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 Friendan:

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

Bettina Apthekar:

There was a passion in what was being said, affirming this [inaudible 00:00:27] what people considered 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 SpeechMatters. A podcast about expression, engagement, and democratic learning in higher education. I'm Michelle Deutchman, the center's executive director and your host. Happy New Year and welcome to 2025. We're thrilled to be kicking off season four of the SpeechMatters podcast. A new year brings both reflection and anticipation, and this year is no exception. With Washington gearing up for the arrival of a new, or should we say familiar, presidential administration. The higher education community is bracing for both potential policy shifts and for changes that may impact daily operations on campus.

The now president and the Republican Party focused on higher education during the 2024 election campaign, so we expect continued attention on universities, especially with regard to diversity and speech over the next four years. While I don't have a crystal ball to see the future, I have the next best thing, which is this month's guest, Jon Fansmith. Jon is the senior vice president of government relations and national engagement at the American Council on Education or ACE, as well as a fellow podcast host of ACE's dotEDU Live. But before we talk with Jon about the future of higher ed policy under the incoming administration, we'll turn to class notes, a look at what's making headlines.

Last Friday, the Supreme Court unanimously voted to uphold the federal ban of the Chinese owned social media platform TikTok. In its decision, the court held that the ban of the app does not violate the First Amendment rights of its American users. This case came to the court as a result of the federal ban of the app passed by Congress in April. Over the weekend, TikTok users were posting tearful goodbye videos to the app, but those tears were wiped away 14 hours later when TikTok was back online following President Trump's promise to pause the ban. As of this recording, the app is online, but the law remains in effect. It's a wait and see game for what will happen next.

In other social media news, Meta has announced changes to how the platform moderates content. Meta's moved to get rid of fact-checkers and to include community notes mimics tactics used by Elon Musk's platform X, formerly known as Twitter. In the video announcing the change, Meta CEO Mark Zuckerberg said of content moderation that what started as a movement to be more inclusive has increasingly been used to shut down opinions and to shut out people with different ideas and it's gone too far. Last week a group of students and professors and Alabama filed a federal lawsuit against state Senate Bill 129, which prohibits the teaching of divisive concepts, precludes the university from having any DEI offices and prevents students, staff, and faculty from hosting any DEI programs or events.

The suit argues that SB-129 violates the First Amendment by imposing viewpoint-based restrictions on educator speech, on information taught to students and on the allocation of state funds on campus. The plaintiffs also allege that the law violates their rights to due process and the equal protection clause of the 14th Amendment. While many states across the country are using their legislatures to pass laws similar to the one being challenged in Alabama, in some states, governors are using the executive branch to reach

the same result. Last week, Governor Patrick Morrisey of West Virginia passed an executive order ending all diversity, equity and inclusion programs at state-run institutions.

The governor faced immediate critiques of the order including from the Foundation for Individual Rights and Expression, otherwise known as FIRE, which said that is written the order unconstitutionally censures teaching and class discussions.

Now back to today's guest, Jonathan Fansmith directs ACE's comprehensive efforts to engage federal policymakers on a broad range of issues including student aid, government regulation, scientific research and tax policy. His work involves representation before the US Congress, administrative agencies and the federal courts. As an expert voice on behalf of colleges and universities, he's quoted widely in national and international media on higher education issues.

Fansmith plays a central part in developing public policy positions that impact all colleges and universities, furthering ACE's historic role in coordinating the government relations efforts of approximately 60 associations in the Washington-based higher education community. I have to add that Jon and his ACE colleagues have been tried and true supporters of the center since the start for which I am so grateful. Jon, it's a privilege to host you on SpeechMatters.

Jonathan Fansmith:

Well thank you Michelle. It's equally a privilege to be here and one, we are tried and true supporters of the center. Absolutely. And what's more, you have been such a great supporter of ACE and our institutions. I think you've now done, how many episodes in my podcast? You were the first to three, you might've been the first to four. Is that right?

Michelle Deutchman:

No, I think I've done two. Let's not overstate it.

Jon Fansmith:

No, you've done more than two.

Michelle Deutchman:

We can debate later. I think we can leave it to say that we are having a mutual admiration society.

Jon Fansmith:

That's right.

Michelle Deutchman:

So before we kind of dive into what's happening or will be happening in Washington, I do just want to talk about... We're recording at a moment when things are still ablaze in Los Angeles and I read this morning that there are some discussions that Congress might try to tie disaster relief for the wildfires in LA to raising the debt ceiling. And so I thought I would just have you quickly comment on that before we dig in.

Jon Fansmith:

To start really, Michelle, by just expressing how much we at ACE and of course people across the country are paying attention to what's happening in Los Angeles. We've been in touch with our campuses and just the level of concern and sadness for what's already happened and fears about what might and to the extent that we can be helpful, we are talking institutions and we appreciate just everything that people on the

ground are doing, first responders and others in our institutions too, and working with their communities to address something that certainly no one could have anticipated. Anyway to that point, what people are doing about it here in Washington DC, besides sending thoughts and wishes, there has been some discussions about a new round of disaster relief funding for Los Angeles.

