



## **Public Policy Forum**

### **Campaign Finance: The Reform Moment in Albany and D.C.?**

**Presented by  
Michael Waldman**

*April 28, 2006*

*Thomas L. Gais:*

Good afternoon and welcome to the Rockefeller Institute. This is another in our series of public policy forums. My name is Tom Gais and I'm co-director of the Institute. It's interesting that we've had a number of speakers in our public policy forums in recent months discussing a wide array of reform issues. We've had Eliot Spitzer and, more recently, Alan Hevesi talking about a long list of reforms that they think ought to be brought to New York State. Today, we're focusing a bit more on a specific issue, mainly how we finance state and national campaigns. But I also think it's fair to say that our speaker, Michael Waldman, has chosen one of the chronically toughest problems for political reform. Part of the toughness also makes it especially interesting.

Campaign finance reform, to my mind, raises an enormous range of questions. There are constitutional questions about how you regulate campaign spending without burdening free speech or freedom of assembly. For example, where is the line between money that supports candidate campaigns on the one hand and money that supports discussions of issues somehow intertwined in those campaigns? Michael's center has actually dealt with that issue a number of times and I suspect he may even talk about that. There are deep questions of political values. What kind of political system do we want and how should it operate? Is the best political system one that promotes vigorous competition between well-funded candidates and political parties and

that promotes maximum participation among all individuals and institutions? Or is it a system that minimizes unequal or corrupt alliances or potential alliances between individuals and institutions on the one hand and candidates and office holders on the other? There are a lot of practical questions and this is a thing that seems to cause campaign finance reforms to have a half-life of just about three years, I think. What are the real effects of different campaign finance laws such as contribution and spending limits and various public financing programs? And how do we administer, enforce, and fund these programs in effective ways? Not just in response to scandals that give rise to the reforms in the first place, but also in response to all the changes and the changing technologies of campaigns in the future.

For all these reasons I'm glad we have a very smart and very brave speaker today. Michael Waldman is the executive director of the Brennan Center for Justice at New York University's School of Law. As such, he oversees the Center's Democracy Program, which includes not only the very impressive campaign finance reform project but also many other projects that address voting and representation, fair courts for vulnerable populations, and approved voter choice of ballot access. Michael's past involvement in campaign finance issues has been extensive and practical including his work as top administrative aide working on campaign finance reforms and drafting proposals while serving as assistant to the President during the Clinton administration from 1995 to 1999. His work during the Clinton administration, however, was hardly limited to campaign finance matters as he also served as director of speechwriting to the President and before that as Special Assistant to the President for Policy Coordination. Michael is a lawyer. He is also the author of several books whose subjects range from the American presidency to the savings and loan scandal of the 1980s. He is also a former professor at the Kennedy School of Government. For all these reasons, we can expect a great deal from our speaker today and maybe he's going to move us to a deeper solution to the issue that vexed Teddy Roosevelt almost 100 years ago. Thank you very much.

*Michael Waldman:*

Thank you for coming here on a lovely day. I will do my very best to be brief, but I should warn you that I wrote Bill Clinton's State of the Union address, so it depends on what the meaning of brief is. I have only been at the Brennan Center for six months but, as you may know, two years ago the Brennan Center produced a report on the State Legislature in Albany that had a big impact and that is still being felt today. Sometimes we feel that we should have tried to copyright

and get royalties from the word “dysfunctional.” Whenever we hear somebody call something dysfunctional, we feel at least a little pride of ownership.

That report, in many respects, didn't say things that people didn't know already, but it helped to crystallize the sense that something was wrong in our government here in New York and that there are some things that need to be fixed. As this election year approaches, both here in New York and nationally, I do think that there is something in the air, a sense that we may be approaching a time when political reforms of various kinds are on the agenda again and it isn't just the pollen; it's something more dramatic than that. The title of this talk refers to a possible reform moment in New York and in Washington, D.C. and I suppose the key thing that might have been missing from the sign is a question mark at the end: whether it's a reform moment or not. We certainly can't lose money over a lifetime betting against campaign finance reform and political reform. But there are propitious signs that something is going to happen. In Washington right now, there is an unfolding corruption scandal of rather shocking dimensions. We don't see the face of it yet entirely but I would like to point out right now to the American public the face of the Congress is named Doolittle, Delay, and Ney. So if reformers can't make something out of that then they're in the wrong business.

Here in New York there's not a vivid scandal in that way, but there is a spectacle that doesn't happen all the time of candidates for statewide office at every level and also for legislative office competing with one another to say that they're the true reformer. And, of course, what they mean differs. But these kinds of constellations, this kind of lining up of the planets, don't happen all the time. So the question is: Are we approaching a reform moment? Scandals often lead to reforms but not always and sometimes you get reforms without scandals. Are we approaching a time here in New York and nationally where the planets are going to line up for change in the way campaigns are financed? What can people do about it? How can we make sure that the proposals that are advanced, as the professor described, are good and would actually advance democracy rather than merely either setting it back or proving futile and proving that good intentions don't mean all that much in the end? There's one thing that I hope you think about as we talk about this. New York State has a long history on these issues. New York, since the beginning of the country, has often been at the forefront of reform. That is also because New York has often been at the forefront of the *need* for reform and we should feel some ownership over the whole institution of American democracy. If you want to think about it, in a lot of ways the ideas behind American democracy came out of the first great op-ed board in our country,

