

Vincent Munoz ([00:03](#)):

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 ([00:13](#)):

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

Bettina Aptheker ([00:22](#)):

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

Michelle Deutchman ([00:36](#)):

From the UC National Center for Free Speech and Civic Engagement, this is SpeechMatters, a podcast about expression, engagement, and democratic learning and higher education. I'm Michelle Deutchman, the Center's executive director and your host. Welcome to episode six.

Michelle Deutchman ([00:53](#)):

Today we have the opportunity to talk with and learn from Jenny Pizer, acting chief legal officer at Lambda Legal. Lambda's the oldest and largest national legal organization committed to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender people, and people living with HIV. Lambda does this through impact litigation, education, and public policy work. With pride celebrations occurring across the country last month, Biden's executive order advancing LGBTQ equality and the release of updated Title IX regulations, the timing is just right for discussion with Jenny.

Michelle Deutchman ([01:29](#)):

But first, Class Notes: a look at what's making headlines. Since our last episode, we saw the end of a blockbuster Supreme Court term that included the final Dobbs decision, which eliminated the federal constitutional right to abortion. University leaders around the country responded to this momentous ruling with statements that decried the decision, applauded it, and a few that tried to stake out neutral ground.

Michelle Deutchman ([01:54](#)):

University of California issued one of the strongest denunciations of the decision, with President Drake stating that, "The Court's decision is antithetical to the University of California's mission and values."

Michelle Deutchman ([02:07](#)):

Others like University of Iowa present Barbara J. Wilson declined to share her personal reactions because she felt that, "Ultimately, my responsibility is to ensure that our institution is a place that encourages rigorous debate, dialogue and engagement."

Michelle Deutchman ([02:23](#)):

Yale and Princeton universities both said they were analyzing the ruling and monitoring legal developments.

Michelle Deutchman ([02:30](#)):

Now that the states have a more significant role in determining if abortions and other reproductive care can be offered, questions have been raised about the impact of Dobbs on institutions of higher learning. For instance, how will it impact the type of training offered in medical schools? Currently, all medical schools require students to complete a clerkship in obstetrics and gynecology, and OBGYN residencies must provide training or access to training on performing abortions. Will this change?

Michelle Deutchman ([02:59](#)):

Studies indicate that students who are pregnant or have young children are much more likely to drop out. Will further restrictions on abortion tip the scales toward leaving school if an unwanted pregnancy occurs? College admission offices fear that this may impact applications and acceptance rates, with some students and parents saying they will no longer consider schools in states with total bans on abortion.

Michelle Deutchman ([03:23](#)):

Some scholars and professional associations have responded with pledges to boycott conferences and presentations in states that criminalized abortion. Another recent higher ed headline was the release of the Biden Administration's updated Title IX regulations. These proposed regulations include substantial changes to how colleges and universities manage allegations of sexual assault and sexual harassment, such as no longer requiring live hearings, moving to a single investigator model, and expanding the definition of sexual harassment. Many free speech advocates argue that the proposed regs will lead to the chilling and restriction of student speech. That issue could be the topic of its own episode. But for now, we're going to turn to today's guest.

Michelle Deutchman ([04:13](#)):

Today's special guest is Jenny Pizer, Lambda Legal's acting chief legal officer. Since joining Lambda Legal staff in 1996, Jenny has been a leading voice for ending marriage discrimination against same-sex couples, for stopping anti-LGBT discrimination in employment, healthcare, and education, and against the misuse of religion to discriminate. In addition to litigating impact cases, she has developed legislation, advised policymakers and worked with community advocates to advance family law and non-discrimination protections, and to oppose overbroad religious exemptions. She now leads Lambda's national legal department of 26 attorneys and 10 paraprofessionals.

Michelle Deutchman ([04:52](#)):

Jenny, thank you so much for taking time from your busy schedule to join SpeechMatters today.

Jennifer Pizer ([04:57](#)):

Oh, Michelle, it's my pleasure. I'm delighted to join you and talk about these very, very important issues of free speech and the First Amendment more broadly.