Right now, the federal government has about a hundred billion dollars in available disaster relief money they approved back in December, most of which was to go to hurricane relief in the Southeast and central eastern U.S. So they'll need more given the scale and the scope of the destruction we've been seeing. Because it's Washington, people won't let a crisis go without a little opportunism and so there is this issue about raising the debt ceiling. President-elect Trump would very much like to have the debt ceiling lifted before he takes office.

And so now we're hearing these discussions that Congress may consider a package of disaster relief along with a debt ceiling bill, which would allow enough votes from Democrats and Republicans for it to pass pretty easily when you might have concerns from the Republicans about the debt ceiling and certainly you would have a lot of democratic support even though they're a minority for both disaster relief and the debt ceiling increase. So just discussions at this point we'll see no vote scheduled, no idea about the amounts. In some ways it's hard to talk about these things before the situation's been resolved, but at least in some ways it's a good sign that Congress is doing something and working towards the possible help.

Michelle Deutchman:

I'm going to go with the hopeful part rather than the opportunism part, but I think if they work together that's good. So we all will be thinking of that and thinking of our friends and colleagues in Los Angeles. So maybe this is odd, but I think I want to kick this off by actually looking in our rearview mirror first. I'm going to quote Winston Churchill from 1948 in a speech he made to the British House of Commons and he said those that failed to learn from history are doomed to repeat it. So with that in mind, I want to ask you what can we learn from the actions around higher ed that were taken during the first Trump administration?

Jon Fansmith:

Well, it's a great question and certainly as a history major in my undergrad, I appreciate any emphasis on learning from history. Sadly, I haven't employed a whole lot of my Russian and Eastern European area studies history experience in my current role, but lots of other critical skills that were learned in my undergrad certainly apply a little bit more. This is a really interesting transition. One, historically, this is only the second time we've had a president serve two non-consecutive terms. So talking about the second term administration where you had an intervening very politically different administration between changes to dynamics but to the environment around higher ed has changed a lot from the first Trump administration.

It's probably not an understatement to say we were not a priority in the first Trump term, if anything, probably more of an afterthought. There wasn't a lot of focus on higher ed. It's very different now, higher education, institutions, the leadership of those institutions, especially highly selective institutions are very much in the rhetoric and on the minds of the incoming administration. So I don't know that you can say there's a clear parallel. These are the through lines you see. One thing we do think will be consistent, there has been a real interest in looking at the missions particularly of religious institutions or looking at the treatment of proprietary institutions where those often differ between Democratic and Republican administrations.

The first Trump term, there were regulations around religious mission that really freed up religious institutions from some requirements that would apply more broadly. And similarly, the oversight of proprietary institutions was lessened. There's some rules that were specific to those schools that the level of scrutiny applied was lessened. So I think we'll certainly see that as part of it. An emphasis on

deregulation generally will be there. And then of course maybe the most consistent thing we saw on the first Trump term that we expect to see in the second Trump term will be first Trump term came in and undid most everything the Obama administration did in their last four years in the higher ed space.

And this incoming administration has already very publicly stated they plan to undo what the Biden administration has done over the past four years. So I see a lot of emphasis in the first few months on just that, flipping the script from Biden to Trump by undoing those regulations, those policies of those executive orders.

Michelle Deutchman:

It sounds like it's a seesaw right back and forth. It reminds me of what happened or what's been happening with the Title IX regulations. You just keep rewriting the regs every time there's a change in administration. What about newer goals? Is there anything that you can foresee that might not be the thread but sort of might be breaking new ground?

Jon Fansmith:

They've been very clear about some areas of priority in higher education, which was not the case before. In President Trump's first election, he mentioned student loan repayment plans in a speech as sort of a small effort. There was a proposal related to that. Nothing ever went forward with that. There was some talk about free speech on college campuses. If you remember, I'm sure that you do of all people, that 2015, 2016 kind of debate, but really very, very little reference higher education whatsoever. In this case, we have a lot of the culture war issues have been highlighted in campaign ads and in speeches. Things like the participation of trans students in collegiate athletics. Title IX more generally, how do you define gender?

How do you define sex? What should federal policy's role be in making those determinations and setting requirements on institutions. DEI is another one. This is something that's been raging across state legislatures, but there will be a very clear emphasis in using particularly around the areas of executive orders, efforts to curb institutions abilities to employ DEI programming, whether that's in terms of student programming or within the curriculum or as part of personnel decisions and employment and training and retention. So those are the culture war ones. I think immediately top of mind very heavily highlighted.

They've also talked a lot about things like accreditation, how you oversee institutions, and then one that we saw a lot of talk about, not exactly clear how this administration will address it, but certainly one I know of interest too, campus protest, anti-Semitism. The federal government the Office of Civil Rights at the Department of Education currently has about a hundred open investigations into colleges and universities for their handling, not just of anti-Semitism to be clear, but anti-Arab speech, anti-Muslim discrimination efforts like that which this administration will be inheriting those investigations.

