

Vincent Munoz:

I think what we need to do is explain how our principles of free speech, free inquiry will help serve the cause of justice.

Betty Friedan:

The First Amendment, the constitutional freedom of speech and freedom of conscience that is the bulwark of our democracy.

Bettina Aptheker:

There was a passion in what was being said affirming what people consider a sacred constitutional right, freedom of speech and freedom of association.

Michelle Deutchman:

From the UC National Center for Free Speech and Civic Engagement, this is the SpeechMatters Podcast. I'm Michelle Deutchman, the Center's executive director and your host. Welcome to episode one. This podcast builds on the Center's work to explore the intersection of expression, engagement and democratic learning in higher education. By tackling the challenges arising in classrooms, in casual conversation, and across the quad, we will highlight the reasons each of our voices is important and why speech matters. Today, we'll talk to Professor Rick Hasen, a national authority on elections about the midterms and how disinformation undermines our democracy. But first, Class Notes: a look at what's happening in the headlines.

Michelle Deutchman:

The past several weeks have been dominated by news about shutdowns, self-censorship and state legislation. Reading about the disruption of invited speakers at Yale Law School and Hastings College of Law, it felt like we were back in 2017 when the response to Charles Murray and Milo Yiannopoulos' campus visits kicked off the narrative that, "There's a free speech crisis on campus."

Michelle Deutchman:

Attempting to shut down a speaker in order to preclude their message from being heard is a troubling tactic, but it's not a new one. It's striking though that some students actually seem to believe that their behavior was protected by the First Amendment. This misguided understanding is especially disconcerting coming from law students. Seems that some additional education and conversation are in order. Universities should consider investing more resources into exploring the why of the First Amendment. There's a high cost of freedom of speech in our society and it's important to talk about why we pay it and what our society would look like if we didn't.

Michelle Deutchman:

There's been much buzz in response to the New York Times op-ed by Emma Camp, the University of Virginia undergrad, who shared how her college experience has been defined not by intellectual diversity, but rather by strict ideological conformity. While there have been lots of surveys about what percentage of students are reticent to share their opinions on controversial topics, there's a dearth of research on why that might be the case. To what extent are students reticent to speak freely because of technological innovations that enable infinite permanent exposure and unlimited audience responses?

Michelle Deutchman:

Camp's piece whipped up a maelstrom on social media, ironically, the kind of vitriol and gratuitous unkindness that might lead someone else to think twice about sharing their opinion. We must be careful, however, not to let all the handwringing about self-censorship and shutdowns detract our attention from the steady drumbeat of state legislation that attempts to limit ideas and perspectives allowed in our university classrooms, a different, but perhaps more dangerous type of cancel culture. More on that in upcoming episodes. But now, it's time to turn our attention to today's topic, cheap speech and its toll on our democracy.

Michelle Deutchman:

I'm pleased to welcome the inaugural guest of the SpeechMatters Podcast, Professor Rick Hasen. Rick is Chancellor's Professor of Law and Political Science at the University of California Irvine and is Co-director of the Fair Elections and Free Speech Center. Hasen is a nationally recognized expert in election law and campaign finance regulation. In advance of the 2020 election, he published Election Meltdown: Dirty Tricks, Distrust, and the Threat to American Democracy. Throughout the 2020 election cycle, Rick served as an analyst for CNN and last month, Rick published a new book, Cheap Speech: How Disinformation Poisons our Politics and How to Cure it.

Michelle Deutchman:

Rick, this has been a busy couple of years for you. Congratulations on the publication of Cheap Speech. It's a terrific read, although it's pretty distressing. Thanks for making time to join us today. It's a privilege to have you help launch our new SpeechMatters Podcast.

Rick Hasen:

Well, I'm honored that you would include me and I'm looking forward to our conversation. It has been a busy few years. There used to be an off season in my world, but unfortunately there isn't anymore.

