

wiley

Campus Protests: ***Navigating the Legal, Political, and Reputational Risks***

Diana Shaw

Posi Oshinowo

June 4, 2025





Diana Shaw
Partner
White Collar Defense &
Government Investigations
DShaw@wiley.law
+1.202.719.3379



Posi Oshinowo
Of Counsel
Employment & Labor
OOshinowo@wiley.law
+1.202.719.4275

Agenda



Context



Overview of Legal, Political, and Reputational Risks



Preparing for Potential Protests



Balancing Competing Interests and Risks



Managing Protest Aftermath



Q & A



Context

On-campus protests and student activism have been a part of U.S. university history from the start

Early protests
(e.g., the “Great
Butter
Rebellion”)

1960’s civil
rights & anti-war
movements

Other issues
(e.g., campus
safety, wage
fairness, etc.)

Context

Case law relevant to on-campus protests primarily implicates the First Amendment

Public v. Private (distinction matters ... maybe)

- Public universities must comply with the 1st Amendment; private universities do not, BUT many afford their students a certain level of free speech in, e.g., school handbooks, codes of conduct, etc.

What kind of speech is protected?

- Protects all speech—even speech that is inflammatory or offensive—so long as it is neither intended nor likely to provoke imminent unlawful action. See *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)

Are encampments protected?

- Yes, but public universities can set reasonable time, place, and manner restrictions on when, where, and how people protest (e.g., setting limits on noise levels); however, restrictions must be content-neutral and narrowly tailored. See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984)

What's not protected?

- True threats (high bar), discriminatory harassment, similar violations of others' rights
- Other unlawful acts – e.g., breaking and entering or trespass (see *U.S. v. O'Brien*, 391 U.S. 367 (1968))



Context

Recent on-campus protests:

October 7 Hamas terrorist attack and Israeli response

- Sparked wave of protests across U.S. college campuses (and elsewhere)
- Largely pro-Palestinian; focused on issues like demanding a ceasefire in Gaza, ending Israeli blockades and occupation, and protesting alleged war crimes
- Protesters have also called for universities to divest from companies involved in the conflict



Context

Repercussions of recent on-campus protests



Hundreds of on-campus protests estimated to have taken place



As of July 2024, more than 3,100 arrests have been made

- Significant number of charges have been dropped, though



At least 60 open Department of Education investigations under Title VI



Dozens of congressional inquiries

- Ongoing investigations, targeted information requests, high-profile hearings



Several resignations/firings of high-profile university officials



Dozens of lawsuits – brought by protesters and non-protesters alike

Overview of Legal, Political, and Reputational Risks

➤ Legal Risks

➤ *Lawsuits and prosecutions*

First Amendment

- University actions like banning protests, suspending student groups, and implementing campus-wide restrictions on events have led to multiple lawsuits against universities alleging violations of students' 1st Amendment rights

Title VI

- Multiple lawsuits and complaints have been filed against universities alleging the universities failed to adequately address alleged antisemitic harassment or discrimination against students during or related to protests
- Department of Justice is investigating at least 10 universities for alleged Title VI violations through its Task Force to Combat Antisemitism (could lead to civil prosecutions)

Safety concerns

- Lawsuits on both sides of this issue, from protesters alleging universities employed excessive measures to “crackdown” on protests resulting in protester injuries, to non-protesters alleging that they were attacked or otherwise injured during the protests (e.g., in an effort to move through crowds to get to other parts of campus)



Overview of Legal, Political, and Reputational Risks

➤ Legal Risks (cont'd)

➤ Government Oversight/Investigations

False Claims Act risk (Executive Order 14173)

- Contract or grant awards may* have to include language certifying that recipient does not run an “illegal” DEI program, and that this certification is material to the government’s payment to such entity (**this provision is currently being litigated*)

Department of Education investigations

- An *Education Week* analysis found that, as of April 25, the Dept. of Ed. had opened at least 90 Title VI and Title XI investigations (most on its own initiative—i.e., not in response to a reported complaint)

EEOC Title VII investigations

- The EEOC has vowed to “hold accountable universities and colleges for antisemitism on campus workplaces” by bringing Title VII investigations (it’s brought at least one such investigation already)

DOJ compliance investigations (Executive Order 14173)

- Administration has called on Attorney General to identify, *inter alia*, institutions of higher education with endowments over \$1B to target in civil compliance investigations



Overview of Legal, Political, and Reputational Risks

➤ Legal Risks (cont'd)

➤ *Other government enforcement*

Immigration enforcement: Involvement in on-campus protests has been cited by Administration as basis for arresting and initiating removal proceedings against non-U.S. citizens (e.g., LPRs)

- Administration has rescinded 2021 policy granting special protection to “sensitive locations,” including school campuses, from immigration enforcement (significant policy shift)
- Officers can only enter *public* areas without a warrant; require permission from authorized campus official for access to nonpublic areas of campus

Overview of Legal, Political, and Reputational Risks

➤ Political Risks

- Universities' handling of on-campus protests and other related issues has had political implications, sparking responses from the White House and Congress

Loss of grant funding or other federal assistance:

