

## NOTES

### **A Union for All: Collective Associations Outside the Workplace**

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## I. INTRODUCTION

“Education is a right.”<sup>1</sup> That is the belief that hundreds of thousands of students carried with them when they took to the streets of Quebec in the Maple Spring of 2012. The provincial government had proposed raising tuition at Quebec’s public universities by 75% over five years, and students were not having it.<sup>2</sup>

Post-secondary students across the Canadian province went out on strike. Starting with Valleyfield College in early February,<sup>3</sup> students in school voted to join their fellows in the street. By March 22, about 310,000 students were on strike.<sup>4</sup> To put that number in context, the strike extended to almost 80% of the province’s 400,000 post-secondary students.<sup>5</sup>

Two hundred thousand marched in the streets of Montreal that day. Hundreds of thousands of students remained on unlimited general strike for months to come. And by September, striking students had beaten back the Liberal Party’s proposed tuition hike and elected the Parti Québécois to the province’s premiership.<sup>6</sup>

One of the spokespersons of the Coalition large de l’association pour une solidarité syndicale étudiante (CLASSE), representing many of the striking students, described the effect of the strike on the political life of the province, saying, “[a]ll of this political effervescence that we have seen this spring, all of this new solidarity which has developed within the population, all of this awareness of our collective power, all of this was born from our strike and would not have

1. Commentary, *Education is a Right*, MCGILL DAILY (Nov. 17, 2011), <http://www.mcgilldaily.com/2011/11/education-is-a-right>.

2. Maude-Emmanuelle Lambert, *2012 Québec Student Strike*, CANADIAN ENCYCLOPEDIA (Nov. 7, 2018), <http://www.thecanadianencyclopedia.ca/en/article/quebec-student-protest-of-2012>.

3. Pascale Breton, *Grève étudiante: le vote qui a donné le ton*, LA PRESSE (Feb. 15, 2013, 12:00 AM), <http://www.lapresse.ca/actualites/dossiers/conflict-etudiant/201302/12/01-4621045-greve-etudiante-le-vote-qui-a-donne-le-ton.php>.

4. *22 Mars: les étudiants prévoient une manifestation « d’ampleur historique »*, RADIO-CANADA (Mar. 20, 2012), <http://ici.radio-canada.ca/nouvelle/554421/manifestation-nationale-etudiants>.

5. J.-Jacques Samson, *La CLASSE déclassée*, LE J. DE QUE. (Apr. 23, 2012), <https://www.journaldequebec.com/2012/04/23/la-classe-declassée>.

6. Lindsay Michael, *Quebec’s Student Tuition Protest: Who Really Won the Dispute?*, CBC NEWS (Aug. 18, 2013, 9:03 AM), <http://www.cbc.ca/news/canada/quebec-s-student-tuition-protest-who-really-won-the-dispute-1.1327562>.

happened without the mass mobilization that followed.”<sup>7</sup> By taking collective action together, the students of Quebec built a movement that challenged the status quo and dreamed of a brighter future.

And they did it through their student unions. Quebec, like many states and provinces across North America, has a network of student unions, which represent students in colleges and universities across the province. Those unions operate much like workplace unions and align strongly with their neighboring labor unions. Those student unions are democratic, often embracing a more radical vision of direct democracy over a staid vision of representative democracy.<sup>8</sup> They are active participants in the life of their colleges and universities, acting as the voice of the students before the administration.<sup>9</sup> They are part of the fabric of Québécois life, participating in political and social debate and working to change the direction of the province.<sup>10</sup> And they are not alone.

This Note aims to examine these unions outside the workplace. Collective associations like student unions are part of communities across the United States, from tenant unions in big cities to student unions in small university towns, to resident associations in rural mobile home parks.<sup>11</sup> States across the country have statutory frameworks extending legal rights and responsibilities to these types of collective associations.<sup>12</sup> While significant scholarship has focused on American unions in the workplace, little attention has been paid to these unions outside the workplace. Labor unions are organizations of workers who have joined together at a workplace or in an industry to improve working condition, raise wages, and have a voice in the future of their jobs and their communities.<sup>13</sup> Collective associations outside the workplace are similar: They are organizations of students or tenants or nursing home residents who seek to improve their lives through mutual aid and solidarity.<sup>14</sup>

Collective associations are widely prevalent in many non-labor contexts, and the statutory schemes recognizing non-labor unions often provide them similar

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7. *La CLASSE Appelle à la Poursuite de la Grève et de la Mobilisation Populaire*, L'ASSOCIATION POUR UNE SOLIDARITÉ SYNDICALE ÉTUDIANTE (Aug. 12, 2012), <http://www.asse-solidarite.qc.ca/actualite/la-classe-appelle-a-la-poursuite-de-la-greve-et-de-la-mobilisation-populaire>.

8. *See The CLASSE Manifesto*, CLASSE, <http://www.stopthehike.ca/manifesto> (last visited Dec. 16, 2018).

9. *See, e.g., Our Mission*, CONCORDIA STUDENT UNION, <https://www.csu.qc.ca/about-us/our-mission> (last visited Dec. 16, 2018).

10. *See generally* L'ASSOCIATION POUR UNE SOLIDARITÉ SYNDICALE ÉTUDIANTE, <http://www.asse-solidarite.qc.ca> (last visited Dec. 16, 2018).

11. *See infra* Part II.

12. *See infra* Part II.

13. *See generally What Unions Do*, AM. FED. OF LAB. AND CONG. OF INDUST. ORGS., <https://aflcio.org/what-unions-do> (last visited Dec. 16, 2018) (highlighting raising wages and benefits, building power for working people, and advancing economic justice).

14. For instance, the United States Student Association says that it works “to dismantle systems of oppression in higher education” and it strives to create an educational system “that embodies the democratic process.” *About*, U.S. STUDENT ASS'N, <http://usstudents.org/about> (last visited Dec. 16, 2018).

rights and authority.<sup>15</sup> Twelve states and Puerto Rico assign significant rights and power to student associations,<sup>16</sup> while fourteen other states and the District of Columbia assign advisory roles or limited institutional authority to student governments.<sup>17</sup> Three states create expansive residential tenant rights,<sup>18</sup> twenty-nine states offer protections for tenant union organizing but no collective certification process and little if any statutory support for tenant unions,<sup>19</sup> and nineteen states extend specific and often robust rights to tenants of mobile and manufactured home parks.<sup>20</sup> Federal law creates a nationwide right to organize resident associations at nursing homes receiving Medicaid or Medicare funds,<sup>21</sup> and another fourteen states significantly expand residents' rights and resident council power beyond the federal level,<sup>22</sup> including eight which actually require that facilities create resident councils in some or all circumstances, rather than merely permitting or assisting them.<sup>23</sup> Non-labor unions are thus a part of public and private institutions all across the country, organizing, negotiating collectively and working to advance the interests of their members.

This Note will discuss these collective associations, analyze their presence across the country, and offer proposals for statutory frameworks to support and enhance these institutions. Section II will analyze the divergent legal frameworks that states have used to extend legal rights and responsibilities to collective

15. For the purpose of this Note, the District of Columbia and Puerto Rico are referred to as states.

16. *See infra* Appendix A.1 at California, Florida, Massachusetts, Minnesota, Montana, Nevada, New Jersey, North Carolina, Oregon, Puerto Rico, Tennessee, Washington, and Wisconsin.

17. *See infra* Appendix A.1 at Arizona, Colorado, Connecticut, District of Columbia, Iowa, Kentucky, Louisiana, Maryland, Missouri, New York, Pennsylvania, Texas, Utah, Vermont, and West Virginia.

18. *See infra* Appendix B at California, District of Columbia, and New York.

19. *See infra* Appendix B at Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, and Wisconsin.

20. *See infra* Appendix B at Arizona, Connecticut, Delaware, Florida, Idaho, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, West Virginia, Wisconsin.

21. *See also* 42 U.S.C. § 1395i-3(C)(1)(A)(vii) (2012) (for Medicare recipients); 42 U.S.C. § 1396r(C)(1)(A)(vii) (2012) (for Medicaid recipients).

22. *See infra* Appendix C at Arkansas, California, Colorado, Florida, Kansas, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Oklahoma, Oregon, and Vermont.

23. *See* ARK. CODE ANN. § 20-10-1006(a) (West 2011) (required at each long-term care facility); CAL. HEALTH & SAFETY CODE § 1418.2(a) (West 2016) (required at licensed facilities); 6 COLO. CODE REGS. § 1011-1:7-13 (2018) (required at facilities with seventeen or more beds); FLA. STAT. § 651.081(2)(a) (West 2005) (required continuing care facilities); KAN. ADMIN. REGS. § 26-41-106(a) (2009) (required at assisted living facilities, residential health care facilities); KAN. ADMIN. REGS. 26-43-106(a) (2009) (required at adult day care facilities); MINN. R. 9520.0630(3) (2017) (required at residential mental health services residential programs); N.H. CODE ADMIN. R. ANN. Bd. Of Managers of the N.H. Veterans' Home 202.01(r) (2010) (required at the state veteran's home); OKLA. ADMIN. CODE 310:680-3-8 (2016); OKLA. STAT. tit. 63, § 1-853.1(A)(3) (2011); OKLA. STAT. tit. 63, § 1-852(E)(2) (2011) (required at certain non-profit facilities seeking to open new facilities to furnish the minutes of family and residents councils from other holdings).

associations outside the workplace and share the results of the fifty-state survey of state collective associational laws. Section III will discuss the values underpinning collective associations in and outside the workplace, identifying the problems these organizations apply themselves to solve, the important role they play in changing society, and the political and constitutional questions that underpin their statutory frameworks. Finally, Section IV will connect the values served and benefits provided by collective associations to the legal systems designed for them, recommending statutory changes to maximize the effect of these unions. The Appendices then survey existing state collective associational laws. Ultimately, this Note will provide a set of recommendations for policy makers seeking to expand statutory collective associational law outside the workplace.

## II. THE EXISTING FRAMEWORKS FOR STUDENT, TENANT, AND RESIDENT UNIONS IN THE UNITED STATES

Collective associations exist across the United States. In red states and blue states, in communities rural and urban, in universities and housing complexes and mobile home parks and nursing homes, Americans have built collective associations recognized by state law to improve their lives and livelihoods. These institutions take a few typical forms. First, student associations of varying statutory authority and independence regularly take part in the governance and life of public colleges and universities.<sup>24</sup> Second, tenant unions with varying rights and responsibilities at times represent community members in their relationship with their landlord—these unions often operate in big housing complexes and urban residential areas, but many states empower residents of mobile home parks and houseboat marinas to a greater extent than residential tenants.<sup>25</sup> Third, federal law and many states enable residents of long-term care facilities, nursing homes, and other elder care communities to come together in collective associations.<sup>26</sup> Each of these will be discussed in depth below.

### *A. Student Associations Are Widespread*

Student associations have played a long and deep role in forming modern American educational life. Student government is a regular feature of higher education institutions, and primary and secondary schools across the country, both public and private.<sup>27</sup> Student associations, meaning the official or recognized associations representing students on campus, play large roles on many college

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24. *See infra* Section II.A.

25. *See infra* Section II.B.

26. *See infra* Section II.C.

27. The American Student Government Association claims over 1,400 institutional members. *See About ASGA*, AM. STUDENT GOV'T ASS'N, <https://www.asgahome.com/about-asga> (last visited Dec. 16, 2018).

campuses, a role that they won through collective action.<sup>28</sup> Many campus administrators have worked to roll back the authority of students in institutional governance, particularly in public colleges and universities where campus movements of the 1960s and 1970s demanded and won real decision-making authority for students.<sup>29</sup> Yet, students often staff governance boards, faculty tenure review committees, fee committees, and activity committees.<sup>30</sup> In many states, students at public universities have the authority to establish mandatory and voluntary fees for student activities,<sup>31</sup> including political activity.<sup>32</sup> In others, certain university fees are subject to student referendum and may be cancelled by democratic vote.<sup>33</sup>

This authority, where it exists in the United States, often results in vibrant student unions. For example, states on the West Coast have some of the strongest student union laws and some of the strongest networks of student unions in the country.<sup>34</sup> When that authority is lacking, student associations often exercise little authority in the governance of their public education systems. Yet it is not the case that blue states have strong student association laws while red states do not: For instance, solid-red Tennessee provides significant authority to student governments while solid-blue Delaware provides almost none.<sup>35</sup> These laws do not map onto a clear red-blue axis.

Despite their importance on many college campuses, there is only limited discussion of student associations in the American legal literature. Much of that

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28. See Angus Johnston, *Student Protests, Then and Now*, CHRON. OF HIGHER ED. (Dec. 11, 2015), <http://www.chronicle.com/article/Student-Protests-ThenNow/234542>.

29. See *id.*

30. See, e.g., FLA. CONST. art. IX, § 7(d) (giving the President of the Florida Student Association a position of the Board of Governors of the State University System); FLA. STAT. § 1009.42(1) (West 2018) (permitting the Florida Student Association to nominate a student to serve on an appeals committee of the State Board of Education regarding financial aid decision); FLA. STAT. § 1001.70(1) (West 2016) (giving the President of the Florida Student Association a position of the Board of Governors of the State University System); MASS. GEN. LAWS ch.15A, § 4(b) (2010) (permitting student government associations to nominate students to serve on the Board of Higher Education); MASS. GEN. LAWS ch. 75, § 1A (2009) (establishing two voting student members and three non-voting student members on the University of Massachusetts Board of Trustees, elected by students); MINN. STAT. § 136F.02(1) (West 2008) (appointing three students to the Board of Trustees for Minnesota State Colleges and Universities); WASH. REV. CODE. § 28B.15.045 (West 2014) (giving student associations an advisory role in student fee usage); WASH. REV. CODE. § 28B.50.869 (West 2014) (permitting student associations to appoint a representative to faculty tenure committees).

31. See, e.g., CAL. EDUC. CODE § 89300(b)(2)(A) (West 2002); MASS. GEN. LAWS ch. 15A, § 29 (2010); MASS. GEN. LAWS ch. 73, § 1F (2009); MINN. STAT. §136F.22(2) (West 2008); OR. REV. STAT. ANN. § 352.105 (West 2014); WASH. REV. CODE. § 28B.15.610 (West 2014).

32. See, e.g., CAL EDUC. CODE § 76060.5 (West 2003); CAL EDUC. CODE § 89300 (West 2002); MASS. GEN. LAWS ANN. ch. 75, § 11A (2009).

33. See, e.g., CAL EDUC. CODE § 89304(a) (West 2002) (regarding supplemental building and operating fees); TEX. EDUC. CODE AN. § 56.243 (West 2012) (regarding a scholarship program); WASH. REV. CODE. § 28B.15.051(1) (West 2014). (regarding technology fees).

34. See generally *infra* Appendix A.1.

35. Compare *infra* Appendix A.1 at Delaware, with Tennessee.

literature discusses the interplay between the First Amendment and student activity fees,<sup>36</sup> as discussed in Section IV of this Note, and almost none discuss student associations as institutions.<sup>37</sup> Outside the United States, however, students' collective associational rights are the topic of far more legal study and analysis.<sup>38</sup>

In the United States today, state legal frameworks governing student associations fall into three general camps. Many states have a statutory framework that assigns significant authority and responsibility to student associations. Many other states have statutory frameworks that assign advisory roles or limited institutional authority to student governments. Finally, many states have no statutory frameworks for student associations or their frameworks assume the existence of student governments at public universities but provide them little to no role in higher education.

Twelve states and Puerto Rico have a statutory framework that assigns significant rights and power to student associations.<sup>39</sup> Those associations are

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36. See, e.g., Maxine G. Schmitz, *Mandatory Student Activity Fees in Public Colleges and Universities: The Impact of Smith v. University of California*, 25 J.L. & EDUC. 601 (1996) (discussing relationship between mandatory student fees and collective associational and speech rights); Perry A. Zirkel, *The First Amendment and Higher Education Students: Part II, The Secular Cases*, 141 ED. LAW REP. 947 (2000) (summarizing First Amendment case law in the higher education context); Janine G. Bauer, Note, *The Constitutionality of Student Fees for Political Student Groups in the Campus Public Forum*, 15 RUTGERS L.J. 135 (1983) (discussing student activity funding); Gregory B. Sanford, Note, *Your Opinion Really Does Not Matter*, 83 NOTRE DAME L. REV. 845 (2008) (arguing that student referenda violate constitutional speech rights); Robert L. Waring, Comment, *Talk Is Not Cheap: Funded Student Speech at Public Universities on Trial*, 29 U.S.F. L. REV. 541 (1995); Christina E. Wells, Comment, *Mandatory Student Fees: First Amendment Concerns and University Discretion*, 55 U. CHI. L. REV. 363 (1988).

37. A literature review found two law review pieces on the topic. See generally Rachel Anderson et al., Essay, *Toward a New Student Insurgency*, 94 CAL. L. REV. 1879 (2006) (an epistolary discussion of student struggle within the University of California system); Winston Boyd Crisp, Essay, *Student Organizations 1945–95*, 73 N.C. L. REV. 830 (1995) (discussing the changing role of the Law Student Association / Student Bar Association at the University of North Carolina School of Law).

38. See, e.g., Violaine Lemay & Marie-Neige Laperrière, *Student Protests and Government Somersaults: The Quebec Spring from a Law and Society Perspective*, 27 CAN. J. L. & SOC'Y 439, 442 (2012) (discussing the use of injunctions to limit student unions, recalling pre-Norris-La Guardia Act America); Finn Makela, *La démocratie étudiante, la grève étudiante, et leur régulation par le droit*, 44 REVUE DE DROIT DE L'UNIVERSITÉ DE SHERBROOKE 307 (2014) (comparing the use of student strikes in Quebec to labor strikes and reviewing the applicable law for student associations); Finn Makela & Sophie Audette-Chapdelaine, *The Legal Regulation of University Student Associations in Canada*, 22 EDUC. L.J. 267 (2013) (surveying the law governing student associations in Canada); Matti Muukkonen, *Association Law in Finland*, 9 INT'L J. NOT-FOR-PROFIT L. 76 (2007) (discussing Finnish collective associational rights guaranteeing the right to collective action obligatory membership requirements and the assignment of public tasks to these organizations); Guillaume Rousseau & Rémi Danylo, *La reconnaissance du droit de négociation et de grève étudiant: fondement « républicain » et traduction juridique inspirée du droit du travail*, 45 REVUE DE DROIT DE L'UNIVERSITÉ DE SHERBROOKE 297 (2015) (discussing student strikes in Quebec).

