# Campus Mobilization at Scale

## Tactics, Media Attention, and Legislative Approaches

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### Overview

There is a dynamic relationship between the activism that occurs at U.S. colleges and universities and how the news media reports on these events. The consequences of what happens on campuses and the accompanying public discourse shapes what the public thinks about the concept of freedom of expression on-campus, and the specific social issues that motivate campus-based organizing. News media portrayals of campus activism contribute to the public's understanding of and tolerance for dissenting views. News reports also contribute to how powerful stakeholders – particularly elected officials and legislators – assess whether the university is properly fulfilling its social role as a standard bearer for principles like academic freedom, free speech, expression, and dissent.

This report offers a summary of two distinct, but closely aligned research initiatives. The first summary characterizes the measures, methods, and findings from a multiphase analysis of campus mobilization tactics and news media. The projects' goals were (1) to develop a process for efficiently measuring different approaches to activism, or the tactics organizers use, in campus-based mobilization at U.S. colleges and universities, and (2) to assess whether campus tactics contributed to the ways newspaper media reported on occurrences of campus-based mobilization. The second summary involves a policy analysis that offers a first look at data related to state-level legislation addressing campus-based freedom of speech and expression between 2015-2020, and a portion of 2021. Together these elements offer new insights about forces that interact with and shape the phenomenon of campus-based activism in the field of higher education.

### The Influence of Campus-Based Tactics on News Media Attention

Campuses are mirrors of society. They reflect enduring concerns and emerging issues related to a range of topics from sexual assault, racial injustice, economic inequities of all types, environmental issues, labor concerns, firearms, policing, politics, immigration, due process and shared decision-making, transparency and accountability in operations and management, and so much more. These issues are the fodder for campus stakeholders to pursue their social change ambitions on campus, or to use their campus affiliations or identities to amplify or extend broader movement aims. Across all types of campus activism and mobilization, organizers take specific actions and behaviors, or tactics, to communicate their messages.[1] For example, a

[1] Briscoe, F., Gupta, A., & Anner, M. S. (2015). Social activism and practice diffusion: How activist tactics affect non-targeted organizations. *Administrative Science Quarterly*, 60(2), 300-332.

protest is a way of organizing that can convey concerns about many types of causes. A protest is a specific type of activity and is not exclusive to a singular topic, ideology, or mobilizing group. Similarly, groups could use the tactic of organizing a vigil on a campus to communicate their concerns. A vigil could advocate for change related to Black lives or unborn lives. In both cases the vigil is the tactic, but the particular issue that it is amplifying is likely to involve different people with distinct social change ambitions.

Practically speaking, the tactics that organizers use – whether it is a protest or a vigil (or a range of other approaches) – are actions that have the impact of producing a certain level of intensity for community members and onlookers.[2] Both campus activists and the campus as a site for free expression and activism (and/or the city or municipality where the campus-based mobilization is occurring) have an interest in understanding the relationships between the tactics that are used and how the campus mobilization is communicated more broadly. What the community and the public glean from campus activism impacts how communities understand not only the issues, but the ways in which the ideals of free speech and expression are enacted in the context of contemporary higher education.

For a long time, analyses of campus-based activism, and even activism more broadly, have tended to address either a singular issue (sustainability, sweatshops, LGBTQ+ rights, etc.) or a specific tactic (shanty towns/occupations, hunger strikes, etc.). Even when a specific tactic is the focus of the analysis, it often ends up addressing a narrow set of issues that were coordinated by like- minded activist groups and resonated during a particular moment in time. The results from such analyses present a few practical challenges for campuses.

First, public colleges and universities are required by federal law to operate from a position of viewpoint neutrality.[3] Similarly, while private campuses don't have the same regulatory obligations as public ones, many private institutions choose to adhere to similar principles that support free expression across a range of diverse issues and perspectives. Secondly, in terms of logistics, a public university campus response or reaction to campus-based activism (and any lawful restrictions it adopts to regulate the time, place, or manner of expression) cannot vary based on who is organizing, or based on the issues, ideologies of the organizers, or the cause.[4] Also, both campuses and the activists organizing the events are expected and obligated to anticipate and prepare for the tactics that will be used. These plans must consider factors such as crowd size, space utilization, entries/exits, sound and messaging, supplies, communication plans, clean up, monitoring, potential for counter-mobilization, safety and health of participants and onlookers, and so on. Many of these factors are relevant to the tactics more so than a distinct aspect of the social change ambition. Moreover, tactics are the '*what happens*' of campus-based activism. Understanding the tactics of campus-based activism helps provide insight into the prevalence and patterns of free expression on campuses. Additionally, knowing

[2] See: Barnhardt, C. L. (2014). Campus-Based Organizing: Tactical Repertoires of a Contemporary Student Movement. In C. Broadhurst & G. L. Martin (Eds.), *Radical Academia? Understanding the Climates for Campus Activists.* (vol. 167, pp. 43-58). San Francisco: Jossey Bass: New Directions for Higher Education.
Myers, D. J., & Caniglia, B. S. (2004). All the rioting that's fit to print: Selection effects in national newspaper coverage of civil disorders, 1968-1969. *American Sociological Review, 69*(4), 519-543.
Snyder, D., & Kelly, W. R. (1977). Conflict intensity, media sensitivity and validity of newspaper data. *American Sociological Review, 42*(1), 105-123.
[3] See: Kaplan, W. A., & Lee, B. A. (2009). *A Legal Guide for Student Affairs Professionals* (2nd ed.). San Francisco, CA: Jossey-Bass.
[4] Sun, J. C., Hutchens, N. H., & Sponsler, B. A. (2014). Responding to Campus Protests: A Practitioner Resource. *Legal Links: Connecting Student Affairs and Law, 1*(2).

how campus-based mobilization tactics are communicated in the news media informs contemporary debates about the intersections of activism, free speech and the active expression of dissent in university environments.

