

**Reforming Congress Project
Sunwater Institute
Interview with Matthew Stephenson**

CHERVENAK: Professor Stephenson, thank you so much for joining us.

STEPHENSON: Thank you very much for having me.

CHERVENAK: Why don't we start off with your background, where did you come from, what did you study, and what have you been working on, and where are you now?

STEPHENSON: Sure, so I graduated from Harvard University with my JD from Harvard Law School and a PhD in political science back in 2003. After that I spent a couple of years clerking for federal judges in Washington, DC, and then I returned to start as an assistant professor on the Harvard Law School faculty back in 2005, and I've been here ever since. The topics that I work on are principally topics in public law and the intersection with politics, so I work on administrative law, statutory interpretation, separation of powers, corruption/anti-corruption, and issues related to legislative process, legislative reform.

CHERVENAK: So that's a wide variety of topics. So is there an overarching theme to your interest in government and systems?

STEPHENSON: Generally I think the topics that most interested me back to my days in graduate school have to do with how we design decision-making systems. So, people disagree about the right decisions to make on any number of contested issues, and in a pluralistic society where different people, people of good faith, have very different ideas about what decision ought to be made, we need to develop systems that produce some process for resolving those questions.

So decision-making authority has to be allocated to somebody, but we're uncomfortable with giving one party or entity total control, so we often divide and design systems with checks and balances and various forms of oversight review, and that's what I really found interesting both in my political science studies and also when I got to law school and started to think about these issues from a legal perspective. I think those are the issues that I've always found most fascinating.

CHERVENAK: And so since you spent some time in the judiciary and in academia, so did any of that experience in your clerking have impact on your academic work?

STEPHENSON: Well, I'm sure that it did in some ways to the extent that my academic work engages with what judges do and how legal doctrine develops. Being in the room where it happens, as it were, certainly was interesting and influenced my thinking. There are particular corners of the law that I probably would never have thought about except that while clerking we had a particularly interesting and challenging case that implicated that corner of the law, so

I'm sure that that experience influenced my thinking. I don't think it was as transformative to my thinking as my experience in law school and in my political science PhD program was in terms of my orientation towards the world and to academic problems, but it was a great experience and certainly informative.

CHERVENAK: So why don't we move on to some of the subjects that you've covered in your work, and I'd like to start off with the one I think it's called Democratizing the Senate, something thereabouts, where you talk about Senate procedures, and can you talk through what are the questions that you had going into that piece of research, and did you find any interesting solutions or ways to try to optimize some of the processes in the Senate?

STEPHENSON: Yes, so that project that you're referring to is a paper called Democratizing the Senate from Within, which is a joint project myself, my former teacher Ken Shepsle, and my former student Jonathan Gould, who's a professor at the UC Berkeley School of Law, and that paper is motivated by a concern about two problems in the United States Senate, which are well-known problems, certainly nothing original in the paper. It has to do with the diagnosis of the problem, but one problem much in the news these days is the way in which the Senate's current cloture rules, that is the rules for ending debate proceeding to a vote on the merits, enable a minority of Senators to block action in most areas.

So this is the so-called filibuster, so because the current cloture rule for ordinary Senate business requires three-fifths majority, basically 60 Senators of the full complement of 100, it is quite easy for a minority to block a whole range of actions. There are important exceptions to the filibuster. Budget reconciliation is much in the news these days as an exceptional case. Due to recent changes, appointments to both the judiciary and to Executive Branch offices are exempt from the filibuster, but for ordinary legislative business you need to get 60 votes, and it's just become commonplace. It's not nothing exceptional. You don't have to hold the floor. It's not reserved for matters of great importance, just you need 60 votes for everything.

The second problem, which I think should get even more attention than it does, is the Senate's extreme mal apportionment. So we normally have this idea of one person, one vote, and that when drawing electoral districts, the Constitution actually has been interpreted to require that those districts be in in rough proportion, that is that the same number of people should get the same number of representatives. That would be true when drawing state legislative districts, It's true when drawing House districts. It's not true for the Senate because built into the original Constitutional design is the idea that each state is entitled to two senators, and that means that a state like California gets equal representation in the Senate as a state like Wyoming, despite the massive differences in population.

So what this means, there are a couple things this means. One of the things that this means is when you combine this with the filibuster, it means that the minority of Senators who can block legislative action often represent an even smaller minority of the population. Senators representing something like a third of the US population have the ability to block legislative action as otherwise brought support.

The other problem, though, is that it means sometimes a majority of the Senate, that is 50 Senators plus the VP, or 51 Senators, may represent less than half of the US population, substantially less than half of the US population, and one of the things this means, and now I'll get to the motivation for the project, there are many proposals right now to eliminate filibuster.

Eliminating the filibuster or creating exceptions to the filibuster would address one problem. It would make it easier for majorities to advance their agenda and prevent the minority from obstructing, but it would exacerbate potentially the second problem because if there were no filibuster, or in those situations where right now there is no filibuster, measures can pass out of the Senate with 50, 51, 52 votes, even though those Senators and the majority represent substantially less than half of the US population.

So for example, a few years back under the Obama administration when there was an effort to pass the Dream Act to protect children who were brought to the United States illegally but as children, there was a majority of Senators in support of that, but not enough to get to 60 votes in the Senate, so the bill was blocked by the filibuster. The Senators in support represented well over half population, but then you take something like the 2017 Tax Cut and Jobs Act, so-called Trump Tax Cuts, the Senate—that's governed by budget reconciliation, so filibuster was not possible. The majority of Senators who voted in favor of that represented only 40 something percent of the US population, so we think this is a problem, and the question is what do you do about it?

Our proposal is, instead of just eliminating the filibuster outright, to change the Senate's current cloture rule so that debate must end when there's a motion to close debate that is supported by a simple majority of Senators who represent collectively more of the US population than those Senators who vote against closure. So it would still be the case that if you don't have 50 votes, you can't, or 51 votes, or 50 votes plus the Vice President, you can't move a matter forward, but even if you have a majority of Senators who vote in favor of cloture, if that Senate majority represents less than half the US population, then debate must continue.

In other words, those Senators who collectively represent a majority of the population could filibuster, but otherwise we would operate by simple majority rule. Our argument is that that would make the Senate substantially more democratic and would do so without a Constitutional amendment and without changing the two Senators per state rule. It could be done internally. That's why we titled the paper Democratizing the Senate from Within. That could be done through a change to the Senate's own rules regarding the cloture process, and we think that would make the body more majoritarian and more legitimate as well as more functional.

CHERVENAK: Do you then have a reciprocal rule for the House, where if there's a majority it has to represent more than half of the US geography?

STEPHENSON: So, no, that that is geographic territory, no. Because we don't think frankly, there is no plausible normative philosophical justification for apportioning representatives to population units that are vastly different in size. It's a—both that and the existence of the filibuster are the result of not principled decisions about what's best for democracy, but either a historical accident in the case of the filibuster or historical necessity in the case of equal representation in the Senate, so no I certainly wouldn't apply any such rules in the House, and frankly in the Senate in my perfect world, I would apportion Senate seats on the basis of population, but again the project is designed to ask what could be done without amending the Constitution, which as a practical matter is impossible. What could be done with the Senate's existing rules of procedure to move us towards something closer to a genuinely democratic body?

