

TURNER:

Hello and welcome back to Wisconsin Law in Action, a podcast where we discuss new and forthcoming scholarship with University of Wisconsin Law School professors. I'm your host Kris Turner, and my guest today is the Dean of the University of Wisconsin Law School, Dan Tokaji. Dean Tokaji is a leading expert on election Law, having published over 50 law review articles, book chapters and other scholarly works. Today, we'll be discussing two of his recent articles on free speech, the 2020 election and the effect of misinformation on democracy. Thank you for joining the podcast today, Dean Tokaji.

DEAN TOKAJI:

Well, thanks so much for having me, Kris, and for doing this podcast. It's really wonderful.

TURNER:

Well, thank you. This is going to be a really wonderful, timely discussion of issues that we've seen like we've never faced before. So I'm looking forward to it.

DEAN TOKAJI:

Yeah.

TURNER:

So we usually start our podcast by asking about our guest's background, specifically, their research and scholarly writing interests. How did you first become interested in election law?

DEAN TOKAJI:

Yeah, I've been interested in election law since even before I became a law professor back in 2003, although back then, and in the years preceding it, I wasn't even aware that election law existed as a field. But really, since my law school days, I've been interested in law and its relationship to democracy, that includes laws regarding voting rights, freedom of speech, and all of the things that are necessary preconditions to have a well-functioning democracy.

DEAN TOKAJI:

It also includes effective institutions and particularly courts that are able to channel disputes over how elections are conducted, over what kinds of speech or association are permissible into a way that we can have our disagreements resolved peacefully. And that is ultimately the hallmark of any democracy, the ability to have disputes resolved in a way that is peaceful and yet reflects the views of the citizenry as a whole.

TURNER:

It seems especially recently that democracy was as written, most people were like, "It's just going to work and continue on as it is," but the election law shows that underneath there's a lot of stuff working to keep it functioning in a way that we have come to expect it to work.

DEAN TOKAJI:

That's exactly right. What I often say is that democracy does not exist in a vacuum. It's a product of a set of basic norms upon which we have to have an agreement that includes freedom of speech, as well as

elections, in which the polity as a whole can participate without undue barriers to any particular group's ability to vote and have their votes counted. And if we don't have these things, if we're not able to protect constitutional rights, and importantly, if we don't have impartial institutions that are able to resolve our disagreements without political favoritism, well, then we're in a lot of trouble.

DEAN TOKAJI:

And I do think we're at a moment in our history, here in the United States and in fact, around the world, including in other established democracies, where the future of constitutional democracy is very much at risk. Our institutions have proven strong enough to make it through this most recent election cycle, at least so far. But I think we've all come to see the vulnerabilities in our democratic, small D, democratic process to a greater extent than was the case before.

TURNER:

Right. And one of those pressing issues in here was falsehoods, especially during the election. And with that, let's turn to one of your newest publications that talks about falsehoods and to a large extent. It's called Truth, Democracy, and the Limits of Law, which was published in the summer of 2020 in the St. Louis University Law Journal. What really gripped me was the introduction to this article, it was just fascinating and it drew me right in.

DEAN TOKAJI:

Yeah, I was actually pretty proud of that. I have to say, even though I've been writing these articles, law review articles for decades now, it still gives me a real chill when I'm able to write something that resonates in a way that this really, I'm glad to hear it did for you. And I really felt it as I was writing it that this, you've got to get that notion that you're saying something that's really meaningful.

DEAN TOKAJI:

And I talk about the importance of truth to our democracy. We often, of course, we'll disagree on what is or is not true. We often, of course, disagree on what the law is or should be, but we have to have some basic agreement on the proposition that truth matters. And the premise of this article is that there are reasons to worry about whether that agreement on the basic proposition that truth matters is still alive and well today. And mind you, this was written before the 2020 general election and all the controversy about the result that arose.

