

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 is 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 Speech Matters, a podcast about expression, engagement, and democratic learning in higher education. I'm Michelle Deutchman, the center's executive director and your host.

After over a year of political campaigning, including numerous twists and turns, one of the most closely watched and consequential elections in American history is settled. Donald Trump will serve as the 47th president of the United States. When I thought about this month's episode, I anticipated we would be talking about contested elections, hand counting of ballots, and whether or not the Supreme Court would need to be involved. Instead, Trump won both the Electoral College and the popular vote, winning all of the seven battleground states.

Despite this decisive win, numerous questions remain. Is this a political realignment in American politics? What's the role of growing disinformation and foreign interference and the fair running of elections? What will the implications of this election be for the future of American democracy?

These are complicated questions, which is why we are lucky to have today's guest, Professor Rick Hasen, who's equipped with over 20 years of experience writing, thinking, and talking about elections and the laws that govern them. We will turn to him in a moment, but first class notes, a look at what's making headlines.

Although election analysis will be continuing in the weeks and months ahead, a few items to note include the growing divide between college educated and non-college educated voters. According to the Chronicle of Higher Education, last week's exit polls showed that 41% of college grads voted Republican compared to 54% of voters without a degree. This year's 13 point college degree chasm was more significant than in both 2020 when exit polls showed a seven point divide, and in 2016 when the difference was nine points.

Circle, the Center on Information and Research on Civic Learning and Engagement shared its initial numbers on turnout by youth voters ages 18 to 29. 42% of young people showed up to the polls overall with 50% turning out in the aggregate in key battleground states. So far, it looks like youth turnout was lower than the historic rates in the 2020 election, which hovered between 52 and 55%, but on par with the 2016 election.

Many policy makers and analysts are busy prognosticating about what a second Trump presidency will mean for higher education. Some fear the dismantling of the Department of Education. Others are concerned by Vice President-Elect J.D. Vance's characterization of professors as quote, "The enemy," unquote. Although it's looking like Republicans will have control of both the House and the Senate, Trump will not need Congress to rescind Biden administrative executive orders, including new Title IX regulations and student debt forgiveness. President-elect Trump has promised to conduct civil rights

investigations and to schools that use race in admissions, and has pledged to reinstate his 1776 commission, which seeks to promote fair and patriotic civics education.

Now back to today's guest, Rick Hasen. Richard L. Hasen is the Gary T. Schwartz Endowed Chair in Law, Professor of Political Science (by courtesy), and Director of the Safeguarding Democracy Project at UCLA School of Law. He's an internationally recognized expert in election law writing as well in the areas of legislation and statutory interpretation, remedies and torts. He is co-author of leading case books in Election Law and Remedies.

Hasen served in 2024 as an NBC news MSNBC election law analyst. He was a CNN election law analyst in 2020. He is the author of over 100 articles on election law issues published in numerous journals, including The Harvard Law Review, Stanford Law Review, Supreme Court Review, and Yale Law Journal. His op-eds and commentaries have appeared in many publications, including the New York Times Wall, Street Journal, the Washington Post, Politico, and Slate.

Hasen also writes the often quoted Election Law Blog, which the ABA Journal named as the Blog 100 Hall of Fame, in 2015. Rick has taught at the Chicago-Kent College of Loyola Law School, Los Angeles, and University of California Irvine before moving to UCLA in 2022. He represents the best of the UC system with a BA from UC Berkeley, Go Bears, and a JD/MA and PhD in political science from UCLA. Rick, thanks for joining us today. We're grateful for your time.

Rick Hasen:

Glad to be back with you.

Michelle Deutchman:

Not only am I grateful for your time today, but I want to take this opportunity to thank you for both being a member of the Center's Academic Advisory Board and being a critical part of the center programming these past years. You joined us weeks after the January 6th insurrection to talk about how to defend free and fair elections, and we're also the inaugural guest on this very podcast in January, 2022 following the publication of your book Cheap Speech, how Disinformation Poisons our Politics in 2022. You also founded the Safeguarding Democracy project at UCLA, which you direct. This project is dedicated to promoting research, collaboration and advocacy aimed at ensuring free and fair elections in the U.S conducted in accordance with democratic norms and the rule of law. So I think that's a great place to start. Let's start with free and fair elections and giving us a sense of how you think this election measured up from an election integrity perspective.