CHERVENAK: So for the this concept of the filibuster itself, where do you come down on that as a concept, or right now it functions, it seems, more as a veto, which in theory should be reserved for the President according to the Constitution. What do you think the role of the filibuster should be? Is it, should it still be allowed to delay legislation substantially when you have a substantial minority opposing a bill, or do you discount it all together and say it should be majoritarian once you factor in the population?

STEPHENSON: So that last point is important, once you factor the population. So in our proposal, we think that, basically what we think is the legislators who represent a majority of the population should be able to do things, pass laws, confirm appointments and so forth. So in a perfect world, again, if we could do a new constitution from scratch, we might just have a very different legislature. It might retain some features of the existing Senate, but the radical mal apportionment wouldn't be there, and the filibuster wouldn't be there. The fact that the Senate is so malapportioned I think is the only plausible justification for retaining something like the filibuster.

I think if we did not have mal apportion in the Senate I would be perfectly happy with majority rule. I don't think that a requirement of super majority rule for most Senate business is justifiable. There are certain items that are specified in the Constitution where a super majority is required, where you need two thirds of the Senate, for example, but for ordinary legislative business, no I'll run it on a majoritarian basis, however, because the Senate is so badly mal apportioned, this creates a potential justification for I think what the tech world they would call a cludge, a kind of inelegant solution to a problem that you really wish didn't exist in the first place.

The problem is the filibuster doesn't really work as a cludge because although it's true that under some circumstances when the Senate majority represents less than half the population the filibuster functions as a majoritarian device, in other circumstances it does exactly the opposite—exacerbates the power of the problem of minority obstructions. So our proposed way around this is to build population representation directly into the cloture, and we believe you can do that for the same reason that the filibuster is allegedly constitutional in the first place because votes to end debate are technically not final votes, they're internal procedural

rules, and so maybe people ask how is the filibuster even constitutional, like doesn't the Constitution specify where there's a super majority requirement when there's no super majority requirement? Is it the assumption that ordinary rules of parliamentary procedure would apply, and that includes majority votes? And I think that's right, the defenders of the filibuster will say, but that only applies to final action. The filibuster is just the product of a procedural rule that allows debate to continue.

And so what Professor Gould, Professor Shepsle, and I say is okay, fine sauce for the goose is good for the gander. If you can do things with procedural rules that you couldn't do because of the Constitution for final votes, then we also are not stuck with each Senator gets equal voting power, right?

You can give Senators different voting power if it's merely a preliminary procedural decision. So that's a very long answer to your question, but I think it's a little bit complicated because again in my perfect world there would be no filibuster, but there would also be no mal apportionment. If there is mal apportionment, then there should be filibuster of a kind, but not our current filibuster, which requires a super majority of Senators, rather a different kind of filibuster that can be maintained by a simple majority of Senators who represent a majority of the population.

CHERVENAK: Well let me ask the question, then, more broadly, whether it applies to the Senate or the House in terms of the minority and what its power basically is to increase the costs of passage of a Bill, right, so you could say that a 51 percent supported bill incurs X cost, and one that is supported by 99 percent of the body imposes at, you know, X, 2X, costs, or half of cost, or whatever you have, the filibuster seems to, or some mechanism of delay seems to, create some outlet for intensity of opposition. And do you support that notion, or it doesn't matter whether it's 49 percent or 1 percent opposition, they should be able to cut off debate and vote?

STEPHENSON: The latter. I think that the idea that the filibuster measures intensity of preference is a bit of a myth. It's a myth that derives from Hollywood treatments like Mr. Smith Goes to Washington. It also derives from the old talking filibuster where people have to hold the floor. As people have increasingly been pointing out, we shouldn't romanticize that. The most prominent uses of the so-called talking filibuster to represent intensity in the Senate were used principally to deny civil rights to Black Americans or other minorities, so the filibuster, it wasn't invented exactly by the pre-Civil War Southern Senators who wanted to protect slavery, but they were the ones who really started to make use of it extremely aggressively.

And then in the middle of the 20th century, that was where we saw, so it was intensity of preference, but not in a way that I think is terribly credible. But even put all that aside, the modern filibuster due to reforms in the 1970s does not require one to hold the floor, it requires—so cloture votes can just be held and require 60 votes. If the cloture vote fails, then the matter doesn't proceed, so it's free essentially for the minority. Now this has led some people to say we should bring back the talking filibuster, then it would be used more sparingly and it would measure intensity of preferences.

I think there are a couple of problems with that. So first off, the reason these reforms in the 1970s were adopted is to prevent a situation where the entire Senate is ground to a halt. The Senate can't take up any other business because someone is filibustering, so it may be that someone has very intense preferences on a particular bill and wants to filibuster it, but what that means they actually have to hold the floor so the Senate can't take any other matter. No other appointments, no lifting the debt ceiling, no taking care of anything. That's a really big problem, so I think the reforms that allowed cloture votes to take the form of just these up or down votes rather than having someone hold the floor were well-intentioned reforms, that that solved a real problem, and I'm not sure we want to return to that world where the body could be ground to a halt.

Now then you might say, well, but people would only do it really rarely. Not necessarily, as long as they can tag and team. It doesn't need to be literally one Senator. That Senator can yield to another one, so unless you had a situation where one person had to hold the floor like Jimmy Stewart in *Mr. Smith Goes to Washington*, then that's not really what's happening, and none of the proposals on the table involve that.

So if, for example, the current Senate minority wanted to filibuster or propose the minority favor, they would just need to kind of do a, do you know, I don't know what the right metaphor be, musical chairs, round robin, something like this, pass the time, and could maintain it, and meanwhile nothing else in the Senate could be happening. So I'm not hugely enthusiastic about the idea of like bringing back the talking filibuster to measure intensity of preference, I don't think it really does that.

And besides I'm not sure intensity of preference matters that much intrinsically. If there are people who really have intense preferences on a particular policy matter, the normal way we imagine this gets worked out in legislative processes is they'll be willing to make concessions on other things to stop or support a bill that they really care about, as opposed to this kind of demonstrative thing where they stand up and talk for a long time or scream and shout. So yeah, I don't tend to think that that argument, I don't find that argument very compelling because what I care about is majoritarian democratic legitimacy.

CHERVENAK: Right, and so also it seems beyond the preferences questions is also, the magnitude of opposition doesn't matter as long as it's below 49 percent in your mind?

STEPHENSON: Yes, I think generally. Now again, there are interesting questions about whether 51 percent majority with mildly prefer policy x should be able to prevail over a 49 percent minority who intensely prefer policy y, but my answer to that is if that's really true, then this minority ought to be able to offer something to that 51 percent majority in the normal horse trading of the legislative process if they really care that much, not to grind the whole body to a halt, especially because given the way the system works right now, the 51 percent may care intensely, and they're still blocked, right. We don't really have a great way of measuring with little scientific exactitude or anything close to it intensity of preference in that manner.

So again, I'm sure there are smart political scientists and economists out there who come up with even better voting systems that work intensity of preference into account, but again the goal of our project is to work as much as possible within the existing framework and ask how can we adjust the existing cloture rules in order to achieve something more closely resembling a legitimate majoritarian outcome.