DEAN TOKAJI:

I'm going to use a phrase that is perhaps unbecoming of a dean here, but it is drawn from the work of philosopher, actually, Princeton philosopher Harry Frankfurt, who wrote a short book several years ago, entitled On Bullshit, where he distinguishes between lies and what he calls bullshit. In Professor Frankfurt's view, lies are when you knowingly say something that you know to be false with the intent to deceive your audience. Bullshit, on the other hand, is where you simply don't care one way or the other about whether your saying is true or false. So your goal is not so much to deceive, but you may have other motives like on our contemporary age in which social media is so dominant, maybe getting more clicks or likes, or maybe winning an election or just getting more attention for yourself. These are motives apart from persuading your audience of the truth of what you're saying.

DEAN TOKAJI:

And Professor Frankfurt also points out that in some ways, what he calls bullshit in his book, by that title, is more dangerous than lies, because when you're lying at least you have some reverence or belief, shared belief with your audience on truth. But when you're bullshitting, well, truth is just completely out the window. It is completely beside the point is that we've given up on any set of shared beliefs on what is true and false. And there is increasing reason to worry about truth going out the window.

DEAN TOKAJI:

The way I think of it, and I'm going to put this in legal terms now in terms beyond what Professor Frankfurt put it. I think of lying as knowingly saying what is false, whereas bullshit is reckless disregard for the truth to borrow from the famous First Amendment case: New York Times versus Sullivan. And in New York Times versus Sullivan, Justice Brennan used that phrase, reckless disregard for the truth, what is commonly referred to as part of the actual malice standard, to describe what people could in fact, be penalized for saying, right?

DEAN TOKAJI:

Defamation of public officials can be subject to civil or even criminal sanctions if it is knowingly false or made with reckless disregard for the truth. And I worry as much about reckless disregard for the truth, particularly in our political discourse these days, as I do about knowingly false statements, that is lies.

TURNER:

And the way the election laws are currently structured, they don't really offset that misinformation has become more prevalent recently. Part of your article builds on works by Professor Richard Hasen who has proposed several modifications to election law to offset the increased level of misinformation. What are your thoughts on these modifications and what other changes do you propose?

DEAN TOKAJI:

Yeah, so Professor Hasen is a very prominent election law scholar. He is the lead author and creator of the Election Law Blog. He and I are also co-authors on our case book, Election Law: Cases and Materials, along with Dan Lowenstein and Nick Stephanopoulos. And so this piece in the St. Louis Law Review was written as a response to a lecture that he gave. And by and large, Professor Hasen and I agree on well, most things, but including, we're both very worried about the proliferation of false statements, including knowingly and recklessly false statements in our political discourse. And we also I think, believe that election law can play some sort of constructive role in doing something to curb the proliferation of falsehoods in our political discourse.

DEAN TOKAJI:

And there are a number of things that I think we agree can be done. There are some prohibitions on false election speech that would fall within permissible boundaries under existing First Amendment doctrine. There's also truthful government speech that can be used as a means by which to counteract false statements, going with a basic First Amendment ideal that the best response to ideas we don't like is counter speech. There's truth in labeling requirements, requiring for example, social media platforms to label statements that are false or misleading, as many social media outlets are doing now, including the most prominent ones, even without any laws requiring them to do so. And that I think, this is a favorable development since I wrote the article, has actually picked up some in the months since then, and especially in the time since the November 2020 election took place.

DEAN TOKAJI:

There are disclosure requirements that can be adopted, and limitations on spending to influence elections by foreign nationals and by foreign governments. And it's on the last one where I think there actually could be some constructive work done. There's been a lot of talk about foreign speech or speech that comes from foreign nationals or foreign governments. Russia in the 2016 election was a culprit. And that's just not my opinion. I mean, there have been bipartisan findings by for example, Senate Committee, concluding that there were strenuous efforts sponsored by the Russian government to influence our election, which I'm not sure that they turned the election, but they certainly had some effect, whether or not there was any collusion with any campaign.