**Approach**

The first phase of understanding campus-based mobilization tactics was pursued by producing a computer-based machine learning measure to take stock of the various tactics that campus activists utilized to express themselves.[5] Using newspaper articles written by campus, local, national, and trade news publications, our research team applied hand-coding content analysis techniques to develop a coding scheme to accurately identify instances of campus mobilization and the types of tactics used by campus activists. We then generated a computer algorithm to replicate the hand coding process for the purpose of increasing the volume of data that could be coded accurately and efficiently. We applied our coding process to 7,452 newspaper articles for the years 2012-2017. Within this sample, we identified 55.3%, or 4,119, newspaper articles that reported on and described some type of campus mobilization event. Across these events we identified five types of tactics used by campus activists: conventional, expressive, disruptive, artistic, and violent. Examples of each type of tactic are presented in Table 1.

Because newspaper databases include information about each article, it is possible to know which type of newspaper publishes a story, the date of its publication, and the length of the article written about the event (among other things). [6] This metadata provides opportunities to assess the scale of coverage, or the amount of news devoted to campus-based mobilization, and to evaluate how different types of news publications choose to report on campus activism. Because we generated measures of campus mobilization events and their corresponding tactics, and because we obtained information about news reporting, we were able to further link these details to information about the campuses referenced in the news articles. Correspondingly, we used data about campuses from the U.S. Department of Education's Institute of Education Sciences, and its National Center for Educational Statistics.[7] Information we gathered included campus characteristics such as the size of a campus or how many students enroll, student body demographics, what type of campus it is (public or private, 2-year or 4-year, denominational or not religious, has NCAA athletics or does not), its relative level of academic selectivity, and the size of the university's endowment.

Together, we use details about campus mobilization event tactics, patterns in news reporting, and the campuses themselves to assess the scale of news media coverage, and the type of news media coverage associated with campus activism. Full details about this research including the theoretical framing, background literature, research design and the methods and measures are included in a forthcoming peer-reviewed manuscript. Please contact 2020-2021 UC Fellow, Cassie L. Barnhardt, at cassie-barnhardt@uiowa.edu for additional details or for technical notes. What proceeds below are a snapshot of insights that emerged from the empirical analyses. These particular insights were selected with campus administrative leaders and campus activists and organizers in mind, and the information is intended to

[5] See Barnhardt, C. L., Dietrich, B.J., Yao, J., Mohebali, M., Young, R. L., & Waad, A. *Campus Mobilization Dynamics: Models of Methods, Counts, Coverage, and Tactics*. Paper presented at the 2018 Association for the Study of Higher Education, Tampa, FL. (November 2018)
[6] The source for data retrieval was Nexis Uni, which can be accessed through academic libraries, or found at https://www.lexisnexis.com/en-us/professional/academic/nexis-uni.page
[7] Information about the Integrated Postsecondary Educational Data System (IPEDS) is available at https://nces.ed.gov/ipeds/

illustrate the ways different forces function to influence how the news media report on campus-based mobilization events.

**Insights and Applications**

*Newspapers increase their coverage for rare campus mobilization events - events that involve violent tactics.*

Violent tactics, or tactics that involve riotous behavior, looting, property damage, physical harm, or blockades, are seldom and rarely used in campus mobilization. They occurred in less than 1% of all campus mobilization events reported in the five-year period studied (Table 1). Conventional tactics are most common, such as protests, rallies, and petitioning.

**Table 1.** Campus Mobilization Tactics Identified in U.S. Newspapers 2012-2017

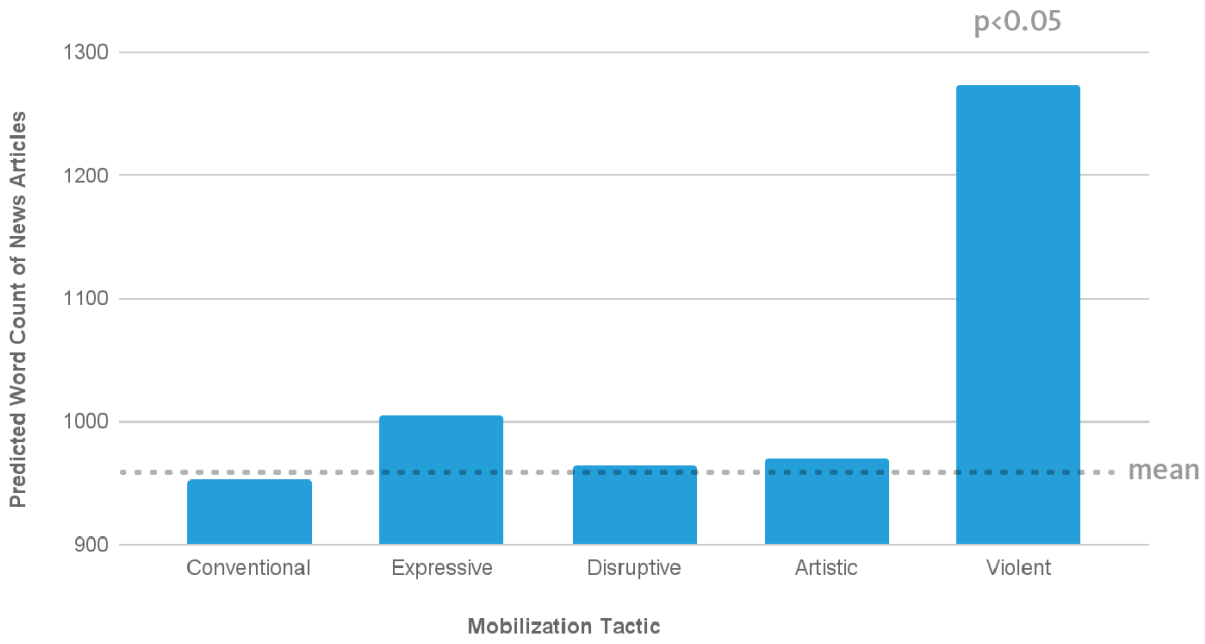
| Type of Tactic | Examples | Accuracy Statistic* | Frequency in Sample |
|---|---|---|---|
| **Conventional** | protest, demonstration, rally/march, lobbying, carrying signs, leafleting, petitioning | 0.90 | 88% |
| **Expressive** | Chanting, sponsoring a speaker, holding a vigil, letter writing | 0.78 | 15% |
| **Disruptive** | Sit-in, hunger strike, disrupting meeting/event, walk-out, occupying space | 0.77 | 32% |
| **Artistic** | Symbolic activities (carrying empty holsters, fashion shows), political theatre, wearing costumes, art installation | 0.95 | 1% |
| **Violent** | Riot, looting, damaging property, physical harm, blockade | 0.99 | <1% |