39. See *infra* Appendix A.1 at California, Florida, Massachusetts, Minnesota, Montana, Nevada, New Jersey, North Carolina, Oregon, Puerto Rico, Tennessee, Washington, and Wisconsin (to a certain extent, although recent legal changes have reduced the power of student unions in the state). Interestingly, in North Carolina, the President of the University of North Carolina Association of Student Governments was a

typically able to fund themselves, often through mandatory or voluntary student fee referenda decided democratically,<sup>40</sup> and are often empowered to engage in certain political activities.<sup>41</sup> Some states assign certain responsibilities and authority to student associations.<sup>42</sup> In these states, some university decisions require the administration to consult with or secure the consent of student unions,<sup>43</sup> and student unions often can request information relevant to their responsibilities.<sup>44</sup> Student unions typically have statutory positions within the education system, usually with full voting rights.<sup>45</sup> In some states, student unions have the authority to attend collective bargaining negotiations between some campus labor unions

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voting member of the University's Board of Governors, but the state government recently passed legislation that will convert them to a non-voting member as of July 2019. *See* N.C. GEN. STAT. § 116-6.1(a) (2017); H.R. 39, 2017 Gen. Assembl., 1st Sess. (N.C. 2017).

40. *See* CAL. EDUC. CODE § 89300(b)(2)(A) (West 2002); MASS. GEN. LAWS ch. 15A, § 29 (2010); MASS. GEN. LAWS ch. 73, § 1F (2009); MINN. STAT. § 136F.22(2) (West 2008); OR. REV. STAT. ANN. § 352.105 (West 2014); WASH. REV. CODE. § 28B.15.610 (West 2014).

41. *See* CAL. EDUC. CODE § 89300 (West 2002); FLA. STAT. § 1009.24(10)(b) (West 2018) (giving associations the authority to spend fees on any lawful purpose to benefit the student body in general); WASH. REV. CODE § 28B.15.610 (West 2014). *But see* Or. Att'y Gen. Op. No. 8289 (June 30, 2015), 2015 WL 4077218 (writing that Oregon student associations must follow the viewpoint neutrality standard in spending mandatory student fees, but not optional or refundable student fees).

42. *See* FLA. STAT. ANN. § 97.021(33) (West 2017) (giving student governments the authority to compel their university to offer voter registration services to students at least annually); MINN. STAT. ANN. § 136F.24 (West 2008) (authorizing student associations to provide legal counseling and services to students); OR. REV. STAT. ANN. § 743.550 (West 2003) (contemplating that student associations provide student group health insurance).

43. *See, e.g.*, CAL. EDUC. CODE. § 89304(a) (West 2002) (giving students the ability to approve supplemental building and operating fees); FL. STAT. ANN. § 1009.22(12)(a) (West 2018) (requiring Santa Fe College for some types of credits to conduct a student referendum before implementing or increasing a transportation fee); FL. STAT. ANN. § 1009.23(18)(a) (West 2018) (doing the same for other types of credits); FLA. STAT. ANN. § 1013.74(3) (West 2013) (regarding certain capital projects); MINN. STAT. § 201.1611(1) (West 2009) (requiring consultation regarding voter registration); OR. REV. STAT. § 352.102(1)(3)(b)-(e) (West 2014) (regarding changes in tuition and mandatory enrollment fees); WASH. REV. CODE. § 28B.15.190(3) (West 2014) (regarding recommendations before the university makes final administrative decisions).

44. *See* OR. REV. STAT. § 243.778(2) (West 2009); WASH. REV. CODE. § 28B.15.190(3) (West 2014).

45. *See, e.g.*, FLA. CONST. art. IX, § 7(d) (giving the President of the Florida Student Association a position of the Board of Governors of the State University System); FLA. STAT. § 1009.42(1) (West 2018) (permitting the Florida Student Association to nominate a student to serve on an appeals committee of the State Board of Education regarding financial aid decision); FLA. STAT. § 1001.70(1) (West 2016) (giving the President of the Florida Student Association a position of the Board of Governors of the State University System); MASS. GEN. LAWS ch.15A, § 4(b) (2010) (permitting student government associations to nominate students to serve on the Board of Higher Education); MASS. GEN. LAWS ch. 75, § 1A (2009) (establishing two voting student members and three non-voting student members on the University of Massachusetts Board of Trustees, elected by students); MINN. STAT. § 136F.02(1) (West 2008) (appointing three students to the Board of Trustees for Minnesota State Colleges and Universities); WASH. REV. CODE. § 28B.15.045 (West 2014) (giving student associations an advisory role in student fee usage); WASH. REV. CODE. § 28B.50.869 (West 2014) (permitting student associations to appoint a representative to faculty tenure committees).



and campus administration and to speak during negotiations.<sup>46</sup> In many of these states, student unions are expressly considered a governmental agency.<sup>47</sup> As such, they can be subject to open meeting and open records laws,<sup>48</sup> to a requirement that they obtain legal advice from the state Department of Justice,<sup>49</sup> or to certain state purchasing requirements.<sup>50</sup> Fourteen other states and the District of Columbia have statutory frameworks that assign advisory roles or limited institutional authority to student governments.<sup>51</sup> Often, that authority is limited to a seat on state commissions or boards<sup>52</sup> or a student advisory committee empowered only to make recommendations.<sup>53</sup> These states might give student governments authority to direct student activity fees, perhaps subject to direction or veto from the university administration,<sup>54</sup> but they typically do not confer statutory authority to set their funding level or to engage in political activities.<sup>55</sup> These associations typically have limited or no statutory responsibilities or authority, often limited to voter registration.<sup>56</sup>

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46. See FL. STAT. ANN. § 447.301(5) (West 2013); FL. STAT. § 447.203(18) (West 2013); MONT. CODE ANN. § 39-31-302 (West 2009); OR. REV. STAT. § 243.778(2) (West 2009).

47. See 48 Or. Att’y Gen. No. 8240 (Aug. 19, 1996), 1996 WL 475229. *But see* MASS. GEN. LAWS ch. 15A, § 29 (2010) (student governments are public institutions); MASS. GEN. LAWS ch. 73, § 1F (2009) (student government associations not legislative agents at state colleges and community colleges); MASS. GEN. LAWS ch. 75, § 11A (2009) (student government associations not legislative agents at the University of Massachusetts).

48. See CAL. EDUC. CODE §§ 89900-28 (West 2009); CAL. EDUC. CODE § 76060.5(c)(2) (West 2003); WASH. REV. CODE § 42.30.200 (West 2018); 44 Or. Att’y Gen. Op. No. 69 (June 27, 1984), 1984 WL 192199; Or. Att’y Gen. Op. No. 8240 (Aug. 19, 1996), 1996 WL 475229.

49. 48 Or. Att’y Gen. Op. No. 8240 (Aug. 19, 1996).

50. WASH. REV. CODE § 28B.10.640 (West 2014).

51. See *infra* Appendix A.1 at Arizona, Colorado, Connecticut, District of Columbia, Iowa, Kentucky, Louisiana, Maryland, Missouri, New York, Pennsylvania, Texas, Utah, Vermont, and West Virginia.

52. COLO. REV. STAT. § 23-60-104(2) (West 2014) (granting one seat on the State Board for Community Colleges and Occupation Education); N.Y. EDUC. LAW § 6306(1) (McKinney 2016) (granting one student-elected seat the board of trustees at most community colleges); N.Y. EDUC. LAW § 6310(1) (McKinney 2016) (establishing the same at community college regions); N.Y. EDUC. LAW § 6003 (McKinney 2016) (for a SUNY college); N.Y. EDUC. LAW § 356(1) (McKinney 2009) (for local supervision councils for state-operated institutions); TEX. EDUC. CODE ANN. § 51.355(c) (West 2012) (University System Board of Regents); TEX. EDUC. CODE ANN. § 51.356(d) (West 2012) (Institution Board of Regents); TEX. EDUC. CODE ANN. § 61.0225(b) (West 2012) (Texas Higher Education Coordinating Board).

53. COLO. REV. STAT. § 23-1-105.5(1)(a) (West 2014); CONN. GEN. STAT. § 10a-3(a) (West 2010); IOWA CODE ANN. § 262.34B(2) (West 2012); TEX. EDUC. CODE ANN. §§ 54.506, 54.514, 54.5032, 54.5031; 54.5061 (West 2012); TEX. EDUC. CODE ANN. § 54.5111 (West 2012); TEX. EDUC. CODE ANN. § 54.5122 (West 2012); TEX. EDUC. CODE ANN. § 54.5131 (West 2012).

54. See ARIZ. REV. STAT. ANN. § 15-1626.01(B) (2014); ARIZ. REV. STAT. ANN. § 15-1633(C) (2014); COLO. REV. STAT. § 23-5-120(1) (West 2014); CONN. GEN. STAT. ANN. § 4-54(b) (West 2014); CONN. GEN. STAT. ANN. § 4-55 (West 2014); IOWA CODE § 260C.18(8) (West 2012); N.Y. EDUC. LAW § 6206(7)(a)(iii) (McKinney 2016).

55. See ARIZ. REV. STAT. ANN. § 15-1633 (2014).

56. See ARIZ. REV. STAT. ANN. § 15-1895 (2014) (giving student associations the right to consult over voter registration plans); IOWA CODE. § 262.9(19)(a) (West 2012) (requiring universities give student associations proper notice before raising tuition); N.Y. EDUC. LAW §§ 353(2)(a), 6204(3)(d)(iii)

Twenty-four states either have no statutory frameworks for student associations or their frameworks assume the existence of student governments at public universities but provide them little to no role in higher education.<sup>57</sup> In these states, the role of student associations might vary widely from institution to institution based on the university's board, but students ultimately have no statutory guarantee for their positions within the institution.<sup>58</sup>

It also is worth noting that some strong student associations formed without an underlying statutory framework. For instance, in the State University of New York (SUNY) system, the SUNY Student Assembly was created by the SUNY Board of Trustees.<sup>59</sup> Both SUNY and the City University of New York (CUNY) systems have active student associations across their institutions,<sup>60</sup> even though New York's student associational law offers little positive authority to either.<sup>61</sup> In other states, student associations can be created through state university system regulation, university board action, or university president recognition.

Finally, at least fourteen states grant statutory authority to student governments or representatives in secondary, and even primary, education.<sup>62</sup> That authority is often limited to an advisory or non-voting role on a local school board, but a few states go even further.<sup>63</sup> This wide variance in the legal systems governing student associations produces disparate results. As with labor union organizing, the laws undergirding student organizing can either facilitate or hinder organization, and changes to those laws can allow organizing to flourish or can cut it off at the pass.

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(McKinney 2016); N.Y. ECON. DEV. LAW. § 435(1) (McKinney 2012) (establishing a right to certain notices of meetings and actions); N.Y. State Bar Ass'n Ethics Op. 73-309 (1973) (authorizing student associations to provide group legal services to members); TEX. EDUC. CODE ANN. § 56.243 (West 2012) (granting student governments some authority to decide whether to fund student scholarships through student fees in a state matching grant program).

57. *See infra* Appendix A.1 at Alabama, Alaska, Arkansas, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, Mississippi, Nebraska, New Hampshire, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Virginia, and Wyoming.

58. *Id.*

59. *See Governing Documents*, ST. U. OF N.Y. STUDENT ASSEMBLY, <http://sunysa.org/governing-documents> (last visited Dec. 16, 2018).

60. The SUNY Student Assembly represents the interests of the 465,000 students in the SUNY system, while the University Student Senate of CUNY represents the interests of the 500,000 students in that student. *See* SUNY STUDENT ASSEMBLY, *About*, <http://sunysa.org/about> (last visited Dec. 16, 2018); U. Student Senate of the City U. of N.Y., *About Us*, <http://www.usscuny.org/copy-of-about-us-2> (last visited Dec. 16, 2018).

61. *See infra* Appendix A.1 at New York.

62. *See infra* Appendix A.2 at Arizona, Kentucky, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Tennessee, Utah, and West Virginia.

63. *Compare* N.H. REV. STAT. ANN. §§ 194:23-f(II) (2008); 189:1-c (2008) (giving schools the option to permit a student to serve as a non-voting member of the School Board), *with* MD. CODE ANN., EDUC. §§ 2-202(f), 3-1002 (West 2012) (giving students a seat on many county Boards of Education and a statewide board); *see also infra* Appendix A.1 at Maryland.

This dichotomy can be seen in the United States Student Association (USSA), the historical nationwide representative of student unions in this country.<sup>64</sup> USSA's membership skews heavily toward states with independent student union funding: Oregon, Washington, California, and Massachusetts.<sup>65</sup> Hundreds of college campuses across the country have participated in student activism in the last few years,<sup>66</sup> often working with USSA. While students have built huge campaign networks in everything from the campus fossil fuel divestment movement<sup>67</sup> to campus labor activism<sup>68</sup> to the DREAMer movement,<sup>69</sup> relatively few student governments engage in political campaigns or national student organizing.<sup>70</sup>

USSA's membership suggests that it is difficult for associations representing a student body to secure the independence and the financial resources needed to have a self-actualized political identity as a student union without such legal autonomy. In fact, the history of student unions in some ways mirrors the history of labor unions before the NLRA: Student unions rose in the civil rights era and won significant power in the governance of universities, but that power has slowly been eroded over the years,<sup>71</sup> much like how labor unions won significant power and market penetration in the 1910s but lost much of it by the late 1920s.<sup>72</sup> Strengthening the legal framework underpinning student unions should facilitate their growth.

Stronger laws make a difference. Elected officials in every state, including states with strong student associational rights, should work to strengthen student association laws. Expanding students' associational rights expands students' role in securing a just, equitable system of higher education and in preparing future

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64. See Angus Johnston, *A Brief History of NSA and USSA*, U.S. STUDENTS ASS'N (2012), <http://usstudents.org/about/history>.

65. *Student Movement Map*, U.S. STUDENTS ASS'N, <http://usstudents.org/resources/student-movement-map> (last visited Dec. 16, 2018) (showing that almost all of its member campuses come from those four states, along with New Jersey and Wisconsin).

66. See *id.*

67. See *United States Petitions*, FOSSIL FREE, <https://campaigns.gofossilfree.org/petitions/countries/US> (last visited Dec. 16, 2018).

68. See, e.g., STUDENT LAB. ACTION PROJECT, <http://studentlabor.org> (last visited Dec. 16, 2018); UNITED STUDENTS AGAINST SWEATSHOPS, <http://usas.org> (last visited Dec. 16, 2018).

69. See *Our Mission*, UNITED WE DREAM, <https://unitedwedream.org/about> (last visited Dec. 16, 2018) (describing itself as a youth-led community and claiming 400,000 members and over 100 local groups).

70. USSA represents about 1.5 million college students, out of 20 million nationwide. See *Back to School Statistics*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=372> (last visited Dec. 16, 2018); @USSStudents, TWITTER, <https://twitter.com/usstudents> (claiming 1.5 million members in its bio) (last visited Dec. 16, 2018).

71. See Johnston, *supra* note 28.

72. Labor union density rose drastically from 11% in 1917 to 17.6% in 1921 before falling back down to 10.1% in 1929. Will Kimball & Lawrence Mishel, *Unions' Decline and the Rise of the Top 10 Percent's Share of Income*, ECON. POL'Y INST. (Feb. 3, 2015), <https://www.epi.org/publication/unions-decline-and-the-rise-of-the-top-10-percents-share-of-income>.

generations to actualize their dreams of a better future. Section IV further explores strategies to foster these associations, but the effects of these laws are real.

### *B. A Majority of States Protect Tenant Union Organizing*

When renters sign a lease with their landlord, they have wildly different rights depending on their jurisdiction and their context. In thirty-one states and the District of Columbia, those rights include the right to form a tenant union free from retaliation.<sup>73</sup> Tenant unions are organizations of renters who come together to deal collectively with their landlord.<sup>74</sup> Often, they form in response to landlords whose business model involves disinvestment in community housing stock and disregard of tenants' needs.<sup>75</sup> Tenant unions typically use tactics such as petitions, press conferences, rallies, lawsuits, and rent strikes to confront the issues residents raise.<sup>76</sup>

But when it comes to statutory frameworks, tenant unions are not a one-size-fits-all institution in many states. Instead, states often have one set of rules for traditional landlord-tenant relationships and one or more sets of rules for the relationship between facility owners and tenants renting lots at mobile home parks, manufactured home parks, or floating home marinas.<sup>77</sup> In nineteen states, some or all residents of home parks or marinas have more formal legal rights than residents of apartment buildings, perhaps because of their status as both a tenant renting land or docking space and as a homeowner.<sup>78</sup> The contrast in rights is often striking.

Tenant unions in both residential apartment units and mobile home parks and marinas have received little attention in the legal scholarship. Student comments from the 1960s proposing to introduce collective action and collective bargaining into landlord-tenant relationships constitute most of it.<sup>79</sup> More modern

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73. See *infra* Appendix B at California, District of Columbia, and New York; see also *infra* Appendix B at Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, and Wisconsin.

74. See *What Is a Tenant Union?*, HOMES FOR ALL NASHVILLE, <https://homesforallnashville.org/tenant-unions> (last visited Dec. 16, 2018).

75. See, e.g., Armando Aparicio & David Zlutnick, *These Tenants Are Leading the Largest Rent Strike in LA History*, NATION (Aug. 20, 2018), <https://www.thenation.com/article/these-tenants-are-leading-the-largest-rent-strike-in-la-history>.

76. *Id.*

77. Compare *infra* notes 101–06 and accompanying text (discussing tenants' rights in traditional dwellings), with *infra* notes 107–14 and accompanying text (discussing tenants' rights in mobile and manufactured home parks and marinas).

78. See *infra* Appendix B at Arizona, Connecticut, Delaware, Florida, Idaho, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, New York, Oregon, Rhode Island, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

79. See, e.g., Samuel A. Simon, Comment, *Tenant Interest Representation: Proposal for a National Tenants' Association*, 47 TEX. L. REV. 1160 (1969); Note, *Remedies for Tenants in Substandard Public Housing*, 68 COLUM. L. REV. 561 (1968) (discussing rent strike statutes for tenants); Comment, *Tenant*

commentary is meager.<sup>80</sup> However, the limited legal analysis these organizations have received does not mean that state law is silent on the subject.