And so their interest in this, certainly they're very public criticism of the leadership of colleges and universities for the handling of it will be areas we expect to see a lot of attention paid to.

Michelle Deutchman:

Right. Higher ed is the enemy according to the incoming vice president.

Jon Fansmith:

I don't know that he said... He did. The title of the speech was professors are the enemy.

Michelle Deutchman:

Professors, sorry.

Jon Fansmith:

But he did say that to accomplish their goals, they have to attack colleges and universities. So not a general rhetorical position we're used to hearing. A little bit stronger than we've seen in...

Michelle Deutchman:

In the past, right?

Jon Fansmith:

Yeah. (affirmative)

Michelle Deutchman:

And I shouldn't be flippant about it because it's very serious. So another serious thing that took place actually in the end of the last Supreme Court term under the Biden administration was the Supreme Court made a hugely consequential decision in Loper-Bright Enterprises versus Raimondo this past June. For those who don't remember Loper-Bright spelled the end to the so-called Chevron doctrine, which requires courts to defer to agencies interpretations of legislation that might seem ambiguous or unclear.

So in a piece that you wrote, Jon, just days after the Supreme Court released its decision, you predicted that chaos would ensue without Chevron. So five months has passed and is chaos the word you would still use and what impact have you seen so far without the Chevron doctrine to guide us?

Jon Fansmith:

So Michelle, you're basically calling out my piece to say was I right? You're giving me the chance to defend my thesis?

Michelle Deutchman:

Totally. This was all about the Socratic method.

Jon Fansmith:

Excellent. I should have been more aware.

Michelle Deutchman:

No, think this is more... You know what I'm saying.

Jon Fansmith:

I know exactly, and I'll be honest, I think my thesis is still valid. I think there's a few things that have impacted what we're seeing, but look, the change in transition between the administrations has meant differences in what's happening in the courts, right? The Biden administration was pursuing a number of either defending legal challenges to regulations they put forward or trying to defend efforts around student loan forgiveness or others that had gone to the courts. Once it was clear that President-elect Trump was coming to office, defending those proceedings wouldn't work because the new administration will simply stop defending them in the court.

So you saw actions that said essentially we're in this hiatus period. Even though these are elections and executive branch agencies, the courts are responsive because those are the agencies, Department of Justice in particular, that will bring the issues forward. So I think chaos is very much on the horizon. I think it's an interesting thing because a lot of times we saw these rulings by the Supreme Court in the last few years and it was really interpreted as conservative court striking down a progressive administration

and whether that was using race and admissions or broad-based loan forgiveness. The Supreme Court kept blocking the Biden administration.

They did it on their overtime rule and they did it on Title IX or they upheld at least lower court rulings to block Title IX from going into effect. And you would say, "Well, great. Those are all a conservative court blocking progressive ideas." But Chevron and what they did in Chevron actually has nothing to do with political views. It really is just a very clear transfer of power from the executive agencies to the courts. The Chevron rule is really, like you said, it's about uncertainty when the laws aren't specific and most laws are not very specific, especially when you get down to the granular details of what implementing them actually looks like on a college campus.

That deference to the agencies allowed a lot of the regulatory environment that we operate under now to go forward. Title IX I think was 30 words in the original bill. The fact that we have a regulatory framework that covers everything from what a student disciplinary procedure looks like to the right to have outside counsel participate to what are reporting lines and what are your training requirements. All from that is Chevron deference in effect. It is saying the agencies know this better. They can interpret what that statute really means. If it now goes back to the courts, there may be conservative courts that will weigh in favor of conservative policies.

But we're going to have a Trump administration coming in that will have their own priorities that will be implementing their own regulations, and there's lots of progressive circuits in this country too that advocates who are opposed to Trump's policies will bring forth suits just like we saw under the Biden administration. The reason I use the term chaos because chaos is a direct result of uncertainty. There is so much uncertainty right now. You cannot look at anything that is being done and say with absolute clarity and conviction, the Trump administration will be able to execute this. They will be able to maintain it through the courts.

We just as of last week, got back to every one of the 50 states operating under the same set of Title IX regulations because they had been enjoined in 26 states. The Biden rules enjoined in 26 states, allowed in 24 states. Some of those campuses in the 24 states were enjoined from doing them because they had certain groups on their campus that had membership because of a different court ruling. It really is if you look at this from the perspective of a campus and say, "What are my obligations now? What will they be?" I mean, if you feel confident in that, I think you're probably not paying enough attention.

There's just no way to know, and that's only going to be magnified as we enter a period of a lot of transition. Again, all those new regulations, all the old ones being struck down, new executive orders, there will be legal review on all those by people opposed to them, and I think chaos is a pretty fair point. So thesis defended there.

Michelle Deutchman:

I grant you your degree.

Jon Fansmith:

Hooray.

Michelle Deutchman:

I do want to ask you your thoughts. I mean, one of the things about letting go of Chevron deference, I don't know how you feel. To me, it feels part and parcel with the sort of lack of reliance on expertise generally that we're seeing in all different areas, which is that we're no longer going to be relying on the people who are working in the regulatory agencies, including the Department of Education. Instead, the decisions will be made by judges who might be very smart, but certainly are not experts on labor or education or transportation.