which we now know as *The Federalist*. Note: should this be *The Federalist Papers*?? It was basically a bunch of newspaper op-eds arguing with opponents of the Constitution. They would be bloggers today. I went back and looked to see how far back the concerns about money and the kinds of things in the Brennan Center report were. I found a quote from Dennis Lynch, writing about New York politics in the 1820s, saying that “Corruption has erected her court in Albany and her throne is the lobby.” Walt Whitman said, “lobbyers ... [are] “the lousy combings and born freedom-sellers of the earth.” This kind of perennial concern about influence and who wields it most over the legislatures, in a cyclical way throughout the history of this state, has led to reaction, to reformers, mugwumps as they were sometimes called, or the good government clubs that were created in the 1890s in New York City. The *New York Sun* newspaper dubbed them “Googoo.” The Googoo were such a threat that, and this might sound familiar, the Democrats and the Republicans got together to do redistricting to change the districts so that the Googoo clubs were no longer in the districts that they had been in, in order to thwart the powerful Googoo force.

The pattern is not only back in the 1800s but more recently that we’ve seen, generally speaking, really substantial political reform at the state level and at the national level. It tends to come after scandal. We know about some of these instances in American history but we don’t think of them in terms of political reform or campaign reform. But in the 1800s, the campaign finance system was about patronage. The way campaigns were financed was government patronage; employees had to give a bit of their salaries over. Everybody knew it was a problem and a scandal, but it wasn’t until President Garfield was assassinated by a disgruntled office seeker that civil service was put into place nationally. That was the first real campaign finance reform nationally. Later in the nineteenth century and the beginning of the twentieth century, you had, of course, the rise of industrialization, the rise of great capital combinations, great corporations, and money began to play a much bigger role in the way that we see it now. You’re exactly right that Theodore Roosevelt, who was governor briefly here and then President, took the lead in trying to take steps about it. But the reason he got involved was because he was caught in a scandal. In 1904, when he was running for reelection, it developed that an insurance company had given him money and that was considered very scandalous at the time. He felt his honor had been besmirched and he told a reporter, “Sooner or later, unless there is a readjustment, there will come a riotous, wicked murderous day to come.” He got Congress to pass the ban on corporate campaign contributions, which basically held (and I think this goes to the issue of whether or not reforms last three years or three decades) until the rise of soft money in substantial ways much

later in the twentieth century. The direct election of senators was itself a reform. That was the product of what was then considered a campaign finance scandal. Back before direct elections, it was the state legislatures that picked the senators and it was the state legislatures where big, powerful business interests generally wielded enormous influence. It was said of the — how can I say it here at the Rockefeller Institute — of an oil company which will go unnamed, it was said of John D. Rockefeller that he did everything to the Pennsylvania Legislature except refine it. His power over those state legislatures was so severe that it led to a very famous muckraking article in *Cosmopolitan Magazine* (I think it was a different *Cosmopolitan* than we know for diet tips), called “The Shame of the Senate.” And that series of articles led in many ways to direct election of senators. Again, that was considered not just an arcane process reform, but at its heart a struggle for democracy, campaign reform, trying to deal with the inevitable tension between money and a private capitalistic economy and what we hope to be the ethos of democracy. Watergate led to federal public financing for Presidential campaigns. Again, the pattern repeats itself both at the national level and locally. The reforms in New York City came not because of some abstract interest in good government but because of very severe corruption scandals in the 1980s leading to the suicide of the borough president of Queens, Donald Manes, and the jailing of two of the other party leaders in other states. So that was what led to the system that is now in place in New York City for municipal candidates, of public financing and spending limits.

So, generally speaking, campaign reform follows scandal. It doesn't always follow scandal. First of all, McCain-Feingold, which I will talk about, was the reform that was passed to deal with the soft money issue a few years ago and that really didn't follow a scandal at the federal level. There were controversies but that just followed more broadly a sense that things had gone really wrong and it took six years of very patient organizing by a lot of groups. Many times, scandal does not produce change, either at the national or the state level. I know this firsthand through bitter experience. As was explained, I was in the middle of the last national effort to pass serious campaign finance reform and it was a bitter experience and a failure in every way. People forget now, but by the late 1980s the changes in the federal campaign finance system had become a real national scandal, a governing crisis. The savings and loan collapse, which I did write a book about, cost taxpayers \$250 billion back when that was real money, back when that was more than just a few condos; that meant quite a bit. And these were, as you know, the thrifts, the savings banks that had been taken over by a whole legion of speculators who turned them into, in effect, a way to fund their own real estate work and they were protected from tough regulation by members of Congress who they gave campaign contributions to.

Some of you may remember the Keating Five, which were five United States senators who went and stopped regulators from cracking down on the worst S&L crook in the country. Among the five senators were not only people like John Glenn, the former astronaut, but John McCain, which is how many of us first heard of him. He, like Teddy Roosevelt, reacted to the shame of having to stand in front of the United States Senate with his hand held up as in a perp walk, by becoming an ardent reformer. But it was a very dramatic public scandal and it seemed as if reform was going to happen.

