

**SUBJECT 1:** Good evening, everyone, and thank you for joining us. We are about to begin.

**DANIELLE CITRON:** Thank you so much, everyone, for coming. I'm Professor Danielle Citron, and I am the director of the LawTech Center at UVA Law School. And I want to start-- before I introduce our distinguished guest, I just want to thank Peter Conklin and Rebecca Klaff for always doing such an incredible job on our webinars. This is our final webinar for the school year. So thank you so much for your help.

And the event tonight is being co-hosted by the *Virginia Journal on Law & Technology* as well as the student group on Law, Innovation, Science, & Technology. So thank you so much to our student groups and our LawTech Fellows who always come out in force.

So, tonight, we're so lucky to have Professor Richard Hasen from the University of California at Irvine Law School. He's the Chancellor's Professor of Law and Political Science. And he also co-directs the Fair Elections and Free Speech Center at Irvine Law School. And he's coming home though next year. He'll be joining the faculty, lucky, lucky, UCLA Law School where he got his doctorate and his master. So it is a homecoming, though, apparently, Professor Hasen lives in LA, so it's fabulous that you're joining the faculty at UCLA Law School.

So, tonight, I'm going to have-- we're so lucky to have Dr. Hasen talk about his fabulous book *Cheap Speech*-- I wish we could see it without my background-- *How Disinformation Poisons Our Politics and How to Cure It*. I've been a huge Professor Hasen fan for a really long time, read his election law blog, and everything he wrote on elections. So it's really such a joy to have you here. And Alex [INAUDIBLE] and I are going to be asking questions.

And please our audience-- first, thank you so much for coming. It's finals. We know that you're studying. We really appreciate you taking the break to join us.

So put your questions in the chat box, and so we promise to include you. So now I get to turn it over to Dr. Hasen. Thank you so much for talking to us about your book.

**RICHARD L. HASEN:** Well, thank you so much for the invitation. And it's great to be with you. My students just finished their semester. And they're in the middle of finals. So I know what this time of the semester is like.

And I appreciate you coming out to talk about these issues. It's actually a pretty good week to talk about these issues with everyone focused on Elon Musk's likely apparent purchase of Twitter. We'll see if he actually follows through. I think there are some questions about that.

So I'm going to talk for about 15 minutes just to give you kind of a broad overview of the book. And I have a set of slides. These are slides I use when I speak to a non-specialized audience.

And so I'm going to skip over a bunch of material. I don't have to explain to this audience what a deepfake is. I know that you've already learned that and those kind of things.

But let me just try to share my slides here and just so I can give you kind of a brief overview of what I'm trying to do in the book. There we go. Are you seeing that? Yes, I'm getting thumbs up from Danielle.

So let me just start with the title *Cheap Speech*. The term is not mine. It's actually a term that originates with a famous law review article by UCLA Law Professor Eugene Volokh, who was a classmate of mine when we were both at UCLA Law School.

He was a year behind me. But we took election law together back in 1990 I think it was. So I'm feeling quite old.

Eugene wrote this article in 1995 that appeared in the *Yale Law Journal* where he was talking about what was going to happen when we were going to move from a position of media scarcity, when there were just a few broadcast networks, some newspapers, where if you didn't like something that appeared in *The New York Times*, you could write a letter to the editor. And if you were very lucky, they might print it. But chances are it would just go into the wind, and that would be it to a period of just a flood of information.

And he kind of predicted the rise of things like Netflix and Spotify and saw that what was going to happen was that the kind of intermediaries like news media that people relied upon to get information that things were going to change and these intermediaries were no longer going to be as important as they were. The picture that Eugene paints in his "Cheap Speech" article is a very optimistic one. And, certainly, there are lots of reasons to be optimistic and to be positive about our new speech era.

Today, anyone can put out any idea that they want and it can spread virally. It can spread far and wide. You don't like something in *The New York Times*, you have ample means of expressing your views. And the only limit on people getting that is them finding you because there's so much information out there. We literally have the knowledge of the world in the palm of our hands.

You can do a search on Google and find out all kinds of things. You can find people who have similar interests, who have similar views. And so there is certainly a positive side to cheap speech. But my book focuses on the dark side and particularly on the side related to what cheap speech has meant for American democracy. And I draw a rather direct line from the information revolution that we had to the situation that led to the insurrection on January 6, 2021.

In the 19 days between the November 3, 2020 election day and November 21, Donald Trump was able to go to Twitter over 400 times to call the election into question to otherwise disparage or claim the election was rigged, that it was stolen. In a very famous post that you see here on December 18, he called for wild protests in Washington, DC.

We know this activated a lot of people who were able to meet using the Facebook group's feature. And they organized for political action, some of them violent action. And I would say that we came a lot closer to a disruption of the peaceful transition of power than most people realize with attacks that could have led to the death or capture of many of our leaders.

Today, millions of people believe the false claim that the 2020 election was stolen. And that's important not only for the legitimacy of the current administration but also for the conduct of future elections. I'm very concerned, and I have a kind of companion piece that just posted this past week at the Harvard Law Review forum on the danger of stolen elections and election subversion of the United States, much of which depends on widespread belief in the false claim that the 2020 election was stolen.

And so at the beginning of cheap speech, I make the argument that if we had the same polarized politics of today but the technology of the 1950s, we likely wouldn't have had the January 6 insurrection. We wouldn't have had the kind of lack of confidence in the integrity of the election process that we see. So there's a dark side when we lose these intermediaries.