In traditional tenant-landlord relationships, state law comes in three sizes: The rights it offers tenants range from relatively expansive union rights to limited organizational rights often concentrated in taxpayer-funded developments to no tenant associational rights at all. Additionally, at least one state employs tenant associations as a statutory tool to privatize public housing projects.<sup>81</sup>

California, New York, and the District of Columbia offer expansive tenant rights.<sup>82</sup> Only in the District of Columbia do tenants have a general right in most circumstances to form a tenant organization with the legal right to bargain with an owner at the bargaining table.<sup>83</sup> Tenants have broad rights to self-organization, modeled off of Section 7 of the National Labor Relations Act, and tenant organizers have the right to canvass in multi-family housing much of the time.<sup>84</sup> Owners may not interfere with most self-organization activities, and tenant union organizers cannot be employees or representatives of the current or prospective owners, meaning they must be independent of the owners.<sup>85</sup> Another law, called the Tenant Opportunity to Purchase Act (TOPA), gives most tenants a right of first refusal when a housing owner seeks to sell the building.<sup>86</sup> Tenant organizations have a right to certain information about the development<sup>87</sup> and have certain appraisal rights during the sale process.<sup>88</sup> Although D.C.'s TOPA is the strongest state law in the country for general tenant associations, it is not unique: Similar laws exist all across the country but are limited to tenant associations at mobile home parks and similar accommodations.<sup>89</sup> Even so, D.C. has what is likely the strongest framework for tenant associations out of any state in the country.

But D.C.'s law is slightly undermined by the lack of existing case law interpreting its requirements. Specifically, it provides that tenants have the right to “meet and confer” with their landlords through representatives of their own choosing.<sup>90</sup> This provision directly reflects the language in many public sector labor laws giving unions the right to meet and confer, analogous to bargaining,

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*Unions: Collective Bargaining and the Low-Income Tenant*, 77 YALE L.J. 1368 (1968) (discussing early efforts to undertake collective bargaining between tenants and landlords).

80. For one of the only examples, see Mary Spector, *Tenant Stories: Obstacles and Challenges Facing Tenants Today*, 40 J. MARSHALL L. REV. 407 (2007) (discussing challenges facing tenants' unions, in particular the expense of educational programs educating tenants on their rights).

81. See MICH. COMP. LAWS ANN. § 152.2721 (West 2006).

82. See *infra* Appendix B at California, District of Columbia, and New York.

83. See D.C. CODE § 42-3505.06(b) (2001).

84. D.C. CODE § 42-3505.06(b), (c) (2001).

85. D.C. CODE § 42-3505.06(d)(1)–(8) (2001).

86. D.C. CODE § 42-3404.08(2001).

87. D.C. CODE. § 42-3404.11(2) (2001).

88. D.C. CODE § 42-3404.02 (2001).

89. See *infra* notes 107–14 and accompanying text.

90. D.C. CODE § 42-3505.06(b) (2001).

with employers.<sup>91</sup> In D.C., though, it is unclear whether the landlord has a corresponding duty to meet with their tenants, because no duty was expressly written into the law.<sup>92</sup> This differs from most public sector labor laws, which expressly impose a duty for employers to meet with the union. Courts, however, might infer this duty through other sections of the law, such as Section (d)(7) which prohibits landlords from interfering with the right of a tenant or tenant organizer to propose that the owner modify the facilities or services.<sup>93</sup> Similarly, the D.C. government could consider clarifying the law by including a duty to bargain. Even so, D.C.'s law remains one of the strongest of the country.

New York and California also offer strong, if insufficient, protections. Both states protect tenants against retaliation for their organizing activities.<sup>94</sup> California extends to tenant union organizers the same broad exemption from trespassing laws that it offers to labor union organizers, where no civil or criminal trespass claim can be brought against the tenant union organizer as long as they enter the property on invitation of an occupant and during reasonable hours.<sup>95</sup> Tenants often have a right to self-organization or a right to express their political beliefs.<sup>96</sup> In New York, tenant associations have a right to participate in certain state commissions,<sup>97</sup> to obtain certain information from owners in some circumstances,<sup>98</sup> and to meet with owners to discuss complaints and concerns in some circumstances (another example of a “meet and confer” right for tenant associations which is similar to many state’s public-sector collective bargaining laws).<sup>99</sup> These rights are broader than in many other states, and the collective certification process or the ability to sustain tenant self-organization are what separate them. Yet, they still fail to provide a general right to form a tenant with the power to bargain with landlords over the terms and conditions of rent.<sup>100</sup>

Twenty-nine states offer limited protections for tenant union organizing but no collective certification process and little if any statutory support for tenant unions.<sup>101</sup> These protections typically result from the state’s adoption of the

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91. *See, e.g.*, CAL. GOV'T CODE § 3505 (West 2008); KAN. STAT. ANN. § 75-4324 (West 2008); 28 R.I. GEN. LAWS. 28-9.3–4 (2011). These laws are examples of state laws requiring public agencies to “meet and confer” with unions representing public employees.

92. D.C. CODE § 42-3505.06 (2001).

93. D.C. CODE § 42-3505.06(d)(7) (2001).

94. *See* CAL. CIV. CODE § 1942.5(d) (West 2010); N.Y. REAL PROP. LAW § 230 (McKinney 2018).

95. *See* CAL. CIV. CODE § 1942.6 (West 2010).

96. *See* CAL. CIV. CODE § 1940.4 (West 2010); N.Y. REAL PROP. LAW § 230 (McKinney 2018).

97. *See* N.Y. CITY CIV. CT. ACT § 110(g) (McKinney 1989); N.Y. UNCONSOL. LAW §§ 8624, 26–510 (McKinney 2013).

98. *See* N.Y. Priv. Hous. Fin. Law § 22-b(3) (McKinney 2015).

99. *See* N.Y. Priv. Hous. Fin. Law § 84-a (McKinney 2015); *supra* note 91 (providing examples of state public sector collective bargaining laws that give unions the right to meet and confer with public employers).

100. *See generally infra* Appendix B at California and New York.

101. *See infra* Appendix B at Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada,

Uniform Residential Landlord and Tenant Act (URLTA)<sup>102</sup> or a comparable provision, which bars landlords from retaliating against tenants for participating in or organizing tenant unions.<sup>103</sup> In many of these states, it is unclear if any tenants have actually invoked these protections. In a few states, additional protections apply, such as in Minnesota where neighborhood organizations can bring legal actions on behalf of a tenant, may request an inspection of a facility, and qualify for certain state loans.<sup>104</sup> In others, there are additional rights only in publicly-supported housing projects.<sup>105</sup>

Finally, nineteen states have no general protections for residential tenant organizing.<sup>106</sup> While state law may provide for protection from retaliation for other activities, such as reporting violations to government agencies, it does not protect tenants organizing to improve the terms and conditions of their housing.

Taken together, while some states have strong tenant association laws, and many states provide a general organizing right, most states provide little to no protection for tenant union organizing. But that is not the end of the story: Many states offer additional rights and protections to certain classes of tenants.

In comparison to standard residential tenants, tenants of mobile home, manufactured home, and floating home parks often enjoy far more statutory rights. Nineteen states extend specific rights to residents of these types of communities.<sup>107</sup>

New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, and Wisconsin. Ohio's law is interesting because it explicitly provides that landlords may not retaliate against tenants for joining with other tenants "for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement." OHIO REV. CODE ANN. § 5321.02(A)(3) (West 2016). The laws of the other states cited in this footnote protect organizing but do not explicitly refer to collective negotiations with landlords.

In this context, statutory certification process means a legal method by which tenant unions can be recognized as an official representative of tenants in a building. Statutory support here means rights afforded to tenant unions to organize and to address terms and conditions of housing, such as a right to meet and confer with landlords about rental contracts or apartment repairs, the right to request and receive information from landlords about rental units, or the right to meet on the property.

102. The URLTA has been adopted by twenty-one states. See John Ahlen & Lynn Foster, *Uniform Residential Landlord-Tenant Law: Changes on the Way*, 28 PROB. & PROP. MAG. 20 (2014), [https://www.americanbar.org/content/dam/aba/publications/probate\\_property\\_magazine/v28/04/2014\\_ab\\_a\\_rpte\\_pp\\_v28\\_4\\_article\\_ahlen\\_foster\\_uniform\\_residential\\_landlord\\_tenant\\_law.pdf](https://www.americanbar.org/content/dam/aba/publications/probate_property_magazine/v28/04/2014_ab_a_rpte_pp_v28_4_article_ahlen_foster_uniform_residential_landlord_tenant_law.pdf). It was originally adopted by the Uniform Law Commission in 1972. *Id.*

103. See *id.*

104. See MINN. STAT. ANN. § 504B.395 subd. 1(2), (3) (West 2014); MINN. STAT. § 504B.185 subds. 1, 2; MINN. STAT. ANN. § 472A.05 (West 2008).

105. See, e.g., CONN. AGENCIES REGS. 27-102l(d)-90(4)(A)(iv) (2015); MASS. GEN. LAWS ch. 121B § 32 (2017); 34 R.I. GEN. LAWS §§ 34-45-7(3)(i), -5(d)(1), -6(a)(2)(2) (2011).

106. See *infra* Appendix B at Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, Puerto Rico, South Carolina, Tennessee, Utah, Washington, West Virginia, and Wyoming. This Note's survey identified that these states did not pass the URLTA or omitted the tenant organizing protection from the anti-retaliation provision of the URLTA, and they had no comparable protection.

107. See *infra* Appendix B at Arizona (mobile home parks and recreational vehicle long-term rental spaces), Connecticut (mobile home parks), Delaware (manufactured home communities), Florida (mobile home parks), Idaho (floating home marinas and manufactured and mobile home communities), Maryland

For example, while residential tenants in Idaho have no statutory right to organize a union, floating home marina tenants have expansive rights: They have the right to form a tenant or homeowners' association "to further their mutual interests," and after forming their association, their landlord must meet and confer with their representatives about almost anything related to their housing.<sup>108</sup> Further, the statutory definition of a tenant association has no minimum membership requirement,<sup>109</sup> presumably meaning that minority unions have the same rights as majority unions. Landlords also may not retaliate against these tenants for their organizational activities.<sup>110</sup> Idaho also affords to tenants of manufactured home and mobile home communities organizational and community common-space use rights,<sup>111</sup> protection from retaliation,<sup>112</sup> and certain informational rights.<sup>113</sup> Many states go even further: Often, mobile home park tenants have similar rights to residential tenants in D.C., with a right of purchase and right of first refusal if the landlord elects to sell the community's land.<sup>114</sup>

Through these types of laws, many states have recognized that tenants, or at least some tenants, have a right of self-organization and have communal interests relative to their landlords that merit statutory protection and authority.

### *C. There Is a Nationwide Right to Organize Resident and Family Councils*

When Medicare and Medicaid recipients enter a nursing home or long-term care facility, the focus is often on the freedom they give up.<sup>115</sup> But federal and state law also give them a very specific right: The right to associate collectively with other residents to form resident councils or groups.<sup>116</sup> In fact, the family of those adults also have the same right: To organize collectively with the families of

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(mobile home parks), Massachusetts (manufactured housing communities), Minnesota (manufactured home parks), Montana (mobile home parks), Nebraska (mobile home parks), New Hampshire (manufactured housing parks), New York (manufactured home parks), Oregon (manufactured dwelling and floating home spaces), Rhode Island (mobile home parks), Utah (mobile home parks), Vermont (mobile home parks), Virginia (manufactured and mobile home parks), West Virginia (residents of house trailers, mobile homes, manufactured homes, and modular homes), Wisconsin (manufactured home communities).

108. See IDAHO CODE § 55-2716 (2012).

109. See IDAHO CODE § 55-2704(5) (West 2017).

110. See IDAHO CODE § 55-2715(3) (2012).

111. See IDAHO CODE § 55-2013A(1) (2012).

112. See IDAHO CODE § 55-2015(3) (2012).

113. See IDAHO CODE § 55-2013A(1) (2012).

114. See, e.g., DEL. CODE ANN. tit. 25, § 7105 (2009) (providing such rights at manufactured home communities); FLA. STAT. ANN. § 723.071 (West 2011) (providing such rights at mobile home parks).

115. See Steve Gurney, *Research Study, "Aging in Place in America"*, RETIREMENT LIVING SOURCEBOOK (Aug. 13, 2018), <https://www.retirementlivingsourcebook.com/articles/research-study--%E2%80%9Caging-in-place-in-america-%E2%80%9D%C2%9D-2270>.

116. See 42 U.S.C. § 1395i-3(C)(1)(A)(vii) (2012) (for Medicare recipients); 42 U.S.C. § 1396r(C)(1)(A)(vii) (2012) (for Medicaid recipients).



other residents.<sup>117</sup> All of these rights aim to ensure the dignity, comfort, and autonomy of facility residents, the vindication of their legal rights, and their self-organization towards their collective goals.<sup>118</sup> Many states extend those rights further to individuals in other types of facilities, and many also give those councils additional authority much like labor unions.<sup>119</sup> Perhaps most interestingly, some states require the creation of resident councils at facilities, essentially legislating a union for all.<sup>120</sup> This Section discusses these frameworks in greater depth.

Federal law provides broad but terse collective associational rights in almost every nursing home and long-term care facility in the country: Essentially, residents and their families have the right to organize and participate in resident and family groups at the facility.<sup>121</sup> These rights arose out of the Federal Nursing Home Reform Act, included in the Omnibus Budget Reconciliation Act of 1987, and followed broad concern over the treatment of the elderly in nursing homes.<sup>122</sup> The Institute of Medicine (now the National Academy of Medicine) impaneled a Committee on Improving the Quality of Nursing Home Care in 1986,<sup>123</sup> and it published an influential book recommending systematic change in the provision of nursing care in this country.<sup>124</sup> Many of those recommendations ended up in the 1987 law.<sup>125</sup>

Above all for residents' collective associational rights, the bill's drafters incorporated and strengthened the Committee's Recommendations 3-7E and 3-7F

117. *See supra* note 116.

118. *See* COMM. ON NURSING HOME REGULATIONS, IMPROVING THE QUALITY OF CARE IN NURSING HOMES 2–7, 19–25, 31 (1986), <https://www.nap.edu/catalog/646/improving-the-quality-of-care-in-nursing-homes> [hereinafter IMPROVING THE QUALITY OF CARE].

119. *See infra* notes 132–34 and text accompanying notes (enumerating the states that extend organizational rights to residents of other types of facilities and the states that significantly increase resident association authority).

120. *See* ARK. CODE ANN. § 20-10-1006(a) (West 2011) (required at each long-term care facility); CAL. HEALTH & SAFETY CODE § 1418.2(a) (West 2016) (required at licensed facilities); 6 COLO. CODE REGS. § 1011-1-7-13 (2018) (required at facilities with seventeen or more beds); FLA. STAT. § 651.081(2)(a) (West 2005) (required continuing care facilities); KAN. ADMIN. REGS. § 26-41-106(a) (2009) (required at assisted living facilities, residential health care facilities); KAN. ADMIN. REGS. 26-43-106(a) (2009) (required at adult day care facilities); MINN. R. 9520.0630(3) (2017) (required at residential mental health services residential programs); N.H. CODE ADMIN. R. ANN. Bd. Of Managers of the N.H. Veterans' Home 202.01(R) (2010) (required at the state veteran's home); OKLA. ADMIN. CODE 310:680-3-8 (2016); OKLA. STAT. tit. 63, § 1-853.1(A)(3) (2011); OKLA. STAT. tit. 63, § 1-852(E)(2) (2011) (required at certain non-profit facilities seeking to open new facilities to furnish the minutes of family and residents' councils from other holdings).

121. *See supra* note 116.

122. *See Nursing Home Reform Act (OBRA '87): 20 Years of History*, SPECIAL COMMITTEE ON AGING, U.S. SENATE (May 2, 2007), <https://www.aging.senate.gov/download/nursing-home-reform-act-obra-87-20-years-of-history-timeline>.

123. *See Proposals for Improvements in Nursing Home Quality: Hearing on H. S. 522007 Before the S. Spec. Comm. On Aging*, 110th Cong. 2 (2007), <https://www.aging.senate.gov/imo/media/doc/hr172ch.pdf> (statement of Charlene Harrington, Professor of Sociology and Nursing).

124. IMPROVING THE QUALITY OF CARE, *supra* note 118.

125. *See* Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987).

into the law. Recommendation 3-7E suggested that the law require every facility to develop a plan for regular resident participation in decision-making around the facility's operations and policies. Among the forms of resident participation were resident councils.<sup>126</sup> Recommendation 3-7F suggested that facilities be required to permit access to the facility by a state-certified ombudsperson, and by “[a]ny authorized employee or agent of a public agency . . . or any authorized member of a nonprofit community support agency that provides health or social services to nursing home residents . . . .”<sup>127</sup>

Reflecting these two provisions, the bill established that every resident has the right to organize and participate in resident groups, and that residents' families have the right to meet in the facility with the families of other residents.<sup>128</sup> It also provided that nursing facilities must permit “immediate access” to a resident by certain state and federal representatives, by an ombudsperson, by the resident's physician, and by the resident's family members and other visitors if the residents choose.<sup>129</sup> Facilities must also permit “reasonable access” to health, social, legal, and other service organizations.<sup>130</sup> These associational, organizational, and access rights provide for the fundamental right to form resident councils, but do not provide for much else.

Many states also provide additional associational rights to residents and afford their associations additional authority. In fact, fourteen states significantly expand residents' rights and resident council power; many also extend this federal right to other care facilities.<sup>131</sup> Eight of those actually *require* facilities to create resident councils in some or all circumstances, rather than merely permitting or assisting them.<sup>132</sup> Another thirteen states and the District of Columbia provide

126. IMPROVING THE QUALITY OF CARE, *supra* note 118 at 31. This Recommendation, reproduced in full, reads:

Recommendation 3–7E: A new standard should be added to the administration condition that would require every facility to develop and implement a plan for regular resident participation in decision-making in the facility's operations and policies and for presentation of resident concerns. Forms of resident participation can include, but are not limited to, resident councils, regularly scheduled resident forums, resident issue or program committees, and grievance committees. Facilities should include existing resident councils and/or other resident representatives in developing this plan.

127. *Id.*

128. *See supra* note 116.

129. *See* 42 U.S.C. § 1395i-3(c)(3)(A)–(C) (2012) (for Medicare recipients); 42 U.S.C. § 1396r(c)(3)(A)–(C) (2012) (for Medicaid recipients).

130. *See* 42 U.S.C. § 1395i-3(c)(3)(D) (2012) (for Medicare recipients); 42 U.S.C. § 1396r(c)(3)(D) (2012) (for Medicaid recipients).

131. *See infra* Appendix C at Arkansas, California, Colorado, Florida, Kansas, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Oklahoma, Oregon, and Vermont.