CHERVENAK: Right. Well let's move on to the other subject, another subject that relates to your work, which is this idea of Congress delegating its power.

STEPHENSON: Yes.

CHERVENAK: And you have several different pieces on this. One of them relates to when and to whom Congress delegates its power, and then the other is once it's delegated, particularly in the instance of regulatory agencies, how does it effectively do oversight, and what impact does that oversight have on the performance of the regulatory bodies? So can you talk through that area? What are your kind of fundamental interests in that space? What questions you asked, and did you find anything interesting?

STEPHENSON: Yes, so a lot of what I have to say here is not all original to me but is the central preoccupation of one of the major fields of law that I study and teach. Typically in law school, we'll call that administrative law, but it's a bit broader. So many of us learned back in our high school civics classes that Congress makes the law and that's the legislative power, and then the Executive Branch implements the law, that's the executive power, and then the courts adjudicate disputes, and that's not wrong exactly, but it's a significant oversimplification.

Oftentimes Congress does not in its statutes spell out all of the details or even any of the details of the rules that you and I and your listeners and other people have to follow. The Clean Air Act doesn't say exactly what kinds of pollution control technologies, power plants, or automobiles need to use. It doesn't say exactly what the allowable concentrations of sulfur dioxide or particulate matter are in the air. It delegates to the Environmental Protection Agency, which is an agency within the Executive Branch of government, the responsibility to promulgate regulations that will protect human health and the environment.

CHERVENAK: Now before you go on, I just want to make sure that, you know, in theory Congress could do that regulation itself. It could set up its own kind of captive regulatory body that reported to it, so, and that split was made whatever 100, 100 plus years, 150 years ago. What do you feel like, before we move on to the existing situation, do you feel like that split was legitimate, or do you think that in the very beginning they should have kept it internal?

STEPHENSON: I tend to think it was legitimate. I think there are a lot of problems with just how much power administrative agencies have and how it's exercised. I do think that oversight both by the courts and from Congress is important, but I am not in the camp that says this was a

huge mistake, it was illegitimate, this all needs to be done by Congress, the regulatory bodies need to be within Congress.

I think there are just a lot of practical advantages, and this goes back by the way, this there's this myth that this was a modern invention. Back at the founding, Congress was passing statutes that gave the treasury department or the various, or the President, or various other bureaus and departments substantial authority to do what looks a whole lot like legislation, even if we don't want to call it that. I think that there are, again there are huge advantages to giving administrative agencies this kind of authority, and it fits uncomfortably, I recognize, with some of the theories of government that we learned, but I think in practice there's substantial advantages to it, and it's a central feature of our system.

I should say another reason for doing this frankly, and this relates to the earlier part of our conversation, is Congressional dysfunction, so when it's so difficult for Congress to legislate, even when let's say even the President's party has a majority in Congress, and it's so difficult to update statutes so that they can address contemporary problems, there will inevitably be enormous pressure on the President and the administration to aggressively construe the statutory authority that they have, to do what they believe needs to be done, and to advance their policy agendas. And this is this has been true of both Republican and Democratic Presidents going back generations.

It's true right now with President Biden issuing a directive to the Department of Labor saying basically develop workplace safety standards that entail either COVID vaccination or regular testing. So that would be an example of inability of Congress to act on an important issue, leading the Executive Branch to move. The Trump administration did similar sorts of things when it couldn't get Congress to pass the statutes that it wanted, the Obama administration, you just keep on going back, this happens all the time.

And I tend to think it's not intrinsically a bad thing. I think that government is big and complicated, and the problems that confront our government are big and complicated, and Congress has limited time and limited attention and limited resources even if you didn't have all this dysfunction, and I tend to think that for pragmatic, practical reasons which are entirely legitimate, delegating substantial regulatory authority to the Executive Branch is valuable and legitimate.

However, there are understandable concerns that if one is going to delegate this power to administrative agencies that are part of the Executive Branch, there need to be appropriate checks and balances. There needs to be appropriate oversight. So even for people like me who think the delegation is legitimate, that doesn't necessarily mean we should just give the executive carte blanche to do whatever. And then this relates back to the first part of our conversation when I talked about what issues really get me excited and really interested in, how do you design a system that maximizes the advantage of delegating policy decisions to administrative agencies in the executive while mitigating or ameliorating the concerns that are inherent in that kind of delegation.

So you want the right kind of judicial and Congressional oversight, you want enough Presidential control but not too much Presidential interference. That's the whole set of issues that I think are extremely interesting and extremely challenging. One of the issues, though, is, again, it connects this issue of Congressional dysfunction, when Congress is dysfunctional then the agencies start to play more of a role and the courts start to play more of a role, because think about this from the perspective of you're the Executive Branch of government, you're the President, there's some important issue that you want to address. What you would really like to do is go to Congress and get a statute passed that will address this issue or at least clarify your authority or give you the authority that you need.

If you can't do this, you're going to try to get the Executive Branch agencies, which you oversee, to pursue your policy goals to the extent they can under their existing statutory authority. But oftentimes the statutes that they're going to be using are older statutes that were enacted with very different kinds of problems in mind so you're probably going to be pushing the limits, and then who's going to decide if you've passed those limits? The courts. And courts, we would like to imagine, are completely dispassionate politically neutral actors who justify the law, but let's get real. We all know that that's not true, especially when the questions are questions not about very precise legal terms but questions about whether the agency has acted rationally or whether some potentially ambiguous term in a statute has been reasonably read by the Executive Branch or whether they're stretching it just too far.

And so I think that that that raises a whole other set of problems. I would prefer to live in a world where it would be easier for the Executive Branch, for instance, to go to Congress to get clarification of the scope of its authority than the world we live in now, even while acknowledging that a great deal of Congressional delegation to the administrative bureaucracy is in my view appropriate.

CHERVENAK: So you did a paper that talked about when you have this imperfect oversight of regulatory agencies that can have an impact on what outcomes from that agency, its work product. What was your, what did you find, what is the sweet spot for oversight, or is there one?

STEPHENSON: There isn't one. There's no perfect solution. We're always trading off values, and this is this is a theme that comes through very much when I teach my first year law students. This material we spend some time struggling with this. Courts struggle with this as well. It would be nice if there were some simple easy neat solution, if you just had this form of oversight you'd get things right, but we're constantly navigating between skill and correctness, like there's just no way around it. And that's just the world we live in.

With respect to courts, just to continue with that example, we like the idea that agencies have to behave lawfully. Many people believe that judicial review, and here I'll quote a senior administrative law scholar from the mid-20th century: judicial review may be necessary psychologically if not logically to a system of administrative power that purports to be

legitimate. I don't think, there are exceptions, but most people wouldn't want to live in a world where courts didn't have a role in determining whether agencies had acted within the bounds of the law and where agencies could just decide for themselves without oversight what the law means.

On the other hand, agencies have expertise in their policy domains that courts just don't have. Agencies through the President are accountable to the electorate in a way that courts just aren't, and many issues regarding the scope of the agency authority are arguably not strictly speaking legal questions, but are questions about the right way to apply general legal standards to particular circumstances. So many people worry, understandably, about judicial overreaching, that instead of just policing the boundaries of what will be legal, courts will end up assuming for themselves a role that really should rest with the agencies and make policy, and so we're constantly trying to balance these considerations.