DEAN TOKAJI:

I'm concerned about these efforts, and I think that distinction should be drawn between foreign nationals, right? There are a lot of people who are not affiliated with any government who may say things that are not true. Well, that's one thing, but it's another thing when a foreign government is trying to undermine our democracy by spreading false statements or spreading information with reckless disregard of its truth or falsity. And as I lay out in the article, I do think that there is more that can be done to distinguish between speech by foreign nationals and foreign governments, and good reason to be more concerned about the latter than the former even though false speech by anyone, whether private or governmental can have harmful effects.

TURNER:

In one previous sentence you write, "In an era of proliferating falsehoods, it is incumbent on the Judiciary to defend the truth." And so the recent court cases, which have been numerous and across several many states, seem to have shown that Judiciary can still provide, as you put it, "An edge against the most egregious falsehoods." Were you surprised by the outcome of these election challenges?

DEAN TOKAJI:

I was not, but I was heartened by it. And you've put your finger on something really important, Kris. This is actually something I think to celebrate. What I argued in the article is that courts can be beacons of truth, and can provide a stabilizing role in our democracy in a time of rampant falsehoods, because a part of our value as lawyers, judges, legal academics, is that we believe in evidence, right? You can't just say things without any basis to support them, you have to provide evidence in support of the factual allegations that you're making when you go to court. And you have to provide reasoned analysis that is based upon precedent. These are core norms of our profession. And so I hoped in that article that courts would continue to play this stabilizing role in our democracy. And I was relieved and heartened in the aftermath of the November 2020 election to see them doing just that, right?

DEAN TOKAJI:

And I do think it's fair to say that there were more frivolous claims that were brought in this election challenging the result in various states than we've seen in previous election cycles. Now, in some sense, this is nothing completely new, we see frivolous election cases brought in every election cycle along with some that have merit, but we saw a larger number in this election cycle, and sadly, they were fomented by repeated false statements made without any evidentiary basis by the losing presidential candidate and some of his lawyers. And I think that was most unfortunate, but we should credit our courts for sifting the wheat from the chaff and doing their job of finding out what really was true and what was not, and rejecting those claims that were made without any real evidentiary basis.

DEAN TOKAJI:

So yeah, I do think courts have an important role to play in sustaining our democracy and separating truth from falsity. And our courts, and this includes justices across the ideological spectrum, from the most conservative to the most liberal. I think we have a lot to be proud of, right? This is one of our institutions that functioned very well in the most recent election cycle, and really should give us confidence. I mean, there are some areas of course, where reasonable minds will disagree on whether there was enough evidence to support a particular claim. And that's always going to be the case. But I think by and large, our courts did well to find out what was true and what was not in the most recent election cycle.

TURNER:

Speaking of false statements, part three of your article focuses on free speech, another hot topic, following the social media suspensions of President Trump's accounts. What if any limitations could be placed on free speech to curb misinformation?

DEAN TOKAJI:

Well, let me first give a little bit of information about my background. I'm someone who believes deeply in freedom of speech and its importance to a well-functioning democracy. That's not only because I've taught First Amendment law and have written about the First Amendment, but also because for many years before that I was a civil rights and civil liberties lawyer where I brought many First Amendment cases, always on the side of freedom of speech. So I want to be very clear at the outset that I believe deeply in the basic values that animate the First Amendment. And at the top of the list are truth and democracy, right?

DEAN TOKAJI:

The idea behind our First Amendment is that freedom of speech will allow us to decide what is true and what is not. That ultimately, the truth will rise to the top, and relatedly, that it will allow us as citizens to do our jobs, when we're voting, when we are exercising our own free speech rights. It'll allow us to function as effective participants in the democratic process, that free speech, in other words, allows democratic self-government to take place.

DEAN TOKAJI:

So truth and democracy, these are values that are central to First Amendment laws. I think almost everyone who has thought about freedom of speech and freedom of association agrees. The problem is that if we look at our political discourse, boy, truth can often seem like it's in very short supply these days. And it's hard for anyone to argue that our democracy is functioning very well at the moment. I mean, some aspects are, as we just discussed, but we see enormous polarization, even fragmentation within our democracy. It is very difficult for those on opposing sides to reach consensus. We see very high levels of what political scientists call affective polarization. That is, people on either sides of the political aisle, it's not just that they disagree, but they look with disdain, even contempt on one another. More people, for example, say they wouldn't want their child marrying somebody who is of the opposite political party. These are very worrying signs in a democracy.