*Note: *range is 0 to 1, value closer to 1 indicates greater accuracy*

Typically, new articles that report on campus mobilization events devote 959 words to doing so. By comparison however, our research found that even after accounting for all other factors, campus mobilization events that involve violent tactics have distinctive patterns of reporting. Newspapers tend to devote far more attention to events where violence occurs. Specifically, the average length of a write-up of an event involving a violent tactic included 316 more words, or about one-third more news space compared to the reporting on mobilization events involving other types of tactics. Figure 1 provides a comparison of the predicted number of words devoted to an article based on different types of tactics; violent tactics were the only type of tactics that

received a larger share of the news coverage (as measured by word count) after controlling for the relative frequency of violent tactics over the five years we examined.

**Figure 1.** Predicted Word Count of News Articles by Mobilization Tactic



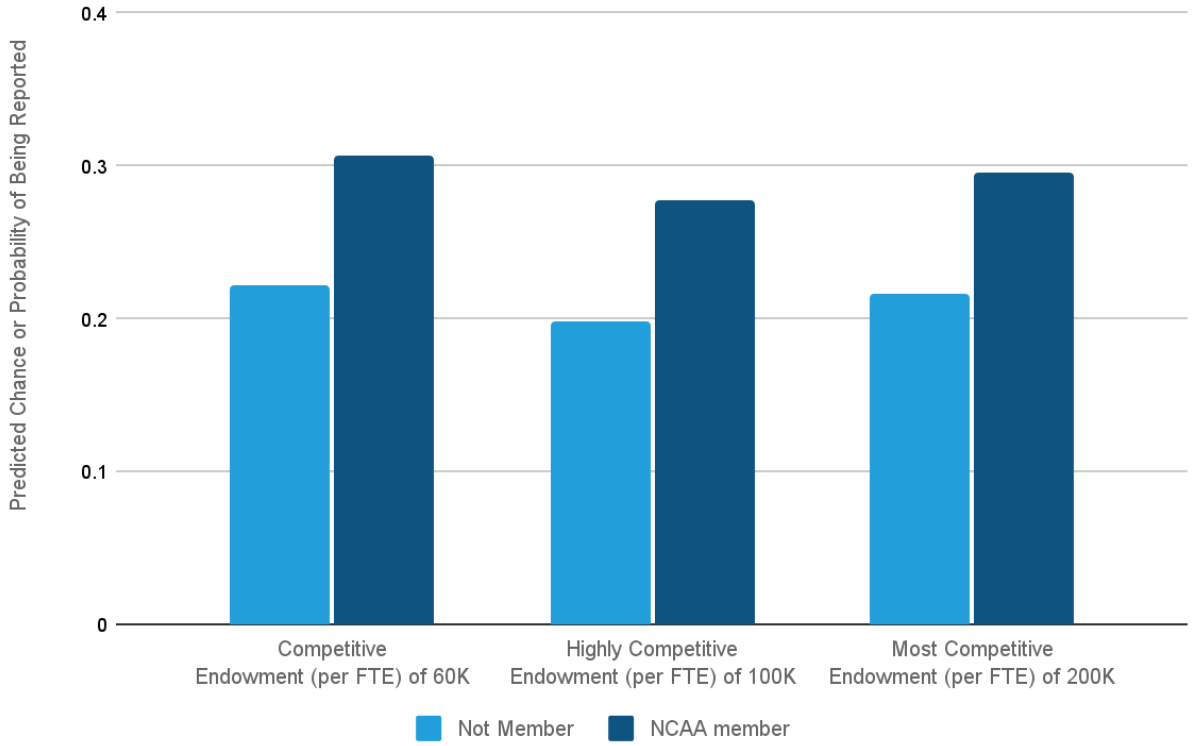

*Compared to other news media, local papers dedicate less space to reporting campus activism. However, when they do, local papers are more inclined to report mobilization events that involved violent tactics, and campuses with NCAA sports.*

Campus newspapers are expected to cover anything that happens on a campus from a new ice cream station in the dining hall, a change in student government, a controversy over the administration of an exam, or a march on the campus quad (among other things). For this reason, we evaluated news coverage in other types of newspapers to the ways campus newspapers report on campus mobilization – with the understanding that campus news coverage is the normative approach to reporting on campus mobilization events and their corresponding tactics.

Among an array of insights, we observed that local newspapers' reporting offers readers articles that are shorter in length compared to campus newspapers. However, compared to other types of tactics, local papers have a bit of reporting bias for violent tactics. That is, there is a much greater (and statistically significant chance) of local papers covering events about campus mobilization when violence occurs, despite violence being the least common type of mobilization tactic. Other patterns also suggest that the local community may be receiving a bit of a slanted view on the nature of campus mobilization given the local reporting patterns. For

example, local papers are more inclined to report on campus mobilization events when a campus is a member of the NCAA athletic conference. Local coverage is also related to the size of the campus endowment and its academic selectivity. Figure 2 offers an estimate of the chances, or differences in the probabilities, that a campus mobilization event will get covered in the local press after accounting for all other campus characteristics, but varying by different circumstances for: the endowment size estimated at either $60K, $100K, or $200K per FTE (full-time equivalent enrollment), the campus being considered either Competitive, Highly Competitive, or Most Competitive (per Barron's Profiles of American Colleges) in terms of academic status, and whether the campus is a NCAA member or non-member.[8] The bars in Figure 2 reveal that while larger endowments slightly increase the chances of local coverage and increasing levels of academic competitiveness slightly reduce the chance, by contrast NCAA-membership (dark bar) factors prominently in increasing the chances of local coverage compared to chance of non-NCAA campuses (light bar) being covered locally.