Another place we're struggling to balance these considerations has to do with the procedures that agencies have to follow, the Executive Branch has to follow when it makes these rules and regulations. We might say well, if we're going to give agencies all of this power to do all this stuff, we'd better impose them some pretty significant procedural requirements. They should be required to consult with members of the general public before they take some significant action. They should be required to justify the decisions that they make in a manner that an ordinary person can understand. They should have to support their scientific or technical claims with adequate evidence that would pass muster according to the appropriate standards of science or economics or whatnot.

On the other hand, the more we load down agencies with these procedural requirements, the more hoops they have to jump through, the harder it is for them to act, the more difficult it is for them to respond to pressing problems, and that creates pressure to speed up the process to move quickly. And again, it's a very, very difficult challenge. I used the example of President Biden's [origin] Labor Department with respect to COVID restrictions in the workplace as an example before, and I can invoke that again. Now, the specific thing that the Biden administration instructed the Labor Department to do is to issue what's called a temporary emergency standard under the Occupational Safety and Health Act.

Normally, to promulgate workplace safety regulations there's an extensive elaborate process that the Labor Department has to go through, and it's understandable why that's there. The Labor Department's decisions can, they're to protect workers, but they can impose massive costs on companies, so there are procedural safeguards built in to make sure the Labor Department considers all the evidence and processes it makes it available for public viewing, and all this stuff, but that process can take literally years to propagate a new workplace safety standard. So an emergency situation, the statute creates an exception where you can put into place a temporary standard for six months without going through all this process.

But how much can fit into that emergency exception? I believe the way the statute is framed is you can use a temporary emergency standard if doing so is necessary to prevent a grave risk to

worker health or safety, and so there's about to be a fight that I suspect will be litigated in court about what counts as necessary and what counts as a grave risk and how much do we defer to the Labor Department's determinations on those points, and how much should a court independently assess whether the evidence really shows that the risk is grave and the standard is necessary? And again there's no easy answer to this question, and there's no easy answer to the question of who gets to decide this.

CHERVENAK: You know it's interesting you bring up this emergency power because it's, the interesting thing about that power is it's limited by time, right, so it's a six month, the law, or the regulation or what have you, is a limited time window. Now when you think about regulations versus Congress, you know, I'm always struck by the fact that whenever Congress makes a law, it thinks that that law should be immortal and live forever, has no self-destruct mechanism, no way to, no sunset for the most part. It seems that regulations play the same role, where you have a temporary group that's making a rule that will last potentially for eternity. Do you have a position on that since you're bringing up this emergency power which relates to a six-month period, has an automatic sunset, what do you think about that as it relates to the regulators?

STEPHENSON: So before I answer that question I want to gently push back on your initial suggestion that Congress doesn't include sunsets and its legislation. In fact it very often does. In fact, to connect this to our earlier part of our conversation, this is often a point of negotiation. It's happening right now with respect to, for example, the Budget Reconciliation Bill, where progressive Democrats and centrist Democrats are fighting over what's going to be in there, and I gather just from news reports that one of the items under discussion is whether some of these provisions will sunset earlier.

My colleague Jake Gersen years ago wrote a nice law review article called Temporary Legislation that really emphasized the degree to which many statutes do contain these sunsets. But you're not wrong many statutes do, they don't necessarily live forever, but there's no built-in ending, which is precisely why, for example, we are sometimes taking statutes from the 1930s and figuring out how they apply to modern technologies that were not even a dream back then. So that's absolutely right. Regulators also do sometimes build sunsets into their regulatory policies or have look backs. So one of the things the Obama administration did was they actually told agencies to the extent permitted by law they should do some retrospective assessments of the regulations that they had in place and figure out whether any of them should be altered or modified.

I think that sometimes it makes sense to include an automatic expiration date on regulations, but not always. It's not obvious to me that that's necessarily essential, especially because it is easier to change a regulation than it is to change a statute. Now that doesn't mean it's super easy to change a regulation, again there's an elaborate process. It might take 18 months to enact a new regulation, it might take another 18 months to withdraw that regulation to substantially change it, but it still can be done a bit more quickly. So I think that it's kind of on an ad hoc basis building in time limitations to statutes or regulations might sometimes be

appropriate, sometimes it might be necessary in the legislative process to get the thing passed in the first place to have a known expiration date, but I'm not sure that really gets to the heart of the challenge.

CHERVENAK: So in terms of the oversight of the regulators, you see the balancing act that has to happen. You don't have a prescriptive solution for best practices or where it's worked well in the past or where it's really bad and we should avoid that area. Any conclusions?

STEPHENSON: Not that I could sum up succinctly in a conversation like this one. It's, again, it's just so complicated. Again, I think the story of at least the latter part of the 20th century going into the 21st century has been increased polarization and dysfunction in Congress has meant that Presidential administrations of both parties have been even more aggressive than they had previously in trying to advance their domestic policy agendas through administrative regulation, and as they've pushed the envelope it has provoked courts to become more aggressive in reviewing what agencies have done and perhaps to some degree less trustful or instinctively deferential to what agencies have done.

There's a lot of rhetoric about how a lot of these decisions should be made by Congress, and while I'm sympathetic to that rhetoric, I keep coming back to this theme when you have a Congress that doesn't seem to be able to act on these issues, that is, due to a combination of institutional mechanisms that facilitate obstructionism and the polarization that has so dominated political news and political discussions for the last generation, I think that it's a little bit unrealistic to just say blithely, well but Congress should really be dealing with this, but that's the story, and I think that's kind of the world that we live in, and especially given that we just had a recent transition in control of the White House, I think this is useful for all parties today because the kinds of rules that you might like when your guys, as it were, were at 1600 Pennsylvania Avenue, might not be the rules that look so great when the other guys have control of the Executive Branch.

And what we're trying to do in principle is to come up with a set of rules that will be appropriate and fair and legitimate, notwithstanding the first order policy preferences of the Executive Branch and Congress of the courts. It's just very, very challenging.

CHERVENAK: So when we're talking about regulation obviously the big argument is that regulators have a lot more information about what's happening, and that lets them to be the right locus of decision making for what regulations there should be in a particular industry or in a particular sector or what have you, and so you've done a lot of work just more on a theoretical or general basis about this concept of information flow and in particular you've addressed that for legislatures, and I'm very interested in this subject about what are the processes by which the legislature, Congress, collects information and then processes it and then uses that information. I think you've focused a little bit more on the acquisition of information, but could you talk us through that, what have you done in that space and what have you found there?

STEPHENSON: Yeah, so again you're putting your finger on a really, really challenging problem which is that you know much of our political discourse focuses on differences in values, and I think that's really, really important because there are fundamental differences in values and priorities, but a lot of differences of opinion come down to differences in empirical judgments about the likely consequences of different policies. You know, people might differ in terms of how much economic costs they think we should be willing to impose the economy to reduce the probability of a certain level of mortality by a certain amount, but even people who agree on that could just have a very different sense of how expensive will this regulation be.

