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Laurence H. Tribe
Carl M. Loeb University Professor
Professor of Constitutional Law, Harvard University

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Webinar

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Introduction

President Barbara Van Allen

Good afternoon and welcome to the 708th meeting of The Economic Club of New York. I'm Barbara Van Allen, President and CEO of the Club. The Economic Club of New York is recognized as the nation's leading nonpartisan forum for discussions on economic, social, and political issues, and we've had more than 1,000 prominent guests appear before the Club over the last century, actually a little more than a century. And so we've had a strong tradition of excellence which continues up to today.

I want to extend a warm welcome to students from the NYU Stern School of Business, George Washington University, and the Gabelli School of Business at Fordham, who are joining us virtually today, as well as members of our largest-ever Class of 2023 Fellows – a select group of diverse, rising, next-gen business thought leaders.

Today, I am truly honored to welcome our special guest, Larry Tribe. He is the Carl M. Loeb University Professor of Constitutional Law Emeritus at Harvard University. The title "University Professor" is Harvard's highest academic honor, awarded to fewer than 75 professors in the university's history. Larry taught at Harvard Law School since 1968, received tenure at age 30, and was voted the best professor by the graduating class of 2000.

He was born in China to Russian Jewish parents. He entered Harvard at age 16, graduated magna cum laude with a summa cum laude in Mathematics and magna cum laude in Law. Larry helped write the constitutions of South Africa, the Czech Republic, and the Marshall Islands. He has received 11 honorary degrees, most recently a degree honoris causa from the Government of Mexico in 2011 that had never before been awarded to an American.

He has prevailed in three-fifths of the many appellate cases he has argued, including 35 in front of the U.S. Supreme Court, and appointed in 2010 by President Obama to serve as the first Senior Counselor for Access to Justice, and in 2021 by President Biden to serve on the Presidential Commission on the Supreme Court of the United States.

He's written 115 books and articles, including his treatise, American Constitutional Law, cited more than any other legal text since 1950. Former Solicitor General Erwin Griswold wrote, "No book and no lawyer not on the Supreme Court has ever had a greater influence on the development of American constitutional law." And former U.S. Court of Appeals Judge, Michael Luttig tweeted in January 2023, "Laurence Tribe has been the nation's preeminent constitutional scholar for the past half century."

Today's discussion will be in the form of a fireside chat, and we are delighted to have John Savarese, Partner in the Litigation Department of Wachtell, Lipton, Rosen & Katz,

doing the honors of moderating. As a reminder, this conversation is on the record, and we do have media on the line. Time permitting, they'll take audience questions from the chat box. So if you're ready, I'm going to turn it over to you, John.

Conversation with Laurence H. Tribe

JOHN SAVARESE: Thank you, Barbara, and welcome to everyone. I first encountered Professor Tribe when I took his Advanced Constitutional Law Course many, many years ago at Harvard Law School. He was mesmerizingly brilliant, as you would imagine from that extraordinary resume that Barbara just rattled off. He was an absolutely wonderful teacher. But I have to confess, he was more than a little intimidating to a young law student.

However, in a happy turn of fate, my wife, Lynn, and I have over the years become friends with Larry and his partner, Elizabeth. And it turns out that in addition to being terrifyingly smart, Larry is warm, funny, gracious, generous, caring, and really a wonderful friend to have. So I'm delighted to be able to play the role of moderator today. And, of course, it's thrilling for a former law student to get to turn the tables on your terrifying professor by actually asking him questions for a change. So let's get started.

So, all right, Larry, let's start with the debt ceiling. Recently, you bravely waded into this

very contentious and very important topic by arguing in a *New York Times* op-ed piece that the debt ceiling just might not be constitutional. Now, for those in the audience who perhaps missed that article, why don't you get us started by explaining the core of the constitutional argument you've advanced about the debt ceiling?

LAURENCE H. TRIBE: I'm glad to do so, John. Thank you all for inviting me, and thank you, John, for being such a wonderful friend, a warm and brilliant lawyer. You and your wife, Lynn, have become friends, and I'm really honored to be engaged in this conversation with you.