**Figure 2.** Local News Coverage




*Educational trade newspapers continue to provide in-depth coverage of campus mobilization. National papers favor reporting on bigger and richer campuses, and to some extent private campuses over public ones.*

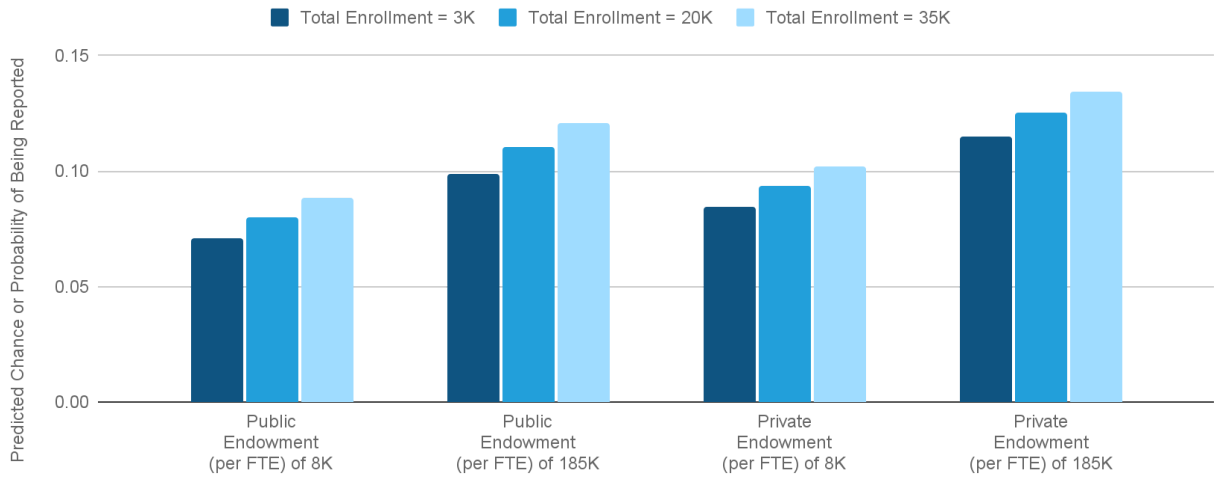
[8] See *Barron's Profiles of American Colleges* (2019), 35th Edition

## Campus Mobilization at Scale

Compared to campus papers, national newspaper articles about campus mobilization are slightly longer, but educational trade newspapers (such as *The Chronicle of Higher Education* or *Inside Higher Ed*) provide the lengthiest coverage of campus mobilization events. As such, it seems the educational trade publications continue to operate as *the* source for in-depth coverage of campus mobilization events, thus suggesting that it is reasonable for campus leaders to look to these sources to understand what is happening across the field.[9] National papers convey trends to a broad readership rather than education insiders, so when it comes to covering campus mobilization is it important to understand which types of campuses tend to get highlighted in that national news. We found that national papers are more inclined to cover mobilization events that occur on private campuses (more so than public ones), and they tend to report on campuses that are bigger (enroll more students), and richer (have larger endowments). Figure 3 estimates the differences in the chance (or the probability - ranging between 0 or likely no chance, and 1, or closer to a 100% chance), of national newspapers reporting on campus mobilization, based on variations in campus type, enrollment, and endowment.

The patterns we observed in national news reporting are potentially problematic on account of the differences for public and private universities when it comes to adhering to laws and regulations associated with free speech. If the national news focuses on activism with a slant towards private universities or it tends to use them as exemplars for what's going on as it relates to campus activism, the national audience may construe what happens at privates as what tends to be the norm. Private campuses have far more latitude to suppress speech and expression by virtue that they are not obligated to adhere to federal legal standards to which public universities must comply. If the public considers the question of whether universities are handling free speech and expression properly through the lens of national news, national articles appear to prefer private university activism over what is happening at public universities.

**Figure 3.** National News Coverage




[9] Note *The Chronicle of Higher Education* began publishing in 1966 in part to offer campuses information about campus unrest and activism. See Carnegie Corporation of New York. (2005). Chronicling Higher Education for Nearly Forty Years. *Carnegie Results, Winter 2006*, 1-12.

## State Policy Proposals 2015-2020: Legislating Freedom of Expression in Higher Education Contexts

Freedom of speech and expression are protected by the U.S. Constitution. Even with these overarching federal protections, U.S. states have created laws that govern the particular terms of expression within states. Historically, after the civil rights era and Vietnam War protests, states adopted various types of statutes related to free speech and expression as part of a wave of various reactions to the activism that occurred on college campuses during that period.[10] Today, campus-based activism, as well as activism more broadly, is at heightened levels. This analysis seeks to examine patterns in state-level policy making associated with regulating freedom of expression, speech, and dissent at this moment.

Below is a summary of the proposed and enacted state-level statutes in the U.S. which included a provision (of some kind) that would have the impact of regulating an aspect of the freedom of speech, expression, or assembly on college campuses between 2015-2020. Initial findings are also available for 2021, but these are partial on account of the timing of this publication being generated in the first half of 2021.