You know you think about the a proposal to impose new emissions limitations on power plants to address greenhouse gases. Some people predict that such and such regulation will have massive economic costs and will cause electricity prices to spike and consumers to suffer, and they might also say that actually man-made, human-caused global warming is not that big of a problem, and other people will say that's completely wrong and that the costs are going to be relatively modest or maybe even non-existent in the long term and the harms are trying to avert are huge. So very often, even though a lot of times the fight will be about values and partisanship and all that, certainly within the agencies and then professional staffs on legislatures, people care a lot about information and how do we make the best judgment we can under situations of phenomenal uncertainty? Nobody knows for sure on a lot of these questions, but we have to make our best guess.

So how do we get this information? It's extremely challenging. Part of it has to do with people, right, part of it has to do with staffing, both Executive Branch agencies and also on the legislative side, important positions with people who know what they're talking about and know what they're doing and to be able to retain people like that. A major concern that I think flies under the radar a little bit is what we might call the hollowing out of our government and public service as people who really know a lot about what they're doing or have a high capacity to process information leave if we make their jobs too unpleasant or not rewarding enough. I actually think that attracting really good people to work in public service is vitally important. I mean I know you have a private sector background, but you're also now working at Sunwater, which is a public interest type of a group. Talented young people coming out of university, a lot of those people could go into the private sector, do very well.

And many of them, though, might consider a public sector job because they think it may be more interesting to them or because they're attracted to the idea of public service or so forth, but if you really want to get really good people, you need to make those jobs attractive and you need to retain them, and you need to give people an incentive not just to take those jobs out of college or graduate school, but to stay in them, because when you're in government the same way you're in any profession you develop some job-specific expertise and if those people leave you know go join the private sector or the academy or whatever, that that's a huge loss, so I actually think an issue that we don't pay enough attention to is to attract good people with good, smart, expert people into public service and keep them there.

I would say that another issue of concern is that oftentimes the people who know the most about a subject, who have the most relevant technical information to provide, are not exactly neutral parties, so people talk a lot about lobbyists and lobbying and for good reason, and I think a lot of people have this image of the way lobbyists operate as essentially bribing politicians, not necessarily in the legal sense, though that might happen sometimes, too, but you know offering campaign donations and showering people with gifts and taking them out to fancy dinners and getting them to vote the way they want.

And for sure that happens, but what I think people don't appreciate as much is what a lot of sophisticated lobbyists do, is they provide legislators, and to some extent as well regulators, with information, right. They're the often well-financed interest groups, the people who can hire staffs of really smart people, who can prepare great glossy presentations and PowerPoints and do surveys and fun studies and do all this stuff, so that at the moment when important decisions are made, the people who can supply the expertise again are not ideologically or politically neutral people, and that can bias the outcomes of policy in favor of the people who can become the reliable sources of information.

So I think that an issue that we need to think more about is how to counteract that so that our decision makers can be getting information from technical experts from other directions. I mean I remember talking to a business school professor years ago who described a particular accounting rule that was being made. It was a very obscure technical thing, like there are like six people in the world who even understand why this is important, and they're all working at investment banks, and so those are the people in the room explaining to the regulators why they got to do what they have to do.

So I think that's another issue with respect to information that's hugely important. I think that you refer to legislatures before and their capacity to acquire information. I resisted the idea that there was a problem with delegation, the legislature should be doing all this stuff itself, but I think there's a case to be made that Congress's informational capacities, its research capacities, all this stuff, could be greater than it currently is.

So again, so that legislators have sources of information, research, you know, beyond the existing Congressional research service, even though they do great work, for example, to help them in this matter. So these are these are some of the things that I think would be relevant to address this problem, but you know information is the lifeblood of effective government. You just can't make good decisions if you don't have information, even if you have all the information it can be very difficult to make the right decision because the information is incomplete, but absolutely finding ways to promote more informed decision making, I think, is critically important.

CHERVENAK: I think this information discussion also plays into the nature of debate, right. When you have a debate around values judgments, you know there's no logical middle ground in many cases. It's a less than zero sum game for potentially both value holders, whereas in quantitative decisions, in theory, there can be there can be compromise, and in some of the

decision making you've described where you have to, everyone has to have a model of the future, right, and a causal chain in their mind, right. If we do this this will happen, if I do that, that will happen. They have different assumptions in that model, they have different predictions about the way the future is going to go. Now I wonder whether there's a better way for debate dialogue to happen in Congress that would separate these kinds of debates, some of them quantitative, some of them assumptions based, some of them values based, and untangle them from each other in a way that there's better conversation and there's better resolution.

STEPHENSON: I would hope that that were so. I think it's a challenge. So when you say debate, let's differentiate the formal debate that happens in the chamber from the broader debate and conversation negotiation and so forth. I tend to think that the debate that actually happens in the chamber is not real debate, and it's not meant to be and never will be. Those are speeches aimed at constituents and lobbyists and others, and nobody ever, I would be shocked if anyone ever changed anyone's mind, at least with respect to a colleague's mind, by giving a rousing speech on the floor of the center of the floor of the House. That just doesn't happen. But—

CHERVENAK: So you're the ultimate pessimist when it comes to speeches.

STEPHENSON: Yeah, I mean in in other contexts, maybe not, right. I've been at faculty meetings, right, where a colleague has made a point about some decision we're taking collectively as a faculty that's caused me to change my mind. I've been at academic conferences where someone has made a valuable point in debate, it's caused by change, so I'm not generally a pessimist that no one ever changes their mind about anything, but on the floor of the of the US Congress, that's not a real debate. Those are speeches.

And they're carefully calibrated and calculated, like no, that's not going to change anybody's mind, but that doesn't mean that there's not dialogue and discourse and persuasion or at least that it's not possible. I do tend to think, actually, to return to our earlier conversation, that it's easier for that sort of conversation, like we basically agree on what we're trying to accomplish, like what's the best policy. One of the reasons I'm more pro-delegation to agencies than other people is I am of the belief that that tends to happen more, and it's easier for that to happen in the agencies than it is in Congress, and I recognize all the concerns about democratic accountability, and who are these bureaucrats, and nobody elected them, for sure.

That's why I think oversight by the President, oversight by Congress is very important, but I also think there's a value to sometimes letting those professionals have a little bit of breathing space, put them in arm's length from the political decision makers, and give them a general direction of what they're trying to accomplish, and let them figure it out, and we see this in moments of crisis, right. In moments of a pandemic, we turn to our infectious disease specialists and our public health specialists. Like, what are we supposed to do?

After the 2007-2008 financial crisis, you know we, President Bush very much turned things over to Hank Paulson and his team of treasury to figure out what was supposed to be going on, so I think there are often moments when even the most political of political people recognize that

we need to let the experts debate these issues, and again, without suggesting that the so-called experts are experts in political value judgments, which they're not. We absolutely need to have democratic accountability and democratic oversight, but in terms of facilitating the kind of debate you were just describing, do we need a booster shot for COVID? Should there be mask mandates in school? Like those kinds of decisions, I don't think it's really, I don't think we're going to get to a closer answer by allowing them, elected members of the House and Senate, to debate those issues whether on the floor or otherwise. I want to get like a bunch of scientists and epidemiologists and so forth in a room to look at the data to try to figure that out.