And so when I finished the first draft of cheap speech, I was predicting the possibility of election-related violence. And then as I was revising, we had the January 6 insurrection. I had to rewrite the entire book to take into account that it was not just a fear but an actuality. And I'm afraid that the worst may not be behind us.

So that's the introduction to the book. And then what I do-- and I'm just going to skip over this video, which explains what deepfakes are. What I talk about in-- the book is really divided into three parts.

The first part I talk about what the problems are that are caused by cheap speech. Second part of the book talks about legal solutions to these problems. The third talks about what could be done beyond law. And so I'm just going to briefly talk about these.

One of the big things that we see is that voters lack the same ability to be able to distinguish truth from fiction that there's of what economists call a market for lemons problem where bad information has an advantage. The economic model for local investigative journalism, which is valuable to voters, that economic model has dried up as advertising has shifted to Google, and Facebook, and elsewhere. It's very expensive still to produce good quality information.

Not hard to produce low-valued information. That is the other meaning of cheap speech, this low-valued information. You can make a website that looks just as good as your local newspaper's website but is full of lies or propaganda.

And so one of the big problems we have is loss of voter confidence and decreased officeholder accountability as local news media declines and as counterfeit news sites arise. We've also seen in the 2016 and 2020 elections a rise of foreign interference in American elections. We see the rise of misinformation and disinformation not just related to voting but especially to voting as well as conspiracy theories raising the potential actuality of violence, rising anonymous political activity, social media not causing but exacerbating our polarization, and escalation of demagoguery.

And just to give an example, there is someone like Marjorie Taylor Greene. 30 years ago if she wanted to gain support, she'd have to curry favor with the leaders of the Republican Party. And to do that, she'd have to moderate her position.

Today, she can go directly to supporters on social media, ask for \$5. It's very inexpensive to raise money in this way. And the more of a demagogue you are, the more money you have the potential to raise.

And I also talk about the potential for algorithmic manipulation of opinion. I give an example. During the 2020 election, there was a period on Instagram where if you search for Joe Biden on Instagram, you were returned in addition to Joe Biden stories positive stories about Donald Trump. But if you search for Joe Biden-- if you searched for Donald Trump, you did not get positive stories about Joe Biden.

And Facebook or Meta, which owns Instagram, explained this as a glitch. But, of course, nothing would stop a social media company or a search company from deliberately doing this. And we've seen new claims that Facebook's algorithms put conservative emails more likely into someone's junk folder than liberal emails. So there's the potential for inadvertent and deliberate manipulation of political views through the algorithmic decisions of these platforms.

One of the specific things I talk about in the book relates to an argument that your professor made with Professor Chesney about deepfakes. And it's what they call the liars dividend. The idea is that if people are unsure, if voters are unsure what information is true or false and it becomes impossible to tell what's a reality when there's a deepfake-- is it real, is it not-- then those who might want to lie about truthful information can simply claim that information is false. And we saw this-- this was predicted in their 2019 *California Law Review* article.

But we've already seen it in the wild just a few months ago when some video related to a Roger Stone documentary appeared at the *Washington Post* related to this documentary that's coming out, which seemed to show Roger Stone's involvement with the January 6 insurrection. And Stone's response was these were deepfakes.

And so I think we're going to be in a situation not necessarily where lots of people are going to be taken in by misinformation, although they're certainly some of that and we certainly have that in relation to the 2020 election, but also that we're going to have a situation where all information is going to be discounted. And that kind of market for lemons situation means that there's going to be less of an economic incentive to produce reliable information.

I'm particularly concerned in the book about disinformation related to election integrity. Pretty amazing statistic. This is a March 2021 survey, not much has changed. Only 26% of Republican voters believe that Joe Biden won the election fair and square despite all reliable evidence to the contrary.

So what can law do? And in the book, I go through a whole bunch of legal arguments starting with fair election administration. It's much harder to lie and say an election was stolen if an election is fairly made. Most of my solutions are not about limiting speech. They're about giving voters better tools through augmented disclosure laws, through labeling deepfakes or synthetic media is altered.

I do believe that you could constitutionally have a narrow ban on empirically verifiable false election speech. That is speech about lying about when, where, and how people vote, telling people they can vote by text when they cannot vote by text or telling people they need ID to vote when they don't. But this could be made a crime. And this kind of information could be constitutionally limited on the platforms.

I also talk about the role of private defamation lawsuits and where the balance should be as well as privacy protections like limiting microtargeting of political ads. And, ultimately, I don't think the solution are laws that require certain content to be included or excluded aside from this narrow ban on empirically verifiable false campaign speech. But if we're worried that platforms have too much political power, I think the solution then is to break them out, that is, to use antitrust law rather than speech law to deal with these problems.

And one of the things I argue against is laws that would require even handedness or, as we've recently seen in Florida and in Texas, laws that would require social media companies to carry certain politicians, even politicians that might advocate violence or that might relentlessly spread election lies like Donald Trump. Donald Trump has been de-platformed from Twitter and Facebook. And these laws would purport to put him back.

I was somewhat surprised to see Justice Thomas as well as Professor Volokh, and we could talk about this in the Q&A, make an argument that it would be constitutional to require these platforms to carry speech. Just like I don't think that Fox News could be required to carry a Joe Biden speech or that *The New York Times* would have to be required to carry a Donald Trump speech verbatim, I don't think you can require the social media platforms to do this either because I think they serve a kind of curating function. Their decision of what content to promote and demote, what to include or exclude is a kind of editorial decision-making, whether or not the platforms call themselves publishers.