132. *See* ARK. CODE ANN. § 20-10-1006(a) (West 2011) (required at each long-term care facility); CAL. HEALTH & SAFETY CODE § 1418.2(a) (West 2016) (required at licensed facilities); 6 COLO. CODE REGS. § 1011-1:7-13 (2018) (required at facilities with seventeen or more beds); FLA. STAT. § 651.081(2)(a) (West 2005) (required continuing care facilities); KAN. ADMIN. REGS. § 26-41-106(a) (2009)

limited supplemental rights, including many which extend the right to organize to other facilities and institutions.<sup>133</sup> Twenty-three states and Puerto Rico provide no additional substantive rights at all.<sup>134</sup>

Where states extend these rights substantially, the statutory framework can create the opportunity for residents to impact the provision of care in their facilities. For example, in New York, the governing body of retirement communities must meet with the residents' associations if one exists at least four times a year and must hold an annual general meeting for all residents.<sup>135</sup> Some state funding is conditioned on approval of the residents' council,<sup>136</sup> and residents' councils have a role in certain statutorily-mandated committees.<sup>137</sup>

Similarly, residents' councils in Oregon have the right to meet with the provider at least twice a year, to request information about any changes to fees or services, to receive financial information about the provider, to receive governing body meeting minutes, and to participate in the governing body as a non-voting member.<sup>138</sup> The provider must pay travel expenses to ensure that resident council representatives can attend meetings of the governing body and its committees.<sup>139</sup> In other states, like Arkansas and Louisiana, state law establishes specific penalties for violating the regulatory and statutory requirements around resident councils.<sup>140</sup> Through laws like these, states have acted to build on the basic rights guaranteed under federal law.

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(required at assisted living facilities, residential health care facilities); KAN. ADMIN. REGS. 26-43-106(a) (2009) (required at adult day care facilities); MINN. R. 9520.0630(3) (2017) (required at residential mental health services residential programs); N.H. CODE ADMIN. R. ANN. Bd. Of Managers of the N.H. Veterans' Home 202.01(R) (2010) (required at the state veteran's home); OKLA. ADMIN. CODE 310:680-3-8 (2016); OKLA. STAT. tit. 63, § 1-853.1(A)(3) (2011); OKLA. STAT. tit. 63, § 1-852(E)(2) (2011) (required at certain non-profit facilities seeking to open new facilities to furnish the minutes of family and residents councils from other holdings).

133. *See infra* Appendix C at Alabama, Arizona, Connecticut, District of Columbia (extending organizing rights to residents of independent living programs, youth shelters, runaway shelters, emergency care facilities, and youth group homes), Georgia, Indiana, Iowa (extending organizing rights to individuals at state mental health resource centers), Louisiana, Maine (extending organizing rights to residents of private non-medical institutions among others), New Mexico, Texas, Utah, West Virginia, and Wisconsin. States without parentheses do not extend the right to organize to other facilities and institutions.

134. *See infra* Appendix C Category at Alaska, Delaware, Hawaii, Idaho, Illinois, Kentucky, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, and Wyoming. Virginia used to offer more guidance and regulatory support for residents' councils until it repealed those regulations. *See* 22 VA. ADMIN. CODE § 40-72-810 (repealed).

135. N.Y. PUB. HEALTH LAW §§ 4612(1), 4665(1) (McKinney 2012).

136. *Id.*

137. *See id.*

138. *See* OR. REV. STAT. § 101.020(9) (West 2010).

139. *See id.*

140. *See, e.g.*, 016.06-16-4000 ARK. CODE R. § 4007 (LexisNexis 2018) (establishing failure to comply with the rules around residents' councils as a Class C violation); LA. ADMIN. CODE tit. 50, § 10167(C)((7)(f) (2018) (establishing failure to allow residents access to an established residents council as a Class D violation).

Yet these associations remain largely unstudied at both a state and federal level: Resident councils have received almost no attention in the legal scholarship. Some legal commentators have discussed welfare unions, which councils in facilities for Medicare or Medicaid recipients resemble in part,<sup>141</sup> but almost no legal scholars have discussed resident councils despite the nationwide right to form one.<sup>142</sup>

Through these laws governing care facilities, states and the federal government have quietly extended collective associational rights to the elderly and people with disabilities. Policy makers should consider strengthening those rights to protect their interests.

### III. THE VALUE OF AND VALUES UNDERPINNING COLLECTIVE ASSOCIATIONS

Collective associations play important roles in society, and laws strengthening them could further their importance. There are a set of interconnected economic and social issues which arguably are caused by declining collective power, and strong and vital non-labor unions could tackle many of those issues. This Part first discusses the growing economic insecurity and disinvestment in social services, laying out the problem in broad terms. It then discusses the characteristics of strong unions to establish what makes a union successful and inform discussions of policy solutions that would build strong unions.

#### *A. The Consequences of Declining Union Power*

Working families have too little political and economic power in a country where the decks are stacked against them. Labor unions are one source of that power, but they need not be the only one. Further, their own power has been diminished by these very same phenomena. Much of the rising economic inequality and insecurity arises from the decline in labor union power: Significant research shows the role that labor unions play in creating a more just and equitable economy and in counterbalancing the political role of capital in order to support

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141. See generally William H. Clune, *Unreasonableness and Alienation in the Continuing Relationships of Welfare State Bureaucracy*, 1985 WIS. L. REV. 707 (1985) (discussing a push towards economic democracy and its relationship to the welfare system); Lynne Polito, *Welfare/Social Justice: Where Do We Go From Here*, 19 W. NEW ENG. L. REV. 54 (1997) (discussing the need for a welfare union).

142. A legal literature review revealed only two discussions of this right. See Donna R. Lenhoff, *LTC Regulation and Enforcement an Overview from the Perspective of Residents and Their Families*, 26 J. LEGAL MED. 9, 30 (2005) (writing that “[p]articipation in resident councils is specifically mentioned as a residents’ right in the Nursing Home Reform Act (NHRA). Similarly, successful family councils can improve quality of care and quality of care and quality of life for residents.” (citation omitted)); Jennifer Gimler Brady, *Long-Term Care Under Fire: A Case for Rational Enforcement*, 18 J. CONTEMP. HEALTH L. & POL’Y 1, 12 (2001) (summarily discussing the right to participate in residents’ groups as another right nursing homes must ensure for their residents).

the interests of working families.<sup>143</sup> Economic insecurity reverberates throughout in every sector of the economy.

States have sharply cut their spending on higher education, leaving students to pick up the bill in the form of higher tuition. Following the 2007 recession, all but four states cut their support for public education.<sup>144</sup> The average state reduced its spending by 18%, while nine states including Arizona, Illinois, and Pennsylvania cut their spending by more than 30%.<sup>145</sup> The student share of public educational costs—the percentage of institutional revenue derived from student tuition—has increased from just over 25% in 1991 to almost 50% in 2016.<sup>146</sup>

These trends have led to one shocking statistic: Since 1973, public college tuition has increased by 274%, even after adjusting for inflation, while median household income had only grown 7%.<sup>147</sup> This defunding of public education coupled with stagnant family incomes has left students struggling to pay their bills, while they take out massive student loans to cover what they cannot pay.<sup>148</sup>

Economic insecurity is also reflected in the housing market. The number of “severely burdened renter households,” defined as families whose housing costs are more than 50% of their household income, has almost doubled since 1990.<sup>149</sup> Almost half of American families are spending more than 30% of their household

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143. See Josh Bivens et al., *How Today's Unions Help Working People*, ECON. POL'Y INST. (Aug. 24, 2017), <http://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy>; Richard Freeman, et al., *What Do Unions Do for the Middle Class?*, CTR. FOR AM. PROGRESS (Jan. 13, 2016), <https://www.americanprogress.org/issues/economy/reports/2016/01/13/128366/what-do-unions-do-for-the-middle-class>; Richard D. Kahlenberg, *How Defunding Public Sector Unions Will Diminish Our Democracy*, CENTURY FOUND. (Jan. 6, 2016), <https://tcf.org/content/report/how-defunding-public-sector-unions-will-diminish-our-democracy>; Todd N. Tucker, *Seven Strategies to Rebuild Worker Power for the 21<sup>st</sup> Century Global Economy*, ROOSEVELT INST. (Sept. 18, 2018), <http://rooseveltinstitute.org/seven-strategies-rebuild-worker-power> (summarizing the economic research on the relationship between union density and worker income and wellbeing). Of course, this proposition is not universally accepted; many commentators believe that labor unions hurt consumers, workers, and economic growth. See, e.g., James Sherk, *What Unions Do: How Labor Unions Affect Jobs and the Economy*, HERITAGE FOUND. (May 21, 2009), <http://www.heritage.org/jobs-and-labor/report/what-unions-do-how-labor-unions-affect-jobs-and-the-economy>.

144. Michael Mitchell, et al., *Funding Down, Tuition Up*, CTR. ON BUDGET & POL'Y PRIORITIES (Aug. 15, 2016), <https://www.cbpp.org/research/state-budget-and-tax/funding-down-tuition-up>.

145. *Id.*

146. STATE HIGHER EDUC. EXEC. OFFICERS ASS'N, STATE HIGHER EDUCATION FINANCE: FY 2016 (Apr. 2017), [http://www.sheeo.org/sites/default/files/project-files/SHEEO\\_SHEF\\_2016\\_Report.pdf](http://www.sheeo.org/sites/default/files/project-files/SHEEO_SHEF_2016_Report.pdf); see also STATE HIGHER EDUC. EXEC. OFFICERS ASS'N, NET TUITION AS A PERCENT OF TOTAL EDUCATIONAL REVENUE 1991–2016 (2017), [https://public.tableau.com/profile/sheeo#!/vizhome/SHEFInteractiveStateData\\_1/About?publish=yes](https://public.tableau.com/profile/sheeo#!/vizhome/SHEFInteractiveStateData_1/About?publish=yes).

147. Mitchell et al., *supra* note 144.

148. See *id.*

149. ALLISON CHARETTE ET AL., ENTER. CMTY. PARTNERS & JOINT CTR. FOR HOUS. STUD. AT HARV. U., PROJECTING TRENDS IN SEVERELY COST-BURDENED RENTERS: 2015–2025 (2015), <https://www.enterprisecommunity.org/resources/projecting-trends-severely-cost-burdened-renters-13350>.

income on rent.<sup>150</sup> Currently, there are about 7.3 million affordable housing units for 11.2 million extremely low-income families.<sup>151</sup> This math just does not add up. Similarly, while the federal minimum wage has remained stagnant since 2009, the national average cost of market-rate housing has increased by almost 19%.<sup>152</sup> For families struggling to make ends meet, the twin problem of rising rents and stagnant incomes does not inspire much optimism about the future.

Given the dire situation many working people face, families often assume they can turn to the social welfare system for assistance, but that assumption is incorrect. Decades of stagnation and cuts have undermined most cash transfer programs, where the government gives monetary assistance to low-income families. For example, in 1989, thirty-eight states had general assistance programs, which are cash assistance programs for the very poor.<sup>153</sup> Today, only twenty-seven states have such a program, and benefits have fallen in every single state that retains its program.<sup>154</sup> Similarly, cuts to federal cash assistance championed by legislators from both parties and signed by President Clinton in 1996 have made it almost impossible for many poor families to get federal cash assistance, while states have siphoned off the block-granted funds to pet projects.<sup>155</sup> According to the Center on Budget and Policy Priorities, the “largest single reason” that social programs protected one million fewer children from living in deep poverty a decade after the welfare cuts of 1996 “was the loss of cash assistance following the 1996 welfare overhaul.”<sup>156</sup>

Just as traditional cash assistance programs have fallen to the wayside, unemployment compensation in many states is no longer as readily available or as generous. In the run-up to the Great Recession, many states failed to adequately fund their unemployment compensation trust funds, leaving them to face insolvency during the largest recession in seventy years.<sup>157</sup> In the aftermath, many

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150. *Id.*

151. *Id.*

152. See Megan Stanley, *Low-Wage Workers Are Buckling Under Rising Housing Rents*, PEOPLE'S POL'Y PROJECT (Oct. 20, 2017), <https://peoplespolicyproject.org/2017/10/20/low-wage-workers-are-buckling-under-rising-housing-rents>.

153. Liz Schott & Misha Hill, *State General Assistance Programs Are Weakening Despite Increased Need*, CTR. ON BUDGET & POL'Y PRIORITIES (July 9, 2015), [https://www.cbpp.org/research/family-income-support/state-general-assistance-programs-are-weakening-despite-increased](https://www.cbpp.org/research/family-income-support/state-general-assistance-programs-are-weakening-despite-increased-need).

154. *Id.* While Pennsylvania ended its general assistance program in 2012, a recent Pennsylvania Supreme Court decision found the law that ended the program was passed in an unconstitutional manner and ordered the program reinstated. See *Washington v. Dep't of Public Welfare*, 188 A.3d 1135, 1154 (Pa. 2018).

155. Jordan Weissmann, *The Failure of Welfare Reform*, SLATE (June 1, 2016), [http://www.slate.com/articles/news\\_and\\_politics/moneybox/2016/06/how\\_welfare\\_reform\\_failed.html](http://www.slate.com/articles/news_and_politics/moneybox/2016/06/how_welfare_reform_failed.html).

156. Arloc Sherman & Danilo Trisi, *Safety Net for Poorest Weakened after Welfare Law but Regained Strength in Great Recession, at Least Temporarily*, CTR. ON BUDGET & POL'Y PRIORITIES, 6 (May 11, 2015), <https://www.cbpp.org/research/poverty-and-inequality/safety-net-for-poorest-weakened-after-welfare-law-but-regained>.

157. Rick McHugh & Will Kimball, *How Low Can We Go? State Unemployment Insurance Programs Exclude Record Numbers of Jobless Workers*, ECON. POL'Y INST. (Mar. 9, 2015),

states have cut benefits and tightened eligibility requirements, leaving workers without the benefits they paid in to.<sup>158</sup> In fact, in 2014, only 34.7% of short-term unemployed workers received unemployment compensation, barely one in three.<sup>159</sup> In seven states, fewer than one in five short-term unemployed workers received unemployment compensation.<sup>160</sup>

Through cuts like these, the social safety net has been dismantled. Not surprisingly, workers are frustrated when they turn to social assistance programs because there is too little there. With the notable exception of Medicaid expansion in the thirty-two states that accepted the Affordable Care Act matching funds,<sup>161</sup> workers today have far fewer resources to turn to if they fall behind.

Taking all of these trends together—stagnant family incomes contrasted against huge wealth gains for the wealthiest Americans, rapidly increasing public university tuition coupled with rising student debt loads, rising rental costs and insufficient affordable housing, and cuts to the social safety net—it is clear they are all part of one problem.

When working people come together in organizations, they build systemic power. Student unions, tenant unions, welfare unions, and other collective associations could be one source of that systemic power. This Note examines the extent of collective associations outside the workplace to advocate for expanding and empowering them.

### *B. The Characteristics of Strong Labor Unions*

The experience of labor unions should inform policy makers seeking to strengthen non-labor unions. Private sector unions in the United States operate under a specific legal framework. Workers have the right to act collectively with their coworkers for their mutual aid and protection or to advance their common interests.<sup>162</sup> Employers cannot legally interfere with or retaliate against workers for protected, concerted employee activities, nor can employers “dominate” labor organizations by giving them monetary support.<sup>163</sup> Unions exist as independent institutions, whose funding comes from dedicated member dues, not from

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<http://www.epi.org/publication/how-low-can-we-go-state-unemployment-insurance-programs-exclude-record-numbers-of-jobless-workers>.

158. *Id.*

159. *Id.*

160. *Id.* Compare those seven states with reciprocity rates of less than 20%—South Carolina, South Dakota, Louisiana, Florida, Georgia, Arizona, and Tennessee—to the six states where more than half of the same group received benefits in 2014—New Jersey (the highest at 65.7%), Connecticut, District of Columbia, Massachusetts, Pennsylvania, and Arkansas. *Id.*

161. See FAMILIES USA, *A 50-State Look at Medicaid Expansion* (May 2018), <http://familiesusa.org/product/50-state-look-medicaid-expansion>.

162. See 29 U.S.C. § 157 (2012).

163. See 29 U.S.C. § 158 (2012).

employer handouts, foundation grants, or intermittent donations.<sup>164</sup> At the apex of their power in the 1960s and 1970s, unions were not simply advocacy organizations but organizing institutions: Their primary lever of power came neither from lobbyists nor political contributions, but from their base of organized workers in their industries.<sup>165</sup> When workers have a union, they have a democratic, independent institution with the power to change their workplaces and their communities.

At the same time, there is wide recognition that the federal statutory framework governing labor unions is a structural barrier against union growth.<sup>166</sup> While the original Wagner Act of 1935 was a radical step forward for workers' rights,<sup>167</sup> later Congressional amendments, state laws, and court decisions have weakened its promise. Congress amended the National Labor Relations Act of 1935 (NLRA) several times to make certain collective worker conduct illegal. First, the 1947 Taft-Hartley Act<sup>168</sup> outlawed secondary boycotts,<sup>169</sup> jurisdictional strikes,<sup>170</sup> closed shops<sup>171</sup> and featherbedding.<sup>172</sup> Taft-Hartley also permitted states to pass so-called "Right to Work" laws, which ban union security agreements<sup>173</sup> and have been passed in twenty-eight states.<sup>174</sup> Right to Work laws substantially

164. See generally National Labor Relations Act of 1935 (codified as amended at 29 U.S.C. §§ 151–169 (2012)).

165. For an interesting discussion of union renewal and strategies to build worker power, see JANE F. MCALEVEY, *NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE* (2016).

166. See, e.g., James J. Brudney, *Reflections on Group Action and the Law of the Workplace*, 74 TEX. L. REV. 1563, 1572 (1996); Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1529 (2002); Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937–1941*, 62 MINN. L. REV. 265, 268–69 (1977); Wilma B. Liebman, *Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Board*, 28 BERKELEY J. EMP. & LAB. L. 569, 572 (2007); Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 958 (2007).

167. See National Labor Relations (Wagner) Act of 1935, ch. 372, 49 Stat. 449 (1935).

168. See Labor Management Relations (Taft-Hartley) Act of 1947, 61 Stat. 136 (codified as amended at 29 U.S.C. §§ 141–97 (2012)).

169. Secondary boycotts are a collective refusal to deal with the products, employees, or business of one employer in order to exert pressure on another employer with whom a group of workers have a primary labor dispute. For example, it would be a secondary boycott if grocery store workers went on strike to demand their grocery store refuse to stock a specific product, such as produce from a struck farm.

170. Jurisdictional strikes occur when two unions represent different groups of employees at the same employer or job site, and there is a dispute over what work should be assigned to which unit. A union strikes to pressure the employer to assign the disputed work to them.

171. Closed shops are agreements between a union and an employer that require the employer to hire only union members for bargaining unit positions.

171. Featherbedding refers to an agreement between a union and an employer where the employer hires more union members than are needed to do the work or hires them to do work that need not be done.

173. Union security agreements are agreements between a union and employer that all bargaining unit members will either join the union and pay union dues or will pay an agency fee to cover the cost of the union's services and representation.