So yeah, so that's one of the reasons I'm actually a little bit more enthusiastic about that kind of delegation, but there's always an on the other hand, and that on the other hand is ultimately these are not purely, I resist the idea that any of these decisions can be purely apolitical, just technical decisions, because at the end of the day you're always trading off values, right, so I'm sure that a COVID booster shot and more aggressive mask mandates would reduce by some increment incidence of disease and morbidity, mortality. I also suspect that those things would have costs, and ultimately how we trade off the costs against the benefits is not purely a technical matter, that's a political matter, and by political I don't mean a partisan political matter. We use the word political in different senses. Sometimes we mean Democrat versus Republican political, but sometimes we mean political more in the sense of a decision about what the polity should do and how we should collectively trade off important competing values.

So I love the idea of giving the professionals room to have the kinds of debates that you're talking about. I would like to give them more space to have those debates, but at some point there also needs to be a decision made through the political process about how to take the information that they give us and make the right decisions. That's why I'm a little bit, I understand the rhetoric of, let's follow the science. I agree with what that rhetoric is trying to accomplish in our current situation, but there's a sense in which that slogan is an oversimplification because you can't answer the question, what public health measures should be put in place just by saying, let's follow the science. The science will tell us something about risk levels and cost levels, but then we need to make a collective decision as a polity about what trade-offs we're willing to make.

CHERVENAK: Yeah, I think the trade-offs are the key thing. I mean, the agency's mandate may be limited to calculating certain kinds of costs but not others, and only Congress can take in all of the costs, right, and look at it holistically, in theory, since the agency is only a partial, has a partial control.

STEPHENSON: Maybe. But that's a little bit of an idealized view of Congress, right. To come back to the earlier part of our conversation, I might say, well, in my perfect world we would have a democratically representative legislature that would be sufficiently tethered to the views of the people where the members would be sufficiently concerned with the welfare of their constituents, that exactly that's how they would make decisions.

I'm not sure if we actually live in that world, which creates some very uncomfortable questions about how decisions should be made. I think that one thing that we really need to face up to in this country is, what are the deficiencies in our political system from a democratic legitimacy perspective and figure out ideally how to fix them, but if we can't fix them, the short term what the implications are of those deficiencies for how we make collective decisions.

CHERVENAK: Well, let's let me ask you a question about one other area of your research, and unfortunately we won't be able to get to all of them today, but just to take a few minutes to talk about your work on corruption. Now obviously there's a very narrow definition of corruption, and then there's a very broad sense of kind of legislative—control, you could call it, of someone. Can you talk through a little bit about what you're doing on corruption and, as much as you can, tied to the US, although I know you're doing international work, but, you know, what is your kind of working definition of corruption, and how does it manifest in the US Congress?

STEPHENSON: Sure, so when you say you're studying corruption, inevitably there are some challenges of figuring out, well, how are you defining that term? The conventional definition of corruption that many advocacy groups and international organizations use these days is something like the abuse of entrusted power for private gain. I think the original, it was something like the abuse of public power for private gain, but then there was a recognition that people in non-governmental organizations, private companies, universities, international bodies, and so forth, may also be corrupt. They can take bribes, they can embezzle, and so we should say entrusted power rather than public power.

But the abuse of entrusted power for private gain. Well, what does that mean? That definition has a bunch of ambiguities baked into it, so what counts as abuse? What counts as private gain? Do we say something is corrupt if it's illegal? Do we say something is corrupt if the act is generally viewed as improper, whether or not it's illegal? Do we say it's corrupt if it distorts or undermines legitimate democratic decision-making processes even if no one thinks there's anything particularly wrong with it? All sorts of complicated questions.

I tend to not want to get too hung up on the definitional questions. Corruption is a word that just is used in different senses. None of them are necessarily always right or always wrong. Some people, as you say, use corruption in a narrow sense, and other people use it as a broad sense. My own research in this area tends to focus on corruption more narrowly defined, and that's not because, again, I think that's the right definition of corruption, the only definition of corruption is that I got interested in problems related to bribery, embezzlement, nepotism, conflict of interest, et cetera, and that cluster of issues typically gets labeled corruption or corruption agenda.

Now with respect to the United States, we have plenty of corruption, so on a on a global scale that problem is less significant to the United States than it is elsewhere, at least if you believe these various corruption perceptions measures, but we still have it, and we, if you read the newspaper, right, you'll see reports of unlawful corruption. The United States Department of

Justice has a whole section, the public integrity section, that investigates and prosecutes violations of federal laws pertaining to various forms of corruption, and that department is plenty busy, right. They submitted an annual report to Congress, and they're doing a lot, so we have plenty of that kind of garden variety, I shouldn't, that minimize that, so illegal corruption, bribery, embezzlement, conflict of interest, et cetera. It exists and it's a big problem.

Now some people would prefer to use a broader definition of corruption to describe patterns of influence in, for example, the United States Congress. The outside role, outsized role, excuse me, of lobbyists, the degree to which legislators are responsive to big donors even if there's no quid pro quo, many people think of it as not just a problem but a form of corruption that individual people are allowed to make such large donations to political action committees or directly to candidates, and then those candidates vote on matters that directly affect the interests of these donors. I entirely understand why many people would say that's corrupt, and as I said before I have no interest in litigating definitions.

What I would say, one thing that I do resist and sometimes there's this argument that you see that actually there's just as much corruption in the United States as there was in the United States 150 years ago or as there is in modern Cambodia or Russia or Sri Lanka or Bangladesh or what have you, and the argument is the US hasn't really eliminated corruption, we've just legalized it. Look at the lobbyists, look at the campaign donors, and so forth.

I resist that in part because based on my study both of US history and the situation in other countries, while I'm very, very concerned about excess money in politics in the United States, there's just an important difference between the methods of influence that are used in the United States through legal channels of lobbying, for example, and outright bribery for decisions in terms of the distorting effect that it has on the public policy process. It's just different, and it has different consequences. The consequences are much more severe when outright bribery or embezzlement are widespread the way they are in many other parts of the world and the way they were in the United States 150 years ago. The analogy that I sometimes like to use to drive home the point that I'm trying to make is that if you look at the US judicial system, there are a variety of ways which is biased in favor of the wealthy.

Wealthy people can hire better lawyers, pay them more, and have sophisticated people on staff, and they may be repeat participants in the litigation process and just be very good at, so that's unfair, and it's bad, and it's a real problem that there's so many advantages that wealthy people have just because they can use their wealth to hire better legal council, legal advice, and so forth.

This is not the same as systems where people just bribe the judge to get the outcome they want. The fact that the use of money to gain the advantage has to be filtered through the hiring of better lawyers and presenting arguments in a particular way and so forth means that even though this is a problem that creates an uneven playing field in an area where it's supposed to be totally fair, it's not nearly as big a problem as systems where it is routine that the judge will rule in favor of whoever gives him the bigger bribe, and I think that's, I would draw a similar

analogy to the political process. So wealthy private interests can monitor the legislative process, they can develop a better relationship with legislators, they can hire fancy lobbyists, gather information in the way that I suggested before, present it very effectively, mobilize voters in a way that's very effective. All of this is a problem, but there are situations, and again this would be true in the United States in the past, it's true in other countries today, where it is routine for legislative decisions based on who gives the legislators the most money or money equivalent. So I actually do think there's a really big difference.