I did work for President Clinton when he was running for President in 1992. It's painful to remember, but when Clinton was elected President, he held his first press conference in Little Rock at the state capitol there right after being elected. He said he had four priorities: the budget, health care, national service, and campaign finance reform. The reason all the politicians were so adamant that this had to be one of the priorities was because Ross Perot had just won 19 percent of the vote as a third-party candidate. He had a bunch of different issues, but at its heart was this very real critique of campaign finance and the way lobbyists had an impact in Washington. Perot got 19 percent of the vote even after it was as clear as a bell that he was flakier than a croissant. I know this is being transcribed; I usually use much harsher terms. People voted for him even though they believed he was crazy. We were sending a signal and this was a propitious moment.

We drafted a very extensive reform proposal and in that case it was the Congressional Democrats who killed campaign finance reform. I was there when it happened. It was the very first meeting of the President Elect with the leadership of Congress, which at that time was controlled in both houses by the Democrats, in the Cabinet room. Clinton gave his pitch for why we had to make an early priority of campaign finance reform and Gore was even harder about it. It is interesting that the senators — George Mitchell was the Senate Majority Leader then — were enthusiastic for reasons that Senators basically did not, in their hearts, believe that they were there because of campaign finance. They always had an opponent. But Tom Foley who was then Speaker of the House of Representatives, a Democrat from Washington State, responded to Clinton and it was really interesting. It was sort of like sitting there watching *The Sopranos*. The code language was interesting. He said, "Mr. President, we agree with you. We've got to do this. We've really got to do it our way. The only thing is that it's going to be really hard for Dan Rostenkowski, (who was the Chairman of the Ways and Means Committee) to whip this bill and the tax bill at the same time. It's going to be really tough to get those members to do it." That was code for: "Nice budget you got there. Pity if something should happen to it." And he was saying

in the coded language of power, “If you push campaign finance reform, we will knife you in the back on your tax bill, which is your main priority.” Clinton could have, I suppose, should have, from my perspective, harangued them, what LBJ might have done, pounded the table and harangued, but he kind of slumped down in the chair. We pushed it but a comprehensive federal campaign financing bill passed the Senate and it passed the House and they never had a conference committee. Among other things, it did everything McCain-Feingold did 10 years later: it banned soft money and things like that, but it also instituted public financing and voluntary spending limits for congressional races. They never actually got together to figure out the differences. In the end, in the last few weeks when the tide of Republican votes was coming at the Democrats, they realized they needed to do something but by that point the Republicans filibustered it and killed it. But it was basically like shooting a corpse. Comprehensive federal reform was done and that was 13 years ago. So the mere fact that people are talking about this stuff, the mere fact that it’s in the air, the mere fact that candidates are saying they’re going to do something about it doesn’t mean, of course, that that’s going to happen.

Why do I think, then, that there might be a reform moment in New York and nationally? Let me quickly tell you what I think some of the factors are and talk about what I think the substantive issues are that people need to be looking and thinking about. Here in New York, as I say, there is not really a big scandal and that may be in the end what prevents this from happening in a substantial way. There is not a savings and loan; there is not a Jack Abramoff. But, of course, there is a growing sense that there is dysfunction in the way the state government runs, a sense of torpor, a sense of things not happening. This campaign finance system as it currently exists is one of the aspects of that. If you’re going to try to change New York State and change Albany then this is one of the things that has to change.

There is a recognition that the New York State campaign finance laws are, as LBJ referred to the federal campaign finance laws before they passed some of the reforms, more loophole than law. Right now, 55 percent of the money given to candidates in New York would be illegal under federal law, which has its own problems. Only 22 incumbents were beaten in the last 30 years for the State Assembly. That’s for many reasons, ranging from redistricting to the fact that I’m sure everybody’s doing a great job and wouldn’t lose but campaign finance is, of course, a big one. Many states don’t pretend to have campaign finance limits; they don’t pretend to have limits on the size of contributions, but New York is proud of its tradition of doing this sort of thing. We’re not a libertarian state. We’re not Wyoming. And of the states that do claim to

have some system of regulation of campaign finance, I think you will find that if you compare ours to the rest of the country, ours is the most lax. We have, in effect, a contribution limit of only \$50,000 per donor to a statewide candidate. The \$84,000 limit of contributions to political action committees (PACs) is the highest in the country. Again and again and again, there are a variety of ways in which the things our law pretends to do, it simply doesn't do.

We could just throw our hands up and say, "Well, we're really Wyoming or Idaho," but I don't think anybody wants that to be the case. The current system is awash in money and money is not necessarily an evil. But a system like this that pretends to be corralling it is not a good thing. There's also a regional movement toward reform. Connecticut recently, after a scandal that led the governor to jail, passed public financing, the first time a state legislature in the country enacted public financing for itself rather than having it done to it by referendum. Vermont, Maine, and New Jersey (of all places) are now experimenting with reform. They're being very careful. They're starting in one or two Assembly districts to see how public financing works but we may have the spectacle, folks, of New Jersey surpassing New York in political ethics and that may, in itself, be a crisis that we will have to deal with. And for a combination of reasons, you do have a situation where nearly all gubernatorial candidates, attorney general candidates, and comptroller candidates, when they get up to speak and talk about what has to happen, they talk about change and political reform. Eliot Spitzer's speech here was a very good example of that. It was very well done. It was very powerful. It certainly looks like there is a good chance he will be the governor. You should know, of course, that what he said is the kind of thing the candidates are saying at every level. That may not be enough to get real reform. That may not be enough to lock people in place. It may not be enough to get things to happen.