Michelle Deutchman:

Not right now. Last time Rick, you and I sat down together, it was two weeks after the January 6th insurrection, seems like a million years ago, and we were discussing elections, insurrection, and inauguration. What's next for democracy? That question, what's next for democracy, remains top of mind as we kind of hurdle toward the midterm elections. Can we start by taking a look back at the last year? Do you feel like in terms of elections and democracy, things have improved or further deteriorated?

Rick Hasen:

I'm afraid that things have further deteriorated and that's because right now, there are millions of people in the United States who believe the false claim that the 2020 election was stolen. A key political science concept about elections is something that we call losers' consent. The idea is that different people have different ideas about who should be elected to office, but you hold a fair election and that the losers agree that they've lost and they grumble about it, they're not happy, but they agree the election was legitimate and they say, "Well, we'll just fight the next time to convince voters to vote for our side."

Rick Hasen:

When you don't have losers' consent, when you have people believe that the last election was stolen, that can cause a deterioration of democracy. After all, if you believe the last election was stolen, you might be more willing to tolerate things to steal it back the next time. It's hard to govern when many people in your constituency believe you don't legitimately belong in office. And so, because of the false claims that have been spread far and wide about the last election being stolen despite all reliable evidence to the contrary, all the reliable evidence indicates that we did have a fair election in 2020, we are in worse shape than we were since the last time that we spoke.

Michelle Deutchman:

I'm not surprised by the answer though. It is demoralizing, but that's okay because we're going to get to some of the potential solutions, but before we get there, I'm curious about when you started writing Cheap Speech. Had you already started when this insurrection occurred on January 6th?

Rick Hasen:

Right. The genesis of the project is a law review article that I wrote for a conference in 2017 in North Carolina for the First Amendment Law Review, the article was entitled Cheap Speech and What it Has Done to American Democracy. I had pretty much a first draft of the book done by the time we got to January 6, 2021 and the insurrection at the Capitol and a big part of what I was claiming in my original manuscript was that we were on the precipice of a violent moment related to our elections. Then of course, we had that violent moment so I had to rewrite the book, especially the first chapter to kind of situate what had happened and explain it within the context of the risks that had been evident all along.

Michelle Deutchman:

You're very prescient. Before we get too far into our conversation about how to solve the numerous problems about misinformation and disinformation especially as they relate to elections, let's talk about your book's title, Cheap Speech. What is cheap speech to you?

Rick Hasen:

Well, that's a great question. Cheap speech has two meanings in my book, and I should say that the term is not mine. It comes from a 1995 law review article written by UCLA Law Professor Eugene Volokh. Professor Volokh was writing at the time that the internet was just really taking off and before anyone knew what social media was and he kind of predicted what was going to happen when we moved from a situation where there was scarcity of speech to a situation where there would be a lot of speech. He was talking for example about the fact that we used to have just a few broadcast channels, just a few television stations and just a few newspapers. If you didn't like something that appeared in the New York Times, what could you do about it? Well, you could write a letter to the editor. You could hold a protest sign somewhere, but you couldn't really get your ideas out there to a wider audience unless you were lucky enough to have the New York Times publish your letter to the editor.

Rick Hasen:

Today, of course, we moved from a trickle of speech to a tsunami of speech. You have the ability to put messages on social media and the only limit in terms of whether they're going to spread is how well you can get the message out there. Professor Volokh saw this as a good thing. He said that the intermediaries that we relied upon to help us figure out what content we're going to get, were going to lose power and he thought this would be very democratizing and that American democracy could well survive without these intermediaries.

Rick Hasen:

Fast forward 20 something years later, and I think all of the things that Volokh saw happening were true, the rise of things like Netflix and Spotify and social media and all of that, but there's been a dark side as well. And so, the other meaning of cheap speech is speech of lower value. And so, one of the key things that's happened over the last 20 years is that journalism has been decimated. Journalists have lost jobs faster than coal miners. There's no mystery as to why this is, kind of the backbone of the economic model for local newspapers was classified and other advertising. All of that advertising now can also be done online and that is, think of Craigslist and then think of what happened after that, Facebook Marketplace and all different ways that people sell things.