Michelle Deutchman ([05:06](#)):

I'm also excited. And I have to start by just mentioning to you that, and I don't say this to every guest, Jenny, it's particularly meaningful for me to have you as a guest, as I've really long admired your work. And one of my first amicus briefs I worked on as a very junior attorney was the Koebeke case way back in 2005. And for those listeners not familiar with that case, it argued that California businesses that extend

benefits to married couples must also extend them on an equal basis to registered domestic partners. When after the California Supreme Court ruled in favor of Birgit Koebke and her partner, Kendall French, they sent me a personal thank you note for my work on the brief. And the cover of the card was a photo of them on the golf course at Bernardo Heights Country Club - the place that had denied them the same rights as married couples.

Michelle Deutchman ([05:53](#)):

And even though that was 17 years ago, I still have that note and it reminds me that the law can be a vehicle for important social change. So I just wanted to share that because obviously you were part of that case as well.

Jennifer Pizer ([06:06](#)):

Well, and Michelle, I would say, what I feel particularly proud about that case is that it brought together work that we had been doing to protect domestic partners that took years of gradually improving the law. Together with efforts to enforce our public accommodations protections here in California, bringing these two things together. And some people might think, "Well, really? Access to country clubs? That's the most important thing for the movement?" But what people sometimes don't realize is that the same law that governs access to places like country clubs that are generally open to many people, offer services and opportunities to the public, that same law applies to retail stores and restaurants and public transportation, and to certain types of housing, to homeless shelters, to soup kitchens, the full gamut of services and opportunities and places that offer services to the general public.

Jennifer Pizer ([07:07](#)):

So by bringing a case to the California Supreme Court on an issue that we thought was very important to this committed couple who were being denied equal treatment, but also might be a setting that some of the justices might understand and relate to, we accomplish something in California law that protects members of the public in a whole host of contexts. And that's an important part of what we do in thinking about the law and the way the social rules and social attitudes need to change, is we find the cases that provide an opportunity to address a legal injustice with an understandable story and bring it to the court with the evidence in order to improve the law that can then affect people in the state as a whole.

Michelle Deutchman ([07:52](#)):

I love that you contextualize that, thank you so much. And I also think it's great that you explain the strategy behind why certain stories might resonate more than others and how that is part of the element of litigation. I think the law is a good place for us to start. And before we dive into contemporary legal issues, I'm wondering if you could share how you decided to dedicate your professional life to the movement and why you picked the law as your vehicle for change.

Jennifer Pizer ([08:20](#)):

Well, that's a wonderful question. And having been at this for a long time, it's fun to think back about how that happened. Because I was raised in a family of scientists, both of my parents were research scientists. They met as graduate students at UC Berkeley studying basic science, biochemistry and microbiology. And yet, my mother was very aware and spoke a lot about the unjust barriers for women in society, the sexism that pervaded and still pervades social expectations. And my dad was very supportive. He had three girls and one boy, and he gave us all opportunities. I mean, I sometimes have

said jokingly as the oldest child that I was my father's oldest son. Obviously I wasn't a son, but that he supported my interest in doing a range of different things, some of them not particularly gender conforming, like using tools and learning how to box, which I wasn't very good at it, but the point is there was encouragement to pursue things that captured the imagination and that for each of us, what we wanted to do.

Jennifer Pizer ([09:32](#)):

And where my parents were focused on medical research as a way to expand human knowledge and make society safer and better for people, my mother's feminist ideas inspired a sense of justice. Justice for women, and justice more broadly.

Jennifer Pizer ([09:52](#)):

So when I was in college in studying American history, history of American social movements, and European history, my imagination was captured by some particular women who were calling out and advocating for change of rules that treated women in a discriminatory way, and embodied the sexual hypocrisy of the middle 1800s in England. But the same thing was happening in the U.S. when laws restricting abortion access, for example, and imposing other so-called morality legislation, spread across the United States, the same things were happening in England.

Jennifer Pizer ([10:34](#)):

And what I saw was the ability of women who were not permitted to be lawyers at the time, but could advocate in parliament and could advocate in courts to call out the unfairness, the discriminatory and hypocritical nature of the laws. And they did it in part by telling stories. And one of them was challenging the obscenity laws in England. We had similar laws in the United States until the 1960s, that limited access to information about birth control by deeming it all obscene.