Jon Fansmith:

I found the... And I don't always read all the opinions in Supreme Court rulings, but on the Chevron one I did, and it really was fascinating because I do think... I'm not dismissing your point. I do think there is a growing skepticism towards the role of expertise, but we're also talking about Supreme Court justices and clerks, some of the most highly educated, the elites of the elites within an elite profession. And when you start looking at both Robert's majority opinion and then Kagan's dissenting opinion, I think what becomes abundantly clear whether Robert throws it right out in front, he doesn't, but he talks about the fact that administrative agencies aren't experts in interpreting laws, courts are.

That's the role of the courts is to interpret the law. He's saying that is the essential function of what is being here and agencies might have technical expertise in what the EPA regulations or EPA statutes are or what suit lending laws are, but when it comes to interpreting law, that's the courts. Kagan's take on that is basically, "No, they do have the expertise. These are people most closely to it. Instead, what we've done is it's a power grab." It's essentially just asserting that the ultimate arbiter of our government are the courts and that any level of deference below them to other types of expertise doesn't exist, doesn't serve that level of judicial authority.

So I don't know it's necessarily a referendum on expertise itself as much as it really is just a active, strong judiciary further asserting their will over a pretty weakened, especially legislature, but in particular administration.

Michelle Deutchman:

I appreciate that. This is why it's so fun to have a conversation with you because we get to really talk through the issues and everybody gets to listen to us doing that. While we're on regulatory agencies, I do have to ask you about this campaign promise to dismantle the Department of Education. I've read about how it seems like it would be very unlikely, but I want to ask you, is this just some red meat for the base or is this something that is really going to be considered and possibly executed?

Jon Fansmith:

So I'll start by saying that it's not going to happen. They're not going to dismantle the Department of Education, so to a certain extent you can say this is red meat for the base. This is an idea that's been around since Reagan's first campaign as for president. It's not a new idea. It tends to resonate a lot and sort of echo what we've seen really at the K-12 level a lot. This idea of get the government out of education, which especially in the higher ed space, ignores just the enormous number of interweaving between the federal government higher education at every level of what we do.

We know for a fact the people who are coming in to run the next department of education are serious, sober-minded people who have thoughts about how to govern effectively, who want to use the authority of the administration in ways to advance policy goals they believe in. That's a reasonable amount of governing. Getting rid of the Department of Education doesn't help them do that. There's lots of other procedural issues. You have to pass laws to abolish the Department of Education. Even if you abolish the Department of Education, that doesn't mean you've abolished all of the other programs and responsibilities. You still have to investigate civil rights complaints at colleges, universities.

You still have to administer student loans. You still have to provide Pell grants. Unless you write laws eliminating all of those things as well, which in a very tightly divided Congress with very narrow margins for Republican control just aren't feasible. Lots of Republicans wouldn't want to do any of those things. I'm not even sure the majority of Republicans would want to do many of those things, so it's not going to happen. I do want to say though, and one of the things that concerns me about this rhetoric, it's really easy for me to sit in DC and talk to other DC people about procedural issues and it's complicated and where are you going to invest your political capital?

I've gotten calls from, I don't know, I mean five or six different reporters, mostly at regional papers across the country who want to talk about this because the genesis for their story is they've heard from students who see the rhetoric about abolishing the Department of Education and don't have the time to parse all those things I went into and are asking, "Does this mean my loans go away? Does this mean I can't get a Pell Grant? Does this mean if I'm thinking about higher education for next year, the Trump administration won't provide financial aid for me to do that? I can't go without it, so do I defer the decision to enroll?" That has real implications.

We talked a little bit about uncertainty for administrative planning and Chevron deference. If you think right at the very sort of the spark of what college is all about, a student deciding to enroll to pursue their studies, this kind of talk. It's not just about governing and everything else. It really does filter down to this level of people who think maybe what we're saying is as a government, we don't want to invest in people like me or we don't see the opportunity for me to go to school as important enough to support. And that is problematic. That has real harm, has real consequences. We know students who don't apply often don't come back around the next time if this situation looks different.

They consider that opportunity when it works and then they get into a job, they get into other obligations and it becomes harder and harder to come back. So there are consequences even to talk that kind of gets shunned at a side when we have these conversations about this.

Michelle Deutchman:

I really appreciate your contextualizing that and I think it kind of fits with the theme of this podcast, which is SpeechMatters, which is that it has impacts, and I appreciate your sharing those and it was a kind of perfect segue to talk about one of the newer players on the higher ed scene, which is Linda McMahon, the president-elect Trump's pick to lead the Department of Education. Is there anything you want to highlight about what she has talked about or said about her agenda or priorities as it pertains to higher ed?