DEAN TOKAJI:

And so, the question I ask, and it's really questions, whether our First Amendment doctrine can do better to serve the core values it's supposed to be serving, promoting truth in a well-functioning democracy. And I think there are things that we should be looking at, for example, over the years over the decades, really, the general skepticism of what is called content discrimination, that is, laws that target speech based upon its subject matter. That's gotten more and more strict in a way that I think has kind of lost sight of the ultimate values of truth and democracy that animate or should animate First Amendment doctrine. It's almost become a hard and fast rule that laws that discriminate based on content are subject to strict scrutiny.

DEAN TOKAJI:

Now, of course, there are several areas that are exceptions. Incitement, something that we're talking about a lot now in the wake of the events on the date of the electoral count in the Capitol. There's defamation, which I alluded to earlier. That's another area that's an exception to this general prohibition on content discrimination. There are true threats. Commercial speech has historically been an area that is less protected, though not completely unprotected. Campaign contributions, another area that is historically less protected, but again, not completely unprotected. So one of the things I suggest in my article is that we should think a little bit more deeply about this blanket prohibition, or what has become almost a blanket prohibition on content discrimination.

DEAN TOKAJI:

I think we also need to look at the values on the other side. What I tell my students when I teach First Amendment law is that, you all probably believe that you value free speech, but if you really value free speech, if you really value the First Amendment, it means taking seriously the values that are on the other side of the equation, including safety and security, including the harm to people's reputations that is sometimes done by false speech, including the harm to our democracy that can be done when those with a lot of resources are able to flood the market with their own speech, and those without a lot of resources are left relatively speaking without a voice. We need to take seriously these values on the other side, as well.

DEAN TOKAJI:

And so, I'm not suggesting an abandonment of our existing First Amendment doctrine by any stretch, but I do think it's important for us to rethink it with these core values of truth and democracy in mind in a way that to be frank, recent First Amendment jurisprudence, especially cases from the Supreme Court have not consistently done.

TURNER:

A term you've just used is harm to democracy. A time when free speech might be harming the tenants within democracy, such as voting or elections, or what have you. Can you expand on the legal history behind this phrase and where it might have come about?

DEAN TOKAJI:

If you look back to the earliest First Amendment cases, cases involving incitement, for example, including opinions by the great, and he was great, Justice Oliver Wendell Holmes, you'll see that there is a recognition that there have to be some limits on speech, right? And where speech is directed to inciting imminent harm, that speech can be regulated. And that includes imminent harm to the democratic process, for example, stopping the counting of electoral votes from taking place. It's a pretty

high standard that you have to show, that the government has to show in order to punish speech on the ground that it's incitement. But there are some circumstances in which democracy can be protected by limiting or after the fact, punishing certain kinds of very harmful speech.

DEAN TOKAJI:

So I do, along with a lot of First Amendment scholars worry about unduly expanding this, right? I think there is a danger, and our First Amendment jurisprudence over the past century, even more recognizes that it's not enough to just make a claim that speech is harmful to democracy. That standard would be very much in the eye of the beholder, and I think quite dangerous to freedom of speech. But there may be circumstances in which antidemocratic speech, speech that can undermine or threaten democracy itself may be proscribed. Other countries recognize this, actually to a greater extent than we do in allowing so called hate speech to be proscribed. And I'm not advocating that we go as far as other countries have done in allowing hate speech to be prohibited or even criminalized. But I do think the time has come for us to consider the appropriate boundaries for antidemocratic speech, that is speech that is designed to undermine democracy.

