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# Presidential Searches and Sunshine Laws

***Recent clashes between public universities, legislatures and the media have brought presidential searches into the public eye, as many states look for ways to follow open records laws while maintaining a process that attracts quality university presidents.***

The creation of open meeting and open record laws, called sunshine laws, grew out of a desire to ameliorate growing public skepticism of politics. To help this along, states began passing sunshine laws allowing greater access to the workings of its public institutions, including colleges and universities. By 1981, every state, as well as the federal government, had enacted sunshine laws to restore public confidence in government and the political process.

While these laws are often highly favored by the public and the media, many state colleges and universities often find themselves at odds over some aspects of their state's laws or interpretation of those laws. Conflicts regularly arise surrounding trustee meetings, foundations' policies, and most contentiously and often publicly, presidential searches.

## Observations

**The courts and the media are playing a greater role in forcing colleges and universities to grant more disclosure in presidential searches**.

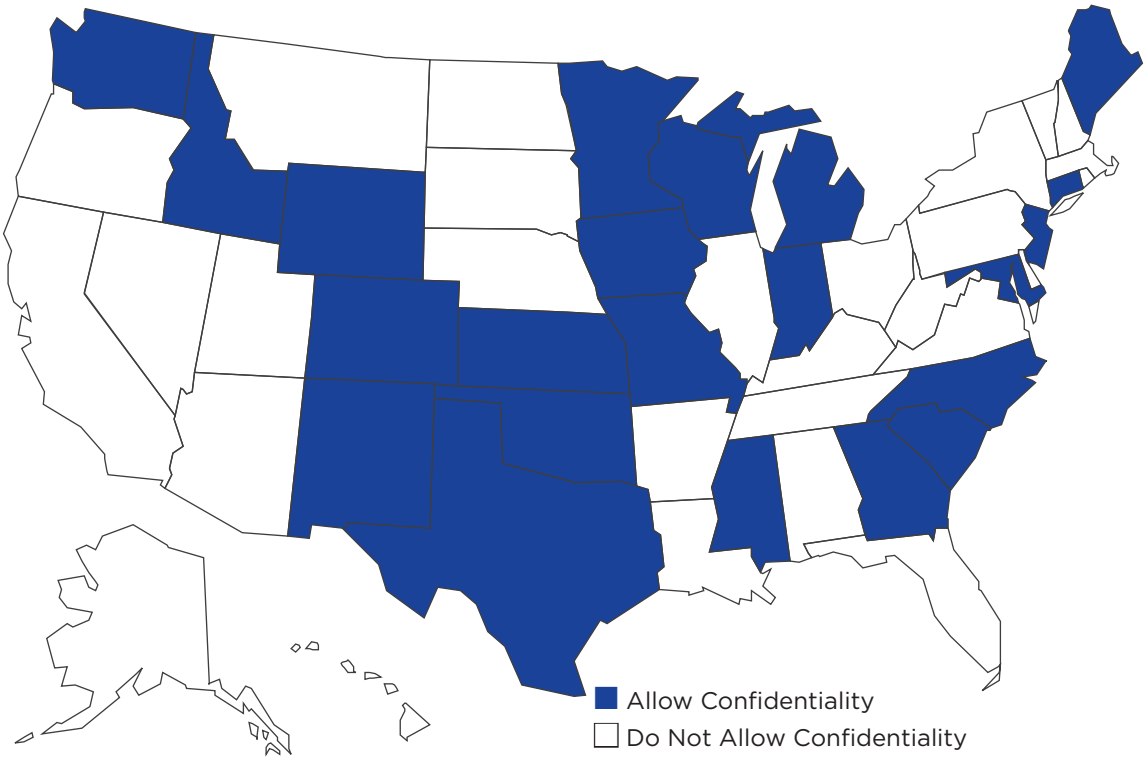
The number of recent court cases underscores the struggle between the media's desire to access the details of a presidential search and a college's desire to keep some information private. Cases involving the University of Minnesota, Georgia State University, and the University of Washington over the past decade illustrate the media's recurrent contention that a presidential search committee either met illegally or did not adequately disclose its records.

Earlier this year, the Minnesota Supreme Court sided with five media outlets, when it ruled that the Board of Regents of the University of Minnesota broke state public information laws in its 2002 presidential search by not releasing the names of the candidates. A county superior court judge in Washington State made a similar ruling in 1995 when he ruled against state universities for not giving public notice of regents meetings.

