

**Reforming Congress Project
Sunwater Institute
Interview with Louis Fisher**

CHERVENAK: Lou Fisher, thank you so much for joining us.

FISHER: It's good to be here.

CHERVENAK: Why don't we start with your background? So where did you start off, the arc of your career and what you're doing now.

FISHER: Okay, I started off in undergraduate school as a major in chemistry and did some graduate work in physical chemistry, then went into the Army for two years and came back to New York City. My folks were from New York City, and I wanted to write in New York City, and that's what I began to do. And went back to graduate school this time in political science and law and got my PhD at the New School for Social Research and taught at Queen's College for three years. And one last point, in New York City at night often I would go out and listen to the lectures, and the lectures I liked not those from academics, the ones I liked were those who worked either for city government or state government or something else where big issues came up, and in order to solve them they had to work with other people, and that appealed to me.

So I decided to leave Queen's College and join Library of Congress. I learned about, they had a unit there at that time called Legislative Reference Service. They worked with members and committees and subcommittees, and that appealed to me, so that's what I did for the next forty years. And eventually Legislative Reference Service became Congressional Research Service, so I was very fortunate to be, being not just academic but applying what I knew and working with other people on big issues, that's what I did.

CHERVENAK: And at CRS, you know, was it mainly legislative branch stuff, or what, did you have a focus area during that time or were you really doing all kinds of different work?

FISHER: Well one thing I started off right away the year before I joined Library of Congress, I'd written a law review article on the issue of whether presidents could refuse to spend appropriated money, whether they could impound money, and I wrote the law review article saying the presidents did not have that authority. And as a result of that article I immediately began working with House and Senate committees on legislation to deny the president that authority. And it passed, and a couple of years ago the New York Times said that President Nixon vetoed that bill, but he signed it, and I have evidence of that because in my house on the wall is a letter President Nixon said to me, Dear Louis Fisher, I'm signing the Impoundment Control Act. In my imagination, I had him saying, Dear Lou, thank you for curbing presidential power.

But that was a good example of doing something practical and working with other people and on a big issue, so that was spinning power, but I did war power. I did anything involving all three branches.

CHERVENAK: And so the CRS, you know you were there in its basically, former institution, so can you talk about how that institution of CRS kind of evolved as you were there from the beginning until when you left?

FISHER: Well, I think for decades one thing that Congress did in changing its name to Congressional Research Services, it created these new positions of GS16 and GS17 and many of my colleagues in CRS also worked with committees and testified. That's what we did. And then after being in CRS for thirty-five years I was brought to the front office saying I had violated the CRS policy of neutrality. I never even heard the word and I had never been neutral on empowerment or anything else and I took the matter to the general counsel's office, Library of Congress, and they said CRS couldn't, had no grounds for discipline, disciplining me or doing anything about that, so I ended up at thirty-five years of going to the Law Library of Congress, and they told me, the law librarian said, you keep doing what you've been doing, forget about this neutrality business, so I spent five years there, and after forty years left and had a—And I will say not just this neutrality business but otherwise I saw a great decline in the capacity of CRS to do the professional work that Congress needs, and we can talk about that.

CHERVENAK: Sure. Well in terms of what kind of brought you into the, into politics in general or at least in terms of the research side of things, you know, what was it, what were your kind of your broad areas of interest that drew you in to first kind of like it sounds like the local side and then ultimately the national stage?

FISHER: Well you know I started off from that budget issue, Impoundment and Control Act but I got involved in anything involving separation of powers, and that of course would include the war power. And I was done, at one point I was detailed out of Library of Congress to the Iran-Contra Committee, and I was the research director there. So I testified. I don't know if you know anything about the state secrets privilege, but it's been abused over the years, and I ended up testifying a lot on that issue and hope that Congress would pass legislation to limit what presidents could do and to quote state secrets, and unfortunately that legislation never passed. So I think anything involving separation of powers would be open for me.