Jon Fansmith:

Of course. No, she's an interesting person to think about in this role, and I mean that truly not in the sort of ambiguous way people use interesting. I think when she was initially announced, you saw some criticism, especially for more progressive education groups that said, "This is not an education leader. This is not a person who's deeply versed in education policy." And that's certainly true. She served on the state board of education for a term, for a year, I'm not sure that was a full term. She's been on the board of a small, or not a small, actually a good-sized religious college in Connecticut. She's been actively involved in public institution, Eastern Carolina University in North Carolina.

And so there is some experience, but slight compared to what we've seen with previous nominees. That said, she has experienced running a federal agency. She was the head of the small business administration in the first Trump term for two years. When you talk to people who worked at that agency under her leadership, it was a healthy agency. There was a lot of attrition of federal employees in the first Trump term. Department of Education is a great example. A large number of employees took early retirement or found other employment. SBA wasn't that. She was seen as a thoughtful, capable leader, supportive of her people looking to accomplish their goals. Since she's come onto the scene, most of her public comments are somewhat limited.

She's going through confirmation process. Going back, looking at the things she said in the past, they have tended to be pretty focused on areas where we think there's good policy to be made. She's talked a lot about Workforce Pell and pathways to professions short of a degree, but that still requires some level of post-secondary training. Those are things that there's a lot of bipartisan discussion about in Congress. It's things that frankly as a membership association, we know our members are doing a lot of, but we think there's a lot more that can be done and federal policy could really help to do more in that space. So it's not all...

I think there was a suspicion of somebody who's not deeply familiar with the education world, somebody who hasn't evinced a great level of interest in that area coming in. But I will say, and we've certainly seen other nominees who are far more problematic, having somebody who's seen as a smart and capable administrator, not especially ideological, not tied necessarily to very partisan or very confrontational positions who has an interest area in some areas where there's good bipartisan policy made.

It's not a bad nominee relative to what we could avoid, and I say that not just in terms of an incoming Republican administration. But often as the Democratic administration, you worry a little bit about people too tied to one view or another who won't be open to input feedback working with the broader community, get all the views at the table. So I am cautiously hopeful about what we'll see in the leadership at the Department of Education.

Michelle Deutchman:

That's really nice to have some heartening perspective. One of the things I anticipate is that McMahon will need to address some expression related matters on campus during your tenure. As you and our listeners know, university campuses attracted the attention of federal lawmakers and the public. When students across the country began protesting against the war in Gaza in October 2023, notably college presidents lost and resigned from jobs following congressional hearings.

Speaker of the House even visited Columbia's campus to give a press conference. Given the influence that lawmakers can exert on universities through threats of withholding federal funding, is the speech of higher education leaders inhibited by pressure from federal lawmakers and just do you have any general thoughts on what is a very large issue? It certainly has been in the past year.

Jon Fansmith:

It's a huge issue and the level of influence, political pressure plays on individual campuses. It's certainly hard to gauge campus to campus, but that said, I think anyone who tells you they're not at least more aware of how campus decisions could be construed within this lens is probably not being fully honest with you, right? It is very hard to have gone through the last year and a half and seen, as you pointed out, targeted efforts to have college presidents removed from their positions because of political disagreements in a way that we haven't really seen historically. I mean, going back to McCarthyism and other things where you saw these efforts serve at the academia to unseat people because of viewpoints.

I do think something that's been very interesting is that we've had a little bit of a transition in this debate certainly following October 7th through the first into the spring semester when protests were at their height, when the conflict was at its highest. It's safe to say, it's fair to say that colleges and university leaders struggled to find their footing. Things that we had understood to be the primary function of an academic environment, which is fostering debate, fostering engagement, erring on the side of more speech as a corrective to bad speech. Led them to these kinds of attacks, led to highlighting discrepancies in enforcement of policies and procedures, and the summer really served as a reset.

I think there's a reasonable debate as well as to whether in many cases, college university administrators overcorrected and stifled speech in some ways or put provisions in place that suppressed speech that otherwise might be healthy if allowed. That said, we have not seen repeats of certainly the things that rise to the top of attention. Acts of violence, significant incidents of hatred and discrimination on college campuses, to anywhere near the degree that we were seeing. And so to a certain extent, I think some of this political pressure, the interest in showing up on campuses is negated when you don't have those trigger incidents to rise to the public's attention to galvanize public support.

I think it was an interesting thing, the education workforce committee, the house committee, where those hearings where college presidents were brought forward, where it took place, they issued their big report, I forget, late November, early December, post-election at the end of the year. And I think a year ago this would have been a news-leading item and 350 something pages detailed excerpts from emails and other

things they subpoenaed from institutions, and I think you can say it landed with a whimper, not a bang. Where it was covered, it was section D, eighth page, not front page, top of the headline sort of thing. And part of that is the public's moved on in some ways without these flashpoints. It's less media friendly in terms of coverage.

Some of it is, I think that there's a growing sense that colleges and universities have recalibrated in a way that alleviates some of the concerns. We will still see reference to this. We will certainly see this because especially elite, highly selective institutions where the majority of these protests were taking place, wherever the majority of the attention was focused are still big targets for a lot of Republicans and some Democrats as well. So where there are flare-ups where there are things to highlight, they'll still get attention, but the public seems to have moved on in a way that I think frankly, once the public moves on, policymakers have less interest in paying attention as well because they're not galvanizing their constituents.