### Approach

We used content analysis to analyze state-level legislation for all 50 U.S. States. Relevant legislation was gathered from state legislative websites. Where possible we used filters to sort legislation by year and topic. We used search terms such as higher education, postsecondary, college, university, faculty, protest, expression, intellectual, riot, and free speech to obtain relevant legislation. Our searches yielded proposed and enacted legislation, related to higher education, education, and government or public property – which depending on how the legislation was written could have implications for colleges and universities in a state. All legislation was reviewed to determine if it was appropriate for inclusion as meeting the definition of addressing some aspect of free expression, speech, or dissent, and was relevant to the higher education institutions in some manner. Each piece of legislation was coded based on its timing, its outcome, and its content. Below is a summary of the patterns we observed in the state statutes that were proposed, and in those that became law (enacted).

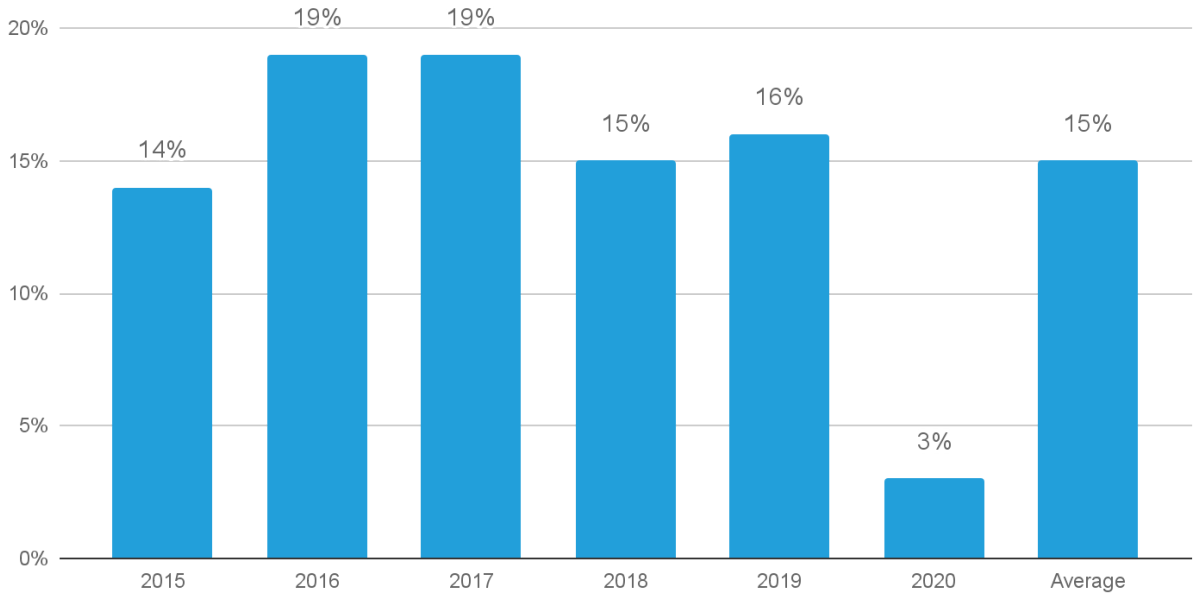
### Insights: Policy Proposals and Laws Enacted

#### Statutes Enacted

Between 2015-2020, there were a total of 275 legislative proposals related to freedom of expression and dissent on college campuses. Of these, 15% of all proposed state-level statutes (or 41) became law. The annual rate of laws passed ranged between 15-19% for all years except 2020, when just 3% of proposed statutes related to expression became law (Figure 4). In the first five months of 2021, there were 91 state-level legislative proposals that included some sort of free expression provision. As of June 1st 2021, 9 have passed (Figure 6).

[10] See: Gibson, J.L. (1989). The policy consequences of political intolerance: Political repression during the Vietnam War era. *The Journal of Politics, 51*(1), pp. 13-35.

**Figure 4.** Percent of Proposed Expression State Laws Passed Annually




Between 2015-2020 Arizona, Arkansas, Oregon, and Virginia each enacted three new laws. However, more typically states adopted one law, and seven adopted two laws related to free speech and expression, see Figure 5. Figure 5 demonstrates that the states that enacted laws related to free expression between 2015 and 2020 tended to have state legislatures controlled by Republicans.[11] Based on the initial data for 2021, this pattern continues for the states that passed free expression legislation between the months of January and May, with Republican controlled legislatures passing free speech and expression laws.

**Figure 5.** States That Passed Laws Related to Free Expression by Year

| 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021* |
|---|---|---|---|---|---|---|
| Oregon | Arizona (2) | Arkansas | Arizona | Alabama | Oregon | Florida |
| Missouri | Maryland | California | California | Arkansas (2) | Virginia | Montana (2) |
| New Hampshire | | Colorado | Florida | Kentucky | | North Dakota |
| Texas | | North Carolina (2) | Georgia | North Dakota | | Oklahoma |
| | | Nevada | Idaho | Oklahoma (2) | | Utah (2) |
| | | Rhode Island (2) | Louisiana (2) | Oregon | | Washington |
| | | Tennessee | Missouri | South Dakota | | West Virginia |
| | | Utah | South Carolina | Texas | | |
| | | Virginia | Virginia | | | |
| | | Wyoming | | | | |