CHERVENAK: So why don't we then start with the with this whole concept of secrecy? You know, so this series is really focused on Congress, but one of the key information sources Congress relies on is information from the executive branch, right? And so you can imagine a scenario where there's everything that happens in the executive branch is transmitted to the legislative branch, and then you can imagine another scenario where zero information comes from the executive branch to the legislative branch. I'm curious, in all your work, you know, how have you explored that issue, and where have you come out in terms of what you think is appropriate in terms of sharing?

FISHER: Well I think one of the big problems, for decades now, is where the executive branch claims it has special expertise in the national security area, particularly with the intelligence communities, and like any human institution, CIA and any other institution can make mistakes. Not only make mistakes, but not admit making mistakes. So a good example of that of course would be George W. Bush saying he had to use military force against Iraq because for six reasons Iraq had weapons of mass destruction. And we went to war, and he asked Congress for authority, and Congress passed legislation, and we went to war, and then we learned that all six of the claims were empty.

So that's been a big, big problem in the intelligence community. It's very secretive and then they, it turns out that they make massive mistakes and don't admit to them. So that that's a big problem. And I think, you know, the Supreme Court in the decision some years back on Citizens United argued that, concluded that, corporations are like you and me. They're like human beings and they have a right to spend whatever they want on campaigns. So when I talk to staffers today in Congress, they tell me their member of Congress spends about half his or her time raising money for himself and herself and for the party. So they don't have time to do the oversight that they used to do in committees and subcommittees. So that's been a big decline, and if you're not doing oversight, there's a lot of big errors that continue at high cost.

CHERVENAK: So for the concept of secrecy in the area of intelligence, you know, in your mind is there some kind of demarcation between what shouldn't flow to the legislative branch versus what should flow? You know, certain criteria or when do things compromise, I guess, national security when they're shared with the legislative branch?

FISHER: I don't see any limits or any clear areas on this but not that. I think Congress, in order to do its job on not just legislating but oversight, needs access to information no matter how sensitive it is. So I would never accept the notion that the executive branch has the right to withhold certain types of information, and that I think leads to at high cost.

CHERVENAK: Are there other areas of information within the executive branch that you think should be better shared with the legislative branch?

FISHER: I can't think, maybe you can, of any type of information that could be withheld from Congress for different type of reasons. I don't know why the executive branch should know things that Congress cannot.

CHERVENAK: Well one thing I was thinking about is in the area of deliberation, right, before a decision is made in any particular direction, whether it's a, you know, whatever kind of decisions that the executive branch has to make on a daily basis, you know, almost in the same way that Congress is accountable to the written outputs that it makes, right, in terms of laws et cetera. You know, is it the same with the executive branch, where the internal deliberations of the executive branch should be some kind of private area, and only the decision should be made public? Or do you think even the decision-making the, you know the conversations within the cabinet, et cetera, should those also be made transparent to the legislator?

FISHER: I think anything that ends up being part of public policy should be shared with Congress so that it can legislate properly and can do oversight. It's kind of silly, but I'm thinking of what movie some president watched one night. Maybe not necessary to reveal that.

CHERVENAK: Right, that's, you know and again as we look at technologies over the long run we'll be able to know more and more about individuals. You know some people would conceive of a utopia where every congressman had a body camera on all day long, right, and that would be their definition of a transparent utopia. Maybe, you know, for me that would cross some kind of a line, right. There needs to be some kind of privacy in order to carry on normal kind of functioning for an individual dignity. Is there something similar applied to the, could you apply some similar logic to the executive branch, where some things are definitely shareable, whereas others, you know, sort of cross the line into getting less sort of optimal outcomes if everyone in the in the executive branch is then just thinking about how such things will appear on TV?

FISHER: I haven't heard any good arguments as to why any information having to do with public policy can be withheld from Congress. Have you heard of any areas like that?

CHERVENAK: I think what you just mentioned related to public policy, maybe that's the key differentiator, right, so if any, if the meetings aren't related to a public policy then it shouldn't matter for the legislative branch, unless of course they indirectly bear on it, which you could potentially argue would be anything.