Rick Hasen:

You don't need to run ads in newspapers and it's very expensive to do investigative journalism. It's very expensive to produce high quality speech that helps voters make decisions. It's very inexpensive to produce misinformation or disinformation, to create a website that looks just like a local newspaper's website, but it's full of lies or intermixes lies with truthful content. That is the dilemma that we face today. Our speech is cheap in that it's easy to spread, but it is also cheap in the sense that the speech that voters need the most to make reliable decisions about our democracy is harder and harder to find and it's harder and harder for voters to know what's true and what's false. In that kind of information environment, it's hard for democracy to flourish.

Michelle Deutchman:

This is going to be something that we're going to have to deal with as a society going forward, which is balancing sort of the good parts of technology with the really challenging parts. One of the things that you talk about in your book when you talk about younger voters is that they kind of face a different information problem than older voters and that younger voters are more likely to reject even truthful information as false because the growth of misinformation has led them to become conditioned to distrust even things that are truthful. Especially since so many of our listeners are folks that work in higher education, I'm wondering how you think universities who work with tens of thousands of young voters can help combat this development of people not trusting anything.

Rick Hasen:

Right. And so, the reason that people don't trust anything is because if it's easy to create false information, voters just discount everything that they see. And so, in the book, I propose a number of legal solutions. For example, I talk about deep fakes. These are video or audio manipulated files that use Artificial Intelligence to create situations where, say, a politician could be shown in a sexually compromised position or uttering a racial epithet, doing something that would be really embarrassing, and how would you know if it's true or not? I suggest a legal solution, which is to label all manipulated media as altered so that voters would have a signal.

Rick Hasen:

Some ways that we can deal with some of the problems of cheap speech is through law. I spent a good part of the book talking about whether such laws are both desirable and also consistent with the First Amendment protection for speech, but you're right that there's a role for universities. In the last part of the book, I talk about not only the problem that we might not get these laws passed and some of these laws might be subject to courts rejecting them as violating the First Amendment. We need to think about what other entities can do to help assure that voters can get accurate information.

Rick Hasen:

What I talk about are building up intermediaries and the university is an important place for doing that first and most obviously, for giving students the tools that they need to determine what is true and what's not true. I know when my kids were going to school, the big mantra was don't just rely on Wikipedia. Now, it turns out that Wikipedia is one of the more reliable sources online, but there are tools to figure out whether or not something that you're seeing is genuine. That is part of what universities can do.

Rick Hasen:

But beyond that, I think we, at the universities and the University of California is so committed to this, need to be thinking about how to balance questions of holding free and fair elections with a speech environment that is full of false speech and our commitment to robust exchange of ideas, which is important, not just for the university, but for democracy. And so, there has to be more thinking about how to achieve that delicate balance and how to bolster intermediaries like news organizations, like universities, like the whole scientific process that helps us to figure out the difference between what's true and what's not true.

Michelle Deutchman:

It's going to be a huge task. I hope that we're up to the challenge. One of the things that makes me think about, Rick, is probably like you and like a lot of the listeners, I was raised on this metaphor of the marketplace of ideas. This concept that truth is going to emerge from the competition of ideas in a free transparent public discourse, but what you really are describing in Cheap Speech is kind of a market failure of this approach to expression. Do you want to say a little bit about that? Is there a different metaphor that might work better for expression in today's world?

Rick Hasen:

Well, I do think that much of what the Supreme Court has said about the First Amendment relies upon on this idea that truth will rise to the top, that the remedy for bad speech is always more speech. I think to go back to the example I gave at the very beginning of our conversation, more speech has not helped to convince millions of voters that the false claim that the 2020 election was stolen is not supported by any empirical evidence. Truth has not risen to the top. And so, we need to think about what this market failure means for our democracy.

