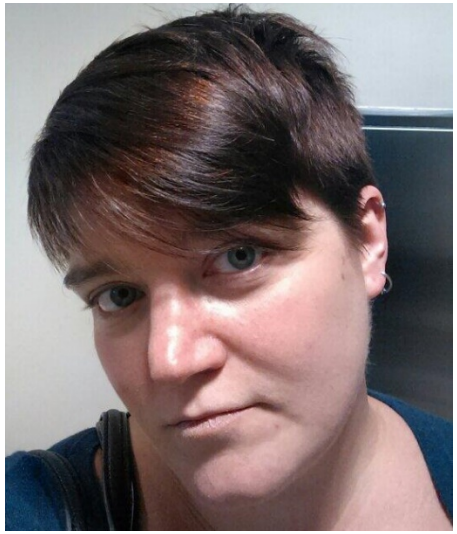
Higher Education Policy Update: Federal and State Priorities for Student Affairs

Summer 2018

NASPA Policy & Advocacy Team



Teri Hinds
Director for Policy Research & Advocacy
thinds@naspa.org
@terilynhinds

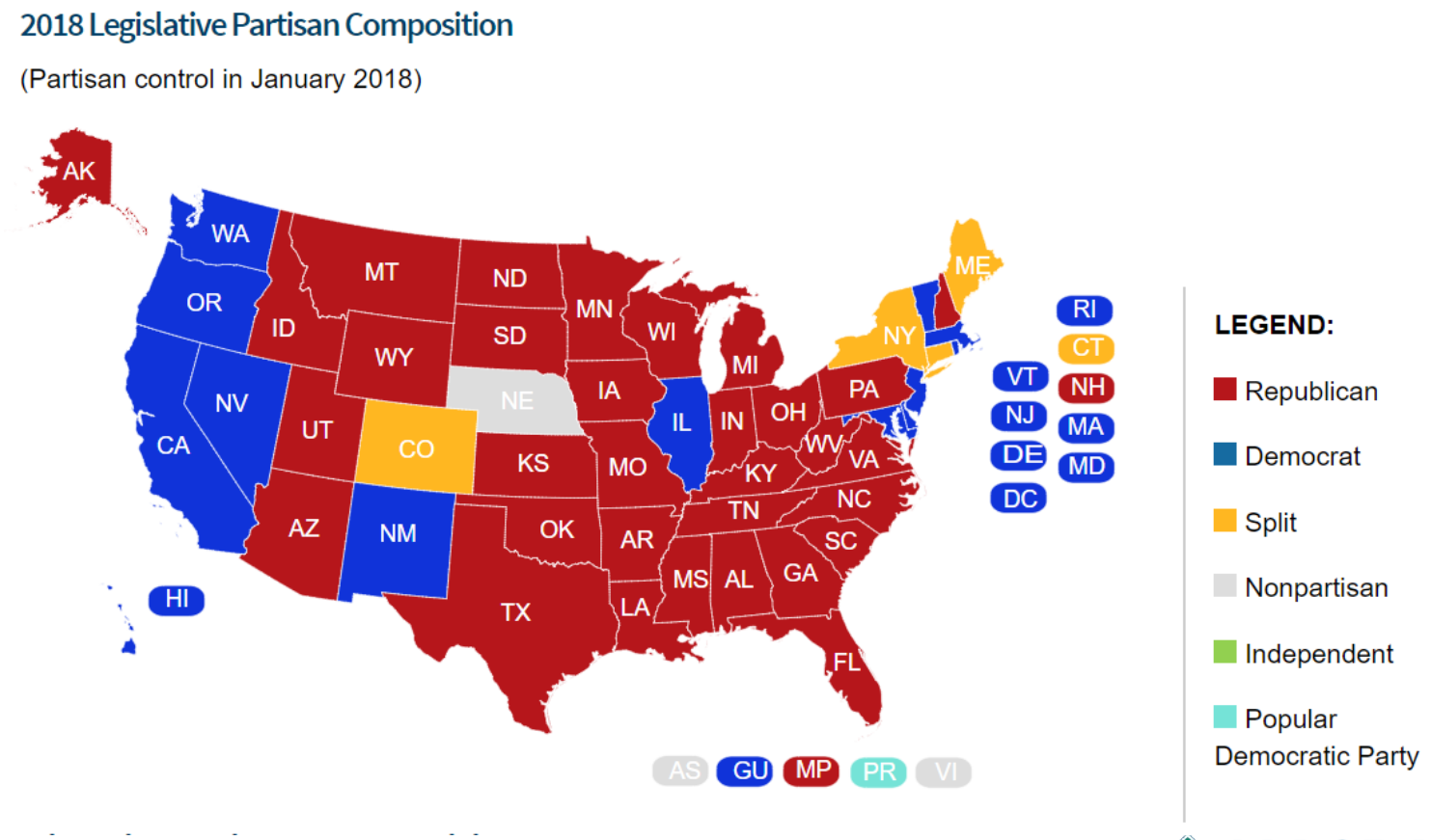
Diana Ali
Policy Analyst
dali@naspa.org

Current Federal Policy Atmosphere

- Continued rifts b/t White House, GOP Leaders
  - Some cohesion around tax bill, defense budget
  - China, tariffs, ongoing Mueller investigation
  - Sharply different budgets, “no more omnibus”
- Partisanship, party control still reigns in Congress
  - Caucuses are gaining
  - Moderates coalesce around DACA in Senate, House
- Midterm elections looming