- Administration has withdrawn/threatened to withdraw billions of dollars in grant and other federal funding on basis of alleged mishandling of on-campus protests and perceived support for discriminatory viewpoints and practices

Loss of international student visas:

- Student involvement in on-campus protests has been cited by the Administration as basis for revoking a student's international student visa

SEVP Decertification:

- Administration has threatened to decertify some universities from enrollment in Student and Exchange Visitor Program (SEVP) based on alleged handling of on-campus protests putting at risk institutions' ability to accept students on an F-1 visa

PLUS:
****Threat of potential loss of tax-exempt status***



Overview of Legal, Political, and Reputational Risks

➤ Political Risks

➤ Congressional Action

➤ **Campus protests/antisemitism = hot button issue that is continuing to gain steam**

Oversight

First round of high-profile hearings in December 2023, followed by additional hearings in April and May 2024

119th Congress has already held 3 hearings, and several committees have included this issue in their oversight plans for the session (e.g., House Education & Workforce; Senate HELP)

Legislation

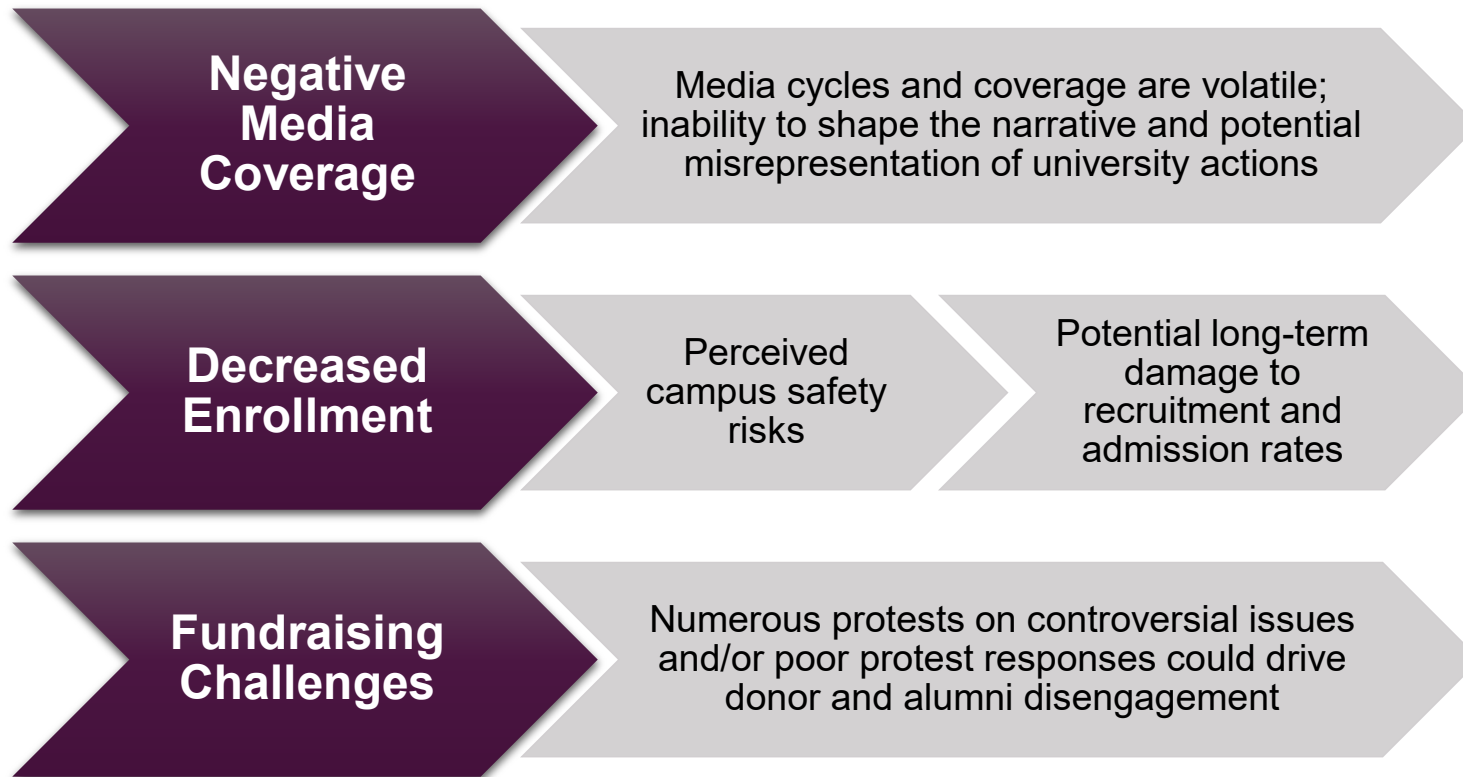
As of May 8, 31 pieces of legislation have been introduced affecting higher education, several of which relate directly to campus protests (e.g., *College Civil Disturbance Act*; *No Student Loans for Campus Criminals Act*)