174. See Labor Management Relations (Taft-Hartley) Act of 1947, 61 Stat. 136 (codified as amended at 29 U.S.C. §§ 141–97 (2012)); NAT'L CONF. OF STATE LEGISLATURES, *Right-to-Work Resources*,



reduce union density.<sup>175</sup> Then, the 1959 Landrum-Griffin Act<sup>176</sup> banned hot-cargo agreements,<sup>177</sup> continued to tighten the rules against secondary boycotts, and limited union recognition strikes.<sup>178</sup> It also banned communists from holding union office, which would not be found unconstitutional until 1965.<sup>179</sup> These substantive amendments made illegal many union strategies for organizing and growth.

Many commentators also highlight the weak enforcement mechanism in the law, where the NLRB may not assess monetary penalties beyond make-whole relief even on employers that willfully violated the act, as contributing to regular violations of the law.<sup>180</sup> Others point to the many Supreme Court decisions restricting workers' rights under the law.<sup>181</sup> Thus, while policy makers might want to pursue the characteristics of labor unions at their peak, it is unlikely that they would want to model collective associational law off of the federal NLRA.

Legislators could achieve effective non-labor associational representation by instead fostering unions with those fundamental characteristics that labor unions displayed in the 1960s and 1970s. At their core, those characteristics are: (1) strong roots in specific institutions coupled with independence from the institutions, (2) a robust internal union democracy, (3) a willingness to be oppositional towards powerful interests as needed, and (4) the legal authority or forbearance to engage in the broadest range of activities with the fewest political or judicial constraints on their activities.<sup>182</sup>

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<http://www.ncsl.org/research/labor-and-employment/right-to-work-laws-and-bills.aspx> (last visited Dec. 16, 2018).

175. See, e.g., Joe C. Davis & John H. Huston, *Right-to-Work Laws and Union Density*, 16 J. LAB. RES., 221, 225-32 (1995).

176. See Labor Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 73 Stat. 519 (codified as amended at 29 U.S.C. §§ 401–531 (2012)).

177. Hot-cargo agreements were an alternative to the secondary boycott where the employer agreed to stop doing business with some or all secondary employers who were in labor disputes with their employees.

178. Recognition strikes are strikes intended to pressure the employer to voluntarily recognize and bargain with a union without going through a formal National Labor Relations Board (“NLRB”) election.

179. *United States v. Brown*, 381 U.S. 437, 462 (1965).

180. See, e.g., Oscar Valdes-Viera, *State of the Unions in the U.S. Economy*, CENTURY FOUND. (June 22, 2016), <https://tcf.org/content/facts/state-unions-u-s-economy>.

181. See, e.g., JULIUS G. GETMAN, *THE SUPREME COURT ON UNIONS: WHY LABOR LAW IS FAILING AMERICAN WORKERS* (2016).

182. For a statutory framework with a similar definition of a tenant union, see MASS. GEN. LAWS ch. 40T § 1 (2004). Therein, a tenant organization at a publicly-assisted affordable housing project in Massachusetts is defined as:

[A]n organization established by the tenants of publicly-assisted housing for the purpose of addressing issues related to their living environment and which meets regularly, operates democratically, is representative of all residents in the development, is completely independent of owners, management and their representatives and which has filed a notice of its existence with CEDAC; provided, however, that no owner or other third party shall be required to ascertain the organization's compliance with this definition.

*Id.*

Taking each assumption in turn, the first characteristic imagines associations as “shop-floor” institutions, representing a united base of people in an institution or local community. Whether that shop-floor is the classrooms of a community college, the apartments of a housing complex, or the waiting room of a welfare office, these collective associations would be deeply rooted in a place and context. Those roots would come with an independent and stable funding source from the power they relate to, with independent offices and officers. These unions would not rely on the institutions whose participants they represent for support or funding, but instead would be able to rely on their members and their communities to achieve their goals.

The second characteristic envisions democratic unionism: Institutions would hold open elections, encourage high member turnout, consider directly democratic voting and administrative procedures, and have a strong internal organization where members are empowered to, and do, act to improve their own lives.<sup>183</sup>

The third characteristic envisions associations comfortable with rejecting tripartite or “industrial peace” frameworks for collective action when circumstances warrant it. Often, politics of cooperation and mutual agreement can be productive for working families, but equally often, labor unions have staked out bold demands and refused to cede to pressures to compromise. Policy makers might prefer that non-labor unions are able and prepared to act in opposition to powerful interests, and to engage in collective action to win demands, both to hold future elected officials and state institutions accountable to their constituents and to organize political movements dedicated to transformational social change.<sup>184</sup>

The fourth characteristic envisions associations able to legally engage in the broadest range of activities possible, including partisan political work and collective action like enforceable strikes and boycotts. Statutory frameworks would create opt-out fee structures and mandate procedures for fee assessment no more complicated than those applying to labor unions.

These characteristics enable institutions to more effectively advance the interests of their members. Ordinary people coming together in independent unions have an opportunity to build collective power and change the world for the better; their potential power neither begins nor ends in the workplace. States should look to these normative goals as the framework for collective associational rights, in

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183. For an example of a collective association dedicated to deeply democratic institutional structures, see generally L'ASSOCIATION POUR UNE SOLIDARITE SYNDICALE ÉTUDIANTE, *Statuts et règlements de l'association pour une solidarité syndicale étudiante (ASSÉ)* (Apr. 27, 2014), <http://www.asse-solidarite.qc.ca/wp-content/uploads/2014/09/statuts-et-reglements-derniere-mise-a-jour-avril-2014.pdf>.

184. Many commentators understand political organizations as vehicles for people, regardless of their income, to build political power and influence policy. See, e.g., WALTER KORPI, *THE DEMOCRATIC CLASS STRUGGLE* 26 (1983); Nathan J. Kelly, *Political Choice, Public Policy, and Distributional Outcomes*, 49 AM. J. POL. SCI. 865, 867 (2005); Benjamin J. Sachs, *The Unbundled Union: Politics Without Collective Bargaining*, 123 YALE L.J. 148, 151 (2017).

order to create vibrant independent unions organizing community members in non-labor sectors across the economy to take on entrenched power and secure a bigger share for everyday people.

### *C. The Stakes for Collective Associations*

There is a lot at stake when it comes to associational rights. In the education context, there are nearly 20 million college students in the United States, with more than 6 million attending two-year institutions and 13.3 million at four-year institutions.<sup>185</sup> About 17 million of those are undergraduates, and nearly 3 million are postgraduate students.<sup>186</sup> While most will be members of some student government association, relatively few states have active, political student associations.<sup>187</sup> Expanding the ability of student unions to act on behalf of their members—by organizing their members, launching social and political campaigns for education justice, and by paying for their activities through fees set by their members—could change the face of education politics in many states.

Similarly, there are millions of renters, millions of people living in assisted living and retirement communities, and millions of high school students. For resident councils, the Administration for Community Living's Long-Term Care Ombudsman program reported that in Fiscal Year 2016, their ombudspersons participated in 22,205 resident council meetings and 1,974 family council meetings, huge numbers.<sup>188</sup>

Collective associations have power. As Harvard Professor Benjamin Sachs put it, “money is not the only source of influence in American politics. Political power also flows from political organization, and organization is a source of power available to all income groups.”<sup>189</sup> Organizations putting people in motion towards a common goal have social and political power to effectuate change.

That might explain why some elected officials in states with strong student unions have recently changed the laws to cut their funding sources. For example, in 2013, a Republican legislature voted to end mandatory student funding at the University of Wisconsin, and in 2016, the United Council for University of Wisconsin Students “went dormant” after running out of money.<sup>190</sup> Similarly, the

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185. See *Back to School Statistics*, NAT'L CTR. FOR EDUC. STAT., <https://nces.ed.gov/fastfacts/display.asp?id=372> (last visited Dec. 16, 2018).

186. See *id.*

187. See *infra* Section II.A.

188. *Long-Term Care Ombudsman Program*, U.S. DEP'T OF HEALTH AND HUM. SERVS.: ADMIN. FOR COMMUNITY LIVING, <https://www.acl.gov/programs/protecting-rights-and-preventing-abuse/long-term-care-ombudsman-program> (last visited Dec. 16, 2018).

189. Benjamin I. Sachs, *The Unbundled Union: Politics Without Collective Bargaining*, 123 YALE L.J. 148, 151 (2013).

190. See Pat Schneider, *Wisconsin Student Power Alliance Picks Up Where Defunded United Council Left Off*, CAPITAL TIMES (Aug. 23, 2016), <https://madison.com/ct/news/local/education/university/>

Republican Governor of Arizona signed a bill to ban the Arizona Students' Association from collecting member dues from universities through student fees.<sup>191</sup> Not coincidentally, Wisconsin raised tuition at its public, four-year colleges by 20% between 2008 and 2016, while Arizona raised tuition at its colleges by a whopping 87.8%.<sup>192</sup> And North Carolina recently changed its law so that a student association president no longer has a vote on the University of North Carolina's Board of Governors.<sup>193</sup> Elected officials who value making higher education accessible to all might see expanding student unions as a tool to organize this constituency and build its political power to protect and expand legislative gains.

Through collective associational rights, workers, students, tenants, nursing-home residents, and welfare recipients could organize themselves into powerful associations to create justice at their institutions and in society.

#### IV. IMPROVING COLLECTIVE ASSOCIATIONS OUTSIDE THE WORKPLACE

Collective associations can play a valuable role in society. Policymakers should create legal frameworks that authorize and empower strong, independent, and well-funded collective associations. This Part will first make a series of suggestions for how such laws should support collective associations. It will then discuss different ways to provide for the funding of collective associations, within the boundaries set by First Amendment jurisprudence. Finally, it proposes extending collective associations from the areas already discussed—student, tenant, and resident unions—to other areas such as welfare unions and public utility and transit authority unions. Through these changes states can provide frameworks to create vibrant collective associations.

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wisconsin-student-power-alliance-picks-up-where-defunded-united-council/article\_1d2becd4-5553-54e4-9837-f74467838580.html.

191. See Angus Johnston, *Arizona Bans Student Funding of Independent Groups*, STUDENT ACTIVISM (Apr. 6, 2013), <https://studentactivism.net/2013/04/06/arizona-bans-student-funding-of-independent-groups>; Anne Ryman, *Student Group's Fee Process is in Brewer's Hands*, A.Z. REPUBLIC (Apr. 2, 2013 9:50 PM), <http://archive.azcentral.com/news/politics/articles/20130402student-groups-fee-process-brewers-hands.html>.

192. MICHAEL MITCHELL, MICHAEL LEACHMAN & KATHLEEN MASTERSON, FUNDING DOWN, TUITION UP, CTR. ON BUDGET & POL'Y PRIORITIES 2 (2016), <https://www.cbpp.org/sites/default/files/atoms/files/5-19-16sfp.pdf>.

193. In North Carolina, the President of the University of North Carolina Association of Student Governments was a voting member of the University's Board of Governors, but the state government recently passed legislation that will convert them to a non-voting member as of July 2019. See N.C. GEN. STAT. § 116-6.1(a) (2017); H.R. 39, 2017 Gen. Assemb., 1st Sess. (N.C. 2017).

*A. Building a Strong Legal Framework for Collective Associations*

Policymakers seeking to promote the individual welfare and collective interests of the vulnerable and disenfranchised might look to collective associational law as a tool to promote self-organization and distributed problem-solving. Collective associational rights for students, tenants, and nursing-home residents could be strengthened through legal changes that reflect the four normative principles of successful, independent unions outlined at the beginning. The following suggested changes to existing laws would strengthen and expand collective associations.

First, effective state organizational laws would include a broad right to organize, individual protections against retaliation, and adequate remedies if those rights are violated.<sup>194</sup> Those laws would be coupled with laws protecting individual rights within and outside organizations, including the right to decline membership, the right to free and democratic elections, and the right to participate fully in the organization without significant barriers other than membership dues.<sup>195</sup> These changes would ensure that residents' rights did not merely exist on paper but could be effectively exercised. They would ensure that the rights of individual members of these associations, including dissenters, were protected. And they would provide for adequate legal remedies to deter violations.

Second, the laws would allow for private, independent organizations. The laws would require and guarantee that organizations be independent of the institutions at which they organize, by making it illegal for the institution to dominate or interfere with the organization and by making it illegal for officers of the association to accept money or personal services from the institution.<sup>196</sup> While many state collective associational laws provide for independent associations, many do not. Additionally, the close relationship between and the strong reliance on facility support for resident council formation put resident councils particularly at risk of domination. An effective associational law would ensure that these associations did not become mere tools or instrumentalities of management, but remained independent.

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194. Policymakers should take care to avoid the trap of ineffective and inadequate remedies that the NLRA fell into. *See, e.g.,* Valdes-Viera, *supra* note 180. One proposed change to the NLRA to strengthen its enforcement mechanism would establish the right to organize a labor union as an individual civil right under the federal civil right regime, including the remedies available for other civil rights plaintiffs. *See* RICHARD D. KAHLBERG & MOSHE MARVIT, WHY LABOR ORGANIZING SHOULD BE A CIVIL RIGHT 74–75 (2012). This could be an effective model to enforce state collective associational rights.

195. *See generally* Labor Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, 29 U.S.C. §§ 401–531 (2012) (establishing these rights for labor union members). It is likely that some or all of those rights are also constitutional rights in this context.

196. *See* 29 U.S.C. § 158(a)(2) (2012) (“It shall be an unfair labor practice for an employer . . . to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it”).

Third, the statutory framework could assign certain service-provision responsibilities to the association. This proposal mirrors both what at least one other country does for student associations<sup>197</sup> and a proposal that many are raising for labor unions, modeled after the Nordic Ghent system.<sup>198</sup> These responsibilities could be directly related to the services the associations provide, such as representing students and tenants before disciplinary or rental-agreement violation meetings or distributing student activity fees to campus groups. But they could also be traditional state functions.

For instance, states or cities could assign certain building inspection functions to tenant unions. Because tenant unions will develop knowledge and expertise about safe housing requirements as they grow and institutionalize, their expertise would help the state fulfill its requirement to inspect buildings. At the same time, that assignment of duties would allow tenant associations to develop relationships with unorganized tenants. Similarly, states could assign certain non-discrimination housing tester roles to tenant unions. And states could allocate funding to childcare programs on college campuses and assign those responsibilities to student unions.<sup>199</sup> That would both serve the student body, in particular non-traditional students and commuters, and help connect student unions to their members. Alternatively, states could have student unions act as advocates or resources for students with disabilities or assign student unions certain financial-aid functions and the tried-and-true non-partisan voter registration role. Through this assignment of state responsibilities, organizations would gain the ability and the funding needed to organize, provide important services to their members, and drive membership rates up.

Fourth, effective state laws would create certain relationship-based rights between the union and institution. Those relationships at a minimum would include a broad right to request information relevant to the representation of members, as exists in many states right now,<sup>200</sup> and the right to bring the institution and its representatives to a bargaining table to meet and confer over members' issues. State laws should create certain maintenance-of-institution rules, such as giving tenant unions a right of first refusal if their landlord seeks to sell their property.<sup>201</sup>

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197. See Muukkonen, *supra* note 38 at 81 (discussing how Finland assigns public tasks to student associations while making membership in the organization obligatory).

198. See generally DAVID MADLAND, CTR. FOR AM. PROGRESS, THE FUTURE OF WORKER VOICE AND POWER (2016), <https://cdn.americanprogress.org/wp-content/uploads/2016/10/06051753/WorkerVoice2.pdf>; DAVID ROLF, SHELBY CLARK & CORRIE WATTERSON BRYANT, ASPEN INST., PORTABLE BENEFITS IN THE 21ST CENTURY (2016), <https://www.aspeninstitute.org/publications/portable-benefits-21st-century>; Matthew Dimick, *Labor Law, New Governance, and the Ghent System*, 90 N.C. L. REV. 319 (2012). The Ghent system is an arrangement where labor unions administer unemployment benefits, which many scholars argue contributes to those countries' high rates of union membership. It has become popular among American labor commentators.

199. See, e.g., WASH. REV. CODE ANN. § 28B.135.010 (West 2014).

200. See *supra* Part II.

201. See, e.g., *infra* Appendix B at District of Columbia.

Union certification elections should be the business of the members, not the institution, and states should consider allowing unions to carry out institution-wide elections much like the system-wide bargaining units in the Railway Labor Act.<sup>202</sup> State law would likely need to create agencies to enforce that law and administer union certification elections, something few states have done for collective associations outside the workplace. These changes would create clear rules governing union certification and provide unions with the tools they need to effectively represent their members within the institution.

Fifth, these state laws would create access rights. States could adopt California's law shielding union organizers from trespass charges and adopt the facility residents' access rights provisions in federal law.<sup>203</sup> In another example, in Oregon, certain tenant unions can send their landlord literature on the association that the landlord must include in an introductory package to new tenants.<sup>204</sup> State law would provide unions a similar right to have literature distributed by the institution, perhaps subject to the association paying for any additional costs associated with distribution. Additionally, associations would have a statutory right to use institutional space without fee and to speak at certain institutional assemblies and gatherings. This would ensure that the unorganized could learn from and rely on the organized to help them form their organizations, while allowing existing organizations to reach their members easily and cheaply.

Sixth, state laws might experiment with making associations mandatory, as some states do for resident councils.<sup>205</sup> Membership in the association would not be mandatory, but state law would require that at least one association form at each institution, so as to provide the associations' members with an easy and clear way to exercise their rights.

Seventh, the constituencies of the institutions need not be limited to funding just one association or organization. Any established collective funding mechanisms<sup>206</sup> could be available to the general body membership, subject to petition and voting requirements, so that students, tenants, and residents could

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202. See generally PAUL, HASTINGS, JANOFSKY & WALKER LLP, AN INTRODUCTION TO THE RAILWAY LABOR ACT (2004), <http://apps.americanbar.org/labor/annualconference/2007/materials/data/papers/v2/012.pdf>. This would be particularly helpful for large housing companies, so that every tenant of that company in a region can vote for the union instead of voting building by building.

203. See 42 U.S.C. § 1395i-3(c)(3) (2012) (for Medicare recipients); 42 U.S.C. § 1396r(c)(3) (2012) (for Medicaid recipients); CAL. CIVIL CODE § 1942.6 (West 2017).

204. See OR. REV. STAT. § 90.510(1)(j) (West 2010) (requiring landlords to distribute tenant association literature to new renters).

205. See *supra* note 132. A similar proposal has been raised in the context of labor unions as well, particularly given the rise of anti-union state laws requiring regular recertification elections in unionized public-sector workplaces. Under this proposal, unions would not be mandatory but regular union elections in unorganized workplaces would be. See, e.g., Andrew Strom, *Why Not Hold Union Representation Elections on a Regular Schedule?*, ON LABOR (Nov. 1, 2017), <https://onlabor.org/why-not-hold-union-representation-elections-on-a-regular-schedule>.