In 1861, when Abraham Lincoln had just taken office, he had to deal with an insurrection that become a Civil War. And one of the problems was that the United States had really very limited resources at the time. He found that he had to extend the magnitude of the national debt by a factor of 80 times in order to put down the insurrection. And that involved borrowing on the credit of the United States, one of the powers that is delegated, not to the President, but the Congress.

So he had to work with Congress to raise that money and at the end of the Civil War, when the reconstruction amendments were passed, probably the most crucial of them, the 14th Amendment, which organized the readmission of the Confederate States to the Union, had to deal with the problem that those who had tried to destroy the country from

outside, thinking of themselves as outsiders, as rebels, were now going to be on the inside and were going to take it down by destroying the credit of the United States.

So it was crucial that the 14th Amendment, which we usually think of in terms of due process and equal protection, include a provision that ensured the sanctity of the public debt of the United States as authorized by law, that it authorized by Congress. And it says very explicitly, the validity of the public debt of the United States authorized by law, including debts incurred for the payment of pensions and bounties for services in suppressing insurrection or rebellion shall not be questioned.

That doesn't mean just rhetorically. You're not supposed to scratch your head about the size of the national debt, now approaching $31.4 trillion. It means that we are good for paying that debt. That when Congress authorizes and, in fact, requires the President to spend money, he's under an obligation to spend it. And if Congress's authorization for taxes has not raised enough money, the gap in between is money that the President is authorized implicitly, if not explicitly, by Congress to borrow.

In 1917, when the debt had to grow even more because of World War I, Congress put a cap on it, an arbitrary cap, saying no matter what we tell you to spend and even though the Constitution says that when you have promised to pay various beneficiaries, military or civilian, you've got to do it, we're not going to affirmatively let you authorize above

whatever that cap is. And obviously, if we still had the 1917 cap, we would long since have passed this infamous Date X, because the cap has had to be constantly raised. It serves no function other than to give a recalcitrant Congress, if it happens to be in the hands of a group of people who are interested in holding the Executive Branch and the whole country hostage, it gives them a bargaining tool. Let's them say we're not going to raise the ceiling unless you cave into things that the ordinary political process would not enable us to get. It's my view that that hostage-taking move is unconstitutional. It violates the 14th Amendment. And besides, it is a tool that essentially became ineffectual except for the fact that people treat it with great sanctity.

In 1974, after Nixon had played politics with the spending power, he had tried to impound money that Congress had told him to spend. The Supreme Court, in a case called Train against City of New York, held in 1975 that the President doesn't have that authority. It's Congress that has the authority of the purse, the power of the purse. If it tells him to spend, he's got to spend. And because the budget process was in a mess, given that crazy ceiling, Congress enacted the Congressional Budget Impoundment Control Act in 1974, which basically replaced that 1917 law. It said that when Congress passes a budget, it basically sets both a cap and a floor on borrowing, and it gives the President, through the Treasury Department, the power to borrow whatever is needed in order to pay the debts that Congress has created through its own budgeting process.

But now, enter Left Stage, this crazy uncle, the 1917 debt ceiling, and somebody says, hey, that's never been declared unconstitutional by any court. Pretty obviously inconsistent with the 14th Amendment and it's pretty obviously been overridden every time Congress passes a new budget under the 1974 budget process. My position is the President shouldn't pay attention to it. He should basically say, look, if you guys don't, either eliminate this useless ceiling or raise it, after it turns out that the debt has exceeded the ceiling, which is now – as I said, $31.4 trillion, I'm just going to have to keep borrowing. And I'm not borrowing without authority. You gave me that authority when you passed the programs that you required me to administer and said that these monies would go out to Social Security recipients and to others.

And on top of that, in Title 31 of the United States Code, which is where this crazy debt ceiling still sits, there is a freestanding set of provisions, Sections 3102 through 3106, which authorize me to borrow. So I'm not borrowing unilaterally. I am ignoring unilaterally the unconstitutional ceiling that you put on me in the independent Section 3101. Now, President Biden, who said in his recent press conference that he is aware obviously of the Constitution – he used to teach Constitutional Law - he very kindly made some nice remarks about taking my advice from time to time and about respecting me and so on, but he said he wasn't so sure this time because he's worried about litigation.