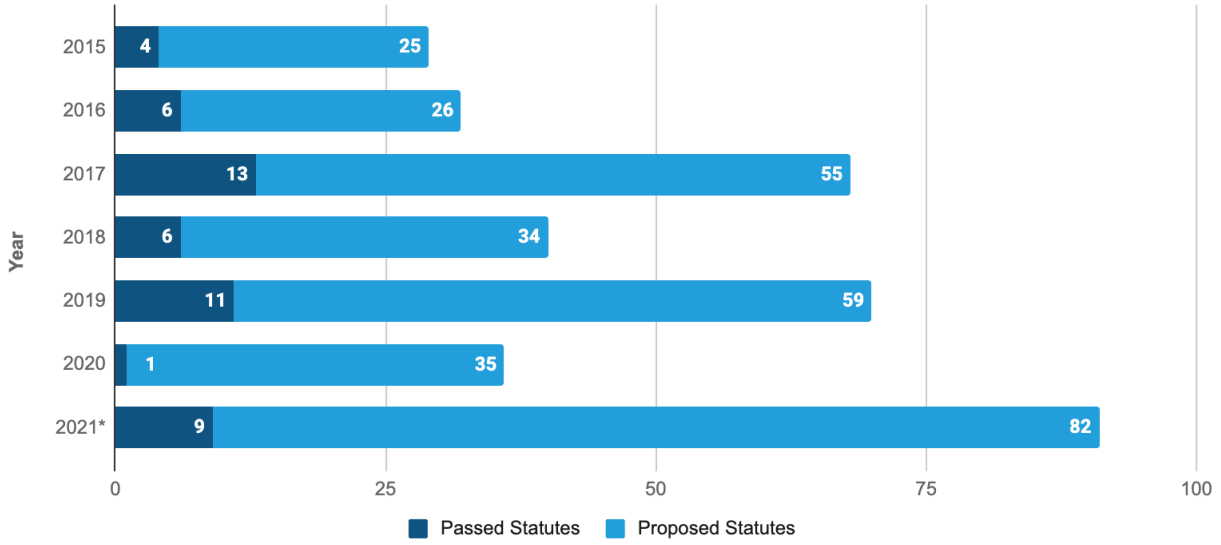
**Note: 2021 includes data for only the months of January through May. States with more than one law passed are noted with (#).*
***Red**=Republican Controlled State Legislature; **Blue**=Democratic Controlled State Legislature; **Yellow**=Split Controlled State Legislature*

[11] The legislative control for each legislative session was gathered from: National Conference of State Legislatures., (n.d.) State Partisan Composition. Legislative Partisan Composition Tables for 2015 – 2021. https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx

## Proposed Statutes

The number of state-based legislative proposals relevant to campus-based freedom of expression and dissent ranged between 29 to 70, with 29 proposals in the 2015 session, 32 in 2016's, 68 in 2017's, 40 in 2018's, 70 in 2019's, and 36 in 2020's session. On average, the annual number of proposed free expression statutes for all states was 45.8. However, in each legislative session following an election year the number of free expression proposals was larger comparatively. Figure 6 visualizes this increase. Following the 2016 elections, with the newly elected officials in office, the 2017 session produced an increase of 36 proposals (totaling 68) beyond the prior year's total. Similarly, after the 2018 elections, the 2019 state sessions included an increase of 30 proposals (totaling 70) above the immediate prior year's session. This pattern appears to be repeating again. The 2021 data collected through just May of 2021 indicates that 91 proposals related to free expression have been introduced into state legislative bodies, an increase of 55 from 2020.

**Figure 6.** Higher Education, Free Expression Proposed and Enacted Laws by Year from 2015-2021




While almost every state proposed at least one piece of legislation related to free expression between 2015 and 2020, except for New Mexico and Delaware (Delaware proposed such legislation in 2021), the annual number of proposals varied by state. Also, not surprisingly, the annual and overall rate of proposals that subsequently became law varied by state.

In the years we analyzed, four states successfully passed into law *all* the state-level free expression statutes that were proposed. Arizona passed three laws (two in 2016 and one in 2018), and Colorado, Kentucky, North Dakota, and Nevada each proposed and passed one law. Alternately, the more typical outcome was that a proposal would never become law, which was the case for 22 states. For all other states, some proposals would become law.

**Insights: Legislative Content**

We evaluated the 2015-2020 speech and expression legislative proposals by noting whether the content of the legislation was written to address only public higher education institutions exclusively in the state (86% did) or whether it was written to address all higher education institutions in the state (26%). We also evaluated policy content to determine which stakeholders were identified in the legislative proposals. Stakeholder groups identified as the targets of the proposed legislation included: higher education governing boards (37%), students (69%), faculty (61%), administrators (55%), or other employees (40%). These categories were not mutually exclusive groups, legislation could reference more than one stakeholder group.

Across all the proposed legislation 69% included references to students. More intriguing however, is that a statistically significant larger share of enacted laws, 90%, referenced students. Similarly, 55% of all proposed legislation focused on campus administrators, but 71% of bills focusing on campus administrators ultimately became law – a statistically significant larger percentage. While 61% of all policy proposals focused on faculty, and a slightly larger share (73%) of the laws that referenced faculty passed, this percentage was not statistically larger.

The substance of the policy proposals between 2015-2020 addressed four primary domains: (1) guidelines to reinforce *compliance* with free speech, expression, and dissent policies, and specifying mechanisms of *enforcement* for promoting adherence to such policies, (2) provisions specifying something related to the source or substance of the *content* of the expression, (3) the campus place or *space* for free expression and dissent, and (4) the *manner* or process of being expressive.

### Compliance and enforcement trends

Of the four general policy domains, compliance and enforcement policy proposals were the most robust arenas for legislative activity, accounting for more than two-fifths of all proposals. Compliance policy proposals sought to create new rules for campus stakeholders (boards, universities, administrators, faculty, students). Related to compliance were legislative proposals that specified accountability mechanisms or consequences for noncompliance, designed to be means of enforcement. Compliance aspects of policy proposals focused on requiring either the university or higher education system to make a free speech policy, adopting student conduct/disciplinary procedures for free speech and expression cases, or requiring administrators to assure campus speakers are not disrupted by others. Other compliance trends involved implementing mandatory free speech policy training at student orientation or for administrators, making a free speech bureau or office for implementing free speech events and speakers. Enforcement involved accountability mechanisms such as requiring universities to issue periodic reports on free speech and expression events noting compliance with rules or instances of noncompliance. Enforcement also involved proposals such as allowing individuals to sue universities for noncompliance with free speech and expression policies, or permitting individuals with grievances to be eligible for financial damages, and creating civil or financial penalties for individual disruptors that required a campus safety (or campus police) response. Proposals also sought to specify particular penalties for individuals when found to be guilty of engaging in certain behaviors while protesting like wearing a mask or assembling/protesting near critical infrastructure. At times enforcement proposals got into the detailed

management of university processes and services, such as specifying student conduct responses. For example, in New Jersey's Bill A5731, it states:

> *The policy will also permit a minimum punishment of one academic term in the event that an individual has twice been determined to have materially and substantially disrupted the expressive rights of other. If a punishment less than a one-term suspension is issued upon a second offense, the institution will submit an explanation in writing to the institution's Committee on Free Expression within two weeks of the determination to impose the lesser punishment.* (p.7)[12]

Also, enforcement proposals sought to withhold funding for higher education institutions found to be out of compliance with free speech and expression policies.