And then I'm going to skip over-- I go through in detail in the book the constitutional questions related to the ban on false speech and the social media must carry regulation. We could talk about all that in the Q&A, whether or not these laws would be constitutional. And one of the arguments I make is that the Supreme Court's current approach to the First Amendment is kind of marketplace of ideas approach means that it likely would reach the wrong conclusion in a lot of cases.

For example, the requirement that deepfakes be labeled as altered could run into the compelled speech doctrine. The requirement that spending on internet-based political ads be just that the funders be disclosed could run into the Supreme Court's new views about exacting scrutiny and disclosure laws under the Supreme Court's recent decision in the *Americans for Prosperity Foundation versus Bonta* case. And I argue pretty strenuously against the Justice Thomas, Eugene Volokh idea that you could require even-handedness in the presentation of candidates on social media.

And then finally, because law is not enough, the last part of my book talks about what kind of changes do I think we should have in relation to-- excuse me, what kind of policies I think we should have in relation to these laws. First of all, because Congress is unlikely to pass a lot of the laws I'm discussing, and even if they did, the Supreme Court might not uphold all of them under its-- what I consider to be outmoded view of the First Amendment.

So what else can be done or what could be done instead? I argue for both the public and employees of these companies to work together to pressure platforms to make changes in response to the serious democracy problems caused by cheap speech. We're seeing this now as Elon Musk is widely considered if he takes over-- actually buys Twitter-- that he's going to restore Donald Trump to the platform. There's going to be some political response to that.

I think we need to subsidize and bolster, especially local investigative journalism efforts, as well as efforts to minimize the reach of counterfeit news sites. We should strengthen intermediaries that engage in truth-telling. Bar associations have been doing that, going after lawyers who were election liars.

Another suggestion I make in the book is that journalistic societies voluntarily come up with a kind of good housekeeping seal of approval that says if you follow all of these steps-- you look for two sources, you give someone you're writing about a chance to respond-- then you get this little approval that you followed journalistic standards. That little symbol could then appear on social media sites. So people would know, oh, this is a post from *Los Angeles Times*. They're at least trying to follow journalistic norms. Maybe this is a signal of quality.

And more generally-- and I talk about at the end of the book-- inculcating values of truth, respect for science and the rule of law. And it's ultimately, I think, what we're dealing with here is not just a legal problem, but it's a social problem. And it's going to require-- there are going to be some people who are not going to be reached. But it's going to require that the center of the country be willing to engage in good faith acceptance of truth and argumentation within the bounds of rationality. And if we don't have that, it's very hard to have a functioning democracy. And with that, let me turn back to Danielle.

**DANIELLE  
CITRON:**

So you've been alarmingly prescient. I have the early draft of your book. And the suggestion that we might have violence and then we did. And you had to go-- and the beginning is brilliant of the book-- that is, your revision done quickly was-- it just grabs you by the throat kind of thing in reading and thinking back on 1/6.

So now here we are in this moment. You noted that Elon Musk is-- let's imagine-- let's look into-- you're so good at projecting-- I mean, a little scarily-- what might happen. Musk-- let's imagine that it goes through and Musk-- what might you think he'd do vis-a-vis Trump, vis-a-vis content moderation? And maybe just react and respond to his recent comments about I want the free speech that mimics what's law on the ground. Does he have the chops to figure this out? And what do you imagine might happen?

And then if it's OK, I'm going to ask you, too, to talk a little bit about-- I'm terrified to read the *Harvard Law Review* post, your [INAUDIBLE] piece, because I know it's also going to be scarily prescient. But let's first start with Musk. And then if it's OK to just give us a little taste of that piece as well, because it's really, I think, important to read both your book or read *Election Meltdown* first-- this first book of yours-- one of the books I read and was like, oh, god, we're in deep trouble-- *Cheap Speech* and then it sounds like the *Harvard* piece. So please, thank you for reacting to that.

**RICHARD L.  
HASEN:**

So first, Elon Musk-- he's a pretty smart guy. He's been able to solve the problem of producing electric cars that people want to buy. I mean, that's a huge accomplishment. He's able to get people into space when the US government has been having trouble doing that. So I don't want to underestimate him.

On the other hand, his comments on Twitter where he has about 80 million followers-- about the same number that Donald Trump used to have-- they're either remarkably naive or they're calculated. So you mentioned one of his tweets over the last few days, which said if it's allowed under the law, then it's on the platform.

And I was thinking, just from a purely business perspective, he is buying this company for \$44 billion-- again, assuming this goes through, and I have serious doubts about whether the sale actually goes through. But assuming this goes through, he's spending \$44 billion, I assume he wants to make a profit.

Now, if what's going to be in my feed is going to be hate speech and pornography and sales for male enhancement pills, which is what you would have if there were no content moderation at all, it's not going to be a very attractive platform. And advertisers are not going to want to be associated with a lot of that stuff.

So Nazis have a right to march in Skokie under the First-- if you're using a First Amendment standard, Nazis have the right to just write whatever they want on Twitter and it's just going to be included. And again, I'm not saying we should have a law against Nazis being able to try to post. What I'm saying is, as a private company that's trying to make a profit and give people something that's valuable, I don't think we're going to want to see that. I don't think we're going to want to see Russian bots flooding with propaganda about how they're justified in the war in Ukraine.