Rick Hasen:

And so, I don't support censorship. I don't think that the answer to the problem is just shut down speech that you don't like and the danger of such an approach is that whoever is the government decision maker that decides what speech is too dangerous, could be someone, I mean, just imagine the president you distrust the most, and that president gets to appoint the communication czar, that would be a very problematic world. We wouldn't want that.

Rick Hasen:

We need to be thinking, recognizing that the marketplace of ideas approach is flawed, but still understanding that a democracy requires a commitment to free speech. How do we bolster institutions that help people figure out what's truthful and what's not, and make decisions that are consistent with their values and their interests. As you said, it's a long-term project. It's a really hard job. It's not as

though there is an easy fix. Part of the book talks about some legal solutions that I think should be considered consistent with the First Amendment, although, there's reason to believe that this Supreme Court wouldn't agree, let certain things like improved disclosure laws are consistent with the First Amendment and some of it is going to have to be private action.

Rick Hasen:

Let me give one more example of what I mean about trying to solve this problem through providing more information. In the 2016 election, there were Russian government employees who were posing as African American voters trying to convince those African American voters that they should not support Hillary Clinton for president. They should sit out the election in an attempt to suppress African American turnout. If those voters who were targeted with these messages knew that the Blacktivist site was not actually African American voters, but was in fact Russian government operatives, that would've made a difference.

Rick Hasen:

Similarly, in the 2017 US Special Senate Election in Alabama to replace Jeff Sessions, who became the Attorney General, those who are supporting Democrat Doug Jones without Jones' knowledge and opposed to Roy Moore, posed on Facebook and in other places as Baptist teetotalers who supported banning alcohol in the state of Alabama and the purpose, we know from some leaked documents of this approach, was to suppress the votes of moderate Republican voters. They'd be turned off to Roy Moore and wouldn't turn out. And Doug Jones, a Democrat, squeaked by, and actually won election in Alabama, which is a deeply red state. I think that those moderate Republican voters would've liked to know who was actually behind those messages, rather than relying on just having this message out there and take your word for whoever says what their identity is.

Rick Hasen:

And so, I would support increased disclosure rules for those who are making political messages. Now, the Supreme Court historically since the 1970s has been very supportive of campaign finance disclosure laws believing that they are consistent with the First Amendment, but in more recent years, especially the recent decision in Americans for Prosperity Foundation versus Bonta, a case that came out last July, the Supreme Court is starting to pull away from support for disclosure saying that disclosure could chill too much content.

Rick Hasen:

And so, this is an example where I think there is a legal solution that actually gives us more speech, we learn of the identity and we can use that information, the identity of political speakers. We can use that information to help us make decisions. The conservative Justice Antonin Scalia talked about the importance of disclosure and that people should stand behind what they say politically, anonymous speech doesn't represent the home of the brave, but yet the current Supreme Court seems to have a number of justices who believe that there could be anonymous speech.

Rick Hasen:

The kinds of solutions, legal solutions that I think we need might be blocked by Supreme Court that is still stuck in an outmoded view of the marketplace of ideas and things that certain kinds of laws that would provide voters with accurate information could be a violation of the First Amendment.

Michelle Deutchman:

I'm really glad that you mentioned Bonta, because I thought that case was deeply troubling. And of course, there are so many different solutions in your book and we can get to those, both the legal ones and sort of the ones beyond the law, and of course, with legal solutions, you've got to overcome, making sure that it conforms with the First Amendment. And then also, the laws have to get passed and there's a lot of problems, including a couple that you have not already mentioned, anonymity and pseudonymity with bots and sort of the asymmetrical nature of disinformation on social media.

Michelle Deutchman:

And of course, then we have the issue of algorithms, and as you mentioned before, labeling inaccurate information. One of the things that I thought was fascinating in your book was that you did talk about how there were some examples of when platforms labeled inaccurate information, they, in fact, in some ways exacerbated the problem and that sort of seems counterintuitive and I'm wondering if you can help us sort that out a little bit.