Rick Hasen:

Sure. So I think the first thing to say is that it was always going to be easier to run an election not during a pandemic than during a pandemic. So already we had a leg up on 2020. 2020 was extremely challenging because people did not feel safe to be close together. So many more people wanted to vote by mail. We had some primaries that were moved because of the inability to get poll workers to come as the pandemic was raging. This was, of course, before the development of the COVID vaccines and there were lots of deaths associated with it. So we all went through it, but it's worth reminding ourselves, I think we've kind of blocked it out, just how difficult the conditions were in 2020. And nonetheless, we managed to have a free and fair election in 2020. And one of the things that is a lesson that was learned from 2020 is that there's a difference between having a fair election and people believing that we have a fair election.

This was the big challenge going into 2024 because we had one of the major party candidates in 2020 and 2024, Donald Trump, suggesting that if he lost the election, that it was going to be because there was cheating or that it was stolen. There was no evidence that there was any large scale cheating or rigging of the election in 2020, nor was there such evidence in 2024. Because Trump ended up winning the 2024 election, all of the things that could have happened after 2024 [inaudible 00:07:42] trying to challenge the

legitimacy of the election, to undermine people's confidence in it, those all kind of fell by the wayside. We are seeing, and I'm sure we'll talk about this, a small rise on the left in belief in conspiracy theories because people on the losing side of elections increasingly can't believe that their side lost and they're looking for other explanations. But both in terms of how the election was run, and in terms of voter confidence in it, I think that things are going to look better from the perspective, say two years from now when we look back on 2024.

But that doesn't mean that we are in a situation where we're going to have free and fair elections and confidence and free and fair elections going forward. Both of those things are potentially at risk going forward in this new era.

Michelle Deutchman:

I'm really happy that you started with that reminder because I think the truth is I hadn't really thought about that in quite some time. I think there is an element of you forget certain things in order to move on, but I want to pick up on what you were saying about confidence in elections and believing it, and sort of asking you your thoughts on, are there ways to help to build confidence in free and fair elections, especially now that we know that there is this, I don't know if you would say it's a new phenomenon, kind of following elections that the loser of an election is going to turn to this sort of theory of fraud or cheating?

Rick Hasen:

So I think that you could go back to the pre-Trump period. I date kind of modern fights over elections, or what I've called the voting wars, to the 2000 election. That's when we had to dispute election in Florida. The entire presidency rode on a few thousand votes in a state where many millions of people voted. The election went all the way to the Supreme Court. And that already I think gave people some concern. I don't think many people paid attention to the mechanics of how we run our elections, but there was a lot of attention to it. And one of the things we've seen, at least since 2000, is that those on the losing side of elections tend to be less confident in the results of the election than those on the winning side. So that's true of Democrats. It's true of Republicans. If my guy won, the election was fair and square. If the other guy won, there must've been some problem.

Donald Trump really supercharged this lack of confidence by making really outlandish claims about the integrity of the election process. So just to take one example from the 2016 election, 2016 was the election that Trump ran against Hillary Clinton. He won that election in the electoral college. He was about 3 million votes behind Clinton in the popular vote. Popular vote is just a beauty contest. It doesn't have any legal effect, but he made the claim that three to 5 million non-citizens voted in that election all for Hillary Clinton, he said, just a crazy outlandish claim. And there were extensive investigations after the 2016 election to see how much of a problem is non-citizen voting. And there weren't 3 million, or 300,000, or 30,000, or 3000, or even 300 cases. There were maybe 30 cases that were being investigated nationwide out of well over a hundred million ballots cast.

So really, there's a huge gap between the rhetoric and the reality. And we know that after the 2020 election, which Donald Trump... This was when Trump ran against Biden. He lost that election in the electoral college. He lost that election in the beauty contest of the popular vote, but he convinced millions of his supporters that the election was stolen. It, of course, indirectly led to the assault on the capitol on January 6th, 2021. It's become kind of a thing that Republican voters will say. Whether or not they actually believe it, that the last election was stolen, it's kind of become an article of faith. You have to be an election denier to be in good standing.