So I don't think he's serious. Even some of these far right websites-- far right sites like a Gab, or Gettr, now I think Truth Social, are moderating content. And so I just don't think that's realistic. So maybe what he means is that they're not going to block political speech. Maybe that's what he's talking about. So Donald Trump is coming back. That seems to be the message.

Today, he posted this meme where he showed himself on a-- I don't if you've seen this-- on an ideological scale where-- it was a left-right scale and he never moves, but the left moves really far to the left and the right doesn't move at all, which also seemed quite naive about where politics is today in terms of who's moving more to the polls. So maybe what he means is not really free speech for everyone, but we're not going to stop the right from being able to get their messages out.

He rightly, I think, criticized Twitter-- although I didn't like how he did it by personally attacking the chief lawyer for Twitter-- I think he was right in saying that it was a mistake for Twitter to have demoted or hidden tweets from *The New York Post* related to the Hunter Biden laptop. I write about this in *Cheap Speech*. And I wrote about it before it became clear over the last few months through articles in *The New York Times* and *The Washington Post* that this laptop appears to be genuine, or at least parts of it appear to be genuine.

What I say in the book is that it was an overreaction to 2016. Facebook and Twitter were so worried they were going to be taken in the way they were by the Russians in 2016 that they overreacted and squelched speech. I think there should be a heavy thumb in favor of free speech. But I also think when someone crosses the line and encourages violence-- that "be wild" tweet-- the one I put up there. I mean, I think that tweet is going to be the centerpiece of much of what we're going to hear from the January 6 Commission.

If what Musk means is he's going to restore Donald Trump and going to restore more right-wing propaganda, then I think there's going to be a political movement. There's going to be a question as to whether or not Twitter, which I think skews left and which has a lot of elites who-- you and I-- we are unpaid independent contractors for Twitter because we're producing content all the time.

We're producing stuff that people want to read. And you've got more followers than I do, but you're sending stuff out to people. And they are enjoying the platform. And they're seeing advertising because you're the talent. And am I going to want to be the talent? There's a collective action problem here, but I think there's going to be enough movement if Donald Trump is restored. Now, Donald Trump may have a contractual reason because he started up a competing company-- Truth Social-- to not come back on the platform. But we'll have to see.

But I don't believe that the sales should be blocked because I don't agree with his opinions. I think just like I don't like Fox News, I don't think it should be outlawed. I think it's the same kind of thing. So if you're worried that Twitter has too much power, break them up. It turns out Twitter has a very elite set of people who are on it. But in terms of volume, it's much smaller than Snapchat or TikTok. It's minuscule compared to Facebook. I think Facebook has two billion and Twitter is in the hundreds of millions.

Not clear to me that this is more than a vanity project of Elon Musk, if he actually goes through with it. Or more likely, given that he seems to be violating or potentially violating the disparagement clause of the contract-- this is a clause that says while he's going through the sale with Twitter, he can't say bad things about Twitter-- he seems to be violating that. Maybe this is all just a ruse to make some money out of Twitter, to damage Twitter. I don't know. You're muted.

**DANIELLE  
CITRON:**

So fascinated. I have to say my class-- I had our entire last class was responses and thinking through. I wish you were there. Just you're more-- you're a moderator. You always are like, A, you lean heavy into speech and disclosure, of course, is your natural inclination as a fair election scholar, which I admire so much about you. Just making me feel better.

And just your wisdom about the-- I didn't realize the contract and disparagement piece. That is, the acquisition is actually more complicated and it may be a play. Like as you said really well, Rick, he's really smart. I shouldn't underestimate his smarts and this way in which there is a political move maybe here. He's playing some game here, right? So I'm feeling-- I'm feeling a little better, I have to say.

I've been like-- having worked so hard with the content moderation teams and with Vijaya, with the chief legal officer, and the idea that she's being trolled and cyber mobs are chasing after her and doxing her and threatening rape and death, like I've just been sad. Having worked so hard on convincing the C-suite to do something about threats, stalking, harassment, and non-consensual intimate imagery. [? Marion ?] Frank and I are working so hard on this. That I thought, oh, my golly, we're undoing all of that? And do I got to leave? So you're making me feel a little better, I have to say.

And also, your really interesting insight about Trump may not actually come back because he's got his own thing. Maybe he can't even. I started to spin out the idea that he comes back and then the election disinfo that you've written so-- you've been so-- you've given us this wide breadth of understanding of the ways in which election lies and even the false-- the empirically false disinfo and the way in which we deter voting. That we welcome Trump back and we've got 2022 and 2024. And I thought, oy. And your concerns about state legislatures.

I was coupling that with your concerns about mischief on the ground with-- so if it's OK to invite you to talk a little bit about-- maybe you're less worried about Twitter and the amping of disinfo on election speech. That is, you're saying don't be alarmist or don't yet flip out. But your concerns-- and I'm going to let Alex pop in in a second.

But I wanted to invite you to talk just a little bit about the concerns that you're seeing as well with the changes in state laws, and changes in and pressure on state election officials, and your worry about the elections themselves, and the fairness that you've documented throughout your career, but you're seeing some even more extreme moves now.

**RICHARD L.  
HASEN:**

Yeah, so I'm just sticking in the chat a link to the *Harvard* piece.

