

# Higher Education: 2016 Elections Wrap-Up and 2017 Federal Policy Preview

By AASCU Government Relations

**H**igher education issues took a more prominent role in the 2016 elections than any time in recent memory, college affordability and student debt levels catapulted higher education to the top of domestic policy concerns. Both major party nominees for president, Republican Donald Trump and Democrat Hillary Clinton, included higher education proposals in their policy agendas, with Clinton offering the most expansive, ambitious higher education plan than any other major party candidate in decades. At the state level, higher education issues did not capture the same amount of attention, as most states did not have gubernatorial elections and the presidential campaign consumed most of the public's attention. Despite this, the 2016 elections for state-level public offices, combined with key ballot measures in select states, will have long-term implications for higher education.

This paper provides a summary of how federal- and state-level elections outcomes may affect public higher education. It includes a summary of presidential election results, as well as the congressional election results, with an analysis of how the composition of the 115<sup>th</sup> Congress will change the policy priorities of higher education legislation expected to be considered

over the next two years. The paper will then distill state election outcomes and provide a synopsis of ballot measures affecting on higher education.

## Federal Policymaking in 2017

The election of Donald Trump and the GOP retention of majorities in both the U.S. House and Senate have radically altered the political landscape that most observers anticipated before November 8. The Democrats made modest gains in both chambers, but these were not enough to change party control (*see Table 1*) and were well-below most pre-election expectations. With the executive and legislative branches now controlled by the GOP, the legislative bottleneck that has characterized the last six years could finally end, leading to significant shifts in federal higher education policy. The only qualifier regarding the prospects of actual congressional action is that most legislation—except for budget reconciliations and de-regulatory resolutions under the Congressional Review Act—needs 60 votes in the Senate, and thus could only pass with some Democratic support. The Senate caucuses will be split 52-48 so the Republican majority will need at least seven Democratic votes for most legislation to move forward.

## Overall Federal Policy Priorities—Tax Reform and Entitlements

The policy and budgetary complexities of the new administration's stated priorities—tax reform and repeal of the Affordable Care Act (ACA)—are likely to occupy much of the attention and energies of Washington next year. Both of these items are costly on the federal budget and touch the lives of millions of citizens. While the GOP has already unveiled well-developed tax proposals, its policy options for replacing the ACA have not been as specific. If congressional leadership manages to produce a package around taxes and

the ACA, it can move to legislate through a budget reconciliation bill, which would almost certainly contain numerous other changes to “mandatory” (i.e., entitlement) programs, including federal need analysis, student loans and mandatory funding for Pell Grants. Such legislation could move through both chambers with a simple majority, and could become law as early as next summer.

### **Direction of Federal Higher Education Policy is Unclear**

It is difficult to anticipate the Trump administration’s likely course of action on federal higher education programs, partly because his campaign did not propose the types of specific policy positions that his opponent did, and partly because some of the president-elect’s specific comments have broken with traditional Republican positions. Early in the campaign, for example, President-elect Trump seemed to endorse lowering federal student loan rates, almost along the lines advocated by Senator Elizabeth Warren (D-MA). Later in the campaign he proposed an income-based repayment rate of 12.5 percent with a 15-year repayment term, after which any remaining balance would be written off by the federal government. Such a repayment option would prove prohibitively expensive unless well-off borrowers end up paying more than they would under a standard loan repayment plan, with the excess payments cross-subsidizing those borrowers who end up getting loan discharge. In addition, this type of income-based repayment option would only be possible in a direct federal lending environment, which the GOP platform has suggested be terminated in favor of a return to bank-based lending.

### **Obama-Era Regulatory Changes in Jeopardy**

The most likely immediate course of action early next year will be a significant retreat from the Obama administration’s regulatory and administrative legacy. Administrative and enforcement changes will be swift, unilateral and relatively easy. Presidential Memoranda and Executive Orders—directives from

the White House to federal agencies, such as those on student loan servicing and “Principles of Excellence” for veterans’ education—can be reversed with a signature. Meanwhile, enforcement priorities and sub-regulatory guidance (most notably, Delayed Action on Childhood Arrivals [DACA] and guidance promulgated by the Office of Civil Rights in connection with Title IX interpretation and enforcement) could change through the political appointment process at federal agencies. Any draft regulations not published in the *Federal Register* by Inauguration Day could simply be withdrawn, while final regulations scheduled to go into effect after the inauguration can be placed in a state of suspended animation through a postponement of that effective date. Such regulations would technically remain on the books but can be repeatedly delayed and neutralized.