FISHER: I like to bring up something that I think relates to what we're talking about because some years back there's an issue brought to the Supreme Court, and it had to do with it with a statute that allowed one house of Congress to act to prevent someone, some action against an individual, and one what one House would be at one, and it was called a legislative veto, sometimes it's a one-House veto, sometimes a two-House veto, and that came to the Supreme Court, and I wrote in the Washington Post in an article saying that no matter what the Supreme Court does or what it wants to decide, the legislative vetoes will continue, particularly those at the committee level and the subcommittee level, and that was a year before the Supreme Court decided to strike down the legislative veto.

And those committee vetoes and subcommittee vetoes have continued, so the Supreme Court didn't know what it was doing, but I think it's a very good example where the two branches worked out an arrangement going back after World War II that agencies can do the best job they can on telling Congress what they think they need for this coming fiscal year and get it passed through the different type of committees and the House and the Senate, but then once the money is appropriated and the fiscal year begins, suddenly things pop up that no one could anticipate.

And there was an arrangement said that if, with the fiscal year beginning, if an agency thinks that although we had asked for this and got that, this new thing is a higher priority and they

would like to take some money to shift it from what they got to this this new issue, but they never thought they could do that by themselves, they would have to come to those committees of jurisdiction and tell them what they'd like to do and get permission from those committees. And the record shows no matter what the Supreme Court said there's no final word because those legislative vetoes have continued up to this present day, and I think it's a reasonable thing that that the executive and legislative branches understood and the Supreme Court did not.

CHERVENAK: And so I assume that crosses over in your thinking also to regulations, so whatever regulation the executive branch may pass, Congress should have an oversight and ultimately could reverse or change any of that at its whim. Is that right?

FISHER: Exactly. That's another area which should be subject to congressional hearings and review, and it should be an opportunity for Congress by legislative veto, committee veto, to reverse what the executive branch wants to do. And I think you know even though the Supreme Court didn't know what it was doing on the legislative veto case, the Chadha case. Executive branch, people do, and if you if you read books by people who have been secretary of a particular agency, they will say in their book, I needed money to be shifted from here to there, and I had to go up to Capitol Hill to meet with committees. So it's a good example of the Supreme Court deciding a case not knowing what it was doing and never really correcting it later on, but the fortunately the two legislative and executive branches have that policy continue, and it's a thoughtful reasonable one.

CHERVENAK: I'm curious about your thoughts since you've been thinking about these issues so long as it relates to at least regulation in particular. You know obviously the way the Constitution was written out, Congress could just do all the regulating itself, right. It outsourced this regulation to the executive branch with some oversight, right. Do you think that was a good move? Should Congress have given the executive branch that capability, or should it have built that capability itself to do the regulation?

FISHER: Well that's a good question. I've never seen much written on that, whether Congress itself could do what is generally done by the agencies, but I think it works best with the agencies taking the quote lead but not think it's independent of congressman coming to those committees of jurisdiction and telling them in this case an agency regulation they'd like to do this and that and get feedback, and I think that's a very healthy thing to come forward and be open and have each branch respect each other.

CHERVENAK: Well let's go back to the notion of money that you brought up earlier. So you've done a lot of writing on the budget and the president's relationship to the budget. Can you talk me through kind of the questions or the areas you've explored related to the budget, and you know where you've come to and you know what should Congress really be doing in the budget and what should the president be doing, if anything?

FISHER: Well I think, you know, the power of the first, the frame is understood belong to Congress. There's this new a lot of talk, including the most recent member of the Supreme Court, about originalism, and there's this belief and when you're interpreting the Constitution you should be guided by originalism, namely what the framers thought at that time, and I've never been, I'm an originalist in the sense I believe in the separation of powers, I believe in checks and balances, but I'm not an originalist in the sense that, we know that the framers allowed slavery to continue, and we know that the framers didn't allow women to vote or to get educated or be any kind of professions, so a lot of things originalism could be a great light for that I am not.

CHERVENAK: I am interested in this concept of you know bottom-up budgeting versus top-down budgeting, and this is something I kind of explored with Allen Schick on the program once before, and you know his opinion is that the way Congress budgets is an incremental kind of budgeting process so you take the previous year as a given and you make modifications, versus kind of each year or each two years thinking anew about the about the budget. So that was one kind of framework through which to view the budgeting process, and of course the other is that today, you know, the president presents a budget to Congress and the Congress does whatever it wants with it, but that wasn't in the original design. The original design was just for Congress to come up with the budget. So I'm curious about where you come out since you've written on this subject, and it is a separation of powers question.

