



# Legal Issues That Keep Presidents Up at Night



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# *Legal Issues That Keep Presidents Up at Night – 2025 10<sup>th</sup> Edition*

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# *Overview*

- ***Significant Discussion Topics***
  - *Impact of New Administration*
  - *Loper Bright Implications*
  - *Financial Stresses*
- ***“Lightning Round” Topics***
  - *The “Wild” World of Sports*
  - *Proposed FLSA Overtime Rule Changes*
  - *Unionization Efforts*
  - *Gainful Employment/FVT*
  - *Really Hot Topics*
- ***Higher Ed’s Troubling Future Legal Environment***
- ***Some Final Suggestions***

# *Impact of New Administration*

- *Overhaul of Triad*
  - *Elimination of USDOE*
  - *Restructuring of accreditation*
  - *Enhanced role for state regulators*
- *Restructuring of Financial Aid*
- *Title IX*
- *OCR Reform*

# *Impact of New Administration*

- *Enhanced CTE support*
- *Immigration enforcement*
- *Endowment tax*
- *Protections for free speech and faith-based institutions*
- *Private claims under FERPA*
- *VP Vance*

# *Overhaul of Triad*

- Elimination of USDOE
  - Project 2025 – “Federal education policy should be limited and, ultimately, the federal Department of Education should be eliminated.”
  - Post-election statements
  - Likely impact for IHEs is a substantial dispersion of regulatory authority and some significant limits on OCR activity

# *Overhaul of Triad*

- Accreditation reform
  - Preclude use of TIV role to mandate DE&I initiatives
  - Protect state sovereignty by limiting accreditors' influence over public institutions' governance
  - Protect faith-based institutions (FBIs) by limiting accreditors' ability to:
    - Establish policies at odds with FBIs' religious beliefs
    - Intrude on FBIs' governance
  - Possibly eliminate accreditors from Triad



# *Overhaul of Triad*

- Accreditation reform (cont'd)
  - New accreditors are encouraged
  - Executive order directing DOJ to pursue antitrust claims against accreditors, especially the ABA

# *Overhaul of Triad*

- Enhanced role for state regulators
  - Enable state regulators to recognize accreditors to serve as TIV gatekeepers
  - Authorize state agencies to act as accreditors for institutions throughout the U.S.

# ***Restructuring of Financial Aid***

- Consider privatizing all lending programs
- Terminate the Public Service Loan Forgiveness program
- Modify HEA to eliminate or reduce USDOE's ability to forgive TIV loans
- Eliminate BDR process in favor of allowing only traditional fraud claims in connection with student's enrollment or educational program

## ***Title IX Regulations Update***

- Injunctions in pending litigation resulted in patchwork enforcement
- USDOE continues efforts to enforce 2024 regulations in non-injunction states
- Expect immediate efforts to change USDOE enforcement efforts after January 20
- Special focus on defining “sex” as meaning only biological sex recognized at birth

# ***OCR Reform***

- Transfer to Department of Justice
- Permit enforcement only through litigation

# *Impact of New Administration*

- *Enhanced CTE support*
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# *Loper Bright Implications*

- *Profoundly consequential SCOTUS decision*
- *Administrative agencies no longer entitled to Chevron deference*
- *Potential impact for IHEs, especially when coupled with WV v. EPA*
  - *Title IX*
  - *Interpretation of financial aid regulations*
  - *Interpretation of Title VI issues*

# *Financial Stresses*

- *Consider fiduciary duty obligations of officers and trustees*
- *Endowment management under UPMIFA*
- *Downsizing/restructuring/eliminating programs*
  - *Faculty handbook issues*
  - *Early exit plans*
- *Dealing with the Triad*
- *Timing issues are critical*



# ***The Lightning Round!***

# *The Wild World of Sports*

- Recent NCAA changes
  - NIL Rules
  - Transfer Portal
- Results
  - Financial arms race
  - Virtually no rules on federal level, but substantial state activity
- Future – No one knows

# ***Proposed FLSA Overtime Rule Changes***

- Injunction of the OT Final Rule issued November 15
- Rolls back the July increase and planned January increase
- Back to minimum salary threshold of \$35,568 per year
- Next steps under Trump?

# *Unionization Efforts*

- Trump impact
- More employer friendly NLRB Decisions, but . . .
- Campus unionization efforts likely to continue
- Proactive efforts to address organizers' efforts

# ***Gainful Employment/FVT Rules***

- Extension for required FVT/GE reporting and review of the Completers Lists by January 15, 2025
- Serious consequences for non-compliance

# ***Really Hot Topics***



# ***The Troubling Future Legal Environment***

- US News—Harris December 2023 poll of 2,000 Americans
  - 63% believe that IHEs are not handling antisemitism on campus effectively
  - 60% believe that colleges and university presidents should be dismissed from their jobs
  - 60% believe they are prioritizing donors, press and other external factors over students

# *The Troubling Future Legal Environment*

- US News–Harris (cont'd)
  - 80% of Americans say that IHEs are more worried about their endowment than creating leaders of tomorrow
  - Nearly 80% of them say that if colleges and universities don't become more accessible to all people and emphasize diversity, then the leaders of tomorrow will all be the same.



# ***The Troubling Future Legal Environment***

- Gallup–Lumina June 2024 poll of 2,000 Americans
  - Declining confidence in IHEs
    - 2015 – 57% had great deal/quite a lot of confidence
    - 2024 – 36% had great deal/quite a lot of confidence
  - Republican decline even greater
    - 2015 - 56% with great deal/quite a lot of confidence
    - 2024 - 20% confident and 50% have little or no confidence

# ***The Troubling Future Legal Environment***

- Conclusions
  - The substantial majority of Americans believe IHEs and their leaders are AWFUL
  - That perspective will cause legislators, regulators, judges, and jurors to create a difficult legal environment in the coming years
  - Higher ed has many fences to mend with our fellow citizens

*So now what?*

# *Presidential To Do Lists – Final Suggestions*

- Make sure your institution is a good neighbor
- Attend NAICU's Annual Meeting and visit your congressional delegation
- Make friends with Trump supporters
- Encourage civic engagement by students, faculty, and staff while recognizing your limited (or nonexistent) ability to control that engagement
- Stay tuned

*Best advice?*

**"Fasten your seatbelts; it's  
going to be a bumpy  
night."**

*Bette Davis in  
All About Eve (1950)*

*Questions?*

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