I hope that now that the 2024 election is behind us, and assuming that Donald Trump does not try to run for office a fourth time, which should be barred by the 22nd amendment of the Constitution that says you only get two terms, but assuming that this is the end, then maybe this stuff fades a little bit. Because when

others have tried to make election denial claims, for example, Carrie Lake when she lost the gubernatorial election in Arizona, those didn't get any traction. And so we really don't know if this is a Trump-specific phenomenon and things will go back more to normal in a post-Trump election period or not, but I think that's something, in terms of confidence, that we need to pay more attention to.

Michelle Deutchman:

So basically time will tell, and sometimes it's hard to have patience. Let's talk a little more broadly about the information, disinformation, misinformation, that trifecta in this election. There were many people who predicted that this was going to be the AI election, whatever that means. And I'm curious from your perspective, if you can share any specific ways that you saw disinformation playing out in this election, and maybe, again, how that was different or similar to the last election in particular that you had written the book before, and even 2016.

Rick Hasen:

So what we saw in 2020 was that the major social media platforms became sites on which false election information was spread and the sites took some actions to try to deal with that. So for example, when Donald Trump would make a false claim about a rigged or stolen election, that claim might be labeled as disputed by Facebook, by Meta. It might have been demoted or had some kind of fact check associated with it. On Twitter, there were these trust and safety teams that were out there trying to combat election disinformation, and more innocent election misinformation. One of the things that we've been recommending through a report that we put out in 2020 when I was still at Irvine, and a report we put out in 2024 called 24 for 24 with recommendations, is that it's really important for social media companies to make it easy for election officials to be found and to be identified as sharing reliable election information.

So you know that the source that you're seeing something from, that it actually comes from an election source. And so there was some hope that in 2024, we would see the platforms continuing on this path of trying to help voters get reliable information. Unfortunately, it was much worse than just neglect. I would say at Meta, Meta is Facebook and Instagram and Threads and WhatsApp, those are some pretty big platforms and programs, they essentially withdrew from politics, deprioritized political content, didn't do much by way of trying to police misinformation or disinformation. I think part of this was a defensive crouch on the part of Mark Zuckerberg who just didn't want to be in Trump's ire, especially after, in Trump's coffee table book, he threatened Mark Zuckerberg with severe jail time for what he did in 2020.

What he did in 2020, aside from running the platforms that were trying to police election disinformation, was that he and his wife's foundation donated about \$300 million to election offices around the country, both Democratic and Republican election offices, to ensure they had adequate funds to run elections in the middle of a pandemic where the costs were so much higher, and this was seen as somehow cooking the books for Democrats. But so Mark Zuckerberg essentially put his head down and said, "Let's just deprioritize political content. Let's not police this stuff like we have before." Things were much worse at X, formerly Twitter, where not only was the trust and safety team fired, but Elon Musk and his takeover became one of the major vectors of the sharing of election disinformation. So it wasn't that the material was simply tolerated on the platform. He became an active disseminator of it.

And I think X really was transformed into a Trump propaganda outfit, at least when it came to the question of the sharing of election disinformation. By some accounts, Elon Musk put in over \$200 million, not counting the value of Twitter, in trying to support Donald Trump's campaign. It's already paid off with the huge rise in the stock price of Tesla and in his other properties to the point that he's actually worth billions of dollars more than he was before the election. So it was actually a very good investment for him, but very bad for the country that he became a vector for sharing election disinformation in a way that was just, again, completely not credible. He would share things that were completely outlandish, and it was done, it appears, for crass, political gain.

Michelle Deutchman:

Not feeling super hopeful yet, but there is still time in this episode. Both of the two phenomenon that you just discussed are very much centered around individuals, so far that we've talked about in terms of... Well, three, Trump and Zuckerberg, and then Musk. And I guess one of my questions is, what does that mean from a policy perspective in terms of, again, trying to work on decreasing the amount and influence of disinformation when really in some ways what we're battling is individual personalities and their power on certain platforms?