Jennifer Pizer ([11:09](#)):

And this one particular advocate invited a criminal prosecution of herself. She distributed information about birth control, in order to bring the issue to court and call out the illogic and the discriminatory nature of it. So that really captured my imagination. Together, of course, with studying American history and seeing how federal court litigation in particular, was an important and powerful part of an overall social change strategy for challenging racial discrimination, segregation laws that prevented equal opportunity and legal rights for women. And the other related social change movements that brought together - something we're going to be talking about more - speech, organizing, and legal advocacy as coherent strategies for changing the law and changing social attitudes. So this is something that inspired me back many, many years ago, and it inspires me still today. I still think this is a very powerful way to drive change, along with the related parts of social movements and organizing.

Michelle Deutchman ([12:17](#)):

Thanks for sharing that answer. I always love to know that backstory. And I love that even though your parents were scientists, they wanted to support you in whatever area of interest that you wanted to pursue.

Michelle Deutchman ([12:29](#)):

Let's continue by talking a little bit about the LGBTQ community and the movement. And I want to have you maybe share with our listeners what you saw as the role of the First Amendment that was played in the progression of LGBTQ rights in America.

Jennifer Pizer ([12:45](#)):

Yeah. Well, the First Amendment rights that we have in the U.S. and that we still have so far, have been instrumental in our LGBTQ movement being able to be born in the first place. Some of our most important early cases were about the rights of student groups, of students and student groups, in public universities and colleges to organize and to speak out, to form their own student clubs, and to bring their grievances to the administration. The right to exist as a group, the right to have access to information about our own history and who we are. This is some of the very important early work going back a number of decades, and there's related work. That was very important in the beginning. And frankly, continues to be essential today.

Jennifer Pizer ([13:35](#)):

So for example, cases about flying rainbow flags, when some people in authority don't like that, don't like the visibility. Don't like the message that is sent by being visible, by flying a rainbow flag or having rainbow stickers up, say, in a classroom. Holding pride parades. Again, First Amendment protected activity to hold a parade or demonstration. Lots of people I think might remember the Boston St Patrick's Day parade case, which was a win in the lower courts, for the right of inclusion of the LGBT Irish group that wanted to be included in the parade. But at the Supreme Court, our side lost with the court saying, "Well, the organizers of the parade get to control the message."

Jennifer Pizer ([14:27](#)):

Now that was a loss at the time, but it has proved to be actually an important principle that we get to control our own parades too. And there was a dispute that arose in San Diego around the same time and a little bit after the Boston St Patrick's Day case, of some anti-LGBT groups who wanted to insist on the right to participate in the gay pride parade to disrupt it, and to include an anti-LGBT message within the gay pride parade. And the rule that says that the organizers of the parade get to control who participates because the parade is their speech, that's been quite important to our movement as well.

Jennifer Pizer ([15:11](#)):

And I have to flag the importance also of the First Amendment rights, but also the federal statutory rights that protect high school students in public schools' ability to organize what are often called Gay-Straight Alliance. And they have many other names as well. But student groups. It's the same idea that was important at the very beginning of the movement at the university level, as that idea grew and became quite important at the high school level, there were administrators, there were community members and others who wanted to shut that down and prevent high school students from being able to have a supportive club. Either as part of a curriculum arrangement, or as a non-curricular club.

Jennifer Pizer ([16:01](#)):

And at Lambda Legal, we had to litigate about that, and we often were doing it together with some of our partners, such as folks at the ACLU, to enforce the rights that high school students have under a federal statute called the Equal Access Act that says if a high school allows students to have clubs, then the rules have to be equal. When that federal law was passed, some who supported it were quite conservative politically and wanted that to pass because they saw it as a way to ensure that religious

clubs could organize. Which they have a protected right to do, absolutely. I think they might not have been thinking that same principal means that the LGBT students also have a right to organize. And we did have to litigate to enforce that, but we were able to do that. And I think that has been quite important.

Jennifer Pizer ([16:52](#)):

Another area that has been important in the past and unfortunately has come back more recently, is dealing with censorship laws that we have sometimes called No Promo Homo. When in the beginning, the focus was more on gay and lesbian students rather than broader recognition of who our community is. But rules that limited information about LGBT people. Limited information about sexual orientation, diversity and gender diversity in public schools for curriculum. And sometimes for the range of activities. This has meant, when those laws have applied, censoring important information in health classes, but also censoring information in history classes and about politics and contemporary events.