**DANIELLE  
CITRON:**

Thank you so much.

**RICHARD L.  
HASEN:**

And I'm very concerned. And the reason that I co-founded the Fair Elections and Free Speech Center, and the reason I'm going to continue this work in another form when I get over to UCLA, is I believe that there is a great threat to the integrity of American elections-- American presidential elections in 2024 and beyond.



The article is called "Identifying and Minimizing the Potential for Stolen Elections and Election Subversion in the Contemporary United States." And I see three paths by which our elections could be subverted. And I should say I'm talking about our presidential elections because there are so many steps that take place between the time the voters vote and the time that Congress finally declares who the winner is of the presidential election.

And it turns out from 2020, that so much of-- our system for determining who the winner of the election is depends on people acting in good faith, depends on norms. So you've got a ceremonial body, for example, in Michigan that's supposed to-- two Democrats, two Republicans are supposed to say, OK, Joe Biden's won the state. Well, that turned out to be a major question, which it never would be in the past, where one of the Republicans abstained on that question. The other Republican was pressured to not vote. And it would take three votes to go forward.

So I talk about three potential paths to changes. One is some kind of manipulation of the process, either by state legislatures or by election officials. Remember, what kept the 2020 election from being stolen was the courage of Republican election and elected officials around the country, people who wouldn't find 11,780 votes in Georgia or who wouldn't convene the state legislatures to come up with an alternative slate of electors that could purportedly be accepted by-- all these kind of things, all based on fraudulent claims.

So one possibility is that there's going to be some manipulation of the process. That can happen at the level of Congress. Imagine Kevin McCarthy is the Speaker of the House and decides not to accept some electoral college votes. Throws the election to the House under the 12th Amendment, all kinds of things can happen.

A second is a kind of legal strategy based on the independent state legislature doctrine, which you briefly alluded to, which is this theory that state legislatures can act in setting election rules independent of state Constitutions, independent of state courts. And it just provides a kind of genie for throwing some rules out that are the rules of the game for running elections. And it does have the potential for messing with fair elections.

And finally, the potential for violence and intimidation, either at the level of people voting, or election officials counting votes, or at Congress trying to declare the votes. And so I run through those different scenarios after first explaining what happened in 2020 and how we were much closer to the election being overturned than I think people realize.

And then the last part of the article talks about what kind of reforms we need. And following the same structure as *Cheap Speech*, it divides into talking about legal reforms, like changing the Electoral Count Act, which is the set of rules that govern how Congress certifies the electoral college votes, and rules requiring paper ballots. That is everyone should vote on a voting machine that produces a piece of paper that can be independently recounted by a court or another body in the event of a dispute, as well as non-legal changes.

And I end with it may take Americans engaged in mass civil protests. I made this point in a *New York Times* piece as well. We might have to have a general strike. I mean, the United States democracy is something that we've taken for granted because it hasn't seriously been challenged. And I think Trump has shown that it's fragile. And either Trump or someone else could try to manipulate that process. And so we have to be on guard.

And so this is my mission for the next five years is thinking through how we, both on legal and political grounds, make sure that we have a core group of central people who agree that the winner of the election should actually be declared the winner and should be able to take office, whether you like that person or not. That winner could well be Donald Trump the next time around in a fair election. I just want to assure that we have a fair election.

**DANIELLE  
CITRON:**

Our fragility has been the most, I think, shocking. Working through and working on issues like hate speech, I once thought we were so-- that we were very different from other countries. And we're no different. We're pretty damn fragile.

So I want to invite Alex. I have more questions, but I want to invite Alex to pop in and ask his questions. And then invite the students, too. Folks listening, please put in the chat your questions for Professor Hasen.

**ALEX:**

Perfect. Again, Professor Hasen, thank you so much for coming to speak with us. You mentioned earlier in our talk, and I found it especially useful while reading *Cheap Speech*, your analogy between campaign misinformation and disinformation to [INAUDIBLE] model of lemons and market collapse with used cars. But there's this line in the book that I feel is especially insightful and which has stuck with me, and I think maybe with some others, too.

You say, when you're relating this kind of metaphor to election disinformation and misinformation, that, quote, "It is as if there's a segment of the automobile market that not only tolerates but actually demands lemons while rejecting reliable cars." And I was wondering if you would expand on what, as a country, we should do if that is, in fact, the case and there's this large chunk of voters who don't actually want factual information but would rather be presented with content that merely reinforces their already stated ideologies.

**RICHARD L.  
HASEN:**

Yeah, it's a fascinating question. And I should say I want to credit my editor at Yale University Press, Bill Frucht, who said it's like people who want a demolition derby. They want a car that they can destroy. They're not looking-- they're looking for a piece of junk not a reliable car.

So one way of rephrasing this question is whether we have a supply problem or a demand problem. And Guy Charles, a good friend of mine, who's an election law professor-- he used to be at Duke, now he's at Harvard-- he wrote a piece that was a symposium at [? Balkanization ?] on my book a week and a half ago. And he wrote about this. And Ilya Somin, who's one of the bloggers over at the Volokh Conspiracy who's written about political ignorance, agreed with Guy and wrote about this.

If we do have a problem that is a demand problem rather than a supply problem, that people want misinformation and disinformation, then the solutions that we would look for would be different. Because then you're talking about potentially changing people's preferences. That is, I think, dangerous territory when it comes to law and shaping preferences. I mean, there's this whole Cass Sunstein literature on trying to shape people's preferences.