FISHER: Well I think what you just said is correct, and it took a while for the budget act to formally give certain powers to the executive branch, particularly the president submitting it. I think you and I would have to wonder how informed the president is in submitting the budget. It's a very complicated process in all the different agencies, and I don't think any president has the time or information to actually do that. So to me it's a little bit of a myth the president presents the budget. He does, he does formally present the budget, but doesn't mean he knows what it was in the proposal. So it's the starting point. That's all it is, it's a proposal, and then Congress can do what it likes.

CHERVENAK: And from the Congress's process point of view, what is your opinion on that process? Obviously it doesn't work right now, but I'm curious about, given your observations over the years, what do you think the process could be or should be on the legislative side? Well I think they have every need and obligation to look at a proposal, and over the years they know about those programs and how effective they have been, so, but again as we just talked earlier, how much time the members of Congress have if they're spending half their time raising money for themselves and for the party, to be informed about all the things that they used to do and were obligated to do? So I think Congress, I don't think it's in a position to carry on its Constitutional duties.

CHERVENAK: And in terms of timing, you know, for individual members to focus on that or even specialized committees to focus on that is definitely a challenge in terms of the capacity and the time commitment. And what about in terms of the process itself, where you have a budget committee versus, you know, appropriations committee versus authorizations committee

authorization committees, do you do you have a perspective on whether that structure is the right one in the long run, or should there be some other kind of structure to address figuring out how much money to collect and spend?

FISHER: I think what you just said is correct. All the duties that Congress has, a budget authorization appropriations et cetera, but it all gets back to the same question we've been discussing. The structure makes sense, but do members have the time to carry out those duties given how much time is being spent on raising money for their campaign and for the party's cam[paign] for their own party? So I think, I don't know how many members of Congress today are admitting that there's a problem on their ability to carry out their Constitutional duties.

CHERVENAK: Well, I think a lot of them in private would tell you that. You know, in terms of public I don't think they're going to say they don't have, they don't do their Constitutional duties. But I think in in reality you know there's a tremendous amount of pressure on them to spend time doing things that aren't related to legislation and oversight. In terms of the other separation of powers questions that you've addressed over the years, include the war powers, right, that's something that you've written extensively about. Can you talk about, you know, what are the issues that you see there and how has that evolved over time?

FISHER: Well I think the framers, there were a few framers, probably Alexander Hamilton would be one, who would have liked to follow the British system and have a lot of power at the royal level. But I think the framers were, rejected that British model, and they did admit that particularly when Congress was out of session that the president might have to repel sudden attacks. But other than that, any going to war, any military action, whether it's called war authorization, or whatever you want to call it, had to be done with Congress and at the approval of Congress. And that system worked well.

There are a couple of exceptions, certainly us initially going to war against Mexico on disputed territory. There's a lot of deception there, but otherwise Congress either declared war, World War I, World War II, authorized war, but then then the big changes came where presidents began to, not to come to Congress for a declaration of war or authorization, instead going to outside bodies, and the pathetic thing was Harry Truman at a certain point wrote a letter to a senator, and it went in the congressional record, you can read it, and Harry Truman as president said, I want you to understand that if I ever use military force I must first come to Congress to obtain authority. So that was Truman's understanding. Then a couple years after that, the Korean War comes up, and Truman sends troops over there, and he was asked, is what you're doing in Korea, is that the war? And Truman says, no it's not war, and then the person asked, is it a UN police action? Yes, that's it, it's a UN police action. So now you see a door opening where under the Constitution instead of presidents having to go to Congress, they'll go to some outside party, the UN security council.

And then Clinton used military force around the globe, he never came to Congress for authority, and he would argue that the use of military force in different countries is not war, and then after the military action was over, after a long period of time, a lot of deaths on both

sides, Clinton would say after the war was over, I'm sorry to use the word war, but after the military action was over, Clinton would say, it was an awful war, I'm glad the war is over. So we have presidents playing games with words and Congress not pushing back. I think any president who wants to sidestep Congress and get authority from this UN security council, or for some NATO allies, should be removed from office, but that that would take a Congress to value itself, and Congress isn't doing that.