And that's where we stand because it looks like McCarthy is being held hostage by people to his extreme right, the Marjorie Taylor Greene contingent, and he cares apparently about nothing more than he cares about keeping his seat. And at the same time, President Biden is worried that as we get closer to the cliff, Moody's might downgrade our bonds and we might effectively go into a tailspin simply because of this arbitrary cap. So that's the picture.

JOHN SAVARESE: But, Larry, I want to come back to that litigation question in a moment, but before we get there, I want to ask this question. Earlier this week, also in the *Times* op-ed section, Stanford law professor Michael McConnell, advanced his own view and took issue with you. Indeed, I think, went so far as to say that your views were far-fetched and dangerous. But more specifically...

LAURENCE H. TRIBE: I think he said dangerous nonsense.

JOHN SAVARESE: Yes, I didn't want to quote that, but you're right. That's exactly right. But what he said about the Constitution is what I want to zero in on. He says Article 1, which is the Article of the Constitution that grants Congress its power, in Section 8, Clause 2, clearly grants – in his view – Congress "the power to borrow money on the credit of the United States" and he goes on to say, hence, the Executive Branch cannot impose taxes or borrow funds on its own authority. The Executive Branch, in other

words, is constrained according to Professor McConnell by any Congressionally-imposed debt ceiling. So what's your response to good Professor McConnell?

LAURENCE H. TRIBE: I like Michael, and I'm not inclined to say that he's guilty of dangerous nonsense. By the way, I should correct myself. A little while ago, I think, unable to fathom what a trillion is, I called the current debt $31.4 billion. It's trillion dollars, with a T. And needless to say I agree with Michael that the President does not have the authority on his own to simply borrow money willy-nilly. If he were to say tomorrow, you know, I think I'll borrow $100 trillion just for the heck of it, I've got a lot of good stuff I'd like to do with it, he wouldn't have that authority. Congress has authorized every penny that he wants to borrow, over and above the $31.4 trillion ceiling. It did that when it passed the laws requiring him to spend that much money but not passing laws enabling him to raise the taxes. Sections 3102 through 3106 of Title 31 give him the borrowing authority.

And Michael McConnell, for all his smartness, and he's a smart guy, he's Head of the Constitution Center at a very fine law school out west, Stanford Law School, and is a consultant at the Heritage Society or Institution or whatever, he just doesn't take account of the fact that in 1974 Congress set up a process that made the 1917 ceiling just odious. It's sort of like an appendix to the human gastrointestinal system, except unlike the relatively useless appendix, this thing can be swung around like a bat with

which people like McCarthy can slam the country in the head. So I think Michael McConnell, with all respect, though I wouldn't use the term "nonsense" hasn't made sense at all.

JOHN SAVARESE: For those of you in the audience who can't get enough of this sort of stuff, I want to put in a plug for a taped debate between Professor Tribe and Professor McConnell, which is going to be available on the Peacock streaming service starting this evening. So if you're not getting enough of it on this webinar, there's more to come when these two brilliant professors square off against each other.

So am I oversimplifying if I say it sounds like your view is, Congress, you can't have your cake and eat it too. You can't say on the one hand, Executive Branch, government of the United States, go and spend money on Social Security, Aircraft Task Forces, missile defense systems, and everything else, and then turn around and say, oh, no, no, no, we were just kidding that you were supposed to do that because we now are hitting you over the head with this debt ceiling.

LAURENCE H. TRIBE: That's a good way of putting it, but they're actually doing even worse than that. They're saying we're hitting you over the head and telling you to ignore your overriding duty to the Constitution to which you took an oath and apparently meant that oath seriously. On top of that, we are going to require you, without giving any

guidance at all, to decide exactly whom you're going to stiff when you can't borrow enough money. Is it going to be the Social Security recipients, the veterans, the people who rely on Medicare or Medicaid, the people who rely on the modern equivalent of food stamps?

The President doesn't have the authority to make those decisions. Those are legislative decisions. And, in fact, Congress can't even give the President that kind of line item veto authority if it chooses to. That's what the Supreme Court held in 1998 in another case involving – wait for it – the City of New York. It's the case of Clinton v. the City of New York. So that pair of cases – Train v. City of New York, and Clinton v. City of New York – one decided in 1975, the other in 1998, neither of which Professor McConnell takes account of, shows that it would violate the separation of powers for Congress to stick the President in this box.