Interestingly, the situation is somewhat different at the federal level and I do think there is an interaction between what goes on at the state and federal level. When things happen at the federal level, it makes it more likely that things happen in the states and vice versa. There, you do have this massive scandal. You have a sense at the federal level that the existing laws that were passed are breaking down. The federal presidential public financing system, which was pretty robust for many years in terms of the amount of money that went into it, is now barely followed by anybody. Last year, you may remember that Kerry and Dean in the Democratic Party and Bush in the Republican Party did not accept matching funds and, therefore, voluntary spending limits for their primary campaigns. I think it highly unlikely that any significant candidates will accept the spending limits and matching funds this time. You also have the revolution at the



federal level of rising expectations because McCain-Feingold was passed, which dealt with the worst abuses of soft money. We have strong legislative leaders like McCain and Feingold and you now have, at the federal level, reviving public financing and spending limits as a goal, which has been off the table since 1993 or 1994. So there is, again, movement toward reform at the national level but it's probably going to take a longer time. It's just beginning. So you've got the scandal but not yet the backlash nationally. You don't have the scandal here in New York but you have the frontlash. You've got the sense that something has to happen.

What is it that is the substance of reform? And when I talk about reform, what am I talking about and what is it generally that these proposals tend to involve? First of all, I realize that I'm speaking to experts in many instances and forgive me if I'm telling you what you already know. All campaign finance law in this country is conditioned by and governed by some Supreme Court decisions and Supreme Court doctrines, which have affected very much how the reform proposals look and what they do. The main case was *Buckley vs. Vallejo* in 1976. Back then Congress, in response to Watergate, had passed mandatory spending limits on campaigns. It had also passed public financing and a few other things. In what some of us believe was a wildly misguided opinion, but it is still the law of the land, the Supreme Court ruled that campaign contributions are a form of speech and that it was appropriate to limit campaign contributions if they could lead to corruption or the appearance of corruption. So you could limit the size of a contribution that I can make or that a corporation or union can make to a candidate because that could be like a bribe; that could be corrupting, but that wildly uneven spending between one side and another was not corrupting. It was not appropriate to use the federal or state laws to try to equalize speech, even if you say that what we're doing is enhancing democracy. So you couldn't have spending limits because that would be an impermissible cap on speech. For the same reason, they said, you can't have limits on the amount that a millionaire or, as we in New York say, a billionaire, spends on their own campaign because you can't bribe yourself and whether there is a distorting or corrupting impact on the whole system it doesn't matter. That was the Supreme Court's decision.

One of the interesting things that has happened with the courts in recent decades is that they used to have a lot of people with practical experience on the courts. If you look at the courts that came out of the New Deal era, they were full of former senators and governors and attorneys general of the United States. Lately, the Supreme Court has been professors and judges. The only person on the Supreme Court that ruled in *Buckley vs. Vallejo* who had actual political experience

was Byron R. White, who had been a campaign official for President Kennedy. In his dissent in that case, he has a famous footnote that basically, if I could sum it up, said, “You people are crazy. You don’t know what you’re doing. You don’t know what you’re setting in motion here.” But that distorted system has led to the arms race in effect at the federal and the state level where candidates, in order to be competitive and taken seriously, have to raise more and more and more money and there’s never an end to it.



There have been efforts over the years to get the Supreme Court to revisit this. The Brennan Center, when it just started a decade ago, wrote a lot of books and had a lot of conferences on how *Buckley vs. Vallejo* was misguided and that it can be pro free speech to find a way to try to stop the arms race, that there can be a corrupting aspect to the chase for contributions, not just to an

individual gift. So far the Supreme Court not only has not agreed with that theory, but the state of Vermont put in place as kind of a test a mandatory spending limit and it just went up for argument before the Supreme Court earlier this year. I wasn’t there but I don’t think anybody thinks that the Supreme Court is likely to find for Vermont. I think they’re most likely to say, in some version, “Can’t you folks read? We said no spending limits.” That would be best in some ways, rather than repealing all limits. What that means is that the way these proposals had been created, voluntary spending limits are okay as long as they’re there as an inducement. An inducement that federal law and many state laws have created with this public financing. Public financing, as you know, is basically candidates get it in some form or another from the taxpayers instead of getting their money from private interests.

There are many different sets of ways that public financing can be done. In Arizona, statewide candidates who raise a certain amount of money or get a certain number of signatures on petitions, from that point on, they get their grant from the state and they’re not allowed to raise another nickel. And they don’t have to raise another nickel. If you talk to Governor Janet Napolitano of Arizona, as I have, she will tell you the main impact for her is that she can actually spend the time talking to voters and not spend her time on the phone raising money. Another way

it's done is through matching funds. Matching funds are when I give a candidate a small contribution and that is matched in some way with taxpayer money. In New York City, which has probably the best matching funds system in the country, it's a four to one match. So what has happened in New York City is that a candidate campaigns to raise private money but it's very much grassroots fund raising. If I give somebody \$100, that's worth \$500 to them. If I give somebody considerably more than that, they still only get the match for the first \$250 of the money. So they don't stop raising money but it's turned into a real inducement for very extensive grassroots organizing and fund raising. That's a different approach. Soft money and the various restrictions on the size of contributions — whether it's the size of the contribution from an individual, who can give money, who can give money to a party, doesn't have to be an actual person, it can be a corporation — there is a blizzard of rules and regulations at the state and federal level.