Jennifer Pizer ([17:39](#)):

So we've had to challenge those laws in a number of states. And because of the First Amendment and some other legal protections, we've had a good amount of success, but I must tell you, there are some cyclical nature in the things that we face, the challenges and the discrimination that we sometimes face. And we are again seeing proposals, including laws that have passed, including most recently the law that passed in Florida, the so-called Don't Say Gay or Trans law. That is the same kind of censorship goal that we faced with the No Promo laws of past decades. And there are similar issues of First Amendment freedoms and equal protection rights that are at issue today as they were in past decades.

Michelle Deutchman ([18:29](#)):

Well, we're definitely going to get to the state legislation. I'm really excited that you mentioned the Equal Access Act, because I had actually just written that down in my notes. And I had written next to it, this idea of be careful what you wish for, because that's exactly what I was thinking of. That these unintended consequences that people think when they're working really hard to exclude others, they aren't thinking ahead that actually it may end up resulting in inclusion, which of course is to, I think, everybody's benefit.

Michelle Deutchman ([18:56](#)):

But before we get onto state legislation, I want to go back to the First Amendment. And maybe this is because I think about the First Amendment all the time. And I feel like more recently, free speech in the First Amendment, it's been argued that it's really been weaponized by the right, that it's no longer a progressive value. And I'm wondering how you respond to that allegation. And if you believe that the First Amendment still has a key role to play in the fight for equal rights, whether it's for the LGBTQ community or other communities.

Jennifer Pizer ([19:26](#)):

Well, it's absolutely essential for multiple different reasons. First I would say, yes, I think there's reasons why people use the phrase that the First Amendment and free speech in particular, has been weaponized by the right. I would add that the same is said with good reason about the other part of the First Amendment, the religious rights, the free exercise clause and the establishment clause, that also has been used as reasoning for creating exemptions from non-discrimination rules and other rules that otherwise would apply.

Jennifer Pizer ([20:02](#)):

But to focus on speech, we have an example of this right now in the Supreme Court, a case called 303 Creative, it's called 303 because it's a case that arises out of the Denver Colorado area and that's the area code there.

Jennifer Pizer ([20:17](#)):

A case about a person who does designs of websites, who has identified herself as a conservative Christian. And she wants to, or she says, she wants to create wedding websites for couples who want to celebrate their wedding. But that for religious reasons, she does not want to create any such websites for same sex couples. So she has a religious motive here, but the argument that she has been making, or one of the arguments has been that she has a free speech right as an artist, not to be compelled to use her artistic talents, her design work, to convey a message with which she disagrees. She also made religion arguments, but the U.S. Supreme Court has accepted that case and briefs are being written now, the case will probably be argued in the fall, where the Supreme Court has taken up this question, it's a question that the court left open a couple of years ago when it decided the Masterpiece Cakeshop case, a wedding case about wedding cakes, of course.

Jennifer Pizer ([21:21](#)):

That case focused more on the religion argument, whether religious rights give people that are operating a business a free pass to disregard civil rights laws. The case was decided on particular facts there. But the general rule that the court announced was that, "No civil rights laws apply to businesses. And if you're in business and you're making and selling cakes, you don't have a religious right to disregard the civil rights law." That's consistent with a rule that the court, a different court, of course, but decided back in the late '60s, when the question was race discrimination, civil rights law forbidding race discrimination by businesses. And religious arguments were presented and the court said, "No if religious reasons for disregarding the civil rights law were accepted, then why bother having a civil rights law at all?"

Jennifer Pizer ([22:17](#)):

The speech argument was made in the wedding cake case. And the court said, "We don't have to address that here. We'll leave that to a future time." So the 303 Creative case is bringing that free speech issue back to the court with the argument that making custom made goods that involve some creative work should be understood as expressive conduct. Expressive conduct does have First Amendment protection, but the way this has been understood in the past, the law that actually has been settled for quite a while, is that there can be a subjective component that is if a person is engaging in conduct and they believe that they're expressing an idea with their conduct - that matters. But we also have to check whether people that see that conduct, would they understand the idea, or would they just see conduct?