JOHN SAVARESE: Got it. So we have other topics we're going to get to, but I want to finish up on the debt ceiling with this question. I'm guessing that when President Biden and Speaker McCarthy are meeting, they're not debating the fine points of these constitutional arguments. So I'm wondering how, as a practical matter, might this issue actually find its way into the courts? Who could bring it before a court? Would a court be able to decide this? How might that actually spool out?

LAURENCE H. TRIBE: Well, I don't think the President wants to sue Congress, so the questions of whether a court would entertain such a suit are probably moot. I also don't think Congress has the ability to sue the President because it would take the Senate and the House in order to have standing under recent doctrine to say that you were disregarding our law, and even then they might not have standing, but the Senate certainly isn't going to do it.

There are, however, people who are directly impacted and threatened. Their employment is threatened by the fact that we are getting close to the cliff without the big boys having gotten together and made a deal of some kind. And in particular, a deal that I think President Biden has the upper hand in if he only remembers the kinds of things that we've been talking about here. There is a lawsuit brought by 75,000 federal government employees in the city of Boston in a federal district court seeking a declaratory judgment and an injunction that the debt ceiling, at least as applied in this context, is of no effect, that it's unconstitutional, that it should be ignored. That's sitting in the district court pending before a very fine judge, Richard Sterns, another former student of mine, by the way.

I don't know if you and Rick were contemporaries. He is presiding over the case. And it is a case which could rocket up the ladder quite quickly to the U.S. Supreme Court if the plaintiffs were to seek a preliminary injunction, if it were either granted or not. So this

could get to the Court. The Court itself might want to duck and pass the buck back to the political branches, telling them go back into that room, the nine of us will lock you in until you come out with some resolution.

The resolution ought to be a clean increase in the debt ceiling not tied to any hostages that are being taken pursuant to it coupled with whatever the ordinary vectors of political influence and power produce with respect to the budgetary negotiations, which ought to be separate. Now obviously when people are simultaneously negotiating over two things, they can pretend to build a Chinese wall right through their own brain, but it's likely to stick. So it is clear that the two sets of negotiations will influence one another. But the clock is ticking. We're getting closer to whatever this X date is, maybe sometime in early June. And the closer we get, the worse it becomes for people like these 75,000 workers who might soon start getting laid off.

JOHN SAVARESE: Fascinating. Okay, let's move on, if I may, to another vexing topic that is on the minds of many in the business community and probably many folks in the audience today. And that is, are there limits on government's authority to regulate or punish corporate speech? And to offer one salient concrete example, is Florida Governor DeSantis's, is he stepping outside of his constitutional lane by criticizing and, some would say, retaliating against Disney for its openly pro-gay civil rights positions? What do you think about that?

LAURENCE H. TRIBE: Here, it's very hard for me to treat this as anything other than an open and shut case depending on, however, what the precise facts are. Unlike the debt ceiling, which is rather complicated, which is almost an interaction of budgetary provisions and the Constitution, here the constitutional provision that applies is fairly straightforward. It's the First Amendment. It says that Congress may make no law abridging the freedom of speech or the freedom of the press or suppressing the right to petition. The 14th Amendment, everyone agrees, makes that step of principles applicable to the state governments, including, whether he likes it or not, Governor DeSantis and the Florida Legislature, which he has pretty much under his control. When the Florida government suppresses the speech of an organization or an individual, it is bumping right up against the First Amendment. When it punishes an individual or a corporation because it finds the point of view of that individual or corporation unacceptable to woke, not woke enough, what have you, it is abridging the freedom of speech – pure and simple. Only the most extreme circumstances, the infamous cry of "Fire" in a crowded theater causing a panic and death and so on, only those kinds of things can justify that kind of suppression.

Now the facts in this case seem pretty clear to me. It looks like Governor DeSantis is taking various advantages and privileges away from Disney. Not things that they are entitled to have as a kind of birthright. No corporation automatically has a right to special benefits to run its own little town and to have Mickey Mouse and Minnie Mouse

and Donald Duck running around and getting tax breaks. But there were reasons that Disney got those breaks. They bring a lot of visitors into Florida. Florida, some people think, is shooting itself in the budgetary foot by punishing Disney.