Overview of Legal, Political, and Reputational Risks

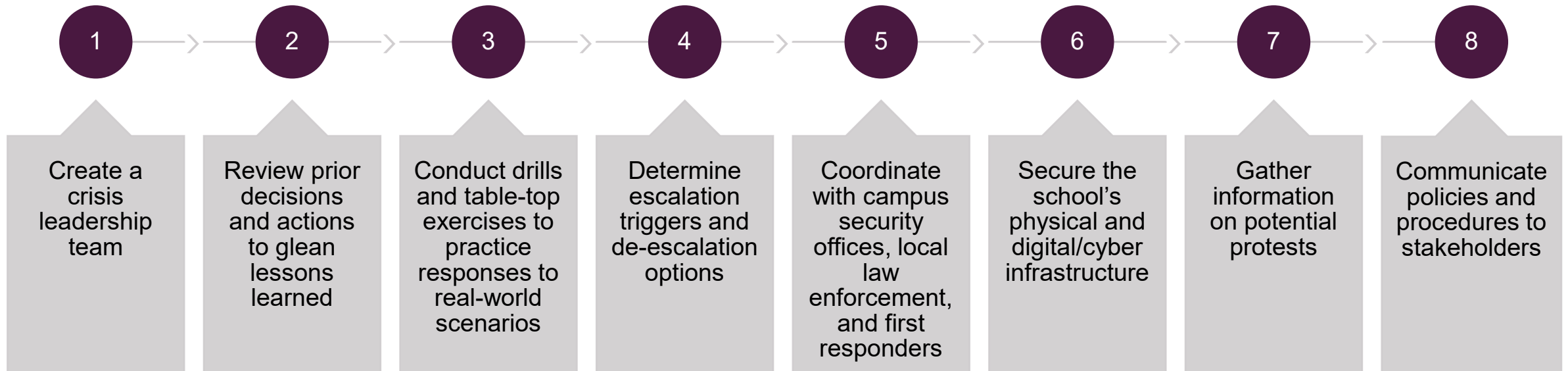
➤ Reputational Risks

- Regardless of whether a school is public or private, restrictions on protests, disciplinary action for protesters, or failure to promptly respond to protests can quickly attract substantial negative attention.



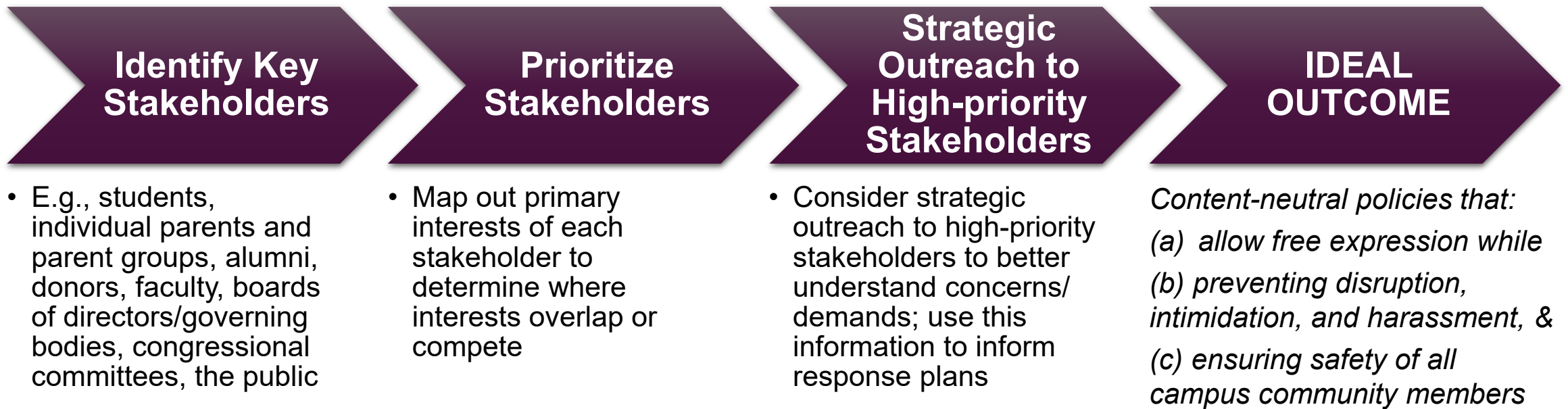
Preparing for Potential Protests. . .

Prepare a crisis response:



Balancing Competing Interests and Risks

- Navigating the risks related to on-campus protests requires a careful balancing of competing interests



Managing Protest Aftermath

Be aware that a second phase is coming and prepare for a potentially lengthy post-mortem



Identify and assess potential legal, political, and reputational risks



Consider potential proactive voluntary actions (e.g., after-action reviews, internal investigations, etc.)

Key initial considerations: conduct under privilege, issue public report, etc.?



Prepare for government oversight (compliance audits & investigations)

Maintain good documentation of policy and process changes (including rationale)

Designate a primary POC and government liaison team for each review or investigation to facilitate the timely fulfillment of document and interview requests

Consider what additional communications and resources may be required to support students for the experience of an increased government presence on campus



wiley

Questions?





Diana Shaw
Partner
**White Collar Defense &
Government Investigations**
DShaw@wiley.law
+1.202.719.3379



Posi Oshinowo
Of Counsel
Employment & Labor
OOshinowo@wiley.law
+1.202.719.4275