Looking at the question of when do reforms work. Broadly, I would disagree with the idea that they don't work. I think they work for a while and then people figure out a way around them and that's just the nature of it. But I think that if you look at things that work as opposed to those that don't work, the things that work best tend to be the things that focus on creating a floor, public financing being an example. Giving people a chance to be heard, for the candidates to make their voices heard. It's much harder to have a system, much more complex because the opportunities for loopholes and evasion and unforeseen consequences are much greater with what they call ceilings, trying to put your thumb here and then the money comes out somewhere else. So as people construct these things, it may be sometimes easier and more vivid to say, "Well, I'm going to stop this kind of bad contribution." But it's a lot harder to make that really stick.

Let me conclude by asking, and of course I want to hear questions, what are the lessons from all this history, what are the lessons from the experiences of recent years about reform? For those of us who do want to see change and reform, what are the lessons we can draw on how to make it a reality? The first thing I guess I would say — and this is to anyone in this room who is a fellow advocate for reform — is to make sure that the proposals put forth to the public and the Legislature are real. That they would actually solve problems; they would actually, if enacted in their pristine form, approach the goal. You have a situation very often where people will think, "Well, we'll put something forward a little bit." I've been an advocate at various times of piecemeal reform. But I think this is a point where there is a need for an intellectual revival about these issues to get people interested again, to get people caring. I think it's quite important that

the reforms really make a big difference. We at the Brennan Center always cite the adage of the architect Daniel Burnham who said, "Make no little plans. They have no magic to stir men's blood and probably will themselves not be realized." This manifests itself, for example, in response to the Jack Abramoff scandal in Washington. You all know what I'm talking about when I talk about Abramoff. He's the lobbyist who swindled the Indian tribes to bribe members of Congress. It was kind of indicative of a real culture of corruption in Washington. The immediate answer everyone jumped to was lobbying reform. More disclosure, banning gifts, changing the dollar amount of meals you can take, whether you had to pay for the skybox tickets or not. Some of that stuff is important. It's important to restore people's trust in elected officials. But I argue, and others argue, that in the end you need to move to something significant like public financing, that simply responding with lobbying reform at the federal level is inadequate. I would say similarly here in New York State my group, along with the New York Public Interest Research Group (NYPIRG) and Common Cause and other traditional reform groups, we've put forward proposals on all different kinds of things ranging, as you know, from legislative rules, to redistricting, to "pay or play," which are the contributions from contractors and lobbyists, which is so significant a factor here. But I would argue again that it would be a grave mistake for people like me to come forward without saying, "Look, these are important but the really fundamental change has to be in the way campaigns are financed through some kind of public financing." So the first lesson is to make sure that the reform is real.

The second is, and this is again a cautionary note for people who are working on these issues, there is a huge tendency and temptation by people who believe themselves to be wonderful and pure, who are working on these issues, to form a firing squad in a circle, to shoot at each other and to be dogmatic and, having put forward the bold proposal, to insist on it and be willing to see everything fail absent the bold proposal. Again, I saw this when I was working on these issues at the national level. We had a proposal that was everything that McCain-Feingold did and a lot more. It was public financing, it was spending limits, and some of the reform groups opposed it because they said anything less than 100 percent public financing was "subsidizing a corrupt status quo." There is a huge history of reform groups, when the time came to cut the deal, doing stuff like that. Again, there is a tendency on the part of many reformers who regard money as somehow suspect, who are a little bit put off by politics and all its messy humanity to go for what I call the ceilings, to go for the restrictions rather than thinking, "How can we enhance democracy and just get more people involved and more people into the system?"

The third lesson is that we do need to realize — and I know that there are people here involved in the Legislature — that this kind of stuff only happens when elected officials believe it to be in their own self interest. Part of the way they believe it to be in their own self interest is that it will make their lives easier or they believe it's a good thing for the state or the country and part of it is because it affects their reelection. Editorial boards, for example, are not actually read all that widely all the time, but they are read at election time. So editorial boards have a tremendous opportunity to hold the feet of elected officials and candidates to the fire this time and going forward. Lots of people said they were for reform in 1992 and then when the klieg lights were turned off suddenly they weren't for it in a meaningful way anymore. The way to get people to actually do something next year is to get them to commit to it in a meaningful way this year.

And the fourth way this could happen is with public pressure and public interest. There is some, but we can't pretend that it's overwhelming. Some of you probably know that the Brennan Center report on legislative rules, which is much more arcane in a lot of ways than campaign finance reform, touched a nerve and really got a huge response all over the state from editorial boards, from business groups, from local community groups. There were people in upstate New York writing in "Brennan Center reforms" on their ballot for legislative races. People need to understand that whatever they want to see happen here in Albany, whether it's lower taxes or better environmental regulations, whatever it is, it's not as likely to happen unless the processes by which politics happens improve. I do think that there is an inchoate sense in the public about this but it has to manifest itself in a meaningful way. There is an Action Day on May 9th where groups are coming from all over the state to try to talk to members of the Assembly and Senate. There are some bills that are being urged to happen this year, but there is also a recognition that next year, and especially the beginning of next year, is a key time. But this isn't going to happen unless citizens demand it and it's hard because by its very nature it's unorganized. People are sitting in their living rooms who just have a sense that politics has gotten away from them and government doesn't listen to them. They're not organized and that's why they're not heard. I think as you look back at the history of the country and of New York State there have been many times when these issues of democracy have been central. Our goal, and what I would hope is the goal of everybody here, is at the very least to make it so that democracy and the struggle for democracy is an issue at the heart of politics and it's an issue on the tip of people's tongues just the way health care is, just the way the environment is. In my view, you won't actually deal with those issues unless you deal with individual democracy. We in New York State should always remember that for all the problems that we have, something that probably one of the greatest

governors, Al Smith, said, “All the ills of democracy can be cured by more democracy.” That was at a moment when people talked about democracy a lot and I think that we may be at a time when people are going to start talking about it in their kitchens and living rooms again, as a central issue. I will be happy to answer any questions or take any challenges or anything like that.