NASPA
Student Affairs Administrators in Higher Education

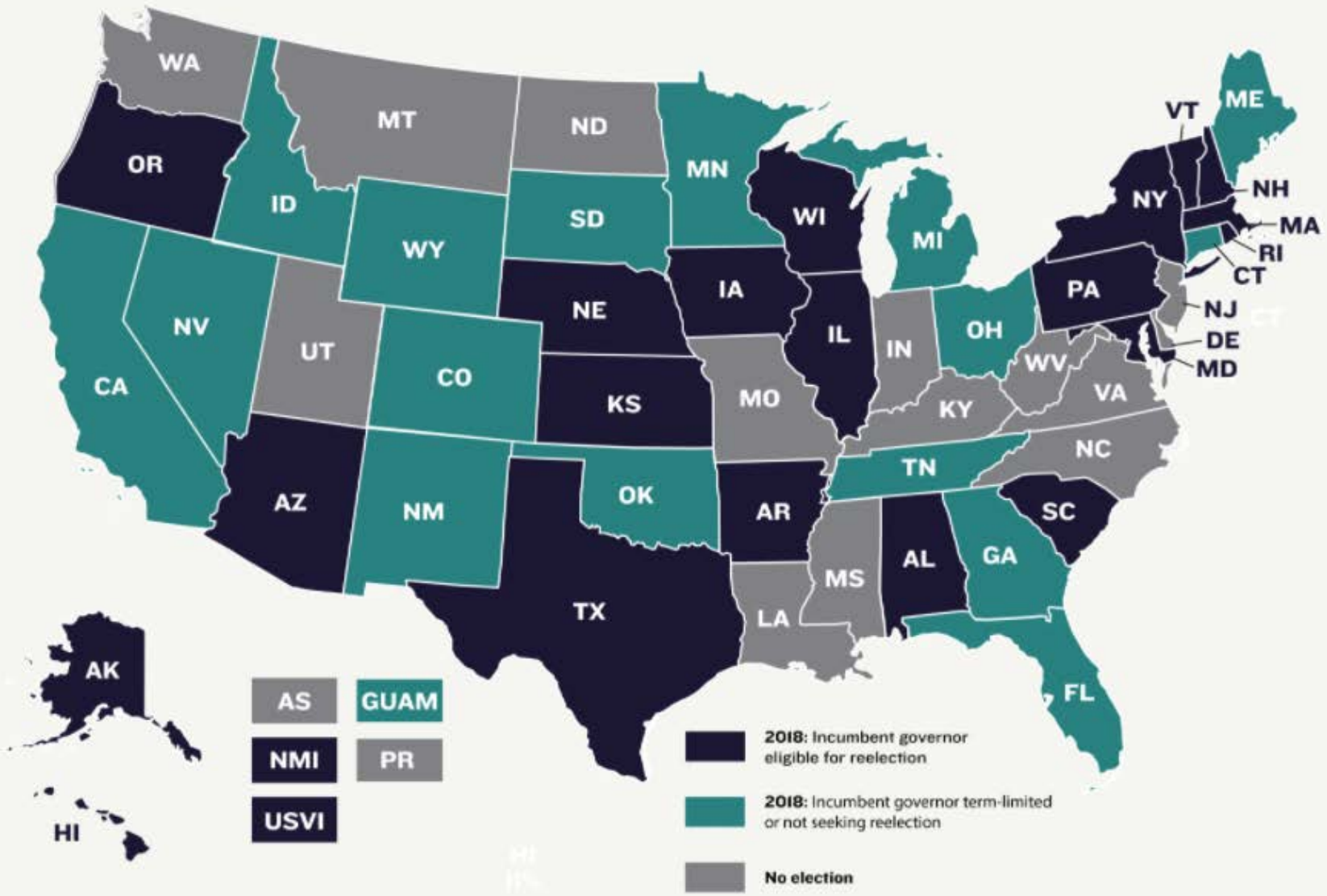
Current State Policy Overview



Source: National Conference of State Legislatures

NASPA
Student Affairs Administrators in Higher Education

2018 GUBERNATORIAL ELECTIONS IN THE STATES AND TERRITORIES



NASPA Public Policy Agenda

- Student success and college completion;
- Student safety and wellness, including financial and mental wellness and protections for trans students and victims of sexual assault;
- Costs of higher education, student debt, and borrower protections;
- Inclusive opportunities for access and success in higher education; and
- Civic engagement and freedom of expression.