Rick Hasen:

Sure. Social media platforms, think Facebook, Twitter, TikTok, they are private actors and the Supreme Court has said that private actors like television stations and newspapers get to decide what content to include and what content to exclude. There was a lot of pressure on Facebook and Twitter and others to deal with false claims that Donald Trump was making during the 2020 election and afterwards about the election being rigged or stolen against him. Again, no credible evidence. This is what I spend my time on looking at elections in how they run. No credible evidence in any state in the United States that the election was rigged or stolen against Donald Trump. In fact, I think despite the fact that we were in a pandemic, it was actually a very well run election and probably the most studied election in real time that we've ever had.

Rick Hasen:

And so, how do the platforms deal with this pressure to respond to Trump's claims? One of the first things that was tried was labeling the speech. Twitter, for example, would say this election claim is disputed with a little place that you could click on another link. Facebook did something which said, get more information about how to vote, visit usa.gov. It turns out that these messages so far as we can tell from studying them were ineffective. A Twitter label actually made the speech more prominent and it got spread more widely and Facebook's statement didn't even suggest that it was false or disputed, it just said get more information, which might have suggested to readers that what Trump was saying was actually true rather than false.

Rick Hasen:

It was not until after the January 6th insurrection when Donald Trump not only had repeatedly claimed over 400 times in the three weeks after the election that the 2020 election was stolen or rigged. Remember, he called for people to come to Washington for what he called "wild protests," and of course, we ended with the January 6, 2021 insurrection, this violent insurrection at the Capitol where we could have had the leadership of American democracy killed.

Rick Hasen:

All of these things led Twitter and Facebook to de-platform Donald Trump, that is remove him from being able to speak. I think that was the right decision. I think it came too late. These are private actors. I think they should have a standard where there should be a great thumb on the scale in favor of keeping politicians with different viewpoints on platforms, but when you cross the line into repeatedly denigrating the integrity of the electoral process without any evidence to support it, or when you call for violence, that you should be able to remove someone from a platform. Twitter's ban is presumably permanent. Facebook's ban is for two years and will come back for review in early January 2023. I recently had a piece in the Washington Post arguing that it should be extended because Trump continues to make these false claims, continues to undermine the integrity of the process.

Rick Hasen:

But there's actually a couple of states, including Florida that have passed laws that would require social media companies to carry politicians. I think that's wrong, but what I found really wrong for the reasons I've given, what I found really interesting, and I write about this in Cheap Speech, is that Justice Clarence Thomas, one of the most conservative justices on the Supreme Court, one of the justices who has such a strong view about free speech that he believes that there could be no limits on corporations or others spending money in politics, or that you could even have effective campaign finance disclosure laws, that same Justice Thomas wrote a concurring opinion in a case that dealt with a different issue that basically suggested that a law that would require private companies to carry the speech of politicians, even that speech that would call for violence, would be constitutional, would be consistent with the First Amendment to force speech on these platforms.

Rick Hasen:

It's really astonishing that someone like Justice Thomas would take that view. Essentially, his argument is that social media companies are more like telephone companies than they are like television stations and telephone companies, because they're so-called common carriers, they can be forced to provide service to everyone. You can't say, "Well, I don't like your political views. I'm not going to give you a phone," if you're AT&T or Verizon, but we allow Fox News or The Atlantic or The New York Times to curate content all the time. They don't have to print what Donald Trump says or they could print everything that Donald Trump says. That is a private choice that is being made.

Rick Hasen:

The idea that we would treat social media companies differently presumes that they're not curating content, but of course, they are, because if Facebook didn't remove objectionable content, then every time you opened up Facebook, you'd be flooded with hate speech and pornography and all kinds of things you don't want to see. Social media companies curate that. They remove that, they promote certain content, they demote other content and they should have the same rights as a television station or a newspaper to decide to include or exclude content as they see fit.