The more immediate regulatory changes expected from the incoming administration will have significant implications for higher education. Regulations that fall into this category include the still-pending state authorization rule, the teacher preparation rule, and the “borrower defense” regulation. Other regulations that are already in effect—such as the 2014 gainful employment rule or the 2010 Program Integrity regulation—could only be rescinded by the new administration through a time-consuming regulatory process identical to the procedures that produced the regulation. In both cases, therefore, the Department of Education would probably have to convene negotiated rulemaking committees in addition to the standard “notice-and-comment” process under the Administrative Procedures Act. Any changes would have to also comply with the “Master Calendar” provisions of the Higher Education Act and be published by November 1 of a given year for the new regulations to take effect by July 1 of the subsequent year. Given that it will probably take at least a year for all of the new appointees of the Trump administration to go through background checks and the confirmation process, major de-regulatory action on rules published before November 1, 2015 would be improbable until 2018.

## New Dynamics on Capitol Hill

An alternative pathway to quick deregulation would be for Congress to exercise its option of rejecting major regulatory changes made after mid-May, 2016 through enacting a resolution of disapproval (with a simple majority) under the Congressional Review Act (CRA). This legislation, dating back to the 104<sup>th</sup> Congress and “Contract for America,” allows Congress to reject regulations made 60 legislative days before the end of an administration’s tenure. The CRA has only been used once—to reverse the Occupational Health and Safety Administration’s regulation on ergonomics issued in the waning days of the Clinton administration. Beyond the important role that the GOP congressional leadership is likely to play in connection with de-regulation, the two higher education authorizing committees are expected to be the primary policy drivers on most higher education issues. Chairman Lamar Alexander (R-TN) of the Senate Health, Education, Labor, and Pensions (HELP) Committee has proven successful in working with his Democratic counterpart, Senator Patty Murray (D-WA), in forging

bipartisan legislation, and will be a primary architect of similar legislation in the next congressional session. The House Education and Workforce Committee will be chaired by Rep. Virginia Foxx (R-NC), a former college president who served as chair of the Subcommittee on Higher Education and Workforce Training for the past six years. While Senator Alexander and Representative Foxx have well-developed policy priorities for reauthorizing the Higher Education Act, the overhaul of the ACA may well end up consuming much of their attention for the foreseeable future and delay action on the HEA to later next year or even to early 2018.

## State Elections

While the 2016 elections for federal office led to modest gains for Democrats and a switch of a party control of the White House, the GOP expanded their control of state legislative chambers and governor’s offices. Republicans will soon have full control of state government in 25 states, while Democrats will have

Table 1. **Congressional and State Balance of Power Pre- and Post-Election, 2016**

	Pre-Election		Post-Election		Gain/Loss	
	Democrat	Republican	Democrat	Republican	Democrat	Republican
<b>U.S. House</b>	188	247	194	241	+6	-6
<b>U.S. Senate</b>	46	54	48	52	+2	-2
<b>Governorships</b>	18	31	16	33	-2	+2
<b>Legislatures—Individual Chambers</b>	31	67	28	69	-3	+2
<b>Legislatures—Both Chambers</b>	12	30	13	32	+1	+2
<b>Total State Control</b> (governor + legislature)	8	22	6	24	-2	+2

**Notes:** Numbers reflect known results as of 12/13/2016.

Data for state legislatures provided by the National Conference of State Legislatures.

Congress: Pre- and post-election, the U.S. Senate included two seats held by Independents, but who caucused with Democrats.

States: Pre-election, 7 state legislative chambers had split party control, whereas 3 did after the election.