NASPA
Student Affairs Administrators in Higher Education

Student Success & Costs & Debt

- **Borrower Protections**
- **Tax Reform**
- **Federal Budget**
  - **FY2018**
  - **FY2019**
- **HEA Reauthorization**

NASPA
Student Affairs Administrators in Higher Education

Borrower Protections

- Continued delays to implementation of borrower defense rules & gainful employment
  - Negotiated rulemaking wrapped up on Feb. 15th unable to reach consensus
  - ED able to release proposal of their choosing expected Nov 2018
- ED continues to scale back oversight of for-profits
  - May 2018, unwinds investigative oversight team

NASPA
Student Affairs Administrators in Higher Education

Tax Reform

- Provisions most harmful to students removed before final passage
  - Tax grad student waivers, employer-provided tuition assistance as income
  - Repeal student loan interest deduction
- Institutional impact varies
  - Endowment tax – at least 500 students, endowment assets at least $500,000/student
  - Doubling standard deduction – fewer will itemize, expected to reduce charitable giving
  - Unrelated business taxable income (UBIT) computed separately for each separately; loss in one area can no longer offset gain in another

NASPA
Student Affairs Administrators in Higher Education

FY2018 Federal Budget

- FY2018 budget surprisingly generous..
  - Max Pell Grant raised 3% over FY2017 ($6,095)
  - 14% increase in FWS & SEOG
  - Increases for TRIO & GEAR UP
- .. but may have future costs
  - February 9 CR increased caps on defense & non-defense w no pay-for
  - Suspends the debt ceiling until March 2019
  - With tax bill, massive increase to national debt

NASPA
Student Affairs Administrators in Higher Education

FY2019 Federal Budget

- President's Budget Proposal more severe than FY2018
  - Cuts $200 billion from student aid programs
  - Freezes max Pell at $5,920 for next 10 yrs
  - Ends PSLF, subsidized loan program
  - Unlikely to become law, but signals priorities
- Congress still working on approps
  - with cap increases approved Feb 2018, expecting at least level funding for FY2019
  - Approps bills will move in "mini-buses"

NASPA
Student Affairs Administrators in Higher Education

HEA Reauthorization

- Chambers working on comprehensive HEA legislation
  - House Ed & Workforce Committee passed partisan PROSPER Act in December
  - Senate HELP Committee was working on purported bipartisan bill but has stalled
- Uncertain whether either will go to full floor vote this year

NASPA
Student Affairs Administrators in Higher Education

HEA Reauthorization

- House Ed & Workforce passed *Promoting Real Opportunity, Success, and Prosperity through Education Reform Act (*PROSPER) Act in December 2017
  - Partisan bill, no opportunity for community input
  - Student Aid Programs
  - Regulatory Reforms
  - Title IX, Possibly Impact on Hazing Prevention
  - Voter Registration Requirements

NASPA Student Affairs Administrators in Higher Education

HEA Reauthorization

- Senate progress toward legislation
  - Hearings in January/February
  - Focusing on financial aid, accountability, affordability
  - Process stalled; uncertain whether a bill will be released this year
- Calls for comment from higher ed community
  - Senator Alexander white paper on regulatory reforms
  - Open call from full HELP Committee

NASPA
Student Affairs Administrators in Higher Education

HEA Reauthorization

- NASPA Priorities
  - Access to financial aid for those most in need
  - Intentional action to close equity gaps, support today's students
  - Support for graduate education
- Opportunities for advocacy
  - If/when full floor vote scheduled in House
  - Once legislative text is released by Senate HELP Committee, bill mark-up

NASPA
Student Affairs Administrators in Higher Education

Student Safety & Wellness

- **Title IX**
  - Inclusivity, trans protections & bathroom bills, equity,
  - Sexual assault prevention & response, respondent rights
- **Mental Health**
- **Guns** on campus
- **Opioid epidemic**

NASPA
Student Affairs Administrators in Higher Education

Title IX: Trans Protections Executive and Judicial Actions

- February 2017: ED & Justice DCL rescind Obama ED guidance for trans students
- March 2017: *GG v Gloucester County School Board* sent back to the lower courts
- May 2017: *Whitaker v Kenosha Unified School District* sets Title IX extending to gender discrimination as precedent in the lower courts