The other issue that's relates to the US Congress and corruption, at least the way I study it is, there has recently been some encouraging legislative action to address corruption, a variety of forms. Last year the US Congress finally passed the Corporate Transparency Act, which requires the disclosure of the identities of people who own companies. There's additional legislation pending right now that would strengthen US anti-corruption laws in a variety of respects.

We're having this conversation two days after the so-called Pandora Paper story just broke, illustrating the ways that kleptocrats and human rights abusers and others have abused, for example, the trust system in the United States and taking advantage of certain US states that provide excessive secrecy with respect to corporate ownership or trust control. So I am hoping that we will see further action of the US Congress, despite all the dysfunctions that I complained about earlier in our conversation, to close some of these gaps and loopholes to address this problem. It's actually one of the rare places in the last few years where I've seen an encouraging degree of bipartisan agreement on the need to crack down on some of these issues, so that gives me actually a little bit of hope.

CHERVENAK: Just one question on your corruption concept is, it relates to parties, right, so you know political parties, most of what you described to me sounds almost like political parties, right. Political parties give to campaigns, personal gain, you know the political parties control chairmanships and minority ranking members and committees. You know, those sound like personal gains for cash. Now I know political parties somehow extended exempted themselves from this corruption definition, but I'm curious about your approach to the issue of political parties since they seem to be operating on this exact same mechanism.

STEPHENSON: So I'm not sure it's exactly the same. I'm not sure a party is saying we're going to support you and the party is suggesting that the people who do a better job supporting will get higher or more senior positions in the party would quite fit that definition of corruption, but again I don't want to litigate the definitions.

In terms of my general view on political parties, I actually I have a pretty big fan of political parties as a general matter. I think right now in the United States we have a lot of problems with how they're organized and what their incentives are, but in a big and complicated society this is how we organize political competition. Parties have brands and they have platforms and they have an identity that goes beyond any individual politician, or at least we hope that they would, and I think that's basically a good thing from the health of the of a democratic polity.

I mean the other option in weak democracies is that everything is personal and that you don't have sustained parties that have a recognizable political platform or ideological agenda, it's just about charismatic leaders who promise particularistic benefits to their supporters, so I'm pretty pro party in the abstract. I certainly think that there are problems, and maybe this is what you're getting at, concerns about the way parties may sometimes enforce party discipline in ways that might not be as productive to certain aspects of how our democracy functions. Promising the best positions to the people who raise the most money for the party strikes me as certainly a matter a matter of concern. I don't like that development. But if I were making my list of dysfunctions and pathologies in the modern United States political system that I would really like to address, the existence of political parties probably wouldn't make my top 10 list. I think parties in the abstract are fine.

I think the way that some political parties or party operatives in the United States behave is a consequence of other rules that are in the system that I really would like to change. And to come back to the earlier part of our conversation mal apportionment in the Senate, for example, means that to the extent the parties have national brands, those parties that have a built-in structural advantage with because of mal apportionment, for example, or because in the House of things like partisan gerrymandering and so forth, have less of an incentive to be more moderate, to pitch to the center and try to attract the support of larger voters.

I think what most political parties or political leaders or party leaders are trying to do is there's a trade-off they face too. So their donors and activists tend to push them to a more extreme wing further from the center of American politics, but the desire to win elections pulls them back towards the center, and there's kind of the people who are managing the party's national brand are constantly dealing with this because your donors and your hardcore activists want you to go further to the left or to the right, but you're nervous about doing that because if your brand starts to seem too extreme, then you might start losing elections.

If they're built-in structural biases that mean that you don't pay as much of an electoral cost if you adopt more extreme positions, then in that push-pull struggle you'll tend to become more extreme. The electoral costs of placating your donors or appeasing your activist class decreases when it kind of doesn't matter if you lose a bunch of votes because you can still win a presidential election with less than 50 percent of the vote, or you can still have a blocking coalition in the Senate with only 41 Senators, so, and you can maybe even get a majority in the Senate even if the people who support you are less, are well under 50 percent of the population.

So I actually think that the asymmetric polarization, which is the term that many of my political scientists friends would use, the extremism in US politics right now is not a separate phenomenon from these structural biases and difficulties with the way our institutions are structured. They are in my view in substantial measure a consequence of those things because parties don't pay, at least one party right now in our nation at the national level, doesn't pay as much of a cost if it adopts relatively extreme positions, and I think that's bad for democracy.

I mean majoritarian democracy has all sorts of problems, but as Winston Churchill once famously said, and I'll paraphrase, it's the worst system of government except all the other ones that have been tried from time to time. But right now in the United States we do not have majoritarian democracy as our principal system of government at the legislative level. We just don't. We like to tell ourselves that we're the world's oldest democracy, but like there's an important sense in which we are not currently a full democracy, and that's painful to hear, but I think I think that it's true, and we need to confront that fact and figure out what to do about it.

CHERVENAK: All right I'm going to move on now to our common questions I ask all of our guests.

STEPHENSON: Sure.

CHERVENAK: I'll try to get these through these a little bit quicker so that we can let you on your way. So my first question on this group is, what do you think Congressional representation should mean?

STEPHENSON: So one aspect of Congressional representation which we've already emphasized in this conversation is representation of the people in the sense that each representative should represent approximately the same number of people. We have in this country representation by geographic units. I'm deeply skeptical that's actually the right way to do it. We're stuck with it, like that's what we've got, but I tend to think that we have representation if we have something approximating one person, one vote, and a constant ratio of population to voting power legislature.

Beyond that there are two principal theories, this goes back to Madison and others of what representatives are supposed to be. This is sometimes called the delegate theory of the trustees, so in one theory members of Congress represent their constituents by doing what their constituents would have done if the constituents had all the information at the time. The trustee theory is to do what you think is right for your constituents even if you don't think that's what your constituents would have wanted if it were put up for a plebiscite.

Both of these I think have arguments in their favor. I instinctively lean more towards the trustee theory. I think that members of Congress or other elected representatives should do what they think is right for their constituents, what's in their constituents best interest, not necessarily what their constituents would vote for in direct democracy system, but it's not genuinely representative if some members represent far fewer members than other representatives do, and I really wish we had a system in which people represented groups that were not as gerrymandered, frankly, to limit the representations in ways that are designed to favor the interests of the elected representatives. I think that is unhealthy.

CHERVENAK: And so it seems that you, but part of your definition sounds like the, even in your trustee model, that a person represents, a member, a representative would represent the entire district or state—

STEPHENSON: Absolutely.

CHERVENAK: As opposed to just a, you know, a small portion of that group or the majority of the voters or what have you.

STEPHENSON: Absolutely. I think that you know President Biden, others, have used this rhetoric in speeches that I represent all of you, not just those of you who voted for me, and I think that's absolutely right. I'm not a fool, right, I'm a realist. I know that in reality, members of Congress or other elected representatives are much more responsive to their supporters, or perhaps especially responsive to the people who might be tempted to vote for the other guy, but at least in principle if we're talking about the ideal of representation, yes an elected member should do what he or she thinks is best for the community as a whole and for his or her constituents.