Of all the compliance and enforcement trends between 2015 and 2020, there were some proposals that stood out for their popularity. For example, twenty-seven states proposed 65 bills that would require higher education institutions to make a free speech policy, 14, or one-third of them became law. Twenty-four states involving 41 proposals sought to require campuses to teach students about the free speech policy during new student orientation, 11 of these proposals became laws. Similarly, 46 proposals sought to require universities or their governing boards to prepare an annual report on free speech as a means for assessing compliance, 12 of these became law.

Another dominant pattern during the five-year period examined was that 22 states proposed 56 bills that included a provision seeking to prohibit disinviting speakers for one reason or another. These 'no disinvitation' legislative proposals were most popular in 2018 and 2019 each accounting for 30% (or 60% combined) of the total bills of this type introduced. Aligned with the 'no disinvitation' proposals, were 'no disruptors' proposals, or proposals that made substantial interference or disruptions of a campus speaker's expression disallowed. In total, 30 states advanced 70 'no disruption' proposals, and 19 of them became law. When proposals that included a 'no disruption' provision were introduced, the passage rate was 46% - a significantly higher percentage than the overall passage rate of 15% (Figure 4). Further, extending the enforcement of the 'no disruptors' concept, 43 proposals included a provision that campus administrators were specifically required to enforce 'no disruptors' policies. Policies that included a campus administrators' enforcement of 'no disruptors' had a passage rate of 26%, again significantly higher than the general passage rate of 15%. Uniquely across all the themes we examined in the free speech and expression legislation, the 'no disruptors' administrative enforcement proposal increased steadily in popularity each year over the five years we considered, included in just 4% of bills annually in 2015 to 25% including this provision in 2020.

## Space

Space policy proposals were largely focused on reconceptualizing the allowable regulations associated with the concept of a public forum on campuses in the state, and codifying digital spaces as being subjected to regulation (such as declaring threatening speech and expression as not protected in digital campus spaces). One popular initiative was to eliminate designated free speech zones on campuses, using language like "the

[12] See https://www.njleg.state.nj.us/2018/Bills/A9999/5731_I1.PDF

institution shall not create free speech zones or other designated outdoor areas of campus in order to limit or prohibit expressive activities" (HB498, Alabama).[13] This legislation was typically also connected to reclassifying outdoor spaces such that is was explicitly permissible to spontaneously assemble, typically noting that it is allowable for "members of the university community to assemble or distribute written material without a permit or other permission from the institution" (SB No. 18, Texas, p.3).[14]

Specifically, 79 of the proposed bills sought to further define what counts as a traditional public forums on university campuses. More specifically, with respect to 'no free speech zones' proposals, 38 of the proposed bills sought to eliminate 'free speech zones' on campuses in 22 states between 2015-2020, 13 of these passed. Nearly one-third (32%) of all of the 41 free expression and speech laws that passed in the five years we examined eliminated designated free speech zones on campuses. We also observed that a significantly higher percentage of bills sponsored by Republicans included these policy provisions to modify the public forum and/or to create 'no free speech zones'.

Of the 22 states with 'no free speech zones' proposals, the state of Iowa was the most active in advancing this idea, with this provision included as part of 7 different pieces of proposed legislation during the years we examined. After Iowa, there were four states – Arizona, Illinois, Oklahoma, and Texas – that included a 'no free speech zone' provision in three legislative proposals. The remaining 17 states with 'no free speech zone' proposals attached them to only one or two bills over the years.

### Content

Another trend in the legislative proposals involved the substance or content of speech or forms of expression. Interestingly, a common legislative provision under this theme was for proposals to essentially restate the expectations associated with existing federal law. That is, 52 pieces of proposed legislation had a provision requiring higher education institutions to exercise neutrality when administering student groups, when instituting time\place\manner restrictions, or hosting speakers on campus. Other content focused proposals addressed historical flags or symbols (statues) either restricting universities' abilities to move or represent them differently, or explicitly allowing universities to make changes to these expressive artifacts.

Still other content themed proposals instructed universities to deviate from the all comers standard that public universities have used when administering student organizations. All-comers approaches to administering student organizations is a standard that has allowed public universities to withhold services, recognition, or funding to student organizations that use their mission to deny membership, or to limit participation for particular types of students based on their personal or individual characteristics (beliefs, identity, etc.).[15] Policy proposals sought to modify that all-comers standard by indicating that universities could not withhold student organization services, financial support, or other benefits from religious student organizations, belief-based student organizations, or identity-based student organizations (organizations with missions connected to race, gender, ethnicity, or LGBTQ+ identities). Other content proposals sought to assure the rights of particular

[13] See http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2019RS/PrintFiles/HB498-enr.pdf
[14] See https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=SB18
[15] See Sun, J.C., & McClellan, G.S. (2019). *Student Clashes on Campus: A Leadership Guide to Free Speech*. New York: Routledge.

groups such as guaranteeing the rights of student governments to express themselves by opposing, approving, or adopting measures independently from the authority of the university.