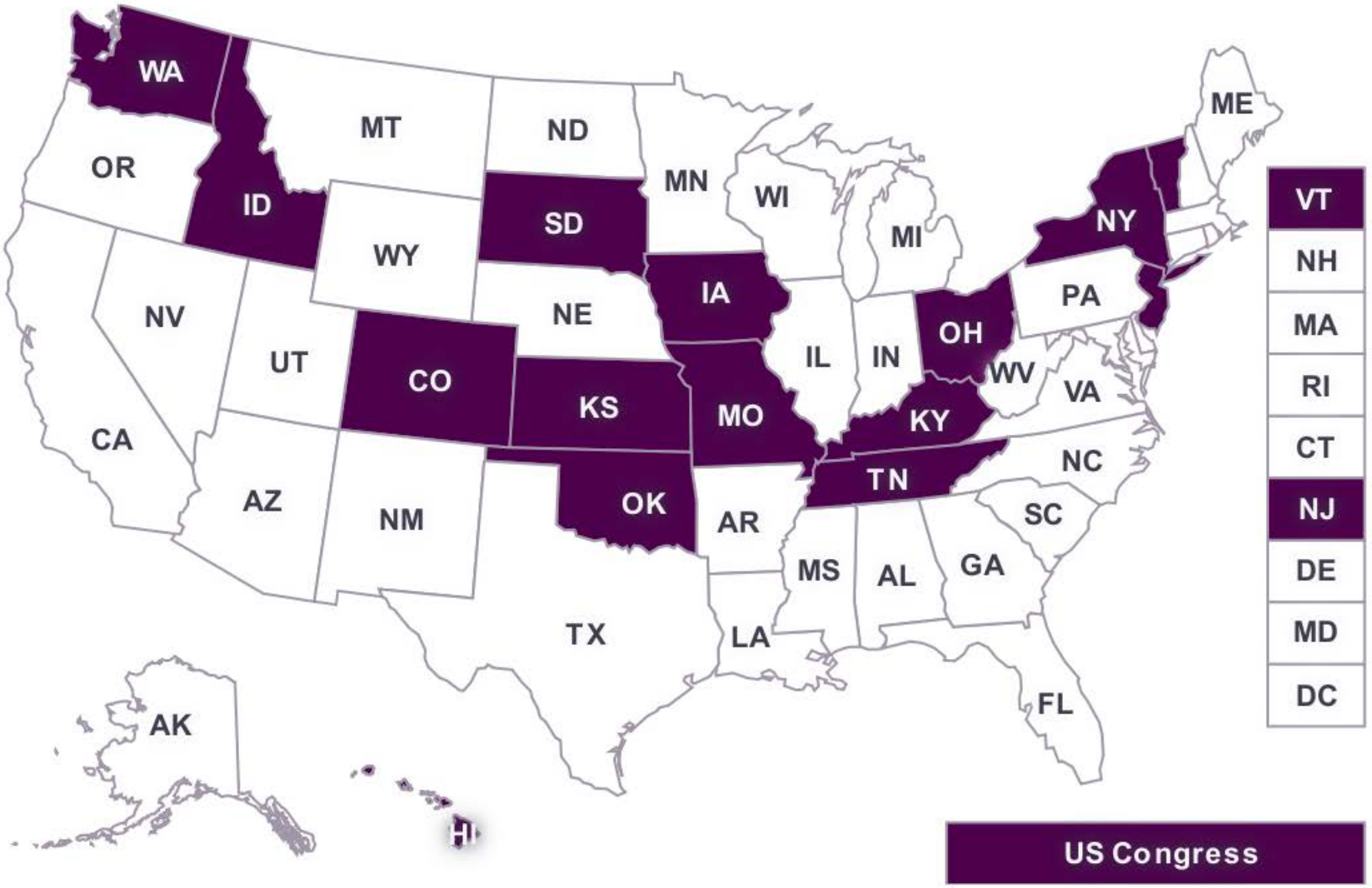
NASPA
Student Affairs Administrators in Higher Education

Title IX: Trans Protections Executive and Judicial Actions

- June 2017: OCR changes procedure on complaints regarding trans students
- February 2018: ED will no longer be considering complaints regarding trans students
- May 2018: Federal judge rules in favor of Gavin Grimm

NASPA
Student Affairs Administrators in Higher Education

Trans Rights



Trans Legislation: Federal

- US HR 4699: “Inclusive Campuses Act”
  - Introduced 12/17
- US HR 5374; US S 2584: “Student Non-Discrimination Act”
  - House version introduced 3/18
  - Senate version referred to HELP Committee 3/18

NASPA
Student Affairs Administrators in Higher Education

Trans Rights State Legislation: Inclusive Policies

- VT HB 333—gender-neutral restrooms in all public buildings (May 2018)
- HI HB 1489—passed Senate and received Notice of Passage on Final Reading (May 2018)
- NJ A 1727, NJ S 705—Establishes Transgender Equality Task Force (still in Committee)