Rick Hasen:

So one question, I think it's just a variation on the point earlier, is how much of this is a Trump specific phenomenon? Really the way to curry favor with Trump is to claim that every election he doesn't win is stolen. Maybe that goes away. Maybe we see less of this in the future. I think we don't know. Another maybe optimistic view is that the market will sort this out. So one of the things that I've been noticing in the last few days, we're recording this about a week after the election, is that the number of followers I have on Blue Sky, which is an X alternative, has doubled. Lots of people are moving away from X. And to the extent that X becomes more like a true social or another right wing platform, it's going to lose some of its influence. Now, people thought that Elon Musk made a financial blunder in purchasing Twitter. Maybe it was a wise investment if he was actually planning to use it for the political purposes.

I just don't know. But the more that he allows, say hate speech on his platform, and the more that it becomes a vector for the spread of all kinds of disinformation, if the market works, people are going to leave. Now, let me be clear. I don't think that Elon Musk should be censored. I think just like whoever owns the New York Times or Fox News can put whatever they want up on their platforms. They're private actors. They can do what they want. I've called on the companies to be responsible corporate citizens, just like you'd want General Motors or any other company, or a church or a union to be responsible citizens and try and support democracy. Same thing for social media companies. So I'm not saying the government should come in and shut him down or that there should be rules on how he moderates content.

In fact, I filed a brief in the Supreme Court in a case called NetChoice from last year that I think we talked about, but when it was still pending, about whether states can regulate what kind of speech social media platforms decide to promote or not. I wrote in that brief that was filed in the Supreme Court, with a few other professors, that it's up to those who own the platform to decide just like it's up to the New York Times decide what the headline is going to be, and there are other ways we can deal with problems of misinformation than censorship. Government censorship is generally a bad idea. And I always tell people imagine the person you distrust the most being president and getting to appoint the free speech czar who gets to decide what content goes up on social media, and you see what the danger is.

And we may see some of that as we enter into this new administration. We don't know what their approach is going to be to free speech, despite all of the anti censorship language coming from J.D. Vance, the new vice president, and from Elon Musk. So we'll see, but I think that Musk has been tremendously irresponsible in sharing this kind of content and in making his platform the go-to place for this. So maybe it will have less appeal. Maybe it will have less reach by the time we get to the 2028 elections. I think we just... We don't know. Certainly, it would be hard to imagine, looking at Twitter in 2020, what it would look like in 2024. I don't know that any of us imagined, even under Musk, that it would become such a cesspool and a vector for the spread of hate speech and other things.

Michelle Deutchman:

There's a lot of things that have happened that I think maybe many people, even experts in pundits and others weren't able to imagine. And it just reminds me a lot of what we talk about when we talk about speech and ugly speech on campus, that we can't necessarily stop it, but what are the other levers that can



be used? And you're talking about the lever here can be to not use that platform anymore. Let's move from information to sort of democracy, which, of course, all of this connects to democracy. But over the past bunch of years, so much of your work at your project and our work at the Center has been to raise awareness and respond to threats to democracy. And this theme played out a lot in the campaigns for president, and you had a headline in your blog last week that said, "Harris asked voters to protect democracy. Here's why it didn't land." And I was wondering if you could just talk a little bit about why you think maybe that wasn't a compelling message for voters in this moment and what that does mean for democracy.

Rick Hasen:

Yeah, sure. So first, to be clear, most of the headlines on my blog are just if they're in quotes, it's what someone else has written as a headline. And that was an article that was in the New York Times that I was excerpting on the blog. But I do think that this is one of the most difficult questions to answer. I'm going to read to you... One of the sites that I read every day is a site called Political Wire, which rounds up the latest political news. And there was a post this morning, quote of the day. This is from a 45-year-old construction worker in Philadelphia talking about why he voted for Trump. He said, "He's good and he's bad. People say he's a dictator. I believe that. I consider him like Hitler, but I voted for the man."