CHERVENAK: So do you think that's the fundamental problem, then, is Congress not valuing itself and its own responsibility?

FISHER: Yes, big problem.

CHERVENAK: I'm sure that the challenge is the precedent and the culture in which they find themselves currently, right, and so I wonder in your thoughts how that culture evolved, right? You're saying the demarcation was Truman, and presumably Truman didn't ask for, you know, didn't want, didn't ask Congress to do its job because he thought it wouldn't, right, and so how did we get to that point is a question I wonder.

FISHER: Well, Truman, of course, if he wants to go to war in Korea, and eventually that damaged him and the Democratic party, particularly when General MacArthur decided to take troops and go right up to the Chinese border and the Chinese troops came in and a huge loss of life on both sides. It seems like from that there will be enough members of Congress with understanding of the Constitutional duties to see that Congress has to recover its powers. I'm thinking of when I was at Library of Congress, there was a proposal legislation that the deficits at that particular time were very, very high, and how can we better control the federal deficits, and the proposal was that the comptroller general in the General Accounting Office would receive expert advice from different groups.

The comptroller general could then cut those amounts, and I was asked to testify on that. I said, but what you're asking the comptroller general to do is to be an executive official. He's a legislative branch official. You can't do that, and then eventually got litigated, and the Supreme Court agreed that the statute was impermissible, allowing legislative officials to carry out executive duties. So that was quite an interesting example.

CHERVENAK: So, I'd like to talk a little bit about the CRS, you know, where we started the conversation because one of the problems as you mentioned is congressional capacity. There's a willingness on the one side, there's a capacity on the other, right. You've identified the lack of will, that's a big problem, but there's also this concept of capacity, and CRS is a core component of that capacity. Can you talk about the evolution of the CRS while you were there and where you think it is now and its role in congressional decision making?

FISHER: Well in talking about my pleasure in those early decades since at Library of Congress, of course working with staffers and committees and subcommittees and the people I worked with were careerists, it was not unusual for me to work with someone who spent thirty, forty years

in Congress. And I valued being in touch with them very, very much, but I think that has changed a great deal. I think a lot of people, first of all, the number of staffers has declined greatly. Now when I was senior specialist, there were about seventeen in Library of Congress, about seventeen senior specialists. And then the GS16, those specialists, and we had about thirty-five to forty of them, so today Congressional Research Service has zero GS16s.

All of that was authorized in 1970 act, and they have three senior specialists all within a year or two to retire, so exactly what Congress has done to strengthen itself through the CRS has disappeared, and Congress doesn't seem to know either that has happened or care about it. They understood in 1970 that they needed professional help, and they upgraded CRS, and CRS has definitely gone downhill, and I haven't heard of any member Congress care about that. And even the members, even staffers I'm aware of in recent years who decided to come to committees of Congress, their track record seems to be maybe spend three or four years with the congressional committee and leave and use that as a jumping point to do something else in town with some other agency but not with the government. So we have declined greatly on professional staff.

CHERVENAK: Well I think you know a number of members have discussed that, particularly the Modernization Committee and they have increased the pay, et cetera, but, you know, is that, is it sufficient, you know, that's the real question, and is it, does it really move the needle for particular senior staff and a lot of that expertise that needs to be retained?

FISHER: Those are all good points, and on this neutrality business, I remember one time when I was at the Law Library of Congress, one senator's staff asked me for a lot of memos on a particular piece of legislation and the amendments were very, very complicated amendments. I did many, many memos on that. At one point they called and said, the senator would like to talk to you. He's on the Senate floor. And so I left the Library of Congress building and walked over to the room right outside the senate chamber, and the senator came out with three of his staffers, two of his staffers, so the four of us were standing there. The two staffers never said a thing, and I'm talking with the senator, back and forth, back and forth, and then the senator brought up one of those amendments. And we talked about that, and then the senator asked, me how should he vote? And I paused. I don't often get that that kind of direct question, and then I thought about, wondering what to do, and since he asked me the question, I said I think you should vote against. And he paused, and I said I may have made a mistake, and he said you're right, I'll vote against.