Jennifer Pizer ([23:13](#)):

And perhaps what they would see as conduct that conforms with law, that doesn't convey agreement or any particular point of view about the law, just shows that people are complying with the law. That's what the settle rule has been. The 303 Creative case is asking the Supreme Court to change that rule. So that's one example. And unfortunately, there are quite a few cases like this that have been challenging the application of civil rights laws to businesses when the business owner wants to discriminate against same sex couples or in other contexts, to discriminate against LGBT individuals.

Jennifer Pizer ([23:53](#)):

That's a real problem. And from our perspective, it's not a new problem, but it's a serious problem. It is a serious abuse of the protection for free speech, but that doesn't lead to a conclusion that the First Amendment, you know, it's not important anymore, or we should look at problems different ways. I mean, the reality is that we've had struggles in society about what type of speech and speech in what context is protected, and when is speech a type of conduct that's causing harm. That's not okay. That's not protected.

Jennifer Pizer ([24:27](#)):

And so one example to give you, and I think we'll talk about it more in a minute, but is harassment. Verbal conduct or expressive conduct that is intended to intimidate, or intended to exclude, or intended to drive somebody out of the classroom or the workplace, or to subordinate a person in a way that they can't participate as an equal in whatever the context is.

Jennifer Pizer ([24:54](#)):

So we've come to recognize that harassment is not protected if it rises to a particular level, if it's sufficiently pervasive, for example, or sufficiently severe. And this is an important issue, continues to be an important issue in educational context.

Jennifer Pizer ([25:11](#)):

So there's a lot more that we could say about this, but I think the bottom line is that the First Amendment protections to share ideas, to organize, to demand change, to demand responsiveness from governmental authorities, that remains as important as ever. And among the reasons why that's true is that our country is in a real crisis point right now. So if we don't keep the First Amendment as a vibrant protection of our ability to call for change, we'd be in real trouble.

Michelle Deutchman ([25:42](#)):

Wow. We already are in a lot of trouble, so you're right. We would be in more trouble. And the folks that are trying to use this legal strategy, in some ways, were kind of relentless, right? Because we've seen it with, like you said, the cake bakers and with flower arrangers and T-shirt makers. The same idea with slightly different facts. And I don't know about you, but I'm definitely troubled by, especially looking back on the term that just finished, about what this court might do in something like 303 Creative. So we might have to have you back after the arguments to talk it through with us.

Michelle Deutchman ([26:15](#)):

For now, I want to talk a little bit about another piece of important federal legislation, which is Title IX of the Education Amendments of 1972, which protects students, faculty and staff from sex-based discrimination at education programs that receive federal funding. And those programs can include elementary, secondary or post-secondary education.

Michelle Deutchman ([26:36](#)):

Now I know when a lot of people hear Title IX, they think of sports and equality of opportunity for women's athletics. However, the legal meaning of the word sex under Title IX has big ramifications well beyond athletics. And over the last 15 years, there has been a lot of administrative ping pong that has occurred throughout the Obama, Trump, and Biden presidencies about the meaning of the word sex

under Title IX. And I know it's probably hard to summarize, but maybe you could give us the cliff notes version of what's been going on and why this definition is so critical.

Jennifer Pizer ([27:10](#)):

Happy to do that. And I would go back, perhaps even before the Obama Administration issued some very important guidance under Title IX. Actually Title IX's prohibition against sex discrimination has been an important part of our engagement with schools on behalf of students, LGBTQ students who are gender nonconforming. I mean really actually going back quite a few years, where we've had a problem, and I hope folks are aware of this, and it's a problem that does persist, of students who present with their hair or their clothing or nail polish or jewelry or whatever it may be, they're expressing themselves. If others perceive them as not sufficiently gender conforming in that person's eyes, there's tended to be elevated rates of bullying and harassment of those students.

Jennifer Pizer ([28:03](#)):

And we've been able, over the years, to rely on Title IX's protection against sex discrimination on behalf of those students. It hasn't had to involve some record presented about what is the sexual orientation or gender identity of that student. Rather, the case has been fairly direct that there's a perception that this person is not presenting, is not behaving or deporting themselves in a way that other people think they should, based on what their perceived sex is.