Yeow. There are certainly many people, millions of people who voted for Trump, despite some of his views on democracy and authoritarianism, and despite the fact that you had Mark Milley, the former Chair of the Joint Chiefs of Staff raising the risk of fascism. Some people, they held their nose. I saw one focus group discussion, I think this was from Sarah Longwell, talking about how Trump was described by one voter as crazy and Harris as preachy, and the voter said, "I'd rather have crazy than preachy." So that's like, I don't really necessarily like this, but there are other reasons why I'm going to vote in this particular way. But I think that for others, they were not bothered by the risks to democracy. And I think that is really something that is hard to come to terms with, that regardless of how people are going to vote, if they don't care about the issues of democracy, then you're really in a situation where a democracy could essentially vote itself out of existence.

I'm not saying that's what's going to happen now. I certainly don't hope that's what's going to happen now. But if people don't value democracy, I was shocked by how much chatter there was. And of course, this is stuff that rises the top but becomes salient. Doesn't mean it's widespread. People talking about repealing the 19th amendment, the 19th amendment in 1920 which gave women an equal right to vote. Just the fact that we're having this discussion makes me very concerned. I had thought, and maybe it's the decline of civics education in the United States, maybe it's the changing nature of communication and people don't value democracy, maybe it's the fact that people feel like their voices are not heard or that cities are not well kept up and government is inefficient, for whatever reason, democracy itself is not as popular as it once was. And so that is really one of the huge challenges we face going forward, not that you'll have someone who'll sneak in as a anti small D democratic candidate, but that someone will run on that kind of platform and that will be popular.

That is not something that I really expected. I'm old enough to have had democracy ingrained in my brain from an early age, but maybe that is not true. And I think the fact that people don't even understand the basics of how government works, the fact that we have this kind of civic illiteracy is a huge problem, and it's not something you can easily go back and retrofit. It's not like someone's going to make a really compelling series of TikTok videos that explain the electoral college and that that's going to solve our problem. So it really is a scary moment. And I can tell that you're not happy with what you're hearing from me, but I do think that we face a kind of challenge that we have not seen in modern American politics.

Michelle Deutchman:

I'm definitely not happy, not so much because hearing it from you, but because I think it's the reality, and it's a reality that I have been thinking about a lot vis-à-vis First Amendment and how little literacy there is about what the First Amendment means, how it applies, sort of what the value of the First Amendment is, not just in society but on campuses. And I think this is what you're talking about, is just a larger extension of that. And there's going to be a lot of people who are going to be thinking and talking about why, like you said, sort the value of democracy doesn't seem to be at its highest at this time.

And with that in mind, I think there are some other things I would like to ask about, which is as of the time of this recording, we don't know exactly who's taking the house. But right now, it's looking like one party is going to have both houses of Congress and the White House. And of course, the Supreme Court's not supposed to be a political body, but given the oh six and nine justices have been appointed by Republican presidents and with the trends in opinions, it's certainly tilting to the right. And what does it mean for either future elections that one political party will control all branches, and are there enough guardrails in place to safeguard the voice of the minority, especially in a situation as you acknowledged where we have now a president-elect who never acknowledged losing the 2020 election?

Rick Hasen:

Well, so first, let me start with a kind of optimistic aspect of having all branches of government controlled by one party, and then turn to the risks. So the advantage is that one of the problems that we face as a country is that our form of government, because of the division of power between the Congress and the presidency, and to some extent the Supreme Court, it's very hard for voters to know who to hold accountable. Democrats can point at Republicans. It's Republicans in the House. Republicans can point at the President. It's Joe Biden. That's why inflation is so bad, or whatever it is that they want to say. When one branch controls all the branches of the government, it's hard to blame the other side. And so voters, to the extent they're paying any attention at all, will have an easier time saying if things go well in the next four years, well, let's reward the Republican party. If things go poorly, let's reward the Democratic Party, something like that.

So having full control and actually being able to get your agenda through is... That's how it is if you think about the UK. You don't have the separation of powers, and you can basically, if you're the prime minister, you've got your parliament behind you, and if you have enough people behind you, you can just do your agenda, and then voters can decide if they like it or they don't. And in fact, we can understand part of this election result as an anti-incumbent mood around the world where after COVID and after inflation, people are looking for change. The question and the danger, and the thing that I worry about is whether or not there will be any changes in election rules that will make it harder for there to be that kind of fair accountability in the future.