But that makes me as an election law person queasy. I'm much more of-- yeah, I think of an article by Jim Gardner, who's an election law professor at Buffalo-- another friend of mine-- it was called "Shut Up and Vote," which is basically like deliberation is overrated. You should vote consistent with your interest and your values. And so what I'm concerned about is do people get accurate information so they can do that?

And so let me start with the question, why is it that people might demand misinformation and disinformation? And as I explain in *Cheap Speech*, I think it's not a coincidence that first Trump-- his strategy relied on tearing down intermediaries. So he attacked the FBI, the press as the enemy of the people, the opposition party, his own party, the judiciary. These are all truth-telling entities.

Because what he's trying to tell to an aggrieved set of rural white voters is you might be losing cultural and economic clout, but it's not your fault. It's someone else's fault. Like the election's been stolen from you, they're conspiring against you on COVID, whatever it is. And so the reason you might demand such messages and the reason why we do see an asymmetry right now because of the political situation, although I think that could change where just information is sought more on the right than on the left, is because it solves a kind of cultural problem.

And so for that, I'm thinking of the work of Yochai Benkler and others-- I'm sure you've talked about this in your class-- the *Network Propaganda* book-- that there's maybe 25% or 30% of the public that are going to be unreachable-- many of them on the right, but not all on the right-- who have this demand for misinformation. And I think they are essentially unreachable in terms of being able to try to solve this problem.

So for those people who want the demolition derby, who are going to Twitter to fight, who don't want to be on Truth Social because there are no liberals to own, for those people I don't think that there's much that I can offer. My appeal is to the center.

It's to those Republicans and conservatives who saw what happened on January 6 and who abhor it. Those members of Congress who are Republicans who don't publicly speak against Trump but who privately say that he's done damage to the democracy. How do you get to those people? Because you have enough of them as well as a coalition of the left and the center, then you can preserve American democracy. So there's a supply problem and a demand problem.

Now, the supply problem-- the demand problem is not helped by the fact that algorithms and others will provide an endless supply. And there's a debate among the social scientists as to whether being fed this stuff makes you demand more extreme content or not. People are going back and forth on that. But even setting those people aside, if they're unreachable in terms of rationality, respect for science, truth, and the rule of law, how do you keep the middle?

And a big part of the answer to that is that we have this mismatch in our political structure. So we don't have a government like in England or in Canada, where there's a parliamentary system. Nancy Pelosi or Kevin McCarthy would be the head of the government. They enact a bunch of policies. You like them, you keep them in office. You dislike them, you throw them out.

Here we have divided-- so the president's got some power, Congress has some power. They're at loggerheads. And minority-- any kind of minority-- Republicans, whatever-- Republicans in Congress-- can block. And we have a judiciary that has so much control over public policy in the United States. You put all this together-- and you have state, local, and federal authority.

You put all this together, there's a lack of accountability. And so that creates more problems because our political system is not really responsive. And so the question is, how do you hold a coalition together when you've got a bunch of Republicans who might hate Trump but they also don't want Joe Biden to be in power.

And so they're going to vote for whichever Republican is at the head of the ticket. And if that Republican happens to be instead of Rob Portman, who's a reasonable Republican Senator from Ohio, it's going to be Josh Mandel or JD Vance, who are going to be another Ted Cruz or Josh Hawley, then I think you're in a very different kind of situation.

And so the system doesn't allow-- and that's why you look at Alaska-- Lisa Murkowski might survive, even though she's a moderate reasonable Republican, because they have a top four primary. And so she's not going to have to please the Republican base. So I'm sorry, that was a long, complicated answer to the demand/supply question, but I think that these things are all intertwined.

**DANIELLE  
CITRON:**

Alex, you want to follow up with another one? I loved that question.

**ALEX:** No, I do want to ask following up on Professor Guy Charles's discussion in that symposium, I think he characterized one of your proposals as applying a ban on what he would say anyone who makes a false statement about the mechanics of voting, whether it was made on TV, in the newspaper, or on social media, or website, or messaging app.

And he, I think, describes himself as saying, well, I think there should be a limitation and that such a ban should only apply to public officials, to candidates, to political parties. And I guess I want to ask you, one, do you agree with his characterization of what you said, and then, two, if so, why do you feel that comparatively larger liabilities is needed to begin with?

**RICHARD L.  
HASEN:**

So first of all, my ban is incredibly narrow. Most of the false statements about elections would not fall into this. So Trump saying the election is rigged is not an empirically verifiable false statement or not. Rigged can mean a lot of things. Elizabeth Warren and Bernie Sanders used the term rigged all the time.

And even when you say an election was stolen-- I say it's a much harder question to talk about what about a speech ban. Washington State is talking about a speech ban on lying about a past election. That makes me much more nervous. But if you're lying-- say, Democrats vote on Tuesday, Republicans vote on Wednesday, or you must have a driver's license to vote-- that's covering just a tiny, tiny fraction of the kind of election-related speech that appears on these platforms. And it has the potential to disenfranchise people.

So just to take a very concrete example. There's a guy that is being prosecuted under an existing federal law. There's a question of whether the federal law applies to it. But he is alleged to have directed messages to African-American voters. This was a Trump supporter. Not like Donald Trump. Not a very famous person.