Jennifer Pizer ([28:36](#)):

This is similar reasoning, similar argument to what we've had in the employment context. That's been very important about opening opportunities in particular for women, but then more recently for LGBT people, a broader recognition that gender-based expectations of other people, and requirements that people can form to sex stereotypes, that limits opportunities and that is sex discrimination. And that violates these federal laws. So for students, it's Title IX. And that's been a very important type of protection going back quite a while.

Jennifer Pizer ([29:13](#)):

What happened during the Obama Administration is that our movement's greater recognition and support for gender nonconforming students and students who identify as transgender in particular, that they were facing more pushback, more exclusionary rules, perhaps because the students were having more confidence and more opportunity to be honest about who they are. And to present themselves at school in their daily lives as who they know themselves to be.

Jennifer Pizer ([29:43](#)):

And so we started to see schools that would limit restroom access. I imagine everybody hearing this will remember how this issue blossomed into public awareness because students who had been... They were fine. They were using the appropriate facilities. They were going about their daily life, but somebody didn't like it. Made a complaint. And school administrators said to a student, "You no longer can use this restroom. You have to either use this other one that people think is appropriate for you based on the sex that you were assigned at birth, or you can go to the other side of the school somewhere way out of the way and use a single use restroom in the nurse's office or the principal's office," or something really inappropriate like that. And so we had to litigate on behalf of some of those students.

Jennifer Pizer ([30:33](#)):

And what the Obama Administration did was recognize the importance of Title IX's protection against sex discrimination. And they applied reasoning that Lambda Legal and some of our partner groups had developed in court. That to understand sex discrimination properly, you must understand that discrimination based on sexual orientation, or gender identity, or perceived gender identity, these are all forms of sex discrimination.

Jennifer Pizer ([31:03](#)):

So the existing federal law, if properly understood, means that LGBTQ people must not face discrimination. They need to be recognized for who they are, or I should say, we need to be recognized for who we are. And allowed proper access to facilities and programs, and be protected against various types of harassment or sex-based rules and exclusions. The Obama Administration looked at the case law that we were developing, and also looked at policies that school boards were developing, and put together guidance. So this was not a mandate that every school had to do the same thing; this was a helpful collection of dozens of different policies that had been developed independently by school districts in order to protect students. The Obama administration gathered all this material, and put it together as recommended guidance for schools.

Jennifer Pizer ([32:01](#)):

Well, there were some who disagreed and next thing we knew there was litigation to block the guidance, to take down the guidance because people disagreed with protecting LGBTQ students. And meanwhile, we had litigation in a number of different areas against school districts that were telling the trans kids that they have to use restrooms that were just not practical for them. The kids have to be able to use the appropriate facilities or else they're not safe. And not being able to use the restroom during the course of a school day often means that kids don't drink enough liquid. They're afraid to go to the restroom. They can't function during the school day the way students need to be able to function. So the Obama Administration was being helpful and was met by organized pushback by those who disagree.

Jennifer Pizer ([32:54](#)):

When the Trump administration came in, among the first things that Betsy DeVos did when she took over the helm of the Department of Education, was replace that guidance with different guidance, that in many ways, invited discrimination against LGBTQ students. I mean the removing of this voluntary guidance from the Obama Administration was invitation enough. And then some of the other rules that were put in place during the Trump Administration, in some ways, really did invite, not just discrimination in terms of negating the needs of LGBT students and transgender students, but also made it harder for schools to investigate and protect students against bullying and sexual harassment and even sexual assault. So this is a whole topic that we should discuss.

Jennifer Pizer ([33:46](#)):

But among the things that has been quite important just last month, was the Biden administration then taking the next step of removing the Trump Administration regulations, and offering proposed new regulations that aimed to address many of the problems that were brought to the Biden Administration's attention. That which we watched and documented and tried to deal with during the Trump years, the whole range of problems that became worse under Betsy DeVos' regulations. That we and many others urged the Biden administration to take this information, and reformulate rules to come

up with a framework, and I believe this is what they've done, to address complaints in an even handed, balanced, and fair way. And to give some clarity about what it means to prohibit sex discrimination in a range of contexts.