206. See *supra* Section III.B.

assess fees for other collective purposes. For instance, students could fund public interest research groups, and tenants could fund a tenant newspaper or legal services program. Extending funding mechanisms beyond just collective associations would allow members to establish specific fee levies to better serve their interests and needs.

Eighth, these state laws would both allow and require democratic consent for overlapping layers of unionization. This proposal is similar to a change many are proposing<sup>207</sup> for labor unions—creating sectoral bargaining—but goes further to suggest permitting sectoral bargaining and institution-by-institution bargaining.<sup>208</sup> This would allow several voices and leaders to speak within an institution, in effect allowing for competing local and state-wide representation, as with student associations in Quebec.<sup>209</sup> If communities of interest within an institution or a region want to form an association, they would be able to do so with the democratic decision of the members. For instance, students need not be limited to one student government: If students in the Engineering School want representation specific to their needs, a certified undergraduate-wide student union should not deter them. Additionally, if the undergraduate student union wished to affiliate with a state-wide student association, it should get democratic consent from its members. With overlapping layers of unionization, some access and information rights might be limited only to the union representing the most members within the community, or state law might require committees of unions to act collectively. But having several institutions able to take independent action could help ensure that one voice does not drown out others.

Ninth, associational rights would not be limited to public institutions or projects receiving public funds. Students and tenants should be allowed to unionize no matter whether the institution is public or private.

Tenth and finally, states would provide a way for these collective associations to fund themselves. This proposal is discussed more in Section IV.B, below, but it is a critical piece of collective associational rights. Without a way to fund themselves securely and without significant transaction costs, associations are hamstrung.

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207. See, e.g., Larry Cohen, *The Time Has Come for Sectoral Bargaining*, NEW LAB. F. (June 2018), <http://newlaborforum.cuny.edu/2018/06/22/the-time-has-come-for-sectoral-bargaining>; KATE ANDRIAS & BRISHEN ROGERS, ROOSEVELT INST., *REBUILDING WORKER VOICE IN TODAY'S ECONOMY* (2018), <http://rooseveltinstitute.org/wp-content/uploads/2018/07/Rebuilding-Worker-Voices-final-2.pdf>; DAVID MADLAND, CTR. FOR AM. PROGRESS, *WAGE BOARD FOR AMERICAN WORKERS* (2018), <https://www.americanprogress.org/issues/economy/reports/2018/04/09/448515/wage-boards-american-workers>.

208. Sectoral bargaining is when a union, or a group of unions, bargains with employers to set standard wages and benefits for every worker in an industry. See Larry Cohen, *The Time Has Come for Sectoral Bargaining*, NEW LABOR FORUM (2018), <https://newlaborforum.cuny.edu/2018/06/22/the-time-has-come-for-sectoral-bargaining>.

209. For instance, in Quebec there are independent overlapping student unions governing different levels of associations, like a union per department, college, and entire undergraduate student body. See generally Makela, *supra* note 38.



Through these principles, state policy seeking to expand collective associational rights might be bolstered. At their core, they provide for strong individual and collective rights, for vibrant and competing associations, and for remedies sufficient to deter institutional malfeasance. They avoid the mistakes of the NLRA while keeping the core characteristics of successful unions. Laws patterned off these principles would likely be far more effective at enhancing collective associational rights than many existing statutory frameworks.

*B. Financing Collective Associations Within the Boundaries  
of the First Amendment*

Financing is one of the most difficult issues confronting collective associations. Student associations often have independent funding provisions, but no other non-labor collective associational law provides any direct funding mechanism.<sup>210</sup> Without funding, though, these organizations cannot fully realize their promise and build power for their members.

That said, mandatory funding systems run into a First Amendment issue. In the labor and student context, these laws often require that all members pay membership dues (or student fees) to the organization, a form of compelled speech and association. The First Amendment protects individuals' right to speak or refuse to speak, to associate or refuse to associate, so compelled speech union dues implicate First Amendment concerns. The Supreme Court has recently become more receptive to arguments that this form of compelled speech can violate the rights of dissenters who do not want to pay these union dues much of the time. Any funding system for collective associations has to consider how to design a stable funding system that can survive constitutional scrutiny. This constitutional jurisprudence is explained below.

1. The First Amendment in the Labor Context

There is a large body of jurisprudence about the intersection between labor law and constitutional rights of free speech and association. Those cases often revolve around union security agreements, and the law is unsettled in this area. But recent Supreme Court decisions, most notably *Janus v. AFSCME Council 31*, sharply restrict allowable funding methods.<sup>211</sup>

Following the labor unrest of the early 1930s, Congress passed the National Labor Relations Act ("NLRA") to create a labor law framework for private sector unions. The NLRA originally allowed an employer and a union to sign a closed shop agreement—these agreements required that employers hire only union members and that all employees maintain their union membership as a

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210. *See supra* Section IV.A.

211. *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2480–1, 2486 (2018).

condition of employment.<sup>212</sup> In 1947, however, Congress passed the Taft-Hartley Amendments to the NLRA which generally tilted the scales of labor law against unions and specifically restricted the lawful types of union-security agreements.<sup>213</sup>

Currently, private-sector labor unions may bargain for two types of union security agreements, the union shop and the agency shop,<sup>214</sup> but later case law, discussed in part below, essentially collapsed those two types of agreements into one: Where the union and employer contract for a union or agency shop agreement authorized by law, nonmembers must either join the union or pay a percentage of union dues to cover the union's spending on core representational expenses.<sup>215</sup>

In other words, labor unions in union security states<sup>216</sup> have a hybrid opt-in, opt-out system for dues collections: Workers in a covered workplace can opt-in to union membership by signing a union card, which may come with higher dues rights and the option to pay additional voluntary contributions into a political action funds, but they also must affirmatively object to avoid paying union dues at all.<sup>217</sup> In addition to standard union dues, members can also often choose to set up a voluntary payroll deduction to donate to the union's political action committee.<sup>218</sup> In so-called "right to work" states, the dues model is largely reduced to an opt-in system, where workers must affirmatively decide to join the union and authorize dues deduction. The constitutional blessing for union security is tenuous under the Supreme Court as currently constituted,<sup>219</sup> and it is unlikely courts would approve

212. See National Labor Relations Act, Pub. L. No. 74-198, § 8(3), 49 Stat. 449, 452 (1935).

213. See JOHN E. HIGGINS, JR. ET AL., BLOOMBERG BUREAU OF NAT'L AFF., DEVELOPING LABOR LAW: THE BOARD, THE COURTS, AND THE NATIONAL LABOR RELATIONS ACT § 26.I.C (Patrick E. Deady et al. eds., 7th ed., 2012).

214. Originally, a union shop agreement required new employees to join the union as a condition of maintaining employment, while an agency shop agreement required only that non-member employees pay dues or some equivalent fees as a condition of maintaining employment. See *id.* at § 26.III.A.

215. Compare HIGGINS, JR. ET AL., *supra* note 213, § 26.II, with *id.* § 26.III.A ("[T]he agency shop may better express permissible limits of compulsory unionism than the traditional concept of the compulsory union shop" under Supreme Court precedent.). See also *Comm'n Workers v. Beck*, 487 U.S. 735, 740 (1988); *Nat'l Labor Relations Bd. v. Gen. Motors*, 373 U.S. 734, 743 (1963).

216. Union security states refers to states that permit union security agreements, allowing private-sector unions to assess agency fees on workers whom they represent. See NOLO, *Union Security Agreement*, <https://www.nolo.com/dictionary/union-security-agreement-term.html> (last visited Dec. 16, 2018).

217. This system came out of another Supreme Court case. See *Beck*, 487 U.S. at 735.

218. These political action committees are often referred to as COPE, the Committee on Political Education. For examples of how these work in various unions, see, e.g., *ATU Cope*, AMALGAMATED TRANSIT UNION, <https://www.atu.org/action/atu-cope> (last visited Dec. 16, 2018); *Contribute to Cope*, SERVS. EMPS. INT'L UNION LOC. 668, <http://www.seiu668.org/contribute-to-cope> (last visited Dec. 16, 2018); *Legislation and Politics*, COMM. WORKERS OF AM., <https://www.cwa-union.org/national-issues/legislation-and-politics> (last visited Dec. 16, 2018).

219. The Supreme Court recently struck down union security agreements in the public sector, see *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2480–1, 2486 (2018), and some people believe the next case might apply *Janus* to the private sector. See, e.g., James Langford, 'This Is War:' Labor Unions Fear Supreme Court Will Target Private Sector Unions Next, WASH. EXAMINER (June 27, 2018, 6:20 PM), <https://www.washingtonexaminer.com/business/labor-unions-fear-supreme-court-target-private-sector->

expanding this model, particularly in the public sector, for reasons explained further below.

Union-security in the private sector was first considered by the Supreme Court in the 1950s in two cases springing from private-sector union security agreements authorized under the Railway Labor Act (“RLA”).<sup>220</sup> In these cases, the Court outlined the broad principle that continues to be good law: Due to Congress’ strong interest in industrial peace, it can regulate labor relations in interstate industries.<sup>221</sup> As a result, union security agreements in the private sector do not inherently raise a First Amendment concern.<sup>222</sup> But such fees were only constitutional if they were charged for legitimate union expenses and not for political expenditures.<sup>223</sup> The Court in *Street* therefore construed the RLA to classify political expenditures as non-chargeable expenses, avoiding any constitutional issue.<sup>224</sup>

In a seminal case called *Abood v. Detroit Board of Education*, the Court applied a similar analysis to the public sector.<sup>225</sup> There, the Court recognized that a state’s interest in labor peace was as compelling as the federal government’s interest in the same, so state labor law was entitled to the same presumption of constitutionality.<sup>226</sup> The Court applied its private-sector case law to the public-sector and held that public-sector agency fees were constitutional when assessed for collective bargaining and contract administration purposes.<sup>227</sup> Fees assessed for political purposes, however, violated the First Amendment.<sup>228</sup> This central holding of *Abood* was the law until the summer of 2018.

Starting in 2012, the Court began signaling its intent to overturn *Abood* by restricting how and when unions could collect public-sector agency fees.<sup>229</sup> After the Court restricted its reach in 2012<sup>230</sup> and then exempted a class of public-sector workers from its holding in 2014,<sup>231</sup> the Court finally overturned *Abood* in 2018. In *Janus v. AFSCME Council 31*, the Court ruled that public-sector agency fees are unconstitutional because the government was compelling its employees to pay

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unions-next-janus-. Others believe it will be confined to the public sector. See, e.g., Benjamin Sachs, *Janus and the Private Sector*, ON LABOR (July 3, 2018), <https://onlabor.org/janus-and-the-private-sector-2>.

220. See Int’l Ass’n of Machinists v. Street, 367 U.S. 740 (1961); Ry. Emps. Dep’t v. Hanson, 351 U.S. 225 (1956). The RLA is a federal law governing collective bargaining in the railroad and airline industries. See 45 U.S.C. §§ 151–188 (2012).

221. *Hanson*, 351 U.S. at 233.

222. *Id.* at 238.

223. *Street*, 367 U.S. at 749–50.

224. *Id.*

225. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 224 (1977).

226. *Id.*

227. *Id.* at 225–26.

228. *Id.* at 235–36.

229. See *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 313 (2012).

230. See *id.*

231. See *Harris v. Quinn*, 134 S. Ct. 2618, 2639–40 (2014).

for political speech they might find objectionable.<sup>232</sup> The Court applied what it called “exacting scrutiny,” overturned *Abood*, and ended union security in the public sector.<sup>233</sup>

This line of case law is important because it is unlikely that non-labor unions will have *more* leeway than labor unions to collect agency fees, and they might well receive less. In the context of a “weaponized” First Amendment,<sup>234</sup> any mandatory fees will likely be viewed with skepticism. This is particularly likely in the public sector context—such as for student associations at public schools, tenants in public housing programs, and welfare recipients—as the Court has rejected agency fee arrangements in public sector employment but not yet in private-sector employment.<sup>235</sup> For these reasons, even if policy makers wanted to create an agency fee system for non-labor unions at public institutions, such a fee system would likely be unconstitutional.

Thus, in reviewing existing statutory frameworks for non-labor collective associations and in considering policy changes to support those associations, these constitutional limitations should be anticipated. Strategies to conform to this constitutional jurisprudence are discussed below.

## 2. The First Amendment in the Educational Context

There are also a series of cases interpreting the First Amendment rights of students at public universities. Mandatory student fees must be disbursed in a “viewpoint neutral” way.<sup>236</sup> This requirement does not extend to optional or refundable fees,<sup>237</sup> which certainly aligns with the labor collective associational framework. Opt-out fee structures are relatively common in higher education.<sup>238</sup> That said, if student associations used mandatory fees for their own ideological purposes, as opposed to spreading funding between student groups of varying ideologies, that could create a constitutional violation.

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232. *See Janus v. AFSCME Council 31*, 138 S. Ct. 2448, 2460 (2018).

233. *Id.* at 2465, 2476–77.

234. *See Janus*, 138 S. Ct. at 2501 (Kagan, J., dissenting) (“The majority overthrows a decision entrenched in this Nation’s law . . . by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy.”). Justice Kagan’s *Janus* dissent is memorable, and she closes by writing, “[T]he majority’s road runs long. And at every stop are black-robed rulers overriding citizens’ choices. The First Amendment was meant for better things. It was meant not to undermine but to protect democratic governance—including over the role of public-sector unions.” *Id.* at 2502.

235. *See id.* at 2480–81.

236. *See Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 233–34 (2000).

237. *See id.* (limiting its holding to mandatory fees). At least one state’s Attorney General’s office has recognized as much in a published opinion. *See Or. Att’y Gen. Op.*, *supra* note 41.

238. *See* Fernanda Zamudio-Suaréz, *Optional Student Fees? In Wisconsin, Students Are Divided on the Idea*, CHRON. OF HIGHER EDUC. (Feb. 27, 2017), <http://www.chronicle.com/article/Optional-Student-Fees-In/239333>.

One additional hurdle to clear is that in at least one state with strong student associations, the funds resulting from mandatory student fees transferred to student associations are public moneys.<sup>239</sup> They would therefore be subject to whatever state restrictions on the use of public money for ideological purposes exist in that jurisdiction.

Between these two restrictions, it is unlikely that mandatory student fees could support ideological purposes. But they can and are used for services and basic representation, like they are in labor unions. Opt-out and other optional fees can go to ideological purposes, retaining that pathway for political action.

### 3. Constitutional Funding Methods for Student, Tenant, and Resident Unions

Ultimately, it is likely, although not guaranteed, that mandatory fees outside established contexts would have to meet the exacting scrutiny of *Janus*. Within higher education, it is likely that the “financial core membership” idea of labor union collective associational jurisprudence, permitting private-sector unions to charge mandatory fees for certain core aspects of their representation such as collective bargaining and disciplinary representation,<sup>240</sup> could carry over, as they already operate under a similar structure with regard to mandatory fees. Voluntary fees, in all contexts, remain an available strategy for funding collective associations and their ideological work.

However, associations need stable sources of revenue, so they may wish to explore other avenues for developing adequate funding. At a minimum, no matter what funding methods the association employs, associations must be able to: independently set dues rates, whether assessed as opt-out or mandatory or both, spend those dues as they see fit, and secure additional funding for political activities through institution-collected voluntary fees.

One way to avoid these constitutional issues is through a more-traditional opt-out fee structure. Effective state law would provide that associations may have the institution collect their dues and transmit them to the association. Members would have a statutory right to set their union’s dues rates. Associations would be able to create a three-tier fee structure, as with labor unions: A mandatory, financial-core dues assessment to cover basic representation, bargaining, and administration costs that all represented persons would have to pay, a membership-based regular dues assessment that covers organizing, non-partisan political representation, and other activities, and an opt-in political action committee fund assessment. The institution would collect these fees every step of the way. To be successful, the state law should also include a strong severability clause, in case some or all of that fee structure is unconstitutional in some or all circumstances.

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239. 37 Or. Att’y Gen. Op. No. 621 (May 30, 1975), 1975 WL 184568.

240. *See* Beck, 487 U.S. at 745.

But this structure would result in a “right to work” dues system if the Supreme Court found the financial-core agency fees unconstitutional, so these unions would confront the issue of free-riders and uncertain funding.<sup>241</sup> This system therefore might not be ideal.

States should experiment with an alternative dues structure. For instance, if mandatory fees were unconstitutional, states might experiment with direct subsidies of union activity.<sup>242</sup> This model may be particularly applicable for state-related associations such as student unions at public universities or tenant unions at public housing projects. But it need not be limited to that. For instance, a state or political subdivision seeking to support tenant organizing could allow tenant associations to set opt-out dues as needed, but then assess a landlord-paid tax on rents to fund tenant associations. The state would then transfer that tax funding directly to tenant unions to fund their activities. This system would offer regular and stable association funding, a key element of union power.

That said, there are several legal barriers. First, many states would have to structure the payment to get around a Gifts Clause challenge. Given the role unions play in supporting economic equality, such a transfer should be considered little different from a state using public money to support private businesses in economic development plans. In at least one state, Wisconsin, state transfers to tenant unions are constitutional.<sup>243</sup> Even so, some commentators and courts might object to direct union subsidies.<sup>244</sup> Similarly, in some states there are rules against tax dollars funding political and legislative activity, which would impede unions from exercising their full range of associational rights. These are not insurmountable problems, but in some states they might make a direct subsidy system less desirable.

Direct subsidies to associations are not the only method to avoid this constitutional issue. A supplemental payment system might be another, which offers some additional benefits as well. There is an inherent contradiction for many non-labor collective associations: They often seek to de-commodify the product whose consumers they represent, while relying on the commodified relationship to

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241. As the Economic Policy Institute explained regarding labor unions, “[w]ithout the ability to collect fair share [agency] fees, the nonmember worker could access these expensive representation services without having paid a dime.” Celine McNicholas et al., *Janus and Fair Share Fees*, ECON. POL’Y INST. (Feb. 21, 2018), <https://www.epi.org/publication/janus-and-fair-share-fees-the-organizations-financing-the-attack-on-unions-ability-to-represent-workers>. The same would likely be true with non-labor unions.

242. This suggestion has been raised for public-sector unions as well, most comprehensively in Aaron Tang, *Life After Janus*, COLUMBIA L. REV. (forthcoming), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3189186](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3189186). This suggestion is also controversial in the labor movement, with many activists strongly opposed to it. See, e.g., Chris Brooks, *Viewpoint: Boss Can’t Be Janus Fix*, LABOR NOTES (July 25, 2018), <http://labornotes.org/blogs/2018/07/boss-can%E2%80%99t-be-janus-fix>.