But be that as it may, it's not going to be up to the courts to ask whether this is a foolish move on the part of the government, it's simply going to be a question, is Disney being punished by the state of Florida, through its governor, by having benefits taken away that would not have been taken away had it not expressed, through its characters, through its theme parks and all the rest, points of view that DeSantis, either is really against or wants to make it look like he's against in order to mount a credible MAGA-based campaign for president against Donald Trump?

Now, corporations, some liberals used to think, shouldn't have First Amendment rights. When Citizens United was decided, lots of people who share my left-leaning points of view, took the position that by invalidating Congress's ability to restrict campaign spending and campaign contributions by corporations, the Supreme Court was essentially creating an oligarchic system in which people with lots of money would replicate their power and so on. And one of the things that was the standard trope in that argument was corporations aren't people. The last time I looked, they didn't have a brain. They didn't have a heart. That's really not relevant. Of course, corporations aren't people, but since the 19th century, they've been treated as persons within the meaning

of the Constitution in the sense that if their property is taken, they can claim a violation of due process.

When Harry Truman tried to seize the steel mills, it wasn't an answer in Youngstown's, you know, Youngstown Sheet & Tube, the steel seizure case, that oh, my goodness, the steel companies aren't people. They did have rights under the due process clause to protect their property and not to have it taken without law, without just compensation, without Congressional authorization. They're owned by people. They have First Amendment rights. If there's a problem with Citizens United, it wasn't that corporations don't have First Amendment rights.

And anyway, the focus of that case was on the rights of listeners, whoever the speakers happen to be or whatever their status, the problem rather was that the court may have paid insufficient attention to the countervailing interest. It may not be the interest in preventing people from stampeding in a crowded theater, but it's in the interest in having a functioning democracy not taken over by wealthy centers of power and influence. But whatever the debate on that side of the ledger, this is no similar interest that is legitimate enough to outweigh the First Amendment rights of Disney and I think that's decisive.

JOHN SAVARESE: So, just to be clear, no one would argue that Governor DeSantis

can't express his own point of view about gay rights or any other topic. That's well within his purview. So the point here, the thing that makes it different – if I'm following you – is the state-imposed deprivation of a benefit tied to the corporate expression of a particular point of view. That's really what makes Disney different.

LAURENCE H. TRIBE: You have it exactly right. And in an Advanced Comm Law course, I'd say, yes John, you are expressing in very straightforward terms what has come to be called the Unconstitutional Conditions Doctrine. As you condition benefits that you, as government, give to various individuals and corporations, you can tell the government that it has to...you can tell them that we're going to give you this money, but you have to spend it feeding the hungry or housing the homeless. You can't spend it on some other thing.

But the conditions you cannot impose are those that require you to sell your free speech rights in exchange for benefits. That's an offer the government can't make, even if it's an offer that you're not coerced into accepting. There are some offers the government can't make and they include offers that you can refuse. But the government can't make certain kinds of deals that effectively tempt people to an extreme degree to trade in their First Amendment rights in exchange for economic benefits. And that's what I think is going on here.

JOHN SAVARESE: Right. So let's move on to a third topic. Just last week, the Supreme Court, in really a quite fascinating decision that's quite potentially important for the business community rejected an argument that had been advanced by food industry groups that the so-called Dormant Commerce Clause, in their view, forbid California from adopting a regulation that the state had adopted barring in-state sales of pork that had been raised in specified cruel conditions.

And the argument was that, well, yes, it purports to be an in-state regulation. The truth is this has a huge impact on the gigantic multi-billion-dollar pork industry and that's largely outside of California. So how can a state do this? And some commentators, including Justice Kavanaugh, in a concurrence in that opinion, have voiced a concern that the court's ruling rejecting this challenge might embolden other states to adopt, again purportedly, in-state legislation that nevertheless has an impact outside the state and in particular might be aimed at businesses that have expressed views that the state doesn't like or that have embraced positions that the state doesn't like.

So to get us thinking about this, first of all, for the non-lawyers in the audience and probably even for some of the lawyers in the audience, just what the heck is the Dormant Commerce Clause? It's a rather arcane area of law. I do remember you covering it long ago in Advanced Constitutional Law, but it's not probably top of mind for everyone. So start us off there.