So that's the kind of, it's hard to describe the complexity of these bills and the amendments, but if someone asks me to look into it, I'll look into it as best I can. If they want to ask me what they should do, I'll do that.

One time on the on the impoundment issue, I was working with a committee and then we went to markup, where they have the bill and other senators can offer amendments, and the council who should have been there wasn't there because he hadn't kept up with the issue. So we're in the room on markup, and I'm sitting right next to the chairman of the committee, and he

recognizes some senator who has an amendment, and he takes the amendments on pieces of paper and he holds it up in the air and reads it. Without saying anything, he hands it to me and asks for my advice, and I gave my advice. You asked for my advice on whether it should be accepted or changed and so forth, but not only did I work with the House and Senate on that Impoundment and Control Act, I met with a lot of top executive officials in the budget area, and I think all the ones I dealt with who were professionals and careerists said that Nixon should not have any independent power to impound money. So I think actually those top executive officials I met with were the ones who had him send that letter to me saying he has signed the Impoundment Control Act.

CHERVENAK: And so the CRS today really doesn't take sides, right, on any particular piece of legislation, that's part of their mantra. So in your mind, you think it would be better if they could take sides, or do you think that there's a different organization that maybe should be created to take sides, or what are your thoughts on that?

FISHER: Well you just said they don't take sides. I, you've been told that on these issues, it's taken a side is not accepted anymore, you can't do that.

CHERVENAK: Well I've seen, you know, testimony and when they're asked a question they reiterate the fact of their neutrality, right, so

FISHER: It's not just CRS people, but other people as well?

CHERVENAK: Oh, CRS people is what I'm talking about.

FISHER: CRS people.

CHERVENAK: So do you think that's right, or should they be able to come down, you know, pro or con, various, you know, voice their own opinions about where the legislation should go, particularly as it relates to the functioning of the legislative branch?

FISHER: Yeah not only express your opinion but express why you've reached that opinion. But I've talked to people today that have retired like me, and they testified frequently before committees and gave their view. And one time on that bill that would have given powers to the comptroller general and I was testifying against that for a House committee, and at that time the Democrats were in control of that committee, and the ranking Republican said the reason I testified the way I am because that happened to be the position of the chairman, and I said to him, if you were the chairman I'd be testifying the same way. I'm offering my view, but no, I think there's been a decline not just in CRS but I think in committee staff of my understanding is the turnover there is very, very rapid. You don't have a lot of careerists.

CHERVENAK: Well we're doing work specifically on that to track that number in our data project to see how many staffers of long length still remain so we can quantify that and then year by year track it to see if it increases or decreases. So we're trying to develop exactly the

data that you're mentioning so we have a base, an audit of every committee and every member to look at their staff tenure. So I'll be able to answer that question in several months definitively.

FISHER: Very, very important and I think everyone who's been, the people I talked to who are retired like me were literally there for thirty-five, forty years, and I don't know what the turnover is like now in CRS. I do know the Congressional Research Service has an American Law division, and they brought in from the outside people to be section heads, and they adopted that neutrality business, and people who were very expert in areas and their reports would go around in the past we're now being told, you got too much on one side, add it on this side and so forth. And many of those attorneys who had been in CRS for a long time just walked away and they went home and quit. So that neutrality is really undermining all the divisions that I know of.

CHERVENAK: Well I think it's time for us to move on to the common questions I ask all our guests if you're ready for the next phase, so why don't we start with, what do you think congressional representation should mean? What does it mean to you when a representative, you know, is covering their constituents? What is the relationship between them and the constituents, and who do they represent and how do they represent them?

FISHER: It's a very deep question. Yeah they are called, we call the representative branch, and they represent, but does that mean they just look, they just get some sort of information what's out there? How do you do that, every, even if you're a House member, no matter what the size of your district, they're going to be conflicting views inside your district or inside your state if you're a senator. So no, I would love to see if there's some studies on how dependent members of Congress are on what views are out there because I think you can, you're representative, but that doesn't mean you have to salute everything you hear out there. But maybe you have some things they your constituents didn't know.