They're not engaging with them. They're not demonstrating a responsiveness to their concerns if this isn't something they're concerned about.

Michelle Deutchman:

Thank you. I mean, it seems that the energy, some of it has been shifted or increased to diversity, equity and inclusion, and that's one of the things I want to ask you about. Obviously you'd already made reference to the fact that over the last couple of years what we've seen is state laws that are being passed to regulate the content of university instruction, limit the services that universities can provide to their communities such as banning DEI offices and closing multicultural centers, and now politicians who've pushed this legislation are signaling plans to use university accreditation systems to continue amassing power and influence or exerting power over university activities and curriculum.

And I'm wondering if you can just talk about if these efforts continue to be utilized and successful, what effects they'll have on universities abilities to carry out their missions?

Jon Fansmith:

And Michelle, this is the part of our conversation where I move from hopeful to less hopeful. I'll be very honest, this is a very concerning area for me. You start with the fact that as you pointed out, we have seen these efforts across the states. Those efforts are not slowing down. They're expanding in terms of the scope. It used to be a sort of a blanket. You can't talk about DEI or you can't have DEI centers, and now we're hearing from institutions that are talking about either efforts through lawsuits or through state investigations or policy proposals to look at things more broadly like do you have scholarships that are specific to women? Do you have scholarships that are specific to students of color?

Are those permissible practices? Really any consideration at the institutional level of race or gender or ethnicity in terms of what you can and cannot do and it's not just accreditation. Accreditation is the one where I think we've seen the debate most as a flashpoint, and we don't want to go too deep into this, but quick summary would be that all colleges and universities that receive federal financial aid are accredited by generally what are considered historically regional accreditors, some cases national accreditors. Those accreditors are required by federal law to look into a whole range of things on college campuses, mostly related to their ability just to operate. Are they financially stable?

Do they have the appropriate safeguards in place, the appropriate structures, things like that? Things that an auditor would look like writ large. Operational concerns, those are delineated in law. The accreditors have to look at those things. The accreditors see their job as not just ensuring that these are viable entities, but also in working with institutions to see that they're continuously improving. That they are not just meeting the minimums and moving on, but that they're doing the best that they can. They're working to be better. And so a lot of the accreditors put in place additional requirements that they look for when review committees go to campuses.

And many of these historically regional accreditors have asked institutions as part of the accreditation review to talk about diversity. Do they work to have diverse student bodies? What does that look like? Do they work to have representative workforces that reflect their communities and their student populations? How do they treat their staff and their students when they're on the campus? Do they respect diversity of viewpoints, diversity of experiences? Do they provide supports and facilities that ensure that every student, regardless of their background, has an equal opportunity to succeed at that campus?

The touch point here though is if you believe as the incoming administration does, that those kinds of practices are in fact not helpful but discriminatory against certain types of students. Then you look at that and you say, the fact that accreditors want you to prove to them as part of your accreditation process that you do these things is actually encouraging discrimination on college campuses because that is not a requirement that's enshrined in federal law. When the Department of Education reviews the accreditors themselves, they can simply say, "Why are you enforcing a discriminatory practice when the law is not asking you to do so?" And it remains to be seen.

There have been efforts at some accreditors to change their standards, to modify either the language or what's required. In other cases, accreditors have looked at that and decided, "No, we're going to push forward with what we believe is important about a well-run institution." This incoming administration is going to push very hard. They're going to push hard on this in a lot of different ways. We expect to see an executive order, which will be on something along the lines that will mirror very closely in executive order that the Trump administration release at the end of their first term called Combating Race and Sex Stereotyping.

Despite the sort of pleasant name, what it really says is that federal agencies and contractors and subcontractors to federal agencies can't actually employ diversity initiatives in terms of hiring or training or promotion retention policies. The first one, we got a lot of outside legal advice that said, "Well, the way it's written is a little ambiguous as to what a contractor is." Colleges and universities themselves may not qualify as contractors based on the way it's written, certainly not in the way that you think of Northrop Grumman as a contractor to the federal government or a Deloitte as a contractor to the federal government.

We do expect though with the new one that will be released, that there will be a greatly expanded version of this with a much more explicit definition that will loop in colleges and universities and other entities. And it'll be the first salvo fired in a federal effort to block DEI programs at colleges and universities and other organizations. Well, not just higher ed, but across a wide range of organizations across this country. And then finally, I talked about this, the view of the incoming administration is that these programs are discriminatory.

The other area where they will have influence is if you believe that these programs are discriminatory and also say, if you believe that allowing transgender students to participate in athletics based on their gender identity is discriminatory. The Office of Civil Rights at the Department of Education's job as many other roles, but a primary role, is to investigate discrimination against students and staff on college campuses. It would not be surprising in the least to see that office initiate investigations into institutions that pursue DEI initiatives or that have transgender students participating in women's and girls athletics because they would clearly... They've been on the record very publicly.