NASPA
Student Affairs Administrators in Higher Education

Trans Rights State Legislation: Exclusive Legislation

- AK—First state to include a “bathroom bill” measure on the ballot (failed 4/18)
- OK SB 1250—gender discrimination as freedom of expression (failed 2/18)
- CO—”Live and Let Live” Act would have allowed foster care and adoption agencies limit adoption based on sexual orientation and gender of parents (failed 3/18)
- NY A 5422—”Classic bathroom bill” only piece of this kind of legislation that has not yet died in committee, 28 days left in session, no action since January

NASPA Student Affairs Administrators in Higher Education

Title IX:
Sexual assault prevention & response

- Title IX investigations
  - June 2017: OCR released new case-by-case investigation guidance
  - September 2017: Rescinded 2011 DCL and 2014 Q&A, gave campuses discretion for investigation requirements, large increase in case closures
  - February 2018: ED will no longer investigate trans students bathroom complaints

NASPA
Student Affairs Administrators in Higher Education

Title IX:
Sexual assault prevention & response

- Respondent rights & due process
  - Last Obama OCR finding prompted rethinking of respondent support services
  - Conflation of respondent stress & survivor trauma
  - September 2017 rescinded Obama-Era guidance removes preponderance of evidence standard
  - Upcoming Fall 2018 (?) NPRM

NASPA
Student Affairs Administrators in Higher Education

Title IX: Sexual Assault Prevention and Assault Legislative Themes

- Law enforcement involvement and mandatory reporting in campus sexual assault still cropping up in state legislation/federal legislation
- Greater transparency about universities' handling of sexual assault
- Some legislation is (or seems to be) victim-centered expanding confidential reporting
  - Post-Nassar, MI introduced package of bills would change mandatory reporting requirements for university sports safety

NASPA
Student Affairs Administrators in Higher Education

Title IX: Sexual Assault Prevention and Assault Legislative Examples

- Sexual assault planning, reporting, and training
  - MD HB 913 & SB 607 (enacted) requires institutions to create a revised policy on sexual assault
  - IL HB 5746 (enacted) requires freshmen to receive sexual violence training
- Affirmative Consent
  - NJ A 3324 & MN SF 145 would mandate affirmative consent at al higher ed instiutions

NASPA
Student Affairs Administrators in Higher Education

Mental Health

- Legislation or regulation addressing mental health directly is rare
  - State budget, reductions in funding impact services
  - Red herring following mass shootings
- Impacts of policy conversations loom large
  - Crumbling safety net, food/housing insecurity
  - Debt/affordability
  - Immigration, attacks on trans rights
  - Civil rights, free speech

NASPA
Student Affairs Administrators in Higher Education

Guns on Campus: State Legislation in 2017

- Georgia HB 280 (In effect 7/1/17)
  - Permit holders allowed to carry except in residential, athletic buildings
  - Carry allowed in tailgating areas
- Arkansas
  - HB 1249 (Enacted 3/22/17): Permit holders w/ add'l training may carry
  - SB 724 (Enacted 4/4/17): Creates exception disallowing carry at sporting events
- Kansas
  - Bill passed 4 years ago w/delayed implementation on campuses until 7/1/17
  - Constitutional carry: no permit req'd

NASPA Student Affairs Administrators in Higher Education

2018 Gun-related Federal Legislation

- Automatic Gunfire Prevention Act (S 1916): bans bump-stocks
- Bills to improve federal background check system
  - Public Safety and Second Amendment Rights Protection Act of 2017 (HR 4240 / S 649)
  - Fix NICS measure passed in FY2018 Omnibus Budget Bill
- Gun Violence Prevention Order Act of 2017 (S 1212): Prohibits possession by person subject to a gun violence prevention order
- Securing Our Children Act of 2018 (HR 5380): creates commission to examine correlation b/t mental health and random acts of violence

NASPA Student Affairs Administrators in Higher Education

2018 Gun-related Federal Legislation

- Several bills to ban assault weapons
  - SAFER Now Act (HR 5410; introduced 3/26)
  - Assault Weapons Ban of 2018 (HR 5087 & HR 5077)
- Expanding gun access / carry rights
  - Concealed Carry Reciprocity Act of 2017 (HR 38; passed House 12/17)
  - Tax Credit for Veterans and Retired Law Enforcement Officers for Securing Schools Act (HR 5360; introduced 3/21)

NASPA
Student Affairs Administrators in Higher Education

Campus Carry: 2018 State Legislation

- Sales to convicted domestic abusers
  - Oregon HB 4145 “Boyfriend Loophole Law” (enacted)
  - Vermont H 422 (enacted)
- Restrictions on bump stocks, high capacity magazines, age limitations
  - Maryland SB 707 (enacted)
  - Vermont S 55 (enacted)
- Improved compliance & reporting to NICS
  - Ohio Executive Order (signed 4/23)
- “Red-flag” laws allow removal of weapons from those who may be dangerous
  - Maryland HB 1302 (enacted)
  - Vermont S 221 (enacted)