CHERVENAK: And what about your personal opinion? Is it that the member should just cover, do they really represent, you know, their primary voters or the majority who elected them or you know everyone in the district or future generations? Where, in your mind, when people say representation, which one of those comes to mind?

FISHER: Well I think it would be unfortunate I can't give a good reason for them to just to say, these are the people who voted for me so I will listen to them and follow their advice and the ones who didn't vote for me I'll ignore them. I think people who didn't vote for you probably could have some good information and judgment, so no, I wouldn't want to see it done that way where you would say to forty, forty-five percent of the, your district, get out of here I don't care about you.

CHERVENAK: So the next question is really about time, right, and you've brought this up already about you know how members spend their time. In your thoughts, what would be kind of an ideal allocation of member time in terms of in Washington versus in their home districts or

working on legislation versus oversight, or how much money would, sorry how much time would you allow them to raise money, et cetera. What's your thought on the time allocation of members?

FISHER: Well I would like to see Congress overturn, since the Supreme Court to me doesn't have the last word on the Citizens United case, and throw that out. A lot of people be disturbed by that. There was a Constitutional issue on, quote, First Amendment, but I would like to see that. Now by the way on the propriety of having restrictions on money and campaign and Teddy Roosevelt's time around the turn of the century, around 1900, there was legislation passed to deny corporations the right to spend money in political campaigns, and there was no resistance to that at all. There was understandable. So you go from that, which I think was a healthy time, up to Citizens United, and I had urged many members of Congress to take action to overturn Citizen United.

CHERVENAK: But in terms of the members' time in DC, I mean what are your thoughts about their time in DC versus in the home district? Would you have them in the office here in DC all the time and go back, you know, every once in a while, or you know, right now they spend Tuesdays to Thursdays really in DC. What are your thoughts on that allocation?

FISHER: Well I think Tuesday to Thursday makes sense. A very, very complicated job that they have, but I think they have a need to be back home not just to learn what's going on back there, but to tell not and not just the people who voted for you but the people who didn't vote for you, some of the issues that you find of interest and share that with them.

CHERVENAK: So my next question is really around debate, deliberation, and dialogue. So you've, as you said, you've been on the floor, you've been in committee supporting members' decision making, trying to help them to come to better decisions, right, that's ultimately the job of CRS is so Congress can make better decisions. And part of that is this debate and dialogue between members, right, between their staffs, et cetera. Where do you think that debate deliberation should happen? You know it used to be at least partially on the floor, it still happens somewhat in committee. Where do you think it should happen? Is it in the back rooms? Is it at bars? Is it homes, you know, in private? Where do you think this discussion should happen between members to come out with better decisions?

FISHER: Well I think you're familiar with the Lilly Ledbetter case where Lilly Ledbetter worked for twenty years for the firm and only learned that she was being paid less than men doing the same job. And she took legal action, but when we got the Supreme Court she lost 5-4, and what I liked about the 5-4 decision is that person writing for the four dissenters was Ruth Bader Ginsburg, and she was someone who very, very solid Constitutional law in a very, very broad sense, and she not only criticized the majority for deciding the case against Lilly Ledbetter, but she said that she's used this word before, this phrase before, now the ball is in the court of Congress. Namely, we have decided this case, but we messed it up, so Congress please fix the problem.

So there's a good example that you're bringing up what members can do because members, very complicated, a piece of legislation, but got through the House and the Senate, and there's some differences between the two and they had to go to conference committee, and then they agreed on legislation. They went to the president Barack Obama and he signed into law, and Congress said that members, the women, can file their lawsuit at any time, so the Supreme Court the last word? No.

And there's a good example where Congress was told by a leading member of the court that if, for the hundred senators to fix what we messed up in the Supreme Court, and that's what Congress did, so that that that dialogue is quite fascinating and very complicated. You can imagine what it's like for the House and the Senate to have that placed in front of them and to act, and they did, and that became law.

CHERVENAK: And what about between members and between senators? What have you seen as like an effective way for them to interact with each other in this way, this dialogue, this debate?