Jennifer Pizer ([34:47](#)):

So we can talk more about the details, but the overall ping pong, if you will, of the situation has been the Obama Administration offering some very helpful clarity, the Trump Administration withdrawing it and exacerbating a series of problems, and the Biden Administration just recently putting out new proposed regulations that are not yet in force, but are just an enormous improvement, enormous steps forward to make schools much safer and fairer to protect students regardless of what their situation may be.

Michelle Deutchman ([35:22](#)):

That was amazing historic rendering of administrative ping pong, Jenny. I'm going to turn now to ask you to speak directly to our listeners who are largely administrators in higher education. And I think it would be useful for them to hear from your vantage point, what kinds of things universities can be doing to do a better job of ensuring equal rights and access for their campuses' LGBTQ student populations.

Jennifer Pizer ([35:49](#)):

Yeah. I'm delighted to do that. And I'm so grateful that this podcast exists, and that people who are in those roles can listen to it and think about these issues. I think many of them probably think about these issues all the time.

Jennifer Pizer ([36:02](#)):

But the thing I would say is that right now the LGBTQ community is under a very aggressive and sustained attack. We've seen this in the states, for example, just this last year alone, in the neighborhood of, and probably well over 300 state bills, taking aim at LGBTQ people. And young people in particular, and transgender young people, especially. It's a very scary and challenging time. And we're seeing efforts to strip LGBT information out of public libraries and to prevent the flying of the rainbow flag over government buildings, there's a lot going on. And some of what's going on, we view as a cultural bullying. A pushback against the progress that we've made as a society, to recognize that LGBTQ people exist, we've always existed.

Jennifer Pizer ([37:00](#)):

And that young people, whether they identify as LGBTQ or whether they have parents or other family members who identify as LGBTQ, they can feel very vulnerable. It's important for leaders, for those with authority and responsibility, for making schools safe and inclusive, to not be bullied, to not be intimidated. Whether it might be by angry members of the community to organize to storm a school board, or that organize to insist that certain teachers be fired or administrators be driven out, or whatever the campaigns may be. And unfortunately, these days we're seeing a lot of this. It's important in these moments to not be intimidated.

Jennifer Pizer ([37:46](#)):

The commitment to make our educational environments open to all and safe for all. That's just about as basic as it gets. And they have to be environments in which information can be shared and people can

learn to think, the students can learn to think, and they can know their own history. Not selective bits of history that make everything look hunky dory, depending on your perspective, but really to understand the complexity of our history. If we don't do that as a society, we're not going to be able to live together with each other.

Jennifer Pizer ([38:22](#)):

So I couldn't appreciate more, the teachers, the educators, the administrators, who are committed to keeping our public universities, colleges, and secondary schools, open and welcoming, and fair, and inclusive. That the free sharing of ideas is essential if we're going to have a functioning democracy, and if we're going to have a society in which people can live together.

Jennifer Pizer ([38:49](#)):

And at a time when there are right wing movements aiming to censor, to pull books out of libraries, to shut down available information as Florida's Don't Say Gay law is doing, these are the moments when it really matters to recognize what that's about. And that approach paves the way for totalitarian dictatorships. We all have a stake in preventing that from happening. And especially educators.

Michelle Deutchman ([39:17](#)):

I mean, what you're really saying is both twofold, Jenny, right? That this is basic. But it's also, people need to have some courage. And it's sad, right? That we're asking people to do basic.... That you need to use courage in today's society to fight against the cultural bullying, to do what's really basic in terms of rights and dignity.

Michelle Deutchman ([39:41](#)):

And I hate to be coming to the end of our time together because there's so much more to talk about. But one of the things I always end on is asking our guest to share with our listeners some more specific ideas for how to make an impact. And that question is, what is one thing that people could do today to advance free speech and/or civic engagement? And that can be general, or it can be specific to the LGBTQ community, but I know that a lot of people say to me, "It's so overwhelming, right? The depth and breadth of the crises in this country right now. What can I do?" And obviously you've given administrators some things that they can really think about. But what about others?