NASPA
Student Affairs Administrators in Higher Education

Campus Carry: 2018 State Legislation

- Legislation to arm teachers / faculty
  - Most focused on K12; Missouri (HB 1942; in House) and Florida (HB 621; failed) included higher ed
- 9 states considered expanding campus carry, restricting campus ability to regulate concealed weapons
  - Passed: Kansas (HB 2042)
  - Pending: Missouri (HB 1936); and New York (S 1754)
  - Failed: Kentucky (HB 210 & HB 36); Mississippi (HB 697); New Hampshire (HB 1542); Oklahoma (SB 1159); South Carolina (H 4709); and West Virginia (HB 4298)
- NJ (S 1854; pending) & MD (HB 904 & HB 1724; both failed) expand gun-free zones

NASPA
Student Affairs Administrators in Higher Education

Guns on Campus: 2018 Federal & State legislation

- Policy debate in most states
  - Presence of firearms may either contribute to or detract from campus safety
    - Campus shootings vs. accidental incidents or suicides
    - PPD May 2018 virtual Town Hall discussion
  - Zero incidents can be directly connected to a campus's conceal carry law
- Unclear whether activism of Parkland, FL students will result in legislative changes

NASPA Student Affairs Administrators in Higher Education

Opioid Epidemic

- President Trump declares opioid epidemic public health emergency, funding included in February budget bill
- Attending college is protective factor…
  - But college environment is risk for alcohol, other drugs
  - Good alcohol/drug prevention & education is good opioid prevention

NASPA
Student Affairs Administrators in Higher Education

Opioid Epidemic

- Drug Free Schools and Communities Act (DFSCA)
  - Must have a program to prevent illicit drug and alcohol use by students and employees
  - Annual notification, biennial review
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)

NASPA
Student Affairs Administrators in Higher Education

Inclusive Opportunities

- **Immigration**:
  - Undocumented students, DACA
  - Sanctuary campuses
  - Increased immigration enforcement
  - Visa processing

Immigration: Undocumented students, DACA

- September 2017- DACA was set to expire with a 6-month delay (March 5 2018)
  - Fear that DACA recipients will be targeted for deportation, lose advantages of DACA status
  - Reliance on Congress to keep the program alive through legislation introduced in the 115th Congress
- January & February 2018
  - District courts in 2nd and 9th circuits issue injunctions on the constitutionality of the announcement to end DACA
  - USCIS continues to accept renewal applications

NASPA Student Affairs Administrators in Higher Education

Immigration: Undocumented students, DACA

- March 2018
  - District court in 4th circuit, finds termination announcement to be lawful, but issues injunction on sharing the usage of DACA recipient data
- April 2018
  - DC district court finds reasoning for program termination faulty, issuing 90 day stay
  - If DHS is unable to give better explanation program will return to as it was before Sept. 5 announcement
- May 2018
  - Texas & six other states file preliminary injunction on the 2012 DACA program, stating that their former lawsuit to end the program had not been met due to court injunctions prolonging it's existence.
  - Injunction aimed halting the program on July 23, 2018, which marks the end of the 90 day stay