FISHER: Well that's a perfectly good question. I really don't know how that's handled. Even just working, as you know, within your own branch of government is complicated.

CHERVENAK: So next question is really about, you know, what fundamental improvement do you think Congress should make to itself within the next 50 years? What kind of institutional improvement?

FISHER: Well I would like to see Congress today, and I'll send you a statement I made to a House committee a couple years ago about the decline in CRS, you know, I would like members of Congress today to look back around 1969, 1970 when they upgraded CRS and they saw that they were not in position to effectively check the executive branch, and which I think is true today. So I would like members of Congress to go back to that late '60s, 1970 period and see why they had to upgrade CRS and for them to know that CRS has gone downhill, both gone downhill in terms of members on the staff but even on the attitude, the crazy neutrality business. So I think the facts are there and I would like to see members of Congress do what they did back in 1970, to say, we are not, we don't have the institutional capacity to do our Constitutional duty, and we're going to have to take steps now.

And part of that would be to upgrade, restore CRS and restore committees and subcommittees, their staffing. I think that's declined a great deal. I think this people used to be a careerists on those committees. I think they've declined very far. Very difficult to find such people today. And you can't, you can't be up to speed in three or four years. It takes you a decade after decade to begin to comprehend things. So it's interesting the Supreme Court and his decisions will rely on the Federalist Papers and about some matters that would come to the Supreme Court, and one was this notion that the president is a sole organ in external affairs, and that's from a Curtiss-Wright case in 1936, and all that the Supreme Court in 1936 had to do was to say Congress has passed legislation delegating to President Franklin D. Roosevelt authority to block any military

items going into an area in South America, so could Congress delegate that to the president, and the Supreme Court said it could. So that that was the decision, and yet the Supreme Court piled on all this kind of what we call dicta extraneous stuff, and not just extraneous but erroneous.

And one was the sole organ doctrine, where Justice Sutherland for the court talked about president being sole organ. And it is true that John Marshall when he was a member of Congress in 1800, he defended what president John Adams wanted to do, was to take a British citizen who was charged with murder and transferred him to England. And at some point in this long address, John Marshall used the word, the president's sole organ, but he doesn't mean president is exclusive power over external affairs, he's the sole organ, and he said that there's a treaty that directed him to do it and he's doing it. So, although the opponents of John Adams wanted to remove him and censure him, and once they heard the full statement by John Marshall, they dropped it.

But the Supreme Court in 1936 in the Curtiss-Wright case with, and this is ridiculous, said the president is a sole organ, suggesting [he] doesn't even need statutory, it had nothing to do with the case at all. So I ended up writing an amicus brief to the Supreme Court pointing out not just that error but two other errors and asked the Supreme Court to correct them. And once you read that decision, you can see that the court in that case still spoke about the president in very high terms of, what the president is having unity. And I think that's almost humorous. I mean anyone who can look at any presidency and find unity to it is maybe drinking too much, but you know, there's a recent case where the court just carelessly, of throwing in not only a dictum, an erroneous dictum, and not being held accountable for it. You know I criticized the court for it and I filed an amicus brief, but no I don't know what that is about the Supreme Court. I don't think it ever. It certainly blesses the presidential power.

CHERVENAK: Yeah, so I guess my last question is really just around your plans. You know, are you working on anything these days, whether it be briefs or whether it be new papers or books?

FISHER: I do a lot of, continue to write books and articles, and I've, a recent article in a law review that will be coming out on being critical as to how much we've broadened independent presidential power, the war power, and I just want, one quick example of that, there ought to be an opportunity for the Supreme Court to see that it's made a mistake and to say so, and if they can do that at times, but I think that to me, admitting that you made a mistake, it's not just, it should not be embarrassing. It means that you're a very responsible person, and I don't see the court being able to do that. Many people try to get the court to correct its errors, for instance on the legislative veto case, Chadha case, the court has never admitted that they didn't know what they were doing. So I think we build up in law schools and political science and history classes this view that the court is extremely competent and able and professional, and that's not the case.

CHERVENAK: Well thank you so much for your time. Much appreciated, and best of luck with the with the coming work.

FISHER: Oh, it's great being with you. Thank you very much.