243. See *infra* Appendix B at Wisconsin.

244. See, e.g., THE GOLDWATER INST., *Public Money for Private Gain* (Oct. 5, 2014), <https://goldwaterinstitute.org/article/public-money-private-gain-legal-strategies-end-tax>; Trey Kovacs, *Use ‘Gift Clauses’ to Prohibit Subsidies*, WICHITA EAGLE (June 25, 2012), <https://www.kansas.com/opinion/opn-columns-blogs/article1094278.html>.

fund themselves. Unlike labor unions that seek higher wages for their members, student, tenant, and resident unions may demand free education, lower rents, and free healthcare. It would be difficult for unions to remove all economic barriers to accessing public goods except for the payment of their own dues, but unions also should not cease to exist once the services they are organized around are de-commodified.

States might want to plan for this cost-free service provision—and the attendant problem it would raise for organizational self-funding—through a supplemental payment system. This system would work through direct payments to individual members administered through the institution. For instance, states could establish a fifty-dollar-per-term student payment for every registered student in public higher education, adjusted for inflation, credited against their tuition. Similarly, states could attach a small direct cash payment to housing vouchers, Medicare long-term care, and/or other public assistance, while also allowing tenants to affix some dues that would come out of that money. The unions' members would then be able to assess fees against these payments, funding their unions without directly costing themselves anything out of pocket. This funding system might or might not avoid the First Amendment issue, but it would reduce the pain of dues assessments while ensuring a stable, future-proof funding system.

Additionally, states could assign associations certain public functions—and the public funding to carry out those functions—to further the state's interests and use the associations' expertise and organized base to achieve its goals.<sup>245</sup>

Through strategies like these, associations might be able to secure stable sources of funding without concern for constitutional violations. States might consider experimenting with these different funding models to facilitate strong collective associations.

### *C. Extending Collective Associations to Other Segments of Public Life*

Creating widespread and vibrant student, tenant, and facility resident associations could reshape community life in this country. But collective associational rights need not, and should not, be constrained to these existing forms of collective associations. Welfare unions, high school student unions, and public consumer unions are a natural extension of these existing frameworks. This Note also proposes a more radical demand: That collective associational rights be extended to any community of interest.

The same rationales that support student and tenant unions support welfare-recipient unions. Giving the most vulnerable an organized voice enhances the dignity of everyday people, whether they are dealing with an individual eligibility determination or a state legislature contemplating funding cuts. States need powerful institutions to defend public assistance programs from future cuts,

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245. See Dimick, *supra* note 198; MADLAND, *supra* note 198; Muukkonen, *supra* note 38; ROLF ET AL., *supra* note 198.

both on the state and federal levels of government. States seeking the benefits of collective associations should extend the same collective associational rights to people receiving public assistance benefits. The framework would be the same as outlined above: (1) strong rights to organize; (2) independent, democratic associations; (3) the assignment of certain core responsibilities to the association; (4) rights afforded to the associations to bargain and deal with the state; (5) access rights to public assistance offices; (6) alternative unionization models; (7) extension of funding framework beyond just the welfare union; (8) democratic member control over the overlapping layers of union institutions; (9) associational rights no matter if the program is administered by a public or private agency (particularly relevant where certain program administration functions have been subcontracted to private companies); and (10) a supplemental funding mechanism.

To provide for this supplemental funding mechanism, states could use any of the funding models discussed in Part IV.B, above. States might consider reviving their general assistance programs for this purpose, restoring state cash assistance to the poorest residents. They could also provide a supplemental welfare cash payment of, say, 3% of total cash and cash-equivalent benefits with a minimum payment set at a certain rate including for families receiving no cash or cash-equivalent benefits (for example, families receiving only Medicaid), pegged to inflation. Cash equivalent benefits would here mean Supplemental Nutritional Assistance Program funds (food stamps or SNAP) and Low-Income Heating and Energy Assistance Program funds (winter heating assistance in cold weather states), along with other state direct benefit programs. Members would then pay dues out of this funding, and pocket the rest. This supplemental program would not be expensive relative to the cost of administering these programs, but it would go a long way towards ensuring that working and poor families have a say in their communities and in their futures.

The same calculus should apply to high school students. While some states extend certain collective associational rights to high school students, the vast majority do not.<sup>246</sup> High school student associations should operate under the same or similar associational frameworks, perhaps subject to some school district oversight. As active participants in political and social life, with many involved in charity, campaign, and social justice work, high school students should also have an organized voice representing them.

Leaving the education and welfare world, associations might be useful in other arenas. For instance, customers of public utilities and public transportation authorities might have a sufficient set of collective interests to justify extending collective associational rights to them. When dealing with public utilities or other public or quasi-public market participants (such as highly regulated

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246. See *infra* Appendix A.2 at Arizona, Kentucky, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, South Carolina, Tennessee, Utah, and West Virginia. These states offer certain collective rights to high-school students, while the remaining thirty-six states and the District of Columbia do not.



telecommunication networks or outsourced public utility functions), consumers' unions might be a force to promote equitable distribution of infrastructure, smart investment of collective funds, and efficient management.

Finally, this Note poses one question: Why shouldn't everyday people have this right everywhere? Why shouldn't communities of interest be able to come together everywhere to deal collectively with a powerful institution? Forming a union is difficult, and managing one is even harder. If people feel the need to come together to deal over a shared injustice they face at the hands of one institution, perhaps collective associational rights might be an effective policy tool to allow them to fix that injustice. Certainly, collective associations carry costs for all parties, but so do lawsuits, arbitrations, and other forms of individual dispute resolution. And statutory dispute resolution systems may be particularly relevant given recent restrictions on class actions and collective arbitrations.<sup>247</sup>

As other avenues for collective action have been shut down, using unions to resolve widespread issues might well be a workable solution in many other areas of society. Advocates should consider whether this is a demand to pursue: Collective associational rights for everyone, everywhere.

## V. CONCLUSION

Collective associations have an enduring role to play in America's future. Through unions representing everyday people—from community college students to tenants to mobile home lot renters to nursing home residents—a surprising number of Americans have the right to join together in a union outside the workplace. States can and should expand these laws to build independent power for everyday families.

This country is unsettled, facing a series of critical threats, from economic inequality to austerity and environmental destruction to the ongoing issues of racism. Policymakers routinely struggle to confront these problems, both because the groups representing the public's interest too often lack the power to fight these battles on so many fronts, and individuals feel disempowered and unable to change anything.

Strengthening collective associations can help solve those problems. It is not a silver bullet, but it can be a strong policy tool to help everyday people join together to advance their interests. Instead of attempting to solve every problem from the state or federal capital, which is often far removed both geographically and culturally from every day citizens, collective associations allow the people

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247. Around the same time the Supreme Court was dismantling union agency fees in the public sector, it also took on access to the courts, class actions, and collective arbitrations. *See e.g.*, *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013); *Wal-Mart Stores v. Dukes*, 564 U.S. 338 (2011); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). As Justice Kagan so memorably described this line of cases, “To a hammer, everything looks like a nail. And to a Court bent on diminishing the usefulness of Rule 23, everything looks like a class action, ready to be dismantled.” *Italian Colors Rest.*, 570 U.S. at 252 (Kagan, J., dissenting).

directly impacted by a specific problem to try and solve it themselves. Through independent, democratic institutions, working people can build the future they want to see.

On a local level, they could bargain for specific improvements to how institutions and systems are run, such as bargaining with landlords over rent increases or schools over tuition rates. They could also directly confront important local issues through negotiation, discussion, and direct action, such as tackling racial discrimination in housing, or confronting elder abuse in nursing homes. And they can educate and counsel their members on important decisions and issues, such as helping students navigate financial aid and reducing student loans, or helping nursing home residents navigate Medicaid eligibility issues.

They can also play an important role in the public sphere. By advocating for their members and using their people power, collective associations can win legislative victories for working families. For example, they could help elected officials improve the efficacy of public programs like higher education, reduce severe housing pressures and inequity, or implement universal health insurance. Labor unions have been key partners in almost every public victory in the last sixty years, from the Clean Air and Clean Water Acts<sup>248</sup> to the Civil Rights Act<sup>249</sup> to Medicare and Medicaid.<sup>250</sup> So too could other collective associations achieve systemic change.

Finally, collective associations can spearhead the project of building a vision for what society should look like. The student unions in Quebec have spent years thinking about and advocating for free higher education.<sup>251</sup> The labor movement is an active participant in discussions about the future of work, compensation, and leisure.<sup>252</sup> Collective associations could play an important role in thinking about the future of retirement and end-of-life care, housing and living, or the provision of public services. The future is unwritten. Everyday people should have a means of developing their own vision for what it should look like.

States should create strong, independent, and well-funded collective associations outside the workplace. The existence of so many laws recognizing these associations in so many places shows that policy makers in the past have considered them an important part of the social fabric. Legislators should give sustained thought to what roles such organizations might play, how they could

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248. See *Green Labor: Protecting the Environment for All*, HORNBAKE LIBRARY, <https://www.lib.umd.edu/unions/political/environment> (last visited Dec. 16, 2018).

249. See *Labor Movement Was Critical Ally to Civil Rights Movement*, NPR (Aug. 27, 2013), <https://www.npr.org/templates/story/story.php?storyId=216191855>.

250. See Bill Moyers, *I Was There When Medicare Got Passed. Here's How It Happened*, MOTHER JONES (Aug. 5, 2017), <https://www.motherjones.com/politics/2017/08/i-was-there-when-medicare-got-passed-heres-how-it-happened>.

251. See *Gratuité scolaire*, ASSOCIATION POUR UNE SOLIDARITE SYNDICALE ÉTUDIANTE, <http://www.asse-solidarite.qc.ca/lutte/gratuitescolaire> (last visited Dec. 16, 2018).

252. See, e.g., *Future of Work*, AM. FED'N OF LAB & CONG. OF INDUS. ORGS., <https://aflcio.org/tags/future-work> (last visited Dec. 16, 2018).

solve enduring issues, and the best way to foster independent self-organization. At the end of the day, unions outside the workplace serve the public best when they are powerful and organized.

And those students in Quebec? The project they continued in 2012 remains unfinished. While the planned tuition hike was reversed, the students' ultimate goal of free, universal higher education remains unrealized in the province.<sup>253</sup> Students have not given up the struggle for free education, though, and they will continue the fight for decades to come.<sup>254</sup> Through their unions, students have a voice in the future of their province. Perhaps everyone should have that same opportunity.

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253. Morgan Lowrie, *Maple Spring: Activists Divided Over Legacy of 2012 Student Protests*, MONTREAL GAZETTE (Mar. 26, 2017), <http://montrealgazette.com/news/local-news/maple-spring-activists-divided-over-legacy-of-quebec-2012-student-protests>.

254. ASSOCIATION POUR UNE SOLIDARITE SYNDICALE ÉTUDIANTE, *supra* note 251.



APPENDIX A.1: SURVEY OF STATE STUDENT ASSOCIATION LAWS  
AT HIGHER EDUCATION INSTITUTIONS

Category 1: States that assign significant rights and power to student associations

Category 2: States that assign advisory roles or limited institutional authority to student governments

Category 3: States that have no statutory frameworks for student associations or their frameworks assume the existence of student governments at public universities but provide them little to no role in higher education

State	Legislative Framework
Alabama: Category 3	The president of the student government association is a nonvoting member of the Boards of Trustees for the Alabama Agricultural and Mechanical University. ALA. CODE § 16-49-20(a)(1) (2012). The president of the student government association at the Alabama State University serves on a Board of Trustee nominating committee which submits names to the Governor for appointment to the Board. ALA. CODE § 16-50-20(c)(1) (2012).
Alaska: Category 3	State law allows student associations to run boxing and wrestling matches. ALASKA STAT. § 05.10.030 (2016).  One student is a member of the Board of Regents of the University of Alaska. ALASKA STAT. § 14.40.150(b) (2016). Students have a complicated election system to send names for consideration for Board of Regents of the University of Alaska. ALASKA STAT. § 14.40.150(b) (2016).
Arizona: Category 2	State law provides consultative rights for the development of student voting plans. ARIZ. REV. STAT. ANN. § 15-1895 (2014).  State law provides for the transfer of student funds to student government at universities. ARIZ. REV. STAT. ANN. § 15-1626.01(B) (2014). Use of those funds on elections or lobbying is prohibited, except for political student groups which must allow for equal access for all sides. ARIZ. REV. STAT. ANN. § 15-1633(C) (2014). There are other limited exceptions for student governments. ARIZ. REV. STAT. ANN. § 15-1633(F) (2014). This statute does not appear to apply at community colleges. <i>See</i> ARIZ. REV. STAT. ANN. § 15-1408 (2014).

	<p>Two students serve on the Board of Regents for the university system. ARIZ. REV. STAT. ANN. § 15-1621(C) (2014). They are appointed on staggered, two-year terms by the governor from a list of nominees prepared by the associated students' organization of one of the state universities. ARIZ. REV. STAT. ANN. § 15-1621(C) (2014). The students have no right to vote until the second year of their two-year term. ARIZ. REV. STAT. ANN. § 15-1621(C) (2014).</p>
<p>Arkansas: Category 3</p>	<p>Student government associations have a statutory role in county election board programs to assist college students in registering to vote. ARK. CODE ANN. § 7-4-117(a)(2)(B) (West 2014).</p> <p>The president of the student government is a nonvoting member of the Boards of Visitors for the Arkansas School for Mathematics, Sciences, and the Arts ARK. CODE ANN. § 6-42-303(b)(3)(vi) (West 2009).</p>
<p>California: Category 1</p>	<p><b>California State Universities</b></p> <p>State law allows for the creation of a “student body organization” at any state university to provide “essential activities closely related to . . . the instructional program of the university” and to operate “projects not inconsistent with the purposes of the university . . . .” CAL. EDUC. CODE § 89300(a) (West 2002). With a two-thirds vote, students may decide to create a membership fee required for all regular students. CAL. EDUC. CODE § 89300(b)(2)(A) (West 2002). A petition against this fee signed by ten percent of the university’s students triggers a referendum vote. CAL. EDUC. CODE § 89300(b)(2)(C) (West 2002). Student body organizations may use the money to lobby. CAL. EDUC. CODE § 89300(c) (West 2002). Trustees may assign a supplemental fee for a statewide California State University student organization, which must be a voluntary fee; trustees either can make it opt-in or opt-out. CAL. EDUC. CODE § 89300(d) (West 2002).</p> <p>There are limitations on what student body organizations may spend mandatory student fees on. CAL. CODE REGS. tit. 5, § 42659 (2018).</p> <p>These fees are to be collected along with tuition and similar other fees at time of registration; all unexpended fees must be deposited in a trust. CAL. EDUC. CODE § 89301 (West 2002).</p> <p>All money so collected is available for purposes of the student body organization as approved by the trustees. CAL. EDUC.</p>

CODE § 89302 (West 2002). California State University campuses will be reimbursed an amount equal to custodial and accounting services provided by the campus to the student organization. CAL. EDUC. CODE § 89302 (West 2002). Any scholarships or stipends funded through these fees must conform to regulations of the trustees. CAL. EDUC. CODE § 89302 (West 2002).

The trustees may construct a building to serve as a student center, financed in whole or in part by the fees. CAL. EDUC. CODE § 89303 (West 2002). Students may assess a supplemental building and operating fee not to exceed forty dollars per student per year. CAL. EDUC. CODE § 89304(a) (West 2002).

There are additional administrative, open record, and open government requirements. CAL. EDUC. CODE §§ 89900-28 (West 2002).

### **California Community Colleges**

At community colleges, student organizations can “conduct any activities” as the college approves. CAL. EDUC. CODE 76060 (West 2003).

Students can vote to establish a representation fee of two dollars per semester. CAL. EDUC. CODE § 76060.5(a) (West 2003). A majority of the vote is sufficient, as long as the number of voters “equals or exceeds the average number of students who voted in the previous three student body association elections.” CAL. EDUC. CODE § 76060.5(a) (West 2003). The fee is collected by the college, at the time of registration, and will be placed in a fiduciary fund for that purpose. CAL. EDUC. CODE § 76060.5(b) (West 2003).