DEAN TOKAJI:

If we want to go way back, one of Hitler's closest allies, Joseph Goebbels, talked about how the National Socialist Party, the Nazis, were able to turn the tools of democracy against itself. And I do think we have to be wary of that. We have to be wary about foes of democracy, those who are designed to undermine or even destroy democracy using the tools of a free country in order to fulfill their sinister goals. And there are people and entities out there who have the objective of undermining our democracy, And we've seen that most recently with the storming of the Capitol. And while you can say after the fact, okay, there was never any really serious threat to the election. It was a direct attack on the citadel of our democracy that did, for several hours at least, disrupt the sacred ritual of counting our electoral votes. So I don't think it is something that we can simply ignore. And there are circumstances in which antidemocratic speech may be proscribed, albeit in very narrow circumstances.

TURNER:

It's a very deep well of free speech discussion, and I think we could go on for a couple hours discussing this if we'd like to. But I guess for the podcast's purpose, we'll keep on moving on. But one more part in your article that you wrote that was very fascinating to me is the term post-truth world, one that you find inappropriate and wanting in many ways. Why is this phrase not accurate to describe the world we are currently inhabiting?

DEAN TOKAJI:

I think it's dangerous to talk about a post-truth world because it concedes that we can no longer reach agreement on what is true and what is not. And if we make that concession, then democracy truly is lost. As Yale historian, Timothy Snyder has written, "Post-truth is pre-fascist." And I am not willing to make that concession. I think we would all do well to avoid using the term post-truth world, the world is not post-truth now after Trump any more than it was post-racial after the election of President Obama.

TURNER:

It seems that people are using this phrase in a way to kind of wrap things up in a neat package or to try to say this is what's happening and that's it. Which I think it's simplifying things in a very dangerous way.

DEAN TOKAJI:

Yeah, I agree. And words have consequences. The language we use to describe things matters. And I think it is very dangerous to talk about the post-truth world, we really give the game away to those who are trying to obliterate the distinction between truth and falsity, including those who have the objective of weakening our democracy.

TURNER:

So in combating falsehoods, what are the first necessary steps. How can lawyers, law students, really anyone interested in democracy help combat these falsehoods.

DEAN TOKAJI:

It's a great question. I think lawyers have an essential role to play in this process, not only because our core values include a commitment to evidence and finding out what is true and what is not, but because we have great skills as lawyers, oral advocacy skills, skills in writing, we're able to make arguments in a way that will persuade our fellow citizens. And it's incumbent upon us as law students, lawyers, law professors to be leaders, and to lead us forward regardless of our ideological predilections. And I don't think this is a liberal or a conservative issue at all, I think all of us who are lawyers share this commitment to truth, although we may not always exercise it or fulfill it. And we have to be outspoken in insisting upon the truth, as many lawyers, including members of Congress of both parties have been in the wake of the 2020 election.

TURNER:

Speaking of the 2020 election, let's turn to your other recent publication. It's the symposium contribution that was posted to Professor Hasen's Election Law Blog, and it's titled #TwoDaysOut: 10 Things to Watch for On and After Election Day. So obviously, this was posted two days before election day. What of the 10 areas you discussed there do you feel has been most important for election law experts to monitor?

DEAN TOKAJI:

This piece is really nothing more than a blog post, but it lays out things that each of them deserve much more extended discussion, and some of them I have discussed at length in other places, but I just wanted to kind of get out there right before the election the things that people had their eye on, many of which actually came to pass. The first was disinformation of falsity in our electoral process, which we've been talking about and certainly was a big issue in the days and weeks following the election where there was a proliferation of false information about what actually happened, including exaggeration about voter fraud, which is one of the worries that I expressed in that blog post.

DEAN TOKAJI:

There were certainly registration issues which I was very worried about before the election. I do think that there's a bright side here, which is the turnout on both sides was really fantastic in the 2020 election, but there were a large number of provisional ballots in many states. Didn't really become a serious issue because the provisional ballots weren't significant enough to affect the result, or at least they were only counted in a relatively timely way. But I do think that this is something we should have our eye on for the future.