Of all the content-based themes, one provision stood out on account of it being directed towards institutional speech. Starting in 2017, we observed a policy innovation that had not been observed in earlier years' legislative proposals. Specifically, the proposal required higher education institutions to refrain from taking a stance or position on issues of the day. In total, 22 proposals in 12 states were advanced between 2017 and 2020, and 4 became law in Alabama, Arizona, Georgia, and North Carolina.

Alabama HB 498 and Arizona HB 2563 each included provisions noting that the institution should "remain neutral, as an institution, on the public policy controversies of the day" with a noted exception of when the issue was connected to the day-to-day functioning of the university.[16] Both Georgia's (SB 339) and North Carolina's (HB527) statutes included similar language noting that state institutions of higher learning maintain "a posture of administrative and institutional neutrality with regard to political and social issues".[17] A caveat was connected with each of these statutes and policy proposals, noting that the policy "shall prohibit the institution from taking action on current public policy controversies in such a way as to require members of the campus community to publicly express a given view of a public policy controversy" (Iowa, HF 533, p.3).[18] Effectively this caveat is quite vague in terms of application: What sort of institutional statements or actions could be construed as creating a requirement for campus community members to express a given view? As of 2021, two more of these provisions have been proposed in legislation in Iowa and Kansas.

### Manner

Legislative proposals addressing the manner of speech, expression, and dissent were a trend, but by comparison such initiatives were pursued less often than the aforementioned other types of legislation. An example of a manner-based proposal was referencing a tactic of expression, such as a strike. Regarding strikes, these mentions were often made with respect to public employees' expression, which had implications for workers at states' public institutions of higher education. Other manner-themed policy proposals focused on things such as riots, where policies were proposed to limit the use of tear gas by law enforcement to only riotous forms of assembly, and to restrict the use of tear gas from other forms of assembly. Further, other manner-themed proposals made references to either lawful possession or placed restrictions on the possession of firearms in places of assembly on state college and university campuses.

### Conclusion

With the state-level legislation of the past five years focused on changing the landscape for free expression, speech, dissent, and assembly, the universality of the First Amendment in the U.S. Constitution seems to be becoming differentiated according to geography and by sector - higher education in this instance. Certainly, higher education institutions are the subject of state lawmakers' interests when it comes to free expression and dissent. It is no wonder that college and universities compel such political attention, these institutions are rich

[16] See http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2019RS/PrintFiles/HB498-enr.pdf and https://apps.azleg.gov/BillStatus/GetDocumentPdf/462378

[17] See https://www.legis.ga.gov/legislation/52111 and https://www.ncleg.gov/BillLookup/2017/HB527

[18] See https://www.legis.iowa.gov/legislation/BillBook?ga=89&ba=HF533

in ideas and are spilling over with critiques of society and its institutions – all of which can be construed as contentious or even threatening to politicians' agendas or world views. As students seek to ready themselves with competencies and perspectives for making a difference both personally and professionally, the college experience invites them to tinker with ideas, use their agency to express their hopes, concerns, and desires, and to find others with whom they can collaborate to amplify their impact for building the sort of world in which they'd like to live.[19]

In reviewing these free speech, expression, and dissent policy data from 2015-2020, we see the onset of state lawmakers advancing proposals that are extremely specific about the operations of administrative and student services at universities. By taking such actions, politicians may be starting to fundamentally change the relationship between state government and the social institution of higher education. Traditionally, politicians have provided the basic framework conditions for the functioning of higher education in a state – its structure (number and type of institutions), its lines of authority (governing boards or state coordinating office), and appropriations (public funding). Then, it is the institutional overseers, governing boards and/or campus senior executives, that use their subject matter expertise to enact policies and develop organizational practices that advance the mission and purpose of the college or university.[20] With greater legislative micromanagement into the day-to-day implementation of things such as student organization administration, the content of student orientation or staff training, and student conduct procedures and penalties, the foundation is being built to normalize the politicization of other ordinary campus functions beyond the free speech and expression domain.

Campus speech and expression will always have elements of controversy. With the observed changes in state policies over the past five years, it seems that controversies will be harder to anticipate and plan for, thereby potentially making free speech and expression more controversial, potentially more harmful, and possibly less effective in transmitting ideas, which is supposed to be the goal of free speech and expression. (Spontaneous speech may be less effective in communicating a message because the element of surprise is likely to overshadow the substance of the issues.) The expansion of 'no free speech zones', and the opening of outdoor public spaces of colleges and universities as traditional public forums will inevitably create procedural challenges for campus well-being and possibly safety.

When campus professionals can properly anticipate events or episodes of free speech, expression, and dissent they have a greater capacity to implement a proportional response to what will transpire. For example, knowing that disturbing images will be disseminated on leaflets by members of a group outside all academic buildings on a given day, the campus community has a greater capacity to mitigate feelings of fear, anguish, exclusion, anger, or repulsion by onlookers, or to protect the participants who are distributing the leaflets from experiencing an aggressive reaction from others. In states where the construct of a free speech zone has vanished, and all campus outdoor spaces are subject to spontaneous displays of mobilization or activism, it is incumbent on campuses to rethink their response strategies. Impromptu protests can not be addressed with a one-size fits all approach from campus safety or student affairs units. Student leaders and faculty must be a

[19] See Barnhardt, C. L. (2019). The Promise and Struggles of Campus-Based Student Activism. In P.A. Sasso & J. L. DeVitis (Eds.), *Student Activism in the Academy: Its Struggles and Promise* (pp. 3-20), Myers Publishing: Gorham, ME.
[20] See Birnbaum, R. (1988). *How Colleges Work: The Cybernetics of Academic Organization and Leadership*. San Francisco: Jossey- Bass.

part of the response plan, as they are often the first to arrive and in the best position to model to community members what an appropriate, healthy, or productive response should look like. Communication, dialogue, and relational skills will be tools for campuses to be responsive to spontaneous controversies that emerge as a function of speech, expression, and dissent.