*Thomas L. Gais:*

I have a lot of questions. I used to work in this area. The last point that you were making is a very good one. If we're going to have real reform, there has to be some kind of continuous political pressure. Right now, you're right that with some exceptions like McCain-Feingold, usually we go through some cycles where we have a scandal and a new law is passed. This happens at the state as well as the federal level. And then there is a more quiescent period and often during those times, legislators don't appropriate as much money as should be appropriated to maintain a campaign financing system, the enforcement is pretty lax, they cut the enforcement board's staffing, and there are state offices with really bad filing systems where a reporter would have a really tough time trying to put together a story from some of those files. So the question of having some sort of sustained political capability or sustained political support for campaign finance is really a tough one. Now, New York City seems to have had that. They have a strong agency down there but they didn't have an easy time to begin with and they had a lot of difficulties when they got started as well but they seem to have done pretty well. Have you or the Brennan Center thought about any practical ways of building public and political support in a more stable way for these kinds of programs?

*Michael Waldman:*

That is an interesting question. It is true that in New York City we know this in part in a very up-close way because the current chair of the New York City Campaign Finance Board, F. A. O. Schwarz, is actually at the Brennan Center. He's retired, but he's our senior counsel so we see it up close. Looking at New York City, it started with a scandal and it came about at a time when the issues of campaign reform were bound up in a lot of other issues of race and representation. It was done kind of all at once. They changed the power of the city council, they passed term limits, there were a lot of things that really mattered to people that sort of happened at once and this was part of it. Two things happened in New York to keep the system working well, with an asterisk. One thing that happened is because we had term limits at the same time as this really robust

public financing system, the elections for city council turned into this incredible exercise of democracy. People got elected who never could have run and will continue to be getting elected who never could have run. So there actually is a class of political leaders who view the system as a great thing and see it as the key to their own public life. They don't really want to see it change. That may change but it seems like the combination of term limits and matching funds is going to keep that. So there is a political class that feels positively about this.

The other thing is, it seems as if it's a cultural matter and it's actually very hard, which we saw at the federal level too after Watergate. The reforms got put into place and there was a real moral sanction and public opinion sanction against anybody who opted out, who didn't go along with the spending limits, who didn't take public financing. In the first 20 years of the public financing system at the presidential level, only one candidate for President didn't take the public financing, John Connolly, and he was a figure of derision because he spent \$12 million and he got one delegate. Now, there is no sanction because soft money made a mockery of the whole idea behind the presidential public financing system, which was that once you got the nomination of your party you weren't supposed to have to raise any more money. Of course, they took the \$50 million plus from the federal taxpayers and then they went out and raised \$120 to \$200 million in private party contributions.

In New York, there is this idea that the city council shouldn't change the campaign finance laws; that's for the voters or the Campaign Finance Board. Only in the last six months has that started to change. The city council has started to make some changes. They weren't necessarily huge changes, but it was a crossing of a psychological Rubicon. I think there will be more and more struggles over the years about that. You hear a lot of people talk about the law of unintended consequences. At the federal level, the lack of enforcement was not an unintended consequence; it was an intended consequence. The Federal Election Commission (FEC) was created to fail. It was created by a man named Wayne Hays who was a member of Congress who insisted that the commission have an even number of Democrats and Republicans and basically not be able to do anything. He did that and then he went to jail because it turned out that he had somebody on his staff who was a secretary and was not able to type. It was a big scandal and he went to jail. But, in the meantime, he created the FEC. In New York, the commission is not set up to fail. It has had very respected people; previously, a Catholic priest who was the dean of Fordham Law School was the head of it and, again, you can't legislate it. It's just a culture that

people thought had to be followed. So there may not be a rule-bound way to do it. It's a cultural thing and moral suasion and that only lasts for a while and then you have to fix it again.

*Courtney Burke:*

I'm with the Rockefeller Institute's Federalism Research Group. In your remarks, you made a good analogy about the group of good government folks standing around in a circle and shooting at each other. I know from the reforms that have happened this year with the Legislature, they've not been real reforms. They passed this group to look at public authorities and how the financing is working for that and they haven't figured out whether it's going to fall to the governor or whether the Legislature is going to do it. So it all seems like it's not really going to be real reform. I was wondering if you would publicly share what you see as an acceptable minimum for real campaign finance reform.