DEAN TOKAJI:

Last minute directives from secretaries of state, another thing I was worried about. We saw some of this in the primary election in 2020, from both Republican and Democratic secretaries of state, including in my former state of Ohio and here in Wisconsin. Fortunately, we didn't see a lot of that in this election cycle, nor did we see a lot of conflict at the polls. There were a lot of worries as there are in every election season that we're going to have conflict. Could include people with firearms intimidating voters at or near polling places. Very little, if any of that in this cycle. Poll workers, I was kind of worried about poll workers in this election cycle. And there are always some snafus that occur here and there, long lines at the polling place, voting machines that break or polling places that they'd open late. But fortunately, we didn't see too many of that. And I think that's in large part, thanks to a lot of people stepping up to volunteer as poll workers.

DEAN TOKAJI:

Counting of absentee ballots. Well, we know this did take a long time in some states, right? And we had a lot more absentee ballots and as well as early votes that were cast in this election cycle as compared to previous election cycles. People did that because they were, by and large, many of them at least worried about the pandemic. But they all did get counted, or at least the vast majority of them got counted in the end. Canvasses and recounts, these things take time, we learned that, right? The results are not official on election night, there's a process that takes place afterwards, during which the vote count can change, as it did in many states. In some cases, there were swings back and forth. But it was good, I think, that we went into the November election knowing that we might not have a clear result on election night, at least not in every state, and we didn't.

DEAN TOKAJI:

US Supreme Court intervention, we can be very happy that we didn't have that in this election cycle. That was one of the things I was worried about, and thankfully, it wasn't close enough for the Supreme Court to have to make a decision that wound up deciding the election, as was the case back in 2000. Acceptance of the result. Well, we saw that, that the losing side did not accept the results gracefully. And our institutions were strong enough to handle it, but it's a worry going forward when we now have this precedent of the losing candidate not conceding. And finally, post election pandemic spikes, we certainly have seen some of that. We've seen in some places it's hard to know the extent to which it was because of people going to the polls on election day. But there certainly have been a number of places after the election, where the number of COVID cases did spike, perhaps in part because people weren't observing the precautions they should have.

DEAN TOKAJI:

So we've got, there a lot of things to worry about, and in the wake of the election, we've seen some other ones. But I do want to tell a positive story after going through all the problems. And the positive story is on the whole, our election system, despite a really unprecedented election where far more people were voting absentee by mail, especially than was the case in previous elections, our elected officials did a really good job. There's never a perfect election, but there were no errors or other problems like voting fraud that were significant enough to affect the result. And our judges, including state and federal judges, did their jobs. And I think by and large did them very well of resolving the disputes that emerged in a timely way. So I think we have a lot to be proud of from our election officials around the country, including people who are affiliated with both of the major parties, as well as our courts, including judges across the ideological spectrum coming out of the 2020 election.

TURNER:

And as you alluded to, we're recording this podcast on January 14, so about a week removed from the riot at the US Capitol and the week for inauguration. So we're in a very busy time here for election law and questions about election law. Do you see any changes to election law based on what's happened since the November election?

DEAN TOKAJI:

It's always so hard to know exactly what's going to happen. I do think that there are some things that we should look at that include the calendar for the Electoral College, as well as the calendar for resolving disputes in some states. You want to make sure you build in enough time to resolve these disputes. It's something I wrote an article on many years ago and I think it remains true today that both at the federal level and in the states there's reason to look at that calendar and to see whether some modifications should be made to it.

DEAN TOKAJI:

I also think that in the wake of this election, it's worth looking at the authority of secretaries of state and state legislatures. We saw some efforts in this most recent election cycle to influence secretaries of states, or state legislatures, and I think that is a very worrisome development. Look, every state has a process that's prescribed by law for resolving disputes, and that includes disputes over presidential elections. That process should be followed. It would be very dangerous if after the laws are in place, after an election has been conducted, a state legislature says, "No, no, no. We don't like the result, and we think this was problematic, and we're going to go back and appoint electors on our own." Or if secretary of state were to take it upon himself or herself, to reverse the result of the election.