Adding to the uncertainty are states whose definition of a finalist or meeting are often ambiguous. In May 2004, Nebraska Attorney General Jon Bruning ordered the release of the names of candidates for the presidential search at the University of Nebraska. According to Nebraska law, the names of finalists must be released once a candidate agrees to an interview. While the university had argued that the candidates they met had not been considered finalists and that the meetings were not formal interviews, they released the names four hours after Bruning's directive.

**Policymakers are using their authority to create legislation either clarifying or expanding their state's sunshine laws.**

## Sunshine Laws: States Allowing Public Colleges to Keep Presidential Applicants' Names Confidential




**Source:** National Association of College & University Attorneys, *Journal of College and University Law,* Winter 2000.

Some states are turning to their legislatures to decide how transparent the search processes will be at their universities. During the 2004 legislative session state policymakers discussed several bills to expand or enforce their sunshine laws.

Lawmakers in Alabama considered, but ultimately failed to approve, a bill that would have clarified the state's open meetings law and allowed public boards to meet behind closed doors in limited circumstances. All votes taken by public boards would have had to be during open meetings.

Missouri's Governor Bob Holden signed legislation increasing the maximum penalty for violations to the state's sunshine laws from $500 to $5,000.

In New Jersey, a Senate bill currently in committee would increase the existing sunshine law's public disclosure and monitoring requirements, including requiring access to meetings online and disclosing meeting schedules, agendas and minutes.

**Opponents of entirely open searches have gained ground in passing legislation that protects the privacy of presidential candidates.**

While many legislatures are increasing public access to presidential searches, many college officials contend that they cannot recruit the best candidates in an environment where they must release all candidates' names. A growing contention is that many qualified applicants will turn to the private sector when determining their next career move. A recent survey of university officials, members of the media and legislators by the Association of Governing Boards of Universities and Colleges and the Center for Higher Education Policy Analysis at the University of Southern California, found that many respondents voiced concern that this turn to the private sector will put the future of the quality of public higher education and its leadership at risk.

As a result, some campuses have convinced legislatures of the importance of excluding presidential

searches from sunshine laws. A 2000 analysis by the National Association of College and University Attorneys found that at least 22 states have statutory exceptions for the names of applicants or candidates for public employment. Three of those states apply only to chief executives at state higher education institutions—Michigan, New Mexico and Texas.

**In an effort to prevent judicial and media interference, colleges and university boards are beginning to take preemptive action.**

Looking ahead, some universities are negotiating with the media and applicants before searches begin, and initiating their own open search procedures. In 2003, rather than continue with a court hearing, the University of Cincinnati and the *Cincinnati Enquirer* came to an agreement about which presidential search meetings would be open to the public.

More recently, the search panel for a new chancellor at Louisiana State University approved a plan that allows potential applicants the chance to discuss the job without making their names public immediately. Instead, interested parties can make informal inquiries on issues such as school resources, what kind of chancellor the university is seeking, student performance and student admission rules. The panel would require formal applicants to send their names to the search committee, allowing it to be open to the media and public.

After a highly publicized financial scandal that led to the resignation of its president, the University of Tennessee publicized its decision to conduct a highly open presidential search. Other universities, including the University of New Mexico, the University of Washington, Tacoma and the University of Texas-Arlington, are preemptively calling for similarly open presidential searches, to avert any judicial intrusion.

Changes in sunshine laws throughout the country will likely continue as lawmakers and universities grapple with a desire to balance privacy and openness during presidential searches. College officials need to stay attentive to the policies and procedures in their states to protect the interests of their school, president/chancellor, and the public interest.

## Resources

The Association of Governing Boards of Universities and Colleges and the Center for Higher Education Policy Analysis at the University of Southern California recently surveyed six states about their open-meeting and open-records laws. The report, *Governing in the Sunshine: Open Meetings, Open Records, and Effective Governance in Public Higher Education* details the impact of sunshine laws on board performance and presidential search and selection. It also includes recommendations for improving the climate surrounding open-meeting and open-records laws. **agb.org and usc.edu/dept/chepa/gov**

An article in the Winter 2000 edition of the *Journal of College and University Law* by Nick Estes chronicles recent court decisions involving state sunshine laws and presidential searches as well as what the author describes as a typical university presidential search and typical state open records statutes. **nacua.org/jcul/JCUL_Without_Hyperlinks/26_jcul_485.pdf**

*The Chronicle of Higher Education's* July 9, 2004 article "Keeping Searches Secret" by Michael Arnone details the growing trend among states allowing public colleges to keep the identities of presidential candidates confidential. **chronicle.com**

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