They perceive that as discriminatory behavior. So it is a multi-front assault. Just to pile on the depressing news here, it is one of those where I've talked a lot about a lot of things. You need Congress to do something, you need to change the laws, and none of the three sets of approaches is there anything existing executive authority allows for it. You don't need a new law, you don't even really need to write a new regulation. This is just a change in interpretation of how their authority should be wielded. So yes, courts remain dominant, and yes, there will be opponents of these policies who will move forward in the courts to block executive actions and we'll see how that all plays out.

But especially around DEI, especially around some of these other issues, there are multiple tools at their disposal and they've given every indication they intend to use them.

Michelle Deutchman:

Well, I really appreciate your kind of getting in the weeds there because you were anticipating my next question, which was sort of about the difference between utilizing accreditation systems versus pursuing explicit legislation. So I think that's really helpful for people to understand the different tools in the toolbox and how they might be used individually or in concert. I don't want to get even darker here, but there has been some people who've been writing about how attacks on higher education are one of the first steps on the road to authoritarianism.

And I'm wondering, I know this is... You might have to pull on your history background. If you have any thoughts on whether the current situation that higher education is facing is in fact a growing marker of authoritarianism, and if yes, what role should higher education, not just experts, but constituents be playing in sort of raising awareness or in some cases sounding the alarm?

Jon Fansmith:

It's such a good question and keeping with our more depressing than hopeful theme. I think your premise is fundamentally sound right, and I'll draw on my Eastern European history background that we saw this pretty clearly in Hungary, for instance, where the Orban rise was very directly tied to coupling with not just driving out particularly progressive pro-democracy voices from colleges and universities, but creating a sort of cultural divide between these global elites who weren't invested in the wellbeing of the nation versus, in Hungary's case, sort of more of an agrarian rural constituency that were true Hungarians, and to paraphrase.

If you are looking to consolidate power and you don't want to be checked by all the frustrating and difficult and necessary checks and balances of democracy puts in place, a really good way to do that is to start by undermining and discrediting the people who uphold the institutions, right? And it's not... I want to be thoughtful about this and say, I don't necessarily know that there's the intentionality to this that we like to subscribe to it in retrospect. A lot of this is individual things where one side wants X, they see something else as oppositional, so they seek to undermine it. Some of these things grow very naturally. I think Americans generally are distrustful of institutions.

That doesn't necessarily mean they embrace authoritarianism. People have countless good reasons to be more skeptical now of law enforcement, of banks, of corporations, of any range of institutions, including colleges and universities than they used to. Again, does not necessarily mean that they're seeking an authoritarian alternative. But when you start to erode the credibility of institutions, when you start to have a mass media and information system that allows people more and more to only hear viewpoints that reinforce their existing views, and you have fewer objective voices of credibility in the process, it's not shocking to me that you start to see a lot of these hallmarks and these norms falling away.

And then are there leaders who are manipulating that? Probably, yes. Are there leaders who are simply seizing on a moment because it advances their interest? Absolutely. Again, I don't know that there's a coordinated effort to topple democracy, but there are certainly people who benefit from democracy being weakened. And I think higher education frankly, has done a really good job in a lot of ways about speaking to the challenges facing democracy. It benefits us in part because we are inherently... A stronger, higher education system is a bulwark for a strong democracy, and that has always been the case.

The better and more educated a populace is, the more engaged in making better and more thoughtful determinations about the course of their country they will be. So those two things are inherently tied together, which is also why we make ideal targets if your goal is to weaken the democratic system rather than strengthen it.

Michelle Deutchman:

I really appreciate the nuance with which you answer that. And then also how you kind of brought it together to be talking about that connection between higher education and democracy, which of course the center really fervently believes in. And it leads me to our last few questions, which is about a lot of surveys and of course survey data can be interpreted in lots of different ways. That the public is allegedly losing faith in the value of a college degree and in institutions generally, but in particular higher education institutions.

And I'm wondering what strategies you and your team have found to be most successful in promoting the value of higher education to federal lawmakers and even the public, including that connection between higher ed and democracy and why that matters even if you're not someone who's able to access post-secondary education.

Jon Fansmith:

It's a challenge. The thing I think a lot of people in higher ed find so frustrating is objective data backs up our arguments in all cases, right? There's no real question about the economic value to an individual or to society of higher education. It is the shortest path up the socioeconomic ladder. It's not resonating with the public [inaudible 00:46:37], and there are deliberate efforts to undermine that. There are lots of learned experiences of people who have had an experience with higher education that was not beneficial and are more than happy to share that with people they know as well. Anecdote runs large in a lot of people's views of higher education. That said, I think for a long time we took the power of the objective data and this inherent belief in our mission and what we do to be self-evident and ignored the fact that that wasn't really working out that way.