CHERVENAK: And what do you think about the future in terms of future generations within a district or state? Does the current representative also represent those future voters, those future citizens?

STEPHENSON: Yes, I think that it's fair to place more weight on the interests of current voters and current constituents partly because they're known, and the issues they face are known, but yes, I absolutely think that all of us should care about future generations and that, and I again I think of elected representative positions as positions of stewardship of public service to the country, and doing what is in the interests of the country and frankly of the world, too, requires thinking about the future not a focus entirely in the short term, so yeah, I think that's, I would agree with that entirely.

CHERVENAK: Right. Next question is, how would your ideal Congress allocate its time, and by this I mean DC versus district, legislation versus oversight.

STEPHENSON: I don't have a very clear sense of DC versus district. I don't have a super clear sense of legislation versus oversight. I would like to see a lot more legislation oversight versus fundraising activities and various other things that are not really doing the people's business, whether that involves spending more time in the district, talking to people or more time in DC interacting with your fellow legislators. I don't have particularly strong feelings about that. This is what, I don't have the expertise to know about your geographic location, but legislation oversight are the are the two big jobs, and I kind of wish it wasn't fundraising and campaigning 24/7, all the time.

CHERVENAK: Right. Next question is how, and we talked about this a little bit earlier, how should debate, deliberation, or dialogue occur or be structured in Congress, and so you've

already talked about the floor as being a stylized speech location. What about, you know, where this debate, where this kind of dialogue discussion actually happens? Is it committees? Is it behind closed doors? Is it open?

STEPHENSON: I mean committee hearings I think are also for sure mostly. I think a lot of it takes place behind closed doors. Again, to be clear, the floor statements and the committee hearings and so forth, there's a reason for the show. It's kind of public communication. People signal where they stand on important issues, and that's valuable as voters, like we need to know that information, so that's useful, but it's not debate or deliberation in the sense of actually trying to persuade people to change their mind or sharing information with them.

I think that a lot of that happens again behind closed doors. A lot of it happens at the professional staff level without denigrating the importance of high level contacts between members. Right now President Biden is in regular contact, I'm sure, in person with Senator Manchin, Senator Sinema, and others, but a lot of this takes place in the professional staff. I think that one thing that another law professor wrote recently that really resonated is really to think of members of Congress at this point as kind of like CEOs of little corporations. I mean they're, and we don't expect the CEO of a corporation to be making every kind of decision on every matter that's important to the company.

They hire people who are their experts who advise them. The CEO has the final say, but a lot of this gets farmed out. There's a kind of internal delegation within Congressional offices, and again, as you probably gathered from our earlier exchange about professional staff at the administrative level, I love professionals, like I love professional staff people, they know what they're doing and are not necessarily in the limelight, but like really know these substantive policy areas, and so I think a lot of debate, deliberation, dialogue in Congress will occur at that professional staff level.

As I said in our earlier conversation, I would love to find ways to create more opportunities for people who really know these issues but who are not the kind of usual suspects of vested interests and so forth, have more of an opportunity to engage. I think that's a deficiency in our current deliberative system in terms of whose voices get heard and frankly whose voices get taken seriously and who's treated as frivolous. And I think there are some real pathologies in our political culture about who is deemed a serious person and who is deemed a non-serious person, and I think the deliberation dialogue in Congress would be improved if we could remedy some of those pathologies.

CHERVENAK: Great next question is, and I think you already answered it with the Senate, but I'd be curious to hear what fundamental institutional improvement should Congress make within 50 years?

STEPHENSON: Yeah, so I would love, as we said at the beginning, I would love the Senate to change its rules to make it more majoritarian the way that professors Shepsle and Gould and I proposed through this majoritarian cloture rule. I'm sure there are others. On the House side, I

think addressing partisan gerrymandering would be my number one priority. Campaign finance reform, the lobbying reform, would be nice too, but on the House side I think partisan gerrymandering is just a massive problem. So if we could address that and get something like nonpartisan districting commissions to allocate Congressional, to allocate districts, that would be I think the most important performance.

CHERVENAK: Right. What a book or article most shaped your thinking with respect to Congressional reform?

STEPHENSON: I wish I could name one. I don't really have a specific book or article on that front. It's more just like having had the opportunity for many years to talk with smart people who think about these issues, but I don't have one, like this is the thing everyone should read.

CHERVENAK: Great, well the last one you know, it's just about your plans. You've already, you know, done so much work in a number of different, very relevant areas to Congress performance and oversight, you know, what's in the hopper for you? What's in the plan, and what are you working on now and where do you see yourself in the future?

STEPHENSON: So I don't like to plan too far ahead. One of the nice things about being a professor is that you have a lot of freedom to work on whatever strikes you as interesting. I'm going to continue my work on transnational corruption, which I think is a very important problem. Most of my work on that topic is focused outside the United States, but I do think these issues related to hidden assets, money laundering, shell companies, and so forth, are important, and I would like to spend more time thinking about those issues.

With respect to the United States, the issues of Congressional reform were actually relatively new for me. I've thought about delegation, administration, separation of powers for some time, but it's really within the last year or two that I've started thinking a lot more about institutional reform of US Congress. The paper that we spent a fair amount of time talking about with Professors Gould and Shepsle is one of my first forays into this area. I'm working on another project with my colleague Jody Freeman about a non-traditional use of the Congressional Review Act in order to avoid the filibuster for purposes of clarifying the statutes agencies administer to address another one of the topics that we discussed, and I do feel like right now I would like to find more ways to work on these kinds of issues because I do think it's really, really important.

And the kind of work in this area that I have done and I expect I'll probably do more of is work that proposes institutional reforms that would not require a Constitutional amendment or a radical change in this composition of the supreme, or the Supreme Court doctrine. Colleagues in the legal academy who are doing work that I deeply respect and that's very important are focused on proposals for Constitutional change or proposals for what judicial doctrine should be in certain areas, and again I think that work is very important, but I think that odds of Constitutional change are very low, and I think that the current Supreme Court does not have

very much appetite for some of the kinds of doctrinal changes that many people who care about democratic dysfunction have been focused on.

So I'm interested in this increasing genre of literature that thinks about, how can we work within the existing system, including how could we take advantage of what seem like loopholes within the existing system to make it more democratic, and I think that's something that, where maybe law professors could actually be helpful because that's the way our minds work. Those are the kinds of things that we look at. We're not necessarily bound by what's immediately practical, but we're also trained to think about what does the law allow, or how can the law be used to achieve these particular ends, so I think that I would like to do more work along those lines, and I hope that other people do too, in conjunction with people working in the political arena in ways that I just don't expect to increase political support for reform from within.

I think reform from without is extraordinarily unlikely, so I think we have to hope that the result of persuasion efforts and election results over the next decade builds up sufficient support for internal reform that we can democratize our system.

CHERVENAK: Well, professor Stephenson, thank you so much for your time. It's been a pleasure, and best of luck with your future work.

STEPHENSON: Thank you very much for having me. I enjoyed the conversation.