LAURENCE H. TRIBE: Well, the Commerce Clause, as I think many people know, is part of Article 1 of the Constitution. We talked earlier about the power to borrow money. That's one of Congress's powers under Article 1, Section 8. Probably its most important power, other than the power to borrow money and to tax and to spend, is the power to regulate commerce among the several states and with foreign countries and with the Indian tribes. It is an affirmative power. There is no bar expressly written into the Constitution on state regulation of commerce that might have interstate components. You know, a railway system runs right through the state of New York, let's say. New York can impose safety requirements. It can impose speed limits. It's having an impact on interstate railway commerce.

There was a famous hypothetical restatement of commerce by a professor, a predecessor of mine named Thomas Reed Powell at Harvard, who said that the fundamental point is that – and he put it in the form of a hypothetical restatement – Section 1 of the restatement was the states may regulate commerce, 1.2 was, however, they may not regulate commerce too much. And then there was a caveat, how much is too much is beyond the scope of this restatement. How much is too much is the scope of the so-called Dormant Commerce Clause.

That is, when Congress has not exercised its power to regulate commerce among the several states, including commerce within the states that is connected to interstate

commerce, when Congress has been asleep at the switch – to go back to the railroad metaphor – the limits that nonetheless are implied on what the states may do, they arise from the dead. The sleepy commerce clause now becomes a source of inhibition on the states, the Dormant Commerce Clause kind of awakes. It becomes, I suppose, the woke commerce clause, to go back to what I suppose, you know, was the DeSantis objection to Disney. And now in applying that, instead of amorphous principles, what is the Court to do?

Well, one thing it does is it imposes an almost per se rule against protectionist measures. Measures that say, for example, if you want to sell Florida products in New York, because we don't really like Florida, suppose, you've got to repackage them in New York, which is a way of capturing the packaging industry for New York. Money that could have been earned more efficiently in Florida now has to be earned in New York. That's a no-no. That's a protectionist measure. Congress can authorize the states to engage in protectionism as it has in certain aspects of the insurance industry and the banking industry, but it needs a Congressional green light for states to be protectionist.

And so one possible argument against this California law, which basically said if you're going to put pork products on our shelves, we have to be satisfied that you didn't torture the pigs and the piglets in the course of producing it. Whether that's an overstatement or not, let's just put it simply, that was their concern, that these pigs were raised in

conditions that were so grotesque and painful that it was a kind of torture. And we Californians don't want to lend ourselves to that kind of activity, wherever it happens. Well, somebody might have argued, because most pork is raised outside California, in places like Iowa, that this was a form of protectionism, except they didn't argue...

JOHN SAVARESE: That indeed was the argument that was advanced in this case, yes.

LAURENCE H. TRIBE: Well, not really. That was the label that they wanted to put on it, but when you unwrapped the label and look at the arguments inside the briefs, they couldn't prove, because there was no evidence that California did this just to take advantage of the fact that most of the burden would be imposed on out-of-state pork producers. There was no indication that Californians wouldn't have done exactly the same thing if all the pork happened to be produced in California.

That is, Californians put such a high value on animal welfare that they were willing to forego the lower prices and the greater convenience that might come from the products of pork raised in this way. So there was no argument that this was genuinely and literally a protectionist measure, but you're right, John, they were trying to show that basically its effect was that of a protectionist measure. So much of its impact was outside and so much of the burden was outside and so little benefit came to people in California that it was the sort of burden that was just too much.

And the Court's basic response to that kind of argument has traditionally been that's an argument you should make to Congress. If you want Congress to take over this field, establish national standards, that's fine. But asking us to weigh and balance this stuff, that's not really a task for us. But that is a very complicated argument to make because the Court's business in many areas is exactly to strike a balance. The balance is often between incommensurable values. How do you weigh the value of more conveniently available, more readily affordable pork products against the incommensurable value of less pain, less torture to piglets?

Justice Scalia, in a very famous line, once said, it's a problem of asking whether the rock is heavier than the line is long. He was brilliant at capturing in a metaphor what the problem is. The problem with that metaphor is that that's what balancing is always about. That is, it's almost always the case, or I should say always the case, that when you're trying to weigh considerations against each other, they're not reducible to a common metric. You can try. If you're someone like Bentham, a utilitarian, you can invent a measure called utiles and try to reduce everything to one common metric. But very often, the axes aren't even in the same direction.