Directed messages to African-American voters telling them they could vote by text or by social media hashtag. And 5,000 people, according to the indictment, tried to do that. Whether they figured out in time that they couldn't do that and realized they needed to vote in a different way, I don't know. But that disenfranchises people.

And if it is limited to empirically verifiable false speech, then you're not really dealing with the same kind of issues of arbitrariness or discretion on the part of election officials. So if you made it a crime to say the election was rigged, what do you mean by that? That's going to require a lot of discretion. If it's a lie-- can you vote by text? Well, there are empirically verifiable sources. You can go to the Secretary of State's website in the state. How can you vote? You can vote by mail or you can vote in person. Here's how you register.

So I don't-- I'm not sure why Guy has a problem with extending it to anyone who makes these statements because they can disenfranchise lots of people. I think he wants breathing space for the First Amendment, which is great when it comes to I think this candidate's great or this candidate is going to ruin the country, but not about these kind of specific statements.

Just like people can lie all the time. But when we put them under oath in a trial and we use a perjury standard, which is a very tough standard-- we say if you cross this very tough standard, we are going to subject you to criminal liability because this is such an important moment. So I'm not sure why he would impose that limitation when what I'm talking about is already extremely limited.

**DANIELLE CITRON:** So I want to invite folks to join the queue. We have looks like 12 minutes left with Professor Hasen. So you have-- there is a line in the book in the "Markets" chapter where you say, we could go back to the Walter Cronkite era, but I don't want to go back there. And I have to say, I paused for a minute and I thought, well, if we could get rid of the misogyny and racism--

**RICHARD L. HASEN:** Well, right, but you can't.

**DANIELLE CITRON:** I know. But if we could. Let's imagine that we could. The notion of-- I guess what I've yearned for and what made me pause in reading that line was that what I miss-- I guess we all miss-- are those mediating institutions, the press that we relied on, the reliable voices, and the sense that we had public trust. We had institutions of public trust.

So can you reflect a little bit on that? That is, if we could get rid of some of the pathologies-- and I know some of your solutions, of course, are oriented toward getting money to funding local journalism-- but the notion that we had institutions of public trust, I'm yearning for that. And so I wanted to see if I could push you a little. And maybe-- I don't think you're going to change your views now-- but I yearn for that, I think, if I could change some of our social attitudes and cultural attitudes.

**RICHARD L. HASEN:** Oh, yeah, I yearn for it, too. I think you're drawing a false dichotomy. One is do we need institutions we can trust and build up trust to assure that people can get reliable information? That's what I want. So one example-- I mentioned it briefly in my initial presentation, but let me focus on it here-- is bar associations.

So when bar associations go after Rudy Giuliani, or John Eastman, or Sidney Powell for-- these are all lawyers who worked for or allied with Donald Trump to spread election lies and try and get the courts to overturn the election based-- or Congress to overturn the election based on frivolous legal theories-- these bar associations are enforcing norms about truth-telling in Court

I mean, there were even things, you may remember-- around the time of the Four Seasons Total Landscaping press conference where the things that Rudy Giuliani wouldn't say in court. We're not talking about fraud here. I think that as lawyers, or for, your audience, future lawyers, there's not only a duty of honesty, there's a duty of candor. And I think the bar associations and judges can help to do that.

So all in favor of that. All in favor of-- I gave the earlier example of bolstering bona fide journalism. And I talk about that seal of approval. I say Breitbart-- there could be a fight over whether Breitbart gets the seal of approval or not. And that fight itself would help to educate the public about what is it that journalists do. When former President Trump says fake news, what does that mean? So let's talk about that.

But that doesn't mean we want to go back to the era where they were all people from the same gender, demographic, social cultural background giving us the news, saying that's the way it is. Well, that's the way it was for some people. But there were a lot of stories that were not being told. And we want access to information.

One of the reasons why I'm skittish about saying that people who say it should be a crime to lie and say it's a stolen election, it's like, well, what if there is a stolen election? You don't want to make it so that people can't say that. And that could-- you have to think with all of these proposals, what if the president I hate the most, whoever he or she is, gets to a point the speech czar, and that person gets to decide what's not in the public interest or what is misleading. I talk about bans on misleading speech. That makes me very nervous.

That's why I try and target any kind of limits to really empirically falsifiable statements. I should say that as soon as my book came out, there was an attack on it on the Fox News website and on the Daily Mail website-- professor calls for censorship-- which if anybody reads my book would realize that that's not at all what I'm calling for. And I think, among academics, I'm a centrist on speech issues. I mean, you tell me.

But just talking about the fact that our marketplace of ideas doesn't work. If truth really rose to the top, if counter-speech was really the answer, you wouldn't have 70% of Republicans believing that the 2020 election was stolen. It was not stolen. That is an empirical fact. As someone who studied elections for two-and-a-half decades, I'm convinced as convinced as I could be about anything. No credible evidence has emerged of a stolen election.

So truth didn't rise to the top. Now what do we do? And I think long-term what we need to do is bolster intermediaries while still taking advantage of all the benefits that come from cheap speech. So think about the racial justice movement and George Floyd. Would that have happened at the time of Walter Cronkite?

We wouldn't have had cell phones to put the video on. The police officer would have said, oh, no, the person was resisting, or there would be some other excuse. Don't believe that eyewitness. That eyewitness isn't credible. But we could see with our own eyes and then we could share that. And we could organize for political action. So while I do focus on the dark side of cheap speech, there is a bright side as well.