*Michael Waldman:*

I don't have a dollar amount, but to me I would argue that reform that merely attempts to limit contributions for party gifts or pay-or-play lobbying but does not in some way put new resources into the system in some form of public financing is doomed to fail and is not worth doing. That's my view. On the one hand you can say, well, it is impossible to pass public financing because of party opposition or ideological opposition, but we have a chance to lower the contribution limits or something like that. Isn't that worth doing? It may be. But I do think that the reforms that really make a difference, not just in reducing corruption but in giving people a sense of real ownership over politics and their government, have more to do with these kinds of augmentations of speech by voters. So that's what I would look for. A lot of these kinds of reforms ultimately do happen most likely when there is strong executive leadership. In the early 1990s, Congress was controlled by the Democrats in both houses and then it was in the opposite party from the President. But there is a sense by legislators that "this is our problem, let us solve it." For an executive to come in and demand action on reform the way we would expect an executive, a governor, or a president to come in and demand action on the environment, that's an insult to the legislators. That attitude is what killed reform at the federal level in the early days. It is not an internal housekeeping matter. It's a matter of huge public importance and without executive leadership, it doesn't happen, generally speaking. There are rare exceptions. John McCain kind of played that role in the Senate.



*Eric Riedel:*

I'm with the office of Assemblyman Dinowitz. You spoke before about how there isn't a huge public outcry for reform right now and I attribute that in large part to a lack of transparency about how the Legislature functions. I've been working in the Assembly for a while and the Brennan Center report was a great step at conveying to the public what's really going on here. But I almost had to work to understand what the Brennan Center report was talking about, how those practices came about, and why they weren't very good for democracy in New York. But given the fact that most people in the public don't read the newspaper, don't follow state government, and therefore don't really understand what the Brennan Center was talking about, how can "good government" groups really convey the situation and push for reform?

*Michael Waldman:*

That's a great question. Sometimes the role of a group like mine is to get into the weeds and really delve into the details of things. Sometimes what has to happen with these kinds of issues, as with any public issue, is popularization. Not simplifying and dumbing down, but just explaining things in terms that people who don't do this for a living can understand. What was interesting about that report was that although it was complex and hard to follow the nuances of committee processes, it really did touch a nerve in a lot of places you would not expect. I think you wouldn't see some of these statewide candidates claiming the mantle of reformer right now if they didn't feel it and if their polls didn't tell them that this is something that, in an inchoate way, not necessarily all detailed, the public wants. Voters get the idea that New York State government is not what it ought to be. It's important for reformers and people working on these issues not to treat the issues of money and politics as a hygienic matter. By which I mean, money is dirty, politics is dirty, let's clean it up and things like that. That is not only off-putting, it also doesn't touch people. What people want to know is: Are their interests being heard by government; are their interests being represented in politics? The argument that we have to make is that these processes in the Legislature choke off the ability of people to have their interests be heard or the role of money chokes off the ability of people to have their interests be heard. I saw on the NYPIRG web site, for example, they were talking about the Edison Electric Institute being able to block legislation that would lower electric rates and this is a byproduct of the current system. That kind of thing brings it home in a tactile way to people with economic concerns and that's a way to make people understand it. Again, people should remember there have been many other

times in the country's history when people were much less educated than they are now, where these issues of processes and democracy were at the forefront of what people talked about. In the whole Progressive Era, which was 20 or 30 years, you saw issues like direct election of the Senate, the things people really cared about. So it can happen.

*Allison Armour-Garb:*

I'm also with the Federalism Research Group here at the Institute. I was just curious, how does the issue of campaign finance reform play in conservative Christian right circles?

*Michael Waldman:*

It's interesting. Generally speaking, it does not fall on ideological lines. I mean, again, you have some Republican Senators, for example, McCain, Hagle, and others, who have been great leaders on it. There is a moral case about the role of money that could be made that's appealing. Interestingly, in practical terms, the organizations of the religious right, such as the Christian Coalition, have taken what I would regard as very hard line antireform view. They spend money. They organize. In part, they view these things as a restriction on their own ability to back candidates. In part, there is also a kind of logrolling among Republican-party-focused interest groups about these things. But the National Rifle Association (NRA) and the Christian Coalition tended to oppose these things because they feel it's going to impinge their own speech. That's as an organizational matter. In terms of the people involved, it doesn't break down ideologically. So people who are pushing for those kinds of changes need to be able to talk about it in moral terms, both in terms of the interests that get represented and in terms of just general right and wrong.

*Aijin Nie:*

I'm with the NYS Division of the Budget. It seems that it would take public outcry and also the will of the public officials for reform to happen. It is hard enough already to convey the message to the public, but how realistic do you think it is that the elected officials will really view it in their best interest to have campaign finance reform?

*Michael Waldman:*

The answer is: It depends on how many members of Congress go to jail. Senator Coburn from Oklahoma said that he had heard that six House members and one Senator were going to jail in the Jack Abramoff scandal, which is kind of funny because there is only one senator whose name has been mentioned, Conrad Burns from Montana. I'm sure he really appreciated his fellow senator announcing that he is going to go to jail. It depends how big the scandal is. If the scandal in Washington is big enough and catches people's attention enough, then what happens is the elected officials feel the need to do something, to show responsiveness. At that point they're less concerned with the substance of the response than showing that they're being responsive. That is where outside groups, newspapers, and third-party validators can help translate to the broader public if the lobbying bill that's being voted on is really reform or not? I always say, when you reach for the fire extinguisher, in the case of scandal, break glass and what's inside the glass is the question. That's why I feel that the proposals need to be strong because they're not more likely to pass by getting weakened. Sometimes they can be harder to pass by getting weakened.