Nebraska has a non-partisan, unicameral legislature.

full control in six. Prior to the election, Republicans controlled 23 state governments, as opposed to seven for the Democrats. Overall, there were 5,915 state legislative seats and 12 governorships up for election this past November. Elections for statewide office were held in 44 states, the sole exceptions being **Louisiana, Mississippi, New Jersey** and **Virginia**, which hold legislative elections in odd-numbered years, while **Alabama** and **Maryland** will hold their next legislative elections in 2018.

## Legislative Elections

According to Ballotpedia, Republicans picked up approximately 43 legislative seats and now control approximately 57 percent of the 7,383 state legislative seats nationwide. The percentage of legislative seats held by Republicans is at its highest levels in nearly a century. Republicans made history by picking up an additional three chambers, bringing their total to 66—an all-time high for the party, according to the National Conference of State Legislatures (NCSL). While Republicans netted more legislative seats nationally than Democrats in this election cycle, there were considerable differences based on geography: Democrats made small gains in the Eastern states and larger gains in the Western states; Republicans made strong gains in the Southern and Midwestern states.

For the third time in the state's history, **Kentucky's** House will be controlled by Republicans. The flipped chamber means Republicans control all 30 legislative chambers in the southern states. In 2017, nearly two in three legislative seats in the southern states will be held by Republicans. Republicans also gained majorities in the **Iowa** and **Minnesota** Senates. In **Connecticut**, Republican gains led to a split state Senate.

Democrats were able to flip the **New Mexico** House and both chambers in the **Nevada** legislature. While the Democrats have a majority in the **Washington** Senate, a Democrat caucuses with the Republicans, leading to GOP control of the chamber. In **Alaska**, the

House is controlled by Republicans, however, three Republican legislators organized with their Democratic colleagues and have chosen a Democratic Speaker of the House.

## Gubernatorial Elections

At the gubernatorial level, Republicans solidified their dominance of the nation's governors' offices, ending election night with their highest number of governorships since 1922. Republicans netted control of two governor's offices, therefore now controlling 33 of the 50 offices, while Democrats control 16 (one governor is independent).

There were six incumbent governors eligible to run for re-election and eight incumbent governors who did not seek re-election or were term-limited. **Indiana, Missouri, New Hampshire, North Dakota, Utah** and **Vermont** held gubernatorial elections that were won by Republicans, with **Utah** Gov. Gary Herbert as the only re-elected incumbent. Democratic incumbent governors in **Oregon, Montana** and **Washington** won their races, and Democrats retain control of term-limited governor's offices in **Delaware** and **West Virginia**, and won a Republican-held governor's office in **North Carolina**.

## State Ballot Initiatives

In the November elections, there were 154 ballot measures across 35 states, with 112 passing (72 percent), according to the NCSL. The number of measures for each type of initiative (see Table 3) was consistent with recent elections, however, the total number of ballot measures is down from their peak of 274 in 1998.

State ballot measures included an assortment of issues, including marijuana legalization, minimum wage, tax reform, and bonds. There was a dichotomy in voting patterns in this year's election: voters overwhelmingly elected Republican candidates, yet simultaneously voted for more progressive ballot measures such as legalization of marijuana and minimum wage.

The measures legalizing the possession and use of marijuana were passed in **Arkansas, California, Florida, Maine, Massachusetts, Montana, Nevada** and **North Dakota**—seven of the nine states where the issue was on the ballot. Voters rejected a number of proposed tax increases and there were mixed results on capital punishment.

Ballot measures for higher education were mainly financial, as college prices continue to be at the forefront of voters' minds. The use of bonds as a mechanism for increasing revenues without increasing taxes was popular in measures related to higher education, as well as generally favorable with voters. All in all, to the extent that these measures will either directly or indirectly affect higher education, the academy fared rather well with eight out of 11 ballot measures passing.

*Shown below is a summary.*

## Governance

**Alabama**—Amendment 1—Alabama Auburn University Board of Trustees—Legislative Referendum  
Result: **Yes 73%** No 27%

This amendment adds two members, elected at-large, to the Auburn University Board of Trustees, and also ensures that no more than three board members' terms will expire in the same year. The addition of two board members is intended to enhance the diversity of the board. Currently, nine of the 14 board members' terms are set to expire in 2019 and Amendment 1 extends the terms of some trustees should four or more trustees' terms expire in the same calendar year. Amendment 1 received broad support from both the Alabama House of Representatives and the Alabama State Senate.