**DANIELLE  
CITRON:**

That's right. We have MeToo-- #MeToo, #BLM. That makes eminent sense to me. How have the-- so we have six minutes left. And I don't want to edge out our students, but as they wait to ask a question, how have the defamation lawsuits gone? You talk a bit-- so I have two questions. One, the defamation piece, which I haven't been tracking as closely but love to know if you have any inside story on some of those lawsuits brought by the voting machine and against Fox, too, by Dominion and other voting machine companies.

And then you have some faith in the labeling of deepfakes. I have no faith. In some respect, I'm persuaded by your point that we want lemons-- lemon-like information. And so I'm not sure what labeling does for us. So, sorry, two questions.

**RICHARD L.  
HASEN:**

Yeah, well, the defamation lawsuits, I do think that they can be valuable. And those suits have not gone far enough to know how successful they're going to be. But it's really interesting that a lot of First Amendment lawyers who normally side with the press are saying, oh, no, this is how defamation is supposed to work under this reckless disregard standard, the actual malice standard. This is where we want to be.

What I criticize in the book is the position of Justice Thomas and Justice Gorsuch that we should get rid of the actual malice standard. I think that errs too much the other way, and would chill legitimate journalism and would give a cudgel for people who are trying to stop journalists from investigating and reporting on those in power, at least as to public officials and candidates I think this is the point that I would have.

On the question of labeling deepfakes, the social science is mixed, at best, about the effects of labeling. I agree with you. I think the labeling-- and I'm very critical of the labeling that Twitter and Facebook did of Trump's tweets during the 2020 election before he was deplatformed. I think Facebook's labels, in particular, which said learn more about elections seem to indicate they were endorsing what Donald Trump had to say. So labels could be done badly.

But California has a law regulating deepfakes that says it doesn't apply to satire. And that strikes me as completely unworkable. Who gets to decide what's satire? And is this being done by the platforms in real time? I think if you had a mechanical solution where you could label it as altered and that's what appeared every time someone saw the video-- it had the word "altered" on the bottom-- that would at least make people think twice.

I'd love to get some funding and do some experiments and see if the labeling would make a difference. But I think it's better than censorship and better than nothing. That kind of where things fit into the spectrum of things.

**DANIELLE CITRON:** So I have one terrific question from a student in my free speech class. So in your book, she asks, you discuss the importance of increased disclosure for online political activity and acknowledge the difficulty of such requirements that they may face in the courts. Many states have passed and implemented their own disclosure requirements for online political activity to increase transparency after 2016. So she asks, what impact, if any at all, do you think state disclosure rules will have on 2022 and 2024 elections?

**RICHARD L. HASEN:** That's a great question. And I haven't studied those state disclosure regimes in detail. But just to explain, they would only apply to state elections. They would not apply to candidates running for Congress or for President. So even if someone's running for Congress in the state, they're going to be subject to the federal disclosure rules.

We know that disclosure matters to voters. So one example I give in the book is there was a proposition on the ballot about a decade ago in California where the spending, I think, was 40 to 1 against-- in favor of the measure and the measure still failed. It was about whether public utilities could compete with private utilities. And every ad in favor of this measure said, vote yes on this, paid for by Pacific Gas and Electric, which is one of the big utilities. And voters used that as a clue, as a cue, and they voted against the measure.

We need to have clues to know how to judge the credibility of speakers. And I'm talking about speakers who spend a lot of money in elections. We're not talking about your average neighbor who maybe supports a politically unpopular candidate. But someone spending hundreds of thousands or millions of dollars, we should know who they are and they should be accountable and we can use that information. And so I'd like to see the federal government move up to where California and other states are in requiring effective disclosure of the large funders of political ads.

**DANIELLE CITRON:** So Alex has our final question.

**ALEX:** Can you hear me? I'm back. So I guess a good way to wrap this up--*Cheap Speech*, the book, comes with a subhead for how disinformation poisons our politics and how to cure it. Yet, as I read the book, I couldn't help but get the sense that these problems are a bit more acute than I previously imagined. So at this point, please give me some hope. Is there actually any way to cure disinformation or is the best we can hope for mitigation and minimization of its effects?

**RICHARD L. HASEN:** Yeah, I'm sure that your professor can tell you that book titles are a struggle between author and publisher. And I think they wanted a little hope. What I would say is that the disinformation in elections is a multifaceted problem. It requires a multifaceted solution. There is no on and off. It's going to be a constant battle. But there are tools that we could use to at least mitigate, if not cure, some of these problems, if we have the political will to get it done.

**DANIELLE CITRON:** And with that, thank you so much, Professor Hasen. It's been such a joy to have you here. And I will keep-- please, you write so much for the popular press, law reviews. Your work is everywhere. And I'm going to keep amplifying it as best I can. I'm such a big fan. So thank you so much for being with us. It's been such a joy.

**RICHARD L. HASEN:** I appreciate the opportunity, especially coming from you whose work I admire so much, and look forward to continuing the conversation in another venue.

**DANIELLE CITRON:** Yes, indeed. So thank you so much. Thanks, UVA Law. And thank you, Peter Conklin for making-- and Rebecca [? Clap ?] for making this all possible.

**RICHARD L. HASEN:** Good luck on your finals.

**DANIELLE CITRON:** Yes, go get them, guys. Wah-hua. Thank you so much. Yay.