Michelle Deutchman:

Right. It seems a little bit like they want their cake and to eat it too, and that's not going to benefit democracy. I want to ask you a little bit about before we turn to beyond the law, while we're still sort of talking about potential legal solutions, where are you on some reform of section 230, which of course is what gives immunity to platforms for liability. Do you think that there's a role to be played by section 230?

Rick Hasen:

I am not a section 230 expert or a law and technology expert. I say at the beginning of Cheap Speech that there are so many important issues related to social media companies, and I say the part of 230 that I think we're talking about is the part that says that social media companies are not really considered publishers, and so, they can't be liable for the kind of speech that they include. There's another provision that said they can't be liable for the speech that is excluded. That raises questions about federal preemption of the state laws like the Florida law that I just talked about.

Rick Hasen:

I think it's a very large question to talk about how social media companies should be treated, but my book is focused on a narrow, but what I consider to be a very important question, which is about speech related only to elections. There, I think that the only kind of limitation on speech that would be applicable to social media companies is I advocate for a ban on false statements about when, where and how people vote.

Rick Hasen:

There was a Trump supporter in 2016, who targeted messages that African American voters telling them that they could vote by text or by social media hashtag. This person's currently being prosecuted under a law that may or may not fit, but I think the Supreme Court in a 2018 case called Minnesota Voters Alliance versus Mansky did say that laws that would make it a crime to lie about when, where, how people vote are likely constitutional.

Rick Hasen:

And so, that's the only kind of speech I think that should be excluded as well as a ban on foreign spending on election ads, which is something that the Supreme Court has said is constitutional to do, but otherwise, I really think that most of the action in terms of social media companies has to come in the form of public pressure. If the social media companies don't respond to public pressure, I think the answer is not a speech code, or a fairness doctrine, or even having this requirement, but instead to break up those companies using antitrust law, which is also not my area of specialization, but I do think that all of these other areas of law touch on the concern about election integrity that I've been writing about.

Michelle Deutchman:

Well, I mean, this is a very intersectional issue that brings in a lot of different areas of expertise. Before we move on to how we might engage in some pressure of the social media companies to sort of do more themselves, I wanted to go back to your narrow band that you just talked about, because I think that's fascinating. One of my questions for you is who then decides what is empirically verifiable? What's false? What's truth? Who do you imagine does that and how can one do that because it's such a large scale of information as you've been talking about?

Rick Hasen:

I'm only talking about lies about when, where, and how people vote. If you tell people that Democrats vote on Tuesday and Republicans vote on Wednesday, that's empirically verifiably false. You can look at all sorts of government information that tells you that election day is Tuesday. Just like we can prosecute people for fraud for financial crimes when they make material misrepresentations of fact that

cause people to lose their money. This could cause people to lose their votes. Telling people you can vote by text is not a thing. It's very easy to prove that voting by text is not a thing. That's the only kind of statement I think could be subject to these laws. Not for example, when there's a contested point, my opponent voted to raise taxes or my opponent doesn't support the side of Ukraine in the current conflict or something like that, that we leave to counter speech, that we leave to campaigns.

Rick Hasen:

But the kind of speech I'm talking about directly affects whether people can exercise their franchise. I do think that the empirically verifiable aspect of it is quite easy in those cases, because this is so narrow. The downside of that is because it's so narrow, it doesn't get to a lot of the speech denigrating elections that really is the subject of my greatest concern. And so, I don't think you can make it a crime to say the election's going to be rigged without any kind of backup statement to it. There was something more specific that could be falsified, then we could talk about that, but that is very hard to do

Michelle Deutchman:

Right. It's a chip on this huge iceberg. I see what you're saying about it being fairly easy to determine whether or not something is false, but whose responsibility then do you imagine it is to then say, "This is false." Is that something a user does? Is that something the platform does?