Jennifer Pizer ([40:26](#)):

Well, I think of course there's a number of things. And I have to say, first of all, that everybody needs to vote. Everybody needs to participate. We all need to not be despairing and to give in to the feeling of being overwhelmed. I mean, that's probably the top responsibility now. Because it's in these times of feeling overwhelmed, when there are too many things to deal with, that we need to pick the things we're going to do and not get overwhelmed by the rest and not give up.

Jennifer Pizer ([40:57](#)):

I look at how there were attacks directed at restroom access that involved vilification of transgender women in particular. We had to do a lot of public education about who transgender women are, and the reality that often they are the most vulnerable people in restrooms. They are not the people that are perpetrating any kind of harassment or violence.

Jennifer Pizer ([41:17](#)):

And then we went from the restroom focus to school programs, and then now to sports. Where the public education that had to be done caused that issue to no longer have salience as a political organizing tool for those who are trying to stop progress of gender equality and LGBT inclusion. If we do our work to do education, then some of these tactics will not work anymore. I don't know that our opponents are just going to give up and go away. But when we do the education, we do make progress because we are telling the truth. And when we tell the truth, some of the false things that get said that portray LGBT people as threats, that dissipates.

Jennifer Pizer ([42:07](#)):

I think the other thing I would say about these academic environments, is for all of us to call out that inclusion is not discrimination. It's not discrimination against the people who want to exclude to tell them that they don't get to do that. So we're talking about inclusion and equal opportunity for everyone. This is something that the current Supreme Court majority does not seem to agree with us on, but it really is a basic principle. So equal opportunities means equal for all. It's not special rights. It's inclusion for everybody. And people who want a right to exclude, are not discriminated against. They're not treated unequally when they're required to follow the same rules that apply to everyone. It really is equal as equal for everyone. We all have a stake in keeping our society open that way and safe for everybody.

Michelle Deutchman ([43:08](#)):

Thank you so much, Jenny. I'm really happy that you said something about not despairing, because it is hard not to feel like it's so much. And so the way you broke it down and gave people some things that they can actually do, and paradigms that they can use to respond when people are saying things like inclusion is discrimination, I think is really helpful.

Michelle Deutchman ([43:31](#)):

Is there anything else you want to add before we wrap up?

Jennifer Pizer ([43:35](#)):

I think I might just emphasize again, that educators, teachers are among the most important people in our society that teach us how to keep our society free and open and thriving. So I just want to appreciate educators.

Jennifer Pizer ([43:56](#)):

And Michelle, I want to appreciate the work that you're doing to help educators do a good job. And for students to recognize the amazing opportunity that we have. And here in California, with our UC system in particular, to learn and to broaden our interests, and to make more information available, not less. There are studies that show that when curriculum includes information about LGBTQ people, surprise, surprise, that environment becomes safer and stronger in a bunch of different ways. And this principle of course, is true, not just about LGBT people, but all of the different groups of people who make up our society. That when our learning about culture and history is more inclusive, first of all, it's incredibly interesting. And also our society can function that much better. So I just want to thank the teachers. And I want to thank you, Michelle, for what you're doing.

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Michelle Deutchman ([44:52](#)):

That's really very kind of you, Jenny. And I want to thank you. I know what a crazy time it is. You're reviewing 700 pages of new regulations in addition to all of the other things you do. So I'm so happy you could join us.

Michelle Deutchman ([45:04](#)):

And I also want to extend my congratulations to you. I know that next month at Lavender Law, you'll be receiving the 2022 Dan Bradley Award, which is, for those that don't know, the National LGBTQ Bar Association's highest honor. And I really can't think of anyone who is more deserving.

Jennifer Pizer ([45:22](#)):

Oh, thank you, Michelle. That's awfully nice of you to say. I'm very proud of it. Very honored. And I've been at it for a while, and there's sometimes few things as gratifying as being recognized by one's peers and colleagues. So it's a very sweet and much appreciated honor.

Michelle Deutchman ([45:40](#)):

Well, wonderful.

Michelle Deutchman ([45:42](#)):

So for our listeners, SpeechMatters will be taking the short hiatus in the month of August, but we'll be back in September to kick off the school year. In the meantime, check out two upcoming Fellows in the Field webinars that are going to be taking place next month. And I'll look forward to seeing you then.