**Louisiana**—Amendment 2—Louisiana Authority of College Boards to Establish Tuition and Fees without Legislative Approval—Legislative Referendum  
Result: Yes 43% **No 57%**

Passage of this amendment would have allowed Louisiana's public colleges and universities to set and raise tuition and fees without legislative approval. Louisiana is just one of two states that does not allow colleges to make autonomous decisions regarding tuition and fees at their respective universities. The issue was first introduced as Senate Bill 80, where it received 81 percent of the votes in favor and went on to pass in the House with 93 percent of the votes.

**South Dakota**—Constitutional Amendment R—Governing Technical Education Institutes Amendment—Legislative Referendum  
Result: **Yes 51%** No 49%

This amendment moves the supervision of technical schools from local school boards to an entity that would be independent of the South Dakota Board of Regents. The passage of this amendment allows the South Dakota Legislature to create a separate board or procedure to run the technical schools and prevents the South Dakota Board of Regents from being this governing body.

## Financial

**Alaska**—Measure 2—Alaska State Government Debt for Postsecondary Student Loans Amendment—Legislative Referendum  
Result: Yes 44% **No 56%**

Measure 2 on Alaska's ballot called to add postsecondary student loans to the already approved bond programs that support infrastructure, housing loans for veterans, natural disasters, and military defense. This would have raised revenue for the Alaska State Loan Corporation (ASLC), which offers educational loans to students who do not otherwise receive state funding.

**Arkansas**—Issue 6—Medical Marijuana Amendment—Citizen Initiative  
Result: **Yes 53%** No 47%

The passage of Issue 6 legalized medical marijuana for 17 conditions, created a Medical Marijuana Commission, and allocated the marijuana tax revenues to technical institutes, vocational schools, workforce training and the General Fund. The legalization of medical marijuana was narrowly struck down by voters in 2012. Governor Hutchinson and recently re-elected Senator Boozman both opposed the initiative.

**California**—Proposition 51—Public School Facility Bonds Initiative—Citizen Initiative  
Result: **Yes 54%** No 46%

Proposition 51 initiates a state statute that allows the state to issue \$9 billion in bonds to fund improvements and new construction of school facilities at the K-12 and community college levels. The proceeds from the bonds will be allocated as follows: \$3 billion for the construction of new K-12 school facilities; \$500 million for providing school facilities for charter schools; \$3 billion for the modernization of K-12 school facilities; \$500 million for facilities to provide career and technical education programs; and \$2 billion for community college facilities. There had been significant bipartisan support of Proposition 51 before the election, namely in a campaign “Yes on Proposition 51,” which received over \$12 million in donations.

**California**—Proposition 55—Extension of the Proposition 30 Income Tax Increase—Citizen Initiative  
Result: **Yes 62%** No 38%

The passage of this proposition continues a previously approved tax increase (Proposition 30) on incomes over \$250,000 through 2030 to benefit education and healthcare. Since 2012 when Proposition 30 was approved, six billion dollars has been raised for education and healthcare. The tax expected revenues will be allocated to K-12 education, followed by the California Community Colleges and, in some surplus years, healthcare.

**Oklahoma**—Question 779—One Percent Sales Tax—Citizen Initiative  
Result: **Yes 41%** **No 59%**

The passage of this question would have raised the state sales tax by one percentage point to generate an estimated \$615 million per year to be used for education funding. The funds would have been distributed among school districts (69.5 percent), institutions under the Oklahoma State Regents for Higher Education (19.25 percent), the Oklahoma Department of Career and Technology Education (3.25 percent) and the State Department of Education (8 percent).

**New Mexico**—Bond Question C—New Mexico Higher Education Bond Question—Legislative Referendum  
Result: **Yes 63%** No 37%

Bond Question C issues \$142,356,000 in general obligation bonds to fund construction projects on campuses of higher education, special schools and tribal schools. The University of New Mexico will receive the largest percentage of the funding in order to build a new physics and astronomy building. In 2014, a similar bond question was approved and issued \$141 million in general obligation bonds to fund capital expenditures for higher education, special schools and tribal school improvements and acquisitions.