I mean, reference fact, we're talking about it right now. I think there is a greater awareness that we need to do a better job of demonstrating value. At ACE, we're a national association. We represent a huge number of colleges and universities. We are talking at the national level about value writ large and what the value of higher education is, and moving away in some cases from this individual economic return still important, I'm not diminishing that, but looking at the role colleges and universities play as economic engines in their communities. The role they play in developing innovative technologies, the role they play in supporting national interests, national security, other things. Where the value is a real... We're a force multiplier for all of the things people want this country to achieve.

And for a national organization, I think that's the right place to be putting our energies, articulating this vision, drawing in constituencies that don't think about higher education necessarily, but who depend on higher education to meet the goals they're setting for themselves. I'm going to sort of anticipate what your follow-up question here will be too, which is to say where I think the actual effectiveness in the national narrative around higher education is, and where I believe institutions are turning the corner in some ways, is talking back to their communities about what they do, how they serve people in their communities, including those as you pointed out, who may not actually have the opportunity to access post-secondary education.

As well as thinking about ways to reach out to those people so that their experience with higher education, post-secondary education looks different than it would have 20 or 30 years ago. That there might be workforce skills training involved at your campus. They might just be you're the beneficiary of emergency supports or health services or cultural events or sporting, whatever that looks like. That there's a clarity and a emphasis on how we're connected to the people around us, how we not just drive our economies, but build our cultures and our communities and how we're very much a part of that.

Michelle Deutchman:

Well, so Jon, it sounds like you're anticipating my next and last question because sadly we're out of time, which is people who work in higher education day-to-day, like a lot of our listeners, what can they be

thinking about and doing to assist people like you and your team to lobby to promote the value of higher education?

Jon Fansmith:

So there's a lot of things they're already doing, and I'll just say we do so many amazing things at our campuses, at all levels and at all types of institutions. And having those experiences to share with people here in Washington, DC actually is one of the best ways to articulate the value of higher education. So that is tremendously helpful in the work that myself and my colleagues do, and certainly sharing those with us and making sure that we are aware. I would encourage your listeners to do that, to feel free to reach out to us. We'd love to talk about that. But the other thing is, and I think not to give people who are already probably overworked more work, but a lot of this national narrative is driven by these individual examples.

And it's the encounters people have with higher education, with post-secondary institutions in their community. And that looks like a lot of different things depending on whether you are a student or a family member or a staff member or a faculty member or somebody who just supports the local campus sports team or goes to a cultural event or it's a beneficiary of a medical clinic or a legal clinic or other services a lot of institutions provide to people in their communities. And the more you do those things, but also the more you do those things with an idea that you are a part of a community, making sure that the people within your community understand that you're there as much to serve them as to serve your mission or your other goals.

That you really see yourself as central to everyone, whether they pay to attend your institution or not. Those are the kinds of things that when people are talking to their members across or talking to their friends, it really relates very specifically to their views of higher ed. And we do a lot of surveys. You asked before about surveys and survey data and what it says, and one of the things that always strikes me is when you ask people their views of higher education, they are generally... We do better than a lot of other people, but there's a lot of negative viewpoints. But when you ask people who went to a college or a university about their own experience, what they think about the institution they went to, they're uniformly incredibly positive and enthusiastic.

And I think it highlights this point. When people actually interact with an experience, colleges and universities that are on a campus, they interact with campus whatever version that takes, that experience is very positive for the most part. The more that that happens, the more that campuses are thinking about and thinking very thoughtfully, intentionally about engaging their communities, giving more of those experiences to more people, the more likely they're to thrive in the environment. And the more that's done on a case by case basis nationally, the better the viewpoint of higher education will be.

Michelle Deutchman:

Well, I think everybody's plate is very full, but I think in some ways what you're talking about is storytelling, which is something that each of us does in our daily life. And I think we're just asking people to think about the stories that they might tell about their experience, either with a college and university or about how a college or university has impacted their life, even if they weren't in there in terms of community engagement and so forth.

And so I think that's a really nice thing to sum up the things that people might do. We don't have to do all these things today. We can think about them as time marches forward. We've covered so much, I don't know if there's anything else you want to add, but I want to give you that opportunity.

Jon Fansmith:

No, the only thing I would add is I would emphasize what you just said, and I think telling our story, we have great stories to tell and you put it so well. Maybe being a little bit more intentional about it, but we have great stories to tell them. When people hear them, their views change. Absolutely. I'll leave it there.

Michelle Deutchman:

Well, I want to end, I get to have the last word as the host to say just how grateful I am that you joined us. I know that you have been doing podcasts and talks all around the country, and so I'm grateful that you made time for SpeechMatters and look forward to continuing to work together.

Jon Fansmith:

Sorry, I know you were supposed to have the last word, but I absolutely agree, and thank you so much for having me, and look forward to having you back on our podcast as well, and hopefully you'll have me back here.

Michelle Deutchman:

That's a wrap. Thanks so much to Jon again for joining us and for sharing his expertise. Next month, we'll talk social media and speech with John Perrino, senior policy and advocacy expert at Internet Society. In the meantime, if there are topics you would like us to cover on the podcast this season, let us know. You can find us at freespeechcenter@UCI.edu. Talk to you next time.