So for example, one of the items on Republican's agenda is requiring documentary proof of citizenship before people can register to vote. This is a requirement that we know, unlike voter ID laws, which I think generally have been found to not have a huge effect on the number of people who want to vote actually voting, in part because people are able to get those IDs if they need them, that a requirement of documentary proof of citizenship will cause thousands of people to become disenfranchised. It's already happening in states like Arizona where if you happen to fill out the state form, the state registration form, you'll no longer be registered to vote in any election if you don't provide your naturalization certificate or your birth certificate, or you've already provided that to the Department of Motor Vehicles and they can pull it off of there. If you happen to register with a federal form, this is the form that Congress has authorized through something called the National Voter Registration Act of 1983, then you'll be registered to vote in federal elections, but not state elections. Kind of a crazy rule.

But if this were applied nationally, I am convinced that there would be millions of people who would be disenfranchised from voting in federal elections. And so that is something that is definitely on the agenda. In fact, Republicans in the house passed a bill that would've done this, and it went nowhere in the Senate. Now Republicans, if they control the House and the Senate, what are they going to do about the

filibuster? Is Trump going to pressure them to get rid of the filibuster? Might there be other changes in election rules that could be put into effect that could have a kind of negative effect on the ability to hold free and fair elections that rather than moving in the direction of greater enfranchisement of eligible voters, we'd be moving in the wrong direction. So that's something I'm really worried about.

And of course, on top of that, you have to layer the fact that the United States Senate is a very anti-majoritarian institution. We here in California, we have the same representation as Wyoming or Rhode Island or Hawaii, very small states. There are more Republican small states than there are Democratic small states, so there's already a Republican bias in the US Senate. So you put all this together, there might be the conditions to increase the minoritarian aspects of the United States electoral forum. And to add on top of that, a conservative judiciary that is much more willing to allow states, and I would say Congress, to impose rules that make it harder for people to register and to vote. And so if, in fact, some of these proposals that are floating on the Republican side to make voting and registration harder actually pass out of Congress, then their chances of being struck down in courts are not as good as they would've been even say 10 years ago.

So I started off with a little optimism, and then I had to douse it with lots and lots of water so that you wouldn't see it grow into anything hopeful at all.

Michelle Deutchman:

Well, no. The Supreme Court has done quite a handy job of defanging the Voting Rights Act. So if you're thinking we're going to be seeing more of that, that certainly is not very optimistic. We had kind of touched on it before when you talked about people like Zuckerberg potentially wanting to step away because of some of the threats that Trump made about jail time. And President Elect Trump has talked very consistently about his interest in using the Department of Justice and other government agencies to potentially punish political foes or pardon individuals who participated in the Capitol riot. And I'm just wondering how realistic you think those scenarios are. And again, it goes back to accountability. And will there be people who will maybe try to be obstacles to block these kinds of actions?

Rick Hasen:

Yeah, well, I think this is... When you made reference earlier to the lack of guard rails, this is really one of the big concerns. And it was just a story in Politico about how people who work at the Department of Justice are especially concerned, and many are talking about leaving. Of all people, it was Jeff Sessions and Bill Barr who held Donald Trump back from doing things the last time, and who he picks for Attorney General is going to be very important. It's really, if you think about the Department of Justice and the courts as really the last in terms of the rule of law, I'm not sure how much we'll be able to depend on both of those to the extent that Trump can reshape those institutions. I think right now, the courts have done a pretty good job in supporting the rule of law.

And despite say things like conservatives and liberal justices and judges dividing over the scope of the Voting Rights Act, they held the line in 2020 on free and fair elections. And so really, it's going to be a huge test for the legal system, for the Department of Justice, and for the courts, to the extent that Trump is willing to test those existing guard rails. Now, I don't think we know what we're going to see and what the priorities are going to be for the next Trump administration. We also know that there also might be an issue of competence. That is, there might be things that they're trying to do that could be done if done competently, but maybe they won't be done competently. So to take an example from the first Trump administration, the way that the citizenship question was added to the census, and then was taken off, it was done in such a ham-fisted poor way that the courts just narrowly blocked it.