*David Cohen:*

I'm also with the NYS Division of the Budget. What brought about the public financing system in Arizona and how well has that worked?

*Michael Waldman:*

That's a great question. Most of the places where public financing has been enacted at the nonfederal level has been through referendum, through the public vote. As I said, Connecticut is the only state legislature to do it to itself and that was as the governor was carted off to jail. That was an unusual circumstance. There is a national group that works on a lot of state campaigns called Public Campaign. One of the questions in public financing, when I used to talk to members of Congress about it, was that members of Congress are deeply convinced that the public really didn't like public financing. It's very much caught up in people's feelings about taxes and government. It was easily derided as welfare for politicians. Those arguments went back and forth in the course of the campaign in Arizona and the other places where it's happened. People decided that although they didn't love the idea of tax money going to elected officials or candidates, it was better than the alternative. It's worked well.

One of the questions with these things is: Do they set the spending limit high enough that people will actually participate in them? If the spending limit is too low, then candidates say, “Well, I would love to not have to raise the private money, but I can’t really run a race if I’m spending this much money.” And that’s what’s happened in some states. In Arizona, it was set high enough so that a lot of people, including the governor, swears by it. She’s a prosecutor, she would never have gotten elected. So it’s considered to be good. What’s interesting is John McCain, of course, is from Arizona and has seen that what were regarded as some of the more radical reforms happened in his own very red state and the voters there like it. It doesn’t always translate into support among elected officials. Maine is an example where the senators have not responded as much to having it in the state.

*Art Farrell:*

I’m with the Rockefeller Institute. You mentioned this atmosphere of an arms race. Is there anything being done to reduce the cost of a campaign such as free TV time, free radio time, things that would level the playing field from the other end and the candidates wouldn’t need as much money?

*Michael Waldman:*

That’s a great question. It’s interesting, first of all, to understand what can you do to reduce the cost push? It’s something that can happen at the federal level much more easily in some ways than at the state level because the state government doesn’t control, say, broadcasting rates. One of the reasons that we have this campaign arms race is because of the need that people perceive to buy TV ads. If you look at our campaign finance system versus other democracies, the main difference is that we make people pay for the ads. They have corruption too and they have mostly public financing or free TV time but we’re the only country where every ad that’s on TV has to be paid with cash on the barrel. That’s why the costs have gone up and it’s a panic response that people have and they buy more and more. There have been a variety of proposals for cheaper or free TV time. It can range from just the advertising rate charged by stations. TV stations actually charge variable rates for ads and one of the proposals that we have is for what’s called the lowest unit rate. Basically, they would have to charge the cheap rate for campaigns. Clinton came out of the South and was nervous about public financing but loved free TV time because he felt it was a way to sell this stuff without it touching the people’s anti-tax sentiments. I worked in the White

House for seven years on a lot of issues and the only time when a private business lobbyist came to me and directly urged me not to do something was broadcasters. They said, “Yeah, we know you said this but we know you really don’t mean it, right?” We worked very hard when we actually tried to get the Federal Communications Commission (FCC) to require free TV time be given by stations in 1997 as a condition of their license. Clinton called for it in the State of the Union, the FCC was going to do it and the broadcasters went to work on Capitol Hill. Do you know who killed free TV time for candidates? John McCain. He said it was a jurisdictional matter because it should have been done at his committee rather than at the FCC, so he killed it.

The most hopeful thing that’s happening in this whole area is something that could radically change the cost structure, which is the Internet. Nobody knows how we’re going to get TV ten years from now. If it all comes through one pipeline, ad rates are going to be topsy-turvy. And the most hopeful aspect of fund raising that’s happened in the last few election cycles is small-dollar fund raising on the Internet, which we’ve all seen in both parties. And I’ll tell you that in my own case, I’ve given campaign contributions over the years. In the last two or three years, during this last Presidential election, I won’t give away my party affiliation, but every time I would look at *The New York Times* at 10 or 11 o’clock at night and see something that the President had done, it would get me so mad that I would go over to some candidate’s site or some organization and give them \$10. I made more small contributions in this last cycle than I ever had. Millions of people did the same. There are a lot of studies now coming out about the impact of Internet fund raising. It’s much more broad-based, it’s more small-dollar, it tends to be more ideological and less transactional. It’s not as much the natural gas industry giving to people who support the tax credit for natural gas. Maybe that will pull parties to the left and to the right and maybe that will be a problem. But it’s a very positive sign.

It’s one of the arguments people make for matching funds as opposed to a full grant system for public financing. Matching funds coupled with Internet fund raising can mean that candidates can get substantial sums of money by appealing to a broad swath of the public giving small contributions and not having to spend money or time doing it. So we don’t know how that’s going to play out but to me that is one of the brightest rays of hope. Again, I urge people who I’ve worked with on reform not to be dogmatic. People who are pushing for public financing can sometimes be dogmatic and say, “The only real public financing is full public financing. No private money, you get a big grant, the government cuts you a check.” And that may be, but there are some arguments both political and also substantive for a matching-funds approach instead.

That to me is the best. The only thing I can think of that might solve the problem on its own is the Internet. But who knows? It could be a bubble.

Anyway, thank you very much. I really appreciate you coming here and staying on this nice day. I urge you to look at the Brennan Center's web site ([www.brennancenter.org](http://www.brennancenter.org)) and keep up with this stuff. Thank you.