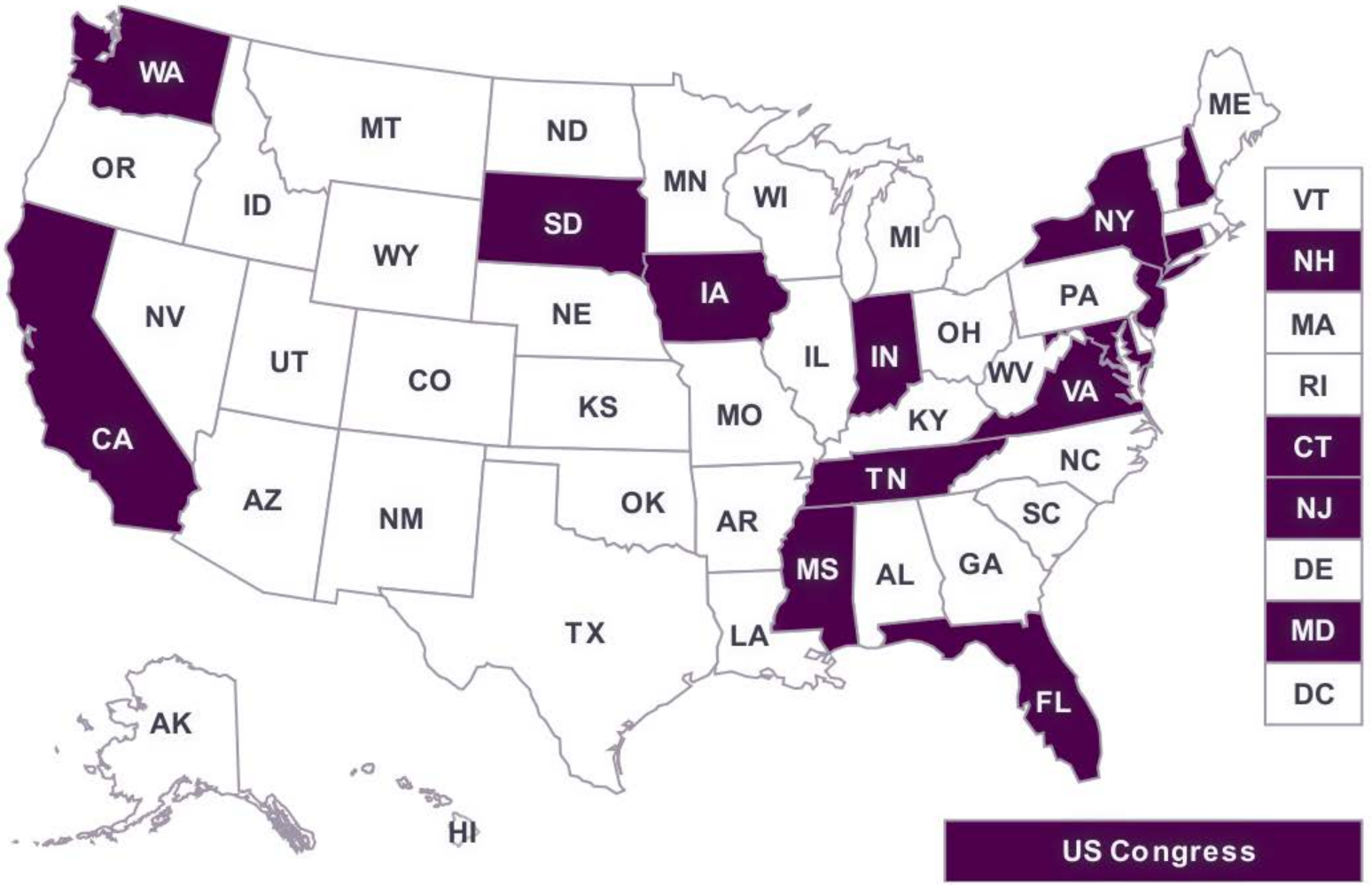
NASPA
Student Affairs Administrators in Higher Education

Immigration: Undocumented students, DACA

- January/February 2018 pathway to citizenship and permanent solution for DACA tied to government shutdowns
- February SENATE—Debate
  - Coons-McCain Bill
  - Common Sense Plan
  - Grassley Amendment
- May HOUSE—Moderate republicans sign petition, in need of 5 more signatures to force a vote
  - DREAM Act
  - USA Act
  - Goodlatte Bill
  - 4th measure to be determined by House Speaker

NASPA Student Affairs Administrators in Higher Education

In-State Tuition for Undocumented Students



Immigration: In-State Tuition 2018 Legislation

- 24 pieces of state-legislation in 14 states
  - 6 pieces of legislation in committee, 16 pieces failed, 2 bills have been enacted
  - 17 bills are inclusive and 7 bills exclusive
  - NJ S 699 passed (5/18) 10th state to offer financial aid to DACA recipients
- Three states have DACA-recipient specified policies
- SD (SB 103) sought to follow GA (SB 492) in denying college admittance to undocumented students, but the bill was tabled in committee.

NASPA
Student Affairs Administrators in Higher Education

Immigration:
Executive Order Travel Ban

- Original ban revoked; February 2018, 3rd iteration blocked in circuit court and headed to SC, North Korea & Venezuela still affected
- Most recent EO temporarily prohibits entries from 6 Muslim-majority countries, 2 non-Muslim-majority countries
- International students are exempt from the ban (F, J or M visas), but could deter short term visits
- Expecting ruling from SC in June 2018

NASPA
Student Affairs Administrators in Higher Education

Immigration: Visa Restrictions

- January 2017 Executive Memo: Enhancing Public Safety in the United States
  - "Ensure the faithful execution of the immigration laws of the United States, including the INA"
- April 2017 EO "Buy American, Hire American"
  - Requires for review of H1-B visa program so that skilled temporary worker visas are awarded to the most-skilled beneficiaries.
  - Still admitting 85,000/year
- January/February 2018 Higher vetting of third parting worksites, and threats to H-4 EAD Visa

NASPA
Student Affairs Administrators in Higher Education

Immigration: Visa Restrictions

- March 2018 proposed changed to application for nonimmigrant visas
  - Would affect 710,000 immigrant visa applicants and 14 million non-immigrant applicants
- May 2018 proposed changes to overstay visa policies
  - Overstay of 180 days could bar re-entry for up to 10 years

NASPA
Student Affairs Administrators in Higher Education

Civic Engagement

- **Free speech** on campus
  - State Legislation
  - Safe Spaces and Brave Spaces
- Increasing capacity for Student Affairs professionals to engage in **advocacy**