It's that which split the court in the most fascinating way. I mean I love it when the court is divided not along predictable ideological lines. I mean, in this case there were seven or eight different opinions. There were several justices – Gorsuch, Thomas, and Barrett

– who took the position basically that this sort of balancing of incommensurables is illegitimate. But then Justices Roberts, Alito, Kavanaugh, Jackson and Kagan said, but we do that all the time, it's perfectly legitimate. So along the axis of the methodological problems that the Court confronts, the Court is split in one way. But then it split in other ways, and I won't really detail all of that.

JOHN SAVARESE: We're running out of time.

LAURENCE H. TRIBE: I think if people are fascinated by this and want to know what its implications would be in other areas, in other industries, they should read a wonderful piece that was published just today by Michael Dorf in an online publication called Verdict. And the title of the piece is "*SCOTUS Endorses Animal Welfare.*" And it will help explain how the Court split and what it all means. There are people who worry that this allows states to regulate, in a purely extraterritorial way, that it will have adverse impacts on women seeking abortions across state borders. I think there is some risk of that but I think it's exaggerated because there are other rights, like rights of interstate travel that are involved in those areas. But, as you say, I think we're running low on time so I better subside.

JOHN SAVARESE: Barbara, I'm going to leave the last word to you. There is one terrific question in the chat, which I wish we had time for.

PRESIDENT BARBARA VAN ALLEN: Let's take a minute. Let's take a minute and do that one.

JOHN SAVARESE: Great. I'm going to read this, Larry. It's a great question. It's got a couple of parts but just answer the last one. When did you first encounter originalism as a judicial philosophy? Has your understanding of originalism evolved over the years? And, maybe the most pertinent one, are you surprised at how influential it has become? So this is the lightning round so we only give you a little bit of time to answer that deeply complex question.

LAURENCE H. TRIBE: I first encountered it in 1977 when I was writing my treatise on constitutional law. I thought of it as an interesting slogan. We'll never know what original meaning attached to various provisions, whose meaning it is, how to reconstruct the relevant history. I saw it get absolutely weaponized around 1980 during the Reagan Revolution. I'm not too surprised, because it makes a lovely and simple bumper sticker. I'm not too surprised that from a certain point of view, it's just as Kagan once said, we're all originalists now. We're all textualists. I would suggest that people chill a little and realize that no methodology dictates outcomes. Outcomes come from a complex interplay of methodologies, starting presumptions, approaches to the world, and the facts of a given set of cases.

JOHN SAVARESE: Wonderful. Good place to end. Barbara, over to you.

PRESIDENT BARBARA VAN ALLEN: Well, thank you both. Larry and John, that was a terrific conversation. I've had members already write to me that they want to get a copy of this transcript. So again, thank you for being here today and giving us some of your busy time.

We're really excited that next week we're going to host Henry Kissinger for his 100th birthday. And he will be in a conversation with Marie-Josee Kravis. The room is full, but we do have a wait list in case there are any cancellations. And, of course, the virtual option remains open so there's plenty of room virtually. On May 23rd, the Club will have a complimentary One Member-One Candidate Reception where members can bring potential candidates for the Club. So we encourage you to think about joining us for that on the 23rd later in the day after we hear from Henry. In June, we've got several great events lined up, one in our Author Series. Sally Susman, the Chief Corporate Affairs Officer at Pfizer, is going to take us through her journey and particularly through Covid and the various implications of that for Pfizer. We're also going to hear from the CEO of Apollo, June 6th, in person, Marc Rowan. And that will be followed on June 26th by Karen Karniol-Tambour, who is the fairly new Co-Chief Investment Officer at Bridgewater. And we have more events that are not yet in the schedule that are percolating along, so stay tuned to our schedule.

And, of course, as always, we like to recognize those of our 361 members of the Centennial Society joining us today as their financial contributions continue to represent the financial backbone of support for the Club and our programming. So thank you to everyone attending today. We look forward to seeing you soon. And Larry and John, again, thank you for a really terrific conversation.