**Rhode Island**—Question 4—Higher Education to Create 21<sup>st</sup> Century Jobs Bonds—Legislative Referendum  
Result: **Yes 59%** No 40%

The passage of this ballot measure issues \$45,500,000 in general obligation bonds to invest in higher education projects. Of the total bonds, 56 percent of the funds are allocated for renovating an engineering building at the University of Rhode Island and the other 44 percent will go to building a collaborative

## 2016 General Election—State Ballot Initiatives

Type of Initiative	Number of Measures	Proportion Passed by Voters
<b>Citizen Initiative:</b> A measure placed on the ballot through the citizen petition process. It may be either a new law or constitutional amendment.	72	47 (65%)
<b>Popular Referendum:</b> A measure placed on the ballot through the citizen petition process. It is a popular vote on a measure already passed by the legislature.	4	2 (50%)
<b>Legislative Referendum:</b> A measure that has been referred to the ballot by the legislature. Most often, these are referred laws, constitutional amendments or bond questions.	75	62 (83%)
<b>Other:</b> In a few states, measures may make it to the ballot from other sources besides the initiative process and/or the legislature.	3	1 (33%)
<b>Total</b>	154	112 (72%)

Source: National Conference of State Legislatures

innovation program between businesses and the University of Rhode Island. In 2014, a similar bond issue was approved with 63.6 percent of the vote and issued \$125 million in bonds for a new engineering building.

### College Access/Affordability

**Oregon**—Measure 98—State Funding for Dropout Prevention and College Readiness Initiative—Citizen Initiative

Result: **Yes 66%** No 34%

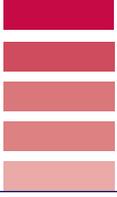
Measure 98 appropriates funding to K-12 public schools to create or expand career and technical education programs, college-level educational opportunities, and dropout-prevention strategies. The \$800 per high school student will not cause an increase in taxes, rather, the revenue from expected economic growth will fund the programs.

#### State Policy Implications

While the policy dynamics for 2017 remains unknown

in many states, sluggish revenue predictions and budget shortfalls await many governors and legislatures throughout the country. With the GOP solidly in control of many state governments, lawmakers will likely rely more on budget cuts than revenue enhancements to balance state budgets. With budget shortfalls and incremental tax revenue growth in several states, governors will likely remain cautious in their approach to crafting budget blueprints next year. State resources will likely continue to be directed at programs and institutions that prepare students for specific, available jobs in the state workforce. Performance-based higher education funding will likely expand to more states while scholars and administrators debate the merits of this approach to higher education funding.

Other issues will also be affected by the 2016 elections. With GOP gains in some states, those seeking to force colleges and universities to allow firearms on college campuses will likely renew their efforts in 2017. State policies to combat campus sexual assault will likely be discussed by lawmakers from both parties. For a



glance at the higher education issues likely to garner considerable state lawmaker attention in the year ahead, look for AASCU's forthcoming *Top 10 Annual Higher Education State Policy Issues* briefing, to be released in early January.

## **Making Higher Education a Priority in 2017**

A common theme of post-election analyses this year has been a call for change amid economic distress in many regions of the country. Economic decline in many communities has led some to believe that our social institutions are not effectively addressing their needs. Public colleges and universities are not immune to that frustration and distrust, especially as tuition prices escalate with seemingly little end in sight.

In spite of these sentiments, an estimated 13.5 million undergraduate students enrolled in public colleges and universities this fall, placing their confidence in these institutions as portals of opportunity and

economic success. Parents throughout the country continue to save for their children's education in hopes of providing them better opportunities and public institutions of higher education continue to be the leading venues for access to high-quality, affordable college opportunities.

The coming year will present challenging environments for champions of public colleges and universities. With numerous budget items competing for increasingly scarce funding, continued pressure to hold the line on taxes, and new lawmakers in key positions, higher education leaders will have to re-emphasize their institution's value, commitment to addressing state and national needs, and track record of responsible stewardship of public funds. This will demand coordinated, committed effort from all campus stakeholders to continue to advance our collective mission and share our story with lawmakers and the public.

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