And so really, we don't know what they're going to prioritize, and we don't know how well they're going to try to put it into effect. We do know that courts so far have mostly done a good job in serving as a backstop and enforcing the rule of law. And so I just think there are a lot of unknowns. And I think the



message I was giving people before the election when there were concerns about were we going to have another Bush versus Gore, was this election going to go into overtime really... If it was very close, that's what I thought we would be facing. The message I was giving them is the same message I give now, which is vigilance. We have to watch. We have to see what happens and use the tools that are available, including our own free speech protected by the First Amendment, including the legal processes, to try to assure that the remaining guardrails are actually being used.

But we are going into a period of unknown because we don't know what those priorities are going to be, and we don't know the extent to which those might be pushed back upon by the legal system. And so that's really one of the things that I'll be watching the most closely in the next few years.

Michelle Deutchman:

So it's both uncertainty, but then coupling that with vigilance. And of course, I agree with you about speech and petition and assembly and sort of needing to double down on those things, but also feeling concerned that when the leader is threatening using the levers of government to punish political opponents, I also worry about the potential chilling effect that that can have.

Rick Hasen:

Sure. And I think how much of a chill, if any, there is, it's going to depend upon what the first six months of this administration actually look like, and that's what I think we'll have to be focused on. And how do different political branches react? Certainly there's reason to believe... If you look, for example, at the United States Senate, some of those who stood up most to Trump on the Republican side, John McCain, Mitt Romney, Bob Corker, they're gone, and some of them that have come in to replace some of these departed Republican senators are much more allied with the Trump program. So that's one of the reasons why there are concerns about what guardrails there will be the next time around. But I think we need to wait and see how things actually shape up. And I don't think now is a moment for panic. I think now is a moment for vigilance.

Michelle Deutchman:

And I think we'll sort of wrap up with a question that I ask all of the guests, which is about what you might say to our listeners, who are largely people who are higher education professionals and policymakers, in terms of what they might do, whether that's individually or as part of their campus communities, in this period of uncertainty to continue to protect democratic institutions and practices. And I realize it's a big question, but the answer can be something small perhaps.

Rick Hasen:

Well, I would start with the fact that the courts have held the line, and so people should keep doing what they're doing until there's reason not to. And there's a benefit, at least to people living in California, which is that you have a state government that can maybe serve as a check on potential excesses of a new administration. Again, I don't want to prejudge anything. We don't know what the world's going to look like. We don't know what the priorities are going to be, but I think that thinking about how to respect the outcome of the election, which is what I think we are seeing, most people accepting the results, even if they're not happy about it in California, where Harris vastly overpolled Trump. This is just like people who lived in Texas or in Alabama where vast majority supported Trump and they got Joe Biden last time.

There is something that comes with not always having your preferred candidate win election. That doesn't necessarily mean that the world comes to an end. It means that you regroup and you try to organize for political action for next time. What's different here is the question about those guardrails. And so really, we're going to have to see how those first few months go, and I think that's going to be a big test for the nation. What it means to have a democracy under these very different conditions and very different set of

communications, technologies, and how people view the world, and how it is mediated and how it is less mediated through expertise, I think, is part of the big challenge that we face.

Michelle Deutchman:

Well, then we just keep doing what we do and hoping for a good outcome. And I think your words and thoughts today really help give kind of a framework for where we are. And even though the path is uncertain, just to kind of hold the line. And so I just want to say thank you so much for joining us. We'll just keep having you back to opine about where we've been and potentially where we're going.

Rick Hasen:

Well, let's hope our next discussion will be a little rosier.

Michelle Deutchman:

Okay, we'll both hope for that. That's a wrap. Thanks again to Professor Hasen for joining us for this conversation. Next month we're excited to speak with Professor Marianne Franks whose new book, *Fearless Speech: Breaking Free from the First Amendment*, is making headlines. Until then, we wish you all a happy Thanksgiving. Talk to you next time.