Rick Hasen:

I think that you can imagine a regime where federal prosecutors can prosecute people for knowingly making these false statements. You can imagine also a kind of system where social media companies and others, newspapers, others, would have a requirement to take down such speech upon a showing that the speech is false and you could give federal courts a role in assuring that this is being done fairly. I think that if there were such a law and Facebook and Twitter were charged with removing false claims about where and when and how people vote, simply sending a message to point out where that speech appears, that would probably be enough to get most of that speech removed. And again, we're talking about a very, very narrow slice of the problem.

Michelle Deutchman:

Right, but we have to start with small steps. Then of course, the catch with government regulation is that the laws need to get passed and I think that's a tall order with the current congressional composition. I had a good colleague of mine, a close colleague at when I worked at ADL, was fond of saying the law is a blunt instrument. And so, as you point out in your book, so much of what is going to lead to the solutions is going to be beyond the realm of the law. A lot of the results of the legislation you outlined to circumscribe Cheap Speech can also be achieved by platforms voluntarily. Private actors can exert pressure on the platforms to label altered speech or tweak their news algorithm permanently or use de-platforming more widely or adopt broader rules against speech that's meant to suppress voter turnout. What are some of the pros and cons of leaving this work to the platforms themselves, what's their incentive to want to do this?

Rick Hasen:

I think they already have an incentive, for example, to remove pornography and hate speech because voters don't want it. I think that it's not only about what their consumers want, it's also about what their employees want. We know there was kind of a little uprising among Facebook employees when they

were seen as not doing enough to deal with Donald Trump's false statements about the 2020 election being stolen, so I think there is room for social pressure.

Rick Hasen:

The benefit of leaving it to the platforms is that we don't have a government bureaucrat charged with trying to deal with all kinds of contested claims, things that are much harder than Republicans vote on Wednesday type claims. The downside, of course, is that someone like Mark Zuckerberg or the people who control Google have a tremendous amount of power in terms of what people see and how they see it. Then I think if they do have too much power, the solution is that the platforms need to be broken up into smaller pieces so that no one has too much market power. If they're not going to police themselves, then I think the answer is more competition.

Rick Hasen:

I think this is actually a bigger issue when it comes to search than when it comes to social media platforms. Imagine, and there's no evidence to support this now, but imagine that Google decided to tweak its algorithms so that it would intentionally help one candidate and hurt another when people did searches about the candidates. That would be an incredibly powerful power to have. That would be incredibly powerful manipulation of the process that could be achieved. And so, I think the solution again is not to say pass a law that says you can't have an algorithm that is discriminatory. Every algorithm discriminates, it makes choices. Be very hard to draft a law that would require fairness in how algorithms work, but if Google is the only game in town, then that's problematic. And so, you need to think about whether or not their market power gives them too much power so that they don't respond to competitive pressures and that they do need to think about how to deal with these kind of claims voluntarily. If they don't, then we need to think about why they're not responding.

Michelle Deutchman:

This conversation is making me wish I had taken some antitrust when I was back in law school. Of course, it's never too late to learn, but I think it's so interesting how layered these issues are as we talk about them. One piece I thought was interesting was there was a Washington Post piece recently that talked about how Twitter kind of confirmed a few weeks ago that it's no longer going to police false election claims about the 2020 election, because its civic integrity policy is designed to be used "during the duration of an election or other civic event." I don't think that got a lot of spotlighting in the news. I was surprised to hear it and I'm wondering what your thoughts are on that. It seems like to me, very time-limited in a way that would be negative.

Rick Hasen:

If in fact it's true that the risk that comes from an election from denigrating the integrity of the election is over when the election is over, then that policy makes sense. But if, in fact, as we see in our current environment, the risk continues to grow, then I think that there needs to be a reevaluation of that policy. I would point to the standards that Facebook came up with about the decision of whether or not to re-platform Donald Trump. They came up with a standard and said the question to ask, and this is quoted in my Washington Post piece that I recently wrote on this, the question to ask is whether or not Donald Trump continues to be a risk to the integrity of American democracy by spreading false claims that undermine people's confidence in the fairness and legitimacy of the process. And so, if that is the standard, that's a lot better than saying the election is over and so we can just move on. Unfortunately, the hangover from 2020 is going to cause problems for the future, not just thinking about the past.