DEAN TOKAJI:

So I worry about some of these possibilities. I worry about pressure being put on secretaries of state and state legislatures. One of the big continuing problems we have in this country is that the vast majority of our state election officials are party-affiliated, right? Most of them are actually elected as candidates from one or the other major party. And that's a real problem. Because effectively the chief election official in most states is a player for one or the other of the teams. Here in Wisconsin, at least, we have a bipartisan election commission that runs our elections, which is better than most states. But I am worried about partisanship in election administration, especially at the state level. And I do think that that's something we should take a serious look at as many people are starting to do.

TURNER:

What do you most hope readers take away from these two recent publications?

DEAN TOKAJI:

The first thing, which we spent a lot of time on in this discussion, Kris, the importance of lawyers in standing up for truth. We as lawyers, and legal scholars, judges, law students, we have a really essential role to play. And it doesn't mean we can't disagree, that we can't disagree on what's true, and what's false. In fact, it's essential that we do have reasoned disagreements over those things, but those discussions have to be informed by evidence. And I worry about the proliferation of falsehoods and reckless disregard for the truth that we see in some quarters, including on the left and the right, if we want to be honest about this. So I think that's one of the clear messages from my work and the work of

many other scholars, to double down on truth. It's more important now than ever that we as lawyers do that. That we be standing up for truth and that we recognize that our legal system is both a bulwark for truth and a foundation component of our democratic process.

DEAN TOKAJI:

The second thing that I would really, really emphasize is the need for us to look at our institutions, right? Especially election administrators, the ones who are responsible for running our elections. And to consider changes that would give us nonpartisan, bipartisan, electoral institutions, as most other countries have. Another piece I'm working on right now is on comparative election administration, looking at chief election authorities in the United States and around the world. We're somewhat of an outlier in having chief election officials that are so closely tied to one or the other of the major parties.

DEAN TOKAJI:

And I worry about the functional impartiality of our election authority. I mean, I think they stood up to the pressure of this election, but if our democracy is going to survive, and to flourish in the years, in the decades to come, I think it's going to be important that our electoral institutions get the attention they deserve, and that we, including us as lawyers, work to improve the entities that are responsible for conducting our elections, and ensuring that we have a result that can be trusted and ultimately, that our democracy has legitimacy it requires.

TURNER:

I look forward to discussing that comparative election law article with you once that's out. We'll have you back on the podcast for that one for sure.

DEAN TOKAJI:

Looking forward to it, Kris.

TURNER:

Where can researchers find more of your work?

DEAN TOKAJI:

Well, I've got an SSRN page which has that draft, that most recent piece on comparative election administration. It relies heavily on the works of one our emeritus professors, Neil Komesar, who's one of my intellectual heroes. So my work is on SSRN and you can find it in various other places. I'll also sometimes be a guest blogger on my friend, Rick Hasen's Election Law Blog. So you can sometimes find my musings on question of the moment there as well.

TURNER:

And we'll link to your SSRN page. We'll link to Professor Komesar's repository page. People can read more of his work. And of course, we'll link to all of your scholarship on our podcast page as well. Thank you very much for joining us today for a timely and fascinating look at election law, free speech and democracy, Dean Tokaji.

TURNER:

This transcript was exported on Jan 20, 2021 - view latest version [here](#).

We've been discussing Dean Tokaji's recently published works, including Truth, Democracy, and the Limits of Law, published in the St. Louis University Law Journal, and #TwoDaysOut: 10 Things to Watch for On and After Election Day, a blog post posted on professor Rick Hasen's Election Law Blog. Both are specifically linked on our podcast page. For a complete listing of all of Dean Tokaji's work, you can visit the University of Wisconsin Law School repository. These things can also be found along with this podcast at wilawinaction.law.wisc.edu.

TURNER:

Thank you all for listening. Be sure to check out our previous podcast where we discuss a wide range of legal topics and scholarship ranging from tribal law to COVID vaccinations and viral ethics. You can subscribe to our podcast via the Apple iTunes store or Stitcher, or listen to our full archive at wilawinaction.law.wisc.edu. Happy New Year and happy researching.