NASPA
Student Affairs Administrators in Higher Education

Free Speech on Campus: Congressional Action

- Concern, evidenced by hearings
  - House Committee on Oversight and Government Reform (7/27/17 & 5/22/18)
  - Senate Health, Education, Labor & Pensions Committee (10/26/17)
- Statement in PROSPER: free speech zones "inherently at odds" with Constitution
- Free Right to Expression in Education (FREE) Act (US S 2394) introduced by Hatch (R-UT)

NASPA
Student Affairs Administrators in Higher Education

Free Speech on Campus: State Legislation

- Model legislation: Forming Open and Robust Minds (FORUM) Act from American Legislative Executive Council (ALEC)
  - Requires establishment, communication of campus policies & accountability for institutions
  - Requires annual reporting to legislature and/or Governor
  - No mandatory student sanctions

NASPA
Student Affairs Administrators in Higher Education

Free Speech on Campus: State Legislation

- Model legislation: CAFE Act
  - Primarily prohibits free speech zones
  - Some include additional language from FORUM ACT
  - Legislation pending in 5 states (LA – awaiting Gov signature; CA; IL; NH; NY)
  - Failed in 4 states (FL; KS; NE; SD

NASPA
Student Affairs Administrators in Higher Education

Free Speech on Campus: State Legislation

- Intellectual diversity
  - Optional clause in FORUM Act prohibits institutions from speaking on “public policy controversies of the day”
  - Appearing in other legislation; introduced & failed in 5 states (KY, MN, MO, OK, SC)
  - Concerns in Congress re self-censorship
  - NASPA Policy and Practice brief Safe Spaces and Brave Spaces: Historical Context and Recommendations for SA Pros addresses creating brave classroom spaces

NASPA
Student Affairs Administrators in Higher Education

Free Speech on Campus: State Legislation

- Model legislation: Goldwater proposal
  - Prohibit administration from disinviting speakers
  - Mandatory student sanctions: suspension and/or expulsion
- 2017 bills: enacted in NC; introduced in MI, IL, WI; failed in LA, TX
- 2018 bills: enacted in AZ; pending in CA; failed in MN, OK, WV, WI, WY

NASPA
Student Affairs Administrators in Higher Education

Free Speech on Campus: NASPA Resources

- Public Policy Division virtual Town Hall (November 2017)
- Policy and Practice briefs
  - The First Amendment and the Inclusive Campus: Effective Strategies for Leaders in Student Affairs (May 2018)
  - Safe Spaces and Brave Spaces: Historical Context and Recommendations for Student Affairs Professionals (October 2017)
- RPI Blog posts: February 2017, August 2017, May 2018

NASPA
Student Affairs Administrators in Higher Education

Increasing Capacity for Advocacy

- NASPActs Committee: a committee of the Equity, Inclusion, and Social Justice Division
- **Student Affairs Day of Action July 17, 2018**
  - Get involved today through the Student Affairs Day of Action Resources Page: http://bit.ly/2BUEKXf
  - Let us know what you're advocating for with #SAadvocates!

NASPA
Student Affairs Administrators in Higher Education

Increasing Capacity for Advocacy: Live Briefings

- Mark your calendars for upcoming free live briefings in conjunction with National Student Affairs Day of Action featuring experts in the field and an advocacy lens
  - June 14: State Advocacy
  - July 12: Federal Advocacy

NASPA Student Affairs Administrators in Higher Education

NASPA Advocacy

- NASPA participates in federal advocacy individually, through higher ed consortia
  - ACE, Student Aid Alliance: broad, cross sector
  - SAHEC: student affairs specific associations
  - PostsecData, Ed-Vet Coalition: issue-specific
- Recent areas of advocacy include
  - HEA reauthorization
  - Immigration & DACA
  - Trans student rights / protections
  - Tax reform, federal budget

NASPA
Student Affairs Administrators in Higher Education

NASPA RPI/PPD Resources

- Monthly Policy Update Email – opt in through NASPA website
- Weekly posts to the RPI blog (http://www.naspa.org/rpi)
  - Monday: Policy News Round-up
  - Thursday: Topical issue analysis/update
- Monthly Public Policy Briefing Series
  - Sign up: https://olc.naspa.org/catalog/naspa-policy-briefing-series

NASPA
Student Affairs Administrators in Higher Education

Additional Resources

- **Govtrack** is a free online resource for tracking federal bills: https://www.govtrack.us/congress/bills/
- **Openstates** is a free online resource for tracking state legislation: http://openstates.org/
- The **Federal Register** provides updated information on changes in regulation policies: https://www.federalregister.gov/
- **AASCU** publishes daily and weekly policy news summary emails, including federal & state news: http://www.aascu.org/policy/publications/subscribe/

NASPA
Student Affairs Administrators in Higher Education