Michelle Deutchman:

It's a pretty bad hangover, that's for sure.

Rick Hasen:

Right.

Michelle Deutchman:

As we look ahead, we really only have half a year until the midterm elections, what would you recommend that our listeners keep in mind sort of as they move through what will surely be a contentious election season rife likely with the use of cheap speech, any words of wisdom?

Rick Hasen:

Well, I think first of all, voters should be looking for accurate information. If it's information about how elections are run, looking at the official websites or social media feeds of election administrators. One of the things that we recommended in a report that we issued in the middle of the 2020 elections at UCI was that government election administrators get dot gov email addresses and are verified on social media platforms so that way, voters can find information about when, where, and how to vote.

Rick Hasen:

I think that on the question of election integrity, one of the key issues going forward in 2022 is who is running for office to be able to run elections for 2024. The thing I'm looking at most in 2022 are what about those candidates who repeat the false statements that the 2020 election was stolen and are asking to be the ones to run the election in 2024? Are we going to have a situation where those who are going to be running the elections might not do so fairly or might not be perceived as doing so fairly because of what they've said about 2020.

Rick Hasen:

And so, I think in places like Georgia and elsewhere, there's going to be a big fight over these questions of what happened in 2020 and who should be in charge in 2024, because unlike other advanced democracies around the world, we run our elections using partisan officials, using officials who are sometimes elected in partisan elections and that is a system that is going to breed mistrust as we continue to be polarized over issues related to 2020.

Michelle Deutchman:

Now that seems like an opportunity waiting for a change potentially. Is there anything else you want to add before I pose kind of my final question to you? I know that there is so much we weren't able to cover, but we were able to cover a lot of material.

Rick Hasen:

No, I think I would just say that there's both a commitment that we need to have to fair elections and one to free speech. On the margins, these require some trade-offs, but there are ways that we can further our democracy through laws that give voters more information and through private action that helps assure not only that we continue to hold elections that are free and fair, but elections that people can have confidence in because they accurately know that those elections are being run in a free and fair way.

Michelle Deutchman:

Terrific. I think my last question is really, since we are a center about free speech and civic engagement, if there's one thing other than what you already suggested about making sure to check the accuracy of the information with which you are relying upon, is there anything else people can do today to advance free speech and civic engagement certain vis-a-vis elections that you might suggest?

Rick Hasen:

Well, I would say subscribe to a local newspaper. That is one of the most important sources of information is old-style news media doing investigative journalism. One of the things I point out is that more and more, we're seeing this kind of journalism move to a nonprofit model, think of something like The Texas Tribune or The Nevada Independent. This kind of reporting is essential because producing valuable information is not cheap and the kind of information that voters need is not just going to come to them magically. It takes resources to get it and all of those news organizations need our support.

Michelle Deutchman:

I love that. For everybody listening, if you don't subscribe to a local paper, go and do it. I am proud to say that I receive a hard copy newspaper every morning and one of the highlights of my day is reading it with my cup of coffee even though I know I could get the news probably quicker on my phone. Rick, this was really fun. It's always enjoyable. I always learn so much from you. Perhaps, we'll be able to annualize our conversation. I want to extend my heartfelt thanks to you for joining us today.

Rick Hasen:

It really was a pleasure and thanks for all the work that you're doing. This is so vital not just for the university community, but for American society at large.

Michelle Deutchman:

With that, we're going to close. Join us in two weeks for a discussion with special guest, UC Berkeley Vice Chancellor for the Division of Equity and Inclusion, Dania Matos, who will share her story of being targeted online for her work and her identity. We'll see you then.