One dollar of every two-dollar fee should be spent to “establish and support the operations of a statewide community college student organization.” CAL. EDUC. CODE § 76060.5(c)(1) (West 2003). The statewide organization should have goals including but not limited to: “establishing a sustainable foundation for . . . representation and advocacy,” “promoting institutional and organizational memory,” “ensuring . . . student organizational oversight and decisionmaking” over community colleges, “strengthening . . . student representation and coordination,” promoting “engagement in community college student issues and affairs,” and “providing for open and public transparency and

	<p>accountability.” CAL. EDUC. CODE § 76060.5(c)(2) (West 2003).</p> <p>Meetings of the statewide student organization are subject to open records and open government acts. CAL. EDUC. CODE § 76060.5(e) (West 2003).</p> <p>Students may opt out of the fees; the refusal must be submitted in writing. CAL. EDUC. CODE § 76060.5(i) (West 2003).</p> <p>Officers of the association must be students. CAL. EDUC. CODE § 76061 (West 2003). There are additional statutory rules for community college student organizations. CAL. EDUC. CODE §§ 76060-67 (West 2003).</p> <p><b>University of California System</b> Other state law contemplates student body organizations at University of California systems, but does not have the same statutory system for it. <i>See</i> CAL. EDUC. CODE § 66150(a) (West 2012).</p>
Colorado: Category 2	<p>Colorado contemplates that student fees would be imposed “by a governing board for a student association or student government” at a state-supported university. COLO. REV. STAT. § 23-5-120(1) (West 2014).</p> <p>Student governments have an advisory role on a state commission reporting on tuition and fees. COLO. REV. STAT. § 23-1-105.5(1)(a) (West 2014). Three students, all officers of the student bodies of state universities, have advisory roles on the Board of Governors for the Colorado State University system. COLO. REV. STAT. § 23-30-101(1)(b) (West 2014). There is a state student advisory committee, along with one student seat, on the State Board for Community Colleges and Occupation Education. COLO. REV. STAT. § 23-60-104(2) (West 2014).</p> <p>The Board of Directors for the Auraria Higher Education Center has one student member, elected from the student bodies for the institutions. COLO. REV. STAT. § 23-70-102(1)(c)(I) (West 2014). Students have an advisory seat on the boards of the following colleges and universities: Adams State University, COLO. REV. STAT. § 23-51-102(3) (West 2014), Colorado Mesa University, § 23-53-102(3); Metropolitan State University of Denver, § 23-54-102(3); the School of Mines, § 23-41-102(1)(a)(I); University of Northern</p>



	<p>Colorado, § 23-40-104(VI); Western State Colorado University, § 23-56-102(3).</p> <p>Governing boards for state-supported universities are authorized to charge fees to pay the costs of student governments. COLO. REV. STAT. § 23-5-119.5(3) (West 2014). Student governments have a collaborative role in an annual review of tuition and fees. COLO. REV. STAT. § 23-5-119.5(4)(b) (West 2014).</p> <p>If a university engages in certain financial transactions and achieves a surplus, student governments have a right to review the use of those surpluses. COLO. REV. STAT. § 23-5-103(3) (West 2014). At the Auraria Higher Education Center, student fees cannot be used for certain capital projects without an affirmative vote of the student body. COLO. REV. STAT. § 23-70-107(1) (West 2014).</p> <p>If an associated students' organization is audited by the state auditor, the organization must pay for the audit. COLO. REV. STAT. § 2-3-110(1) (West 2014).</p>
Connecticut: Category 2	<p>Student governments may petition to get control of the student trustee account at their public university. CONN. GEN. STAT. ANN. § 4-54(b) (West 2014). After submitting a petition signed by five percent of students, a referendum will be conducted; control over the account will be turned over upon the approval of a majority of forty percent of all enrolled students. CONN. GEN. STAT. ANN. § 4-54(b)-(c) (West 2014). If the student government takes control of the fund, the treasurer of the association must file financial statements with the state government. CONN. GEN. STAT. ANN. § 4-55 (West 2014).</p> <p>There is a student advisory committee to the Board of Regents for Higher Education with one representative from each public community college, state university and state college. CONN. GEN. STAT. ANN. § 10a-3(a) (West 2010). The members are elected by the student government organization of the institutions they represent. CONN. GEN. STAT. ANN. § 10a-3(b) (West 2010).</p>
Delaware: Category 3	<p>Students organizations at career and technical colleges have at least one seat on the Delaware Advisory Council on Career and Technical Education. DEL. CODE ANN. tit. 14, § 8602(a)(9) (2015).</p>

<p>District of Columbia: Category 2</p>	<p>Students have two seats on the Board of Higher Education; one student is elected by graduate students and one is elected by undergraduate students. D.C. CONST. art. VI § 3(B)(2).</p> <p>Student bodies may “provide for a student government organization to represent the interests of students and act as an advocate for the rights and interests of students.” D.C. CODE MUN. REGS. tit. 8-A, § 701.1 (2010). The Board of Governors must recognize the student government. D.C. CODE MUN. REGS. tit. 8-A, § 701.2 (2010). Student organizations may assess a student activity fee, which the student organization prepares and submits annually to the Dean for “approval of the Board as part of the annual budget process.” D.C. CODE MUN. REGS. tit. 8-A, § 701.3 (2010).</p>
<p>Florida: Category 1</p>	<p>The president of the Florida Student Association has a position on the Board of Governors of the State University System. FLA. CONST. art. IX § 7(d); FLA. STAT. ANN. § 1001.70(1) (West 2016). The Florida Student Association may also nominate one student to serve on an appeals committee of the State Board of Education for student appeals of financial aid decisions. FLA. STAT. ANN. § 1009.42(1) (West 2018).</p> <p>By state law, a student government is established on the main campus of each state university, and each university board of trustees may also establish a student government on branch campuses; these student governments are part of the universities. FLA. STAT. ANN. § 1004.26(1) (West 2016). They are organized and maintained by students, with a president, legislative body, and judiciary. FLA. STAT. ANN. § 1004.26(2) (West 2016).</p> <p>University boards establish a student activity and service fee on the main campus and may establish one on each branch campus. FLA. STAT. ANN. § 1009.24(10)(a) (West 2018). Subsequent increases in student activity fees must be recommended by a fee committee, “at least half of whom are students appointed by the student body president.” FLA. STAT. ANN. § 1009.24(10)(a) (West 2018). The student government allocates and spends the fee, and it may be spent on “lawful purposes to benefit the student body in general.” FLA. STAT. ANN. § 1009.24(10)(b) (West 2018).</p> <p>The sum of the activity and service fee, along with health and athletic fees, may not exceed forty percent of tuition. FLA. STAT. ANN. § 1009.24(4)(d) (West 2018).</p>

	<p>Student governments may request to designate their school as a “qualifying educational institution” under Florida’s Voter Registration Act. FLA. STAT. ANN. § 97.021(33) (West 2017). That designation requires the university to “provide each student . . . the opportunity to register to vote or update a voter registration record on each campus at least once a year.” FLA. STAT. ANN. § 97.0583 (West 2017). Those universities are also “encouraged to provide voter registration services at other times and places,” such as during financial aid applications, admissions, and orientations. FLA. STAT. ANN. § 97.0583 (West 2017).</p> <p>Presidents of Florida College System institutions have the power to “approve the internal procedures of student government organizations and provide purchasing, contracting, and budgetary review processes for these organizations.” FLA. STAT. ANN. § 1001.65(15) (West 2016). Student government association members may only be reimbursed for travel if their travel expenses have been approved by the head of the university. 1979 Fla. Op. Att’y Gen. Op. No. 079-76 (Aug. 29, 1979).</p> <p>Student government associations may send a representative to collective bargaining negotiations between the university and its employees. FLA. STAT. ANN. § 447.203(18) (West 2013); FLA. STAT. ANN. § 447.301(5) (West 2013). For certain capital projects, universities are required to consult with the student government prior to submitting it to the Board of Governors for approval. FLA. STAT. ANN. § 1013.74(3) (West 2013); <i>see also</i> FLA. STAT. ANN. §§ 1009.22(12)(a), 1009.23(18)(a) (West 2018) (requiring Santa Fe College for some types of credits to conduct a student referendum before implementing or increasing a transportation fee); FLA. STAT. ANN. § 1004.32(3) (West 2016) (appointing the student body president as an ex officio voting member of the board of trustees of the New College of Florida).</p> <p>At least one Florida court has thrown out an administrative rule and a university presidents’ rule modifying supplement student fee payment to the Florida Public Interest Research Group, Inc. to an opt-out system from an opt-in system. <i>Cortes v. State</i>, 655 So. 2d 132, 140 (Fla. Dist. Ct. App. 1995).</p>
Georgia: Category 3	No such law was found.

Hawaii: Category 3	The Senate of the Associated Students at the University of Hawaii is not subject to the state's Sunshine Law. Haw. Att'y Gen. Op. No. 85-18 (Sept. 6, 1985). The Associated Students at the University of Hawaii is chartered by the university to represent its members. <i>See</i> HAW. REV. STAT. ANN. § 304A-2257 (LexisNexis 2013).
Idaho: Category 3	Universities may charge special service fees for student government support. IDAHO CODE 33-2110(3)(a)(ii) (2015). State universities may designate their bursar or fiscal officer as treasurer for "any organization or association of the students" of the institution. IDAHO CODE § 67-2025 (2014).
Illinois: Category 3	The Board of Trustees of the University of Illinois is composed of the Governor and twelve trustees, nine appointed by the Governor and three students, one from each campus. 110 ILL. COMP. STAT. ANN. 310/1 (West 2013). Only one student trustee has the right to cast a legally binding vote. 110 ILL. COMP. STAT. ANN. 310/1 (West 2013). The student government of a campus has the right to replace student trustees who leave office in some circumstances. 110 ILL. COMP. STAT. ANN. 310/1 (West 2013).
Indiana: Category 3	At the following public universities, student governments nominate four people for a five-member "search and screen" committee to select student nominees for the board of trustees: Ball State University, IND. CODE ANN. § 21-19-3-5 (West 2007); Indiana University, § 21-20-3-14; Indiana State University, § 21-21-3-4; Purdue University, § 21-23-3-6; Vincennes University, § 21-25-3-3.
Iowa: Category 2	<p>A student fee committee exists at public universities in Iowa, where five members are students appointed by the student government organization, and five are university employees appointed by the president of the university. IOWA CODE ANN. § 262.34B(1) (West 2012). The committees have an advisory role about any changes to student activity fees. IOWA CODE ANN. § 262.34B(2) (West 2012).</p> <p>Student governments have an advisory role in selecting the student member of the Board of Regents. IOWA CODE ANN. § 262.2 (West 2012).</p> <p>If the Board of Regents for the university system proposes a tuition increase, it must notify in writing the student government organizations of the affected institutions. IOWA CODE ANN. § 262.9(19)(a) (West 2012). The Board may not increase tuition unless it is properly noticed and done at a</p>

	<p>regular meeting. IOWA CODE ANN. § 262.9(19)(a) (West 2012).</p> <p>The student government has the authority to spend student activity fees, subject to administrative and board approval. IOWA CODE ANN. § 260C.18(7) (West 2012). Increases in student activity fees are “determined by the student government unit with administrative and board approval.” IOWA CODE ANN. § 260C.18(7) (West 2012).</p> <p>If money accumulated by campus organizations is not available to be spent by those organizations, some universities “allocate that interest to campus improvements that . . . have been accepted by the student government . . .” <i>See</i> Iowa State University of Science and Technology, IOWA CODE ANN. § 266.20 (West 2012); University of Iowa, § 263.8B; University of Northern Iowa, § 268.3.</p>
<p>Kansas: Category 3</p>	<p>Before a Kansas community college may use student fees to grant scholarships, the use must be “acknowledged by student government representatives.” KAN. STAT. ANN. 71-203 (West 2008).</p> <p>There is a students’ advisory committee to the state Board of Regents for the system of higher education. KAN. STAT. ANN. 74-3229(a) (West 2008). Its six members are “the highest student executive officer” elected by the student bodies at several public universities. KAN. STAT. ANN. 74-3229(a) (West 2008). This committee receives notice of all meetings of the state Board of Regents and is empowered to: 1) “attend all meetings” of the Board, 2) “make recommendations” to the Board, 3) “advise and consult” with the Board, 4) “identify student concerns,” 5) “consider any problems presented to it by the Board,” and 6) “disseminate information to their peers.” KAN. STAT. ANN. 74-3229(b) (West 2008).</p>
<p>Kentucky: Category 2</p>	<p>Kentucky has established a Board of Student Body Presidents, comprised of the student body presidents of each public university, two representatives from the Community and Technical College System, and one student body president representing the Association of Independent Kentucky Colleges and Universities. KY. REV. STAT. ANN. §§ 164.0211(1) (West 2006). The Board “advise[s] the legislative and executive branches regarding postsecondary education issues and concerns of students,” and “at least once per year [it] shall meet with the Council on Postsecondary Education</p>

	<p>and the Advisory Conference of Presidents.” KY. REV. STAT. ANN. §§ 164.0211(2)-(3) (West 2006). The Board also submits three nominees’ names to the Governor for consideration to be appointed student member to the Council on Postsecondary Education. KY. REV. STAT. ANN. §§ 164.0211(4), 164.011 (West 2006).</p> <p>Student body presidents are statutorily authorized to receive an honorarium for their service, without it being considered a conflict of interest if they also serve on the university’s board. KY. REV. STAT. ANN. § 164.291 (West 2006).</p> <p>The student body presidents at the following universities sit on the Board of Trustees or Regents for the universities: University of Kentucky, KY. REV. STAT. ANN. § 164.131(5) (West 2006); University of Louisville, § 164.821(2); Eastern Kentucky, Morehead State, Murray State, Western Kentucky, Kentucky State, and Northern Kentucky Universities, § 164.321(8)(a) (these universities have one Board of Regents).</p> <p>One member of the student body sits on the Board of Directors at each community or technical college. KY. REV. STAT. ANN. § 164.600(4) (West 2006). Two students sit on the Board of Regents for the Community and Technical College System, with one elected by community college students and one by technical college students. KY. REV. STAT. ANN. § 164.321(8)(b) (West 2006).</p> <p>The Kentucky Bar Association authorizes attorneys to participate in a legal advising system established by student governments to service students. Ky. Bar Ass’n, Ethics Op. E-101 (1974).</p> <p>The state’s Open Meeting laws might apply to student governments. KY. REV. STAT. ANN. §§ 61.800-850 (West 2006). Most recently, the Attorney General held that it applied to the University of Louisville Student Government Association. Ky. Att’y Gen. Open Meetings Decision No. 05-OMD-086 (May 5, 2005). However, an earlier opinion held that the Murray State University student government was not a public agency subject to the law. Ky. Att’y Gen Op. No. 74-639 (Aug. 26, 1974).</p>
Louisiana: Category 2	Public universities and colleges may assess certain technology fees, subject to the approval of the student government association; the association may set a maximum amount for

	<p>any such assessment and may terminate the assessment at any time. LA. STAT. ANN. 17:3351.1(A) (2013).</p> <p>Student government associations may use student fees for lobbying and educational purposes, but the use of those funds must comply with the statutes regulating lobbying activities. La. Att’y Gen. Op. No. 75-556 (Apr. 24, 1975).</p> <p>Student government associations may use student fees to retain an attorney to provide legal advice and representation for university students, subject to the approval of the state bar association. La. Att’y Gen. Op. No. 74-453 (Mar. 21, 1974).</p> <p>The Attorney General has held that allocating student government association funds to the College Republicans would be constitutionally prohibited. La. Att’y Gen. Op. No. 92-591 (Sept. 14, 1993).</p> <p>The Public Records Law applies to many records of student government associations. LA. STAT. ANN. §§ 44:1-44:41 (2007); <i>see</i> Carter v. Fench, 322 So. 2d 305, 308 (La. Ct. App. 1975). The Louisiana State University Student Government is a public body subject to the Open Meetings Law. LA. STAT. ANN. 42:13–42:28 (2006); <i>see</i> La. Att’y Gen. Op. No. 94-333 (Aug. 22, 1994).</p> <p>There is a student member on the Board of Regents for the higher education system. LA. STAT. ANN. 17:3121.1(A) (2013). They are elected by and from a council of the student body presidents of the colleges and universities under jurisdiction of the Board. LA. STAT. ANN. 17:3121.1(A) (2013). The same is true for three Boards of Supervisors for three universities and two colleges, and two such members are on the Board of Supervisors of Community and Technical Colleges, one chosen by and from the presidents of the community colleges and one by and from the vocational-technical schools. LA. STAT. ANN. 17:1806(A) (2013).</p> <p>At one high school, the Louis Armstrong High School for the Arts, the student government association adopts a process to elect a student to the school board. LA. STAT. ANN. 17:1970.4(B)(6) (2013).</p>
Maine: Category 3	There is one student member of the Board of Trustees for the Maine Community College System who is nominated by the Governor from a list of student body presidents at six

	<p>campuses, and then confirmed by a committee of the Legislature. ME. STAT. tit. 20-A § 12705(1)(G) (2008).</p> <p>The president of the student body of the Maine School for Marine Science, Technology, Transportation and Engineering serves on the school’s Board of Trustees, but may not attend or vote on matters considering during executive session. ME. STAT. tit. 20-A § 8234(1)(G) (2008). The same is true at the Maine School of Science and Mathematics. ME. STAT. tit. 20-A § 8204(1)(I) (2008).</p> <p>In 2008, a one-time student committee was created to make recommendations on the transfer of credits at the University of Maine. The committee was composed of one student representative selected by the student body of each campus of the state university system. ME. STAT. tit. 20-A § 10907(1)(C) (2008).</p>
Maryland: Category 2	<p>Students and student organizations that lobby “as part of a course or student activity” are not subject to certain lobbying registration requirements. MD. CODE ANN., GEN. PROVISIONS, § 5-702(b)(3) (West 2015).</p> <p>Student bodies elect one member to the Board of Community College Trustees for Prince George’s County. MD. CODE ANN., EDUC. § 16-414(b)(2) (West 2012).</p> <p>The following colleges and universities have a student member on the Board of Regents, but no statutory selection mechanism: Morgan State University, MD. CODE ANN., EDUC., § 14-102(c) (West 2012); University of Maryland System, § 12-102(c)(1) (West 2012); St. Mary’s College, §§ 14-402(b)(2), 14-404(f) (West 2012).</p> <p>There is a student member of the Higher Education Commission, but no statutory selection mechanism. MD. CODE ANN., EDUC., § 11-102(b) (West 2012). The same is true for the Board of Trustees for Baltimore City Community College. MD. CODE ANN., EDUC., § 16-504(b) (West 2012).</p>
Massachusetts: Category 1	<p>Student government associations may nominate students to serve on the Commonwealth’s Board of Higher Education. MASS. GEN. LAWS ch. 15A, § 4(b) (2010). There are two voting student members and three non-voting members on the University of Massachusetts Board of Trustees, elected annually from each of five campuses with voting rights rotating between campuses. MASS. GEN. LAWS ch. 75, § 1A (2009). For other higher educational institutions, students</p>



	<p>have one seat on each board of trustees, elected annually by the student body. MASS. GEN. LAWS ch. 15A, § 21 (2010).</p> <p>The Commonwealth’s Board of Higher Education has the authority to “recognize the duly elected student government association at each public institution of higher education as the official representative of the student body.” MASS. GEN. LAWS ch. 15A, § 9 (2010).</p> <p>The first Friday in April is “Student Government Day.” MASS. GEN. LAWS ch. 6, § 12M (2016).</p> <p>Students may, in a referendum vote sanctioned and certified by the official student government association, create non-mandatory student fees to nonpartisan student organizations which employ lobbyists and other “legislative agents.” MASS. GEN. LAWS ch. 15A, § 29 (2010); MASS. GEN. LAWS ch. 73, § 1F (2009) (state colleges and community colleges); MASS. GEN. LAWS ch. 75, § 11A (2009) (University of Massachusetts). Such fees are opt-out fees that are paid through tuition bills and must be reauthorized by referendum every two years. MASS. GEN. LAWS ch. 15A, § 29(b) (2010). No mandatory student fees can be paid to legislative agents or organizations attempting to influence legislation; however, student government associations are not construed to be such legislative agents. MASS. GEN. LAWS ch. 15A, § 29 (2010); MASS. GEN. LAWS ch. 73, § 1F (2009) (state colleges and community colleges); MASS. GEN. LAWS ch. 75, § 11A (2009) (University of Massachusetts).</p>
Michigan: Category 3	No such law was found.
Minnesota: Category 1	<p>The state system will “recognize one statewide student association for the state universities and one for the community and technical colleges.” MINN. STAT. ANN. § 136F.22(1) (West 2008). Each campus student association is “affiliated with its statewide student association.” MINN. STAT. ANN. § 136F.22(1) (West 2008). Each statewide association sets its fees to be collected by the board. MINN. STAT. ANN. § 136F.22(2) (West 2008). “The board may revise or reject the fee change.” MINN. STAT. ANN. § 136F.22(2) (West 2008).</p> <p>The statewide student associations have an advisory role for student members of the Board of Trustees. MINN. STAT. ANN. § 136F.04(1) (West 2008). There is also a Student Advisory</p>

	<p>Council to the Office on Higher Education and its members include student leaders in public and private colleges. MINN. STAT. ANN. § 136A.031(3)(a) (West 2008). Each school must also consult with the student government in facilitating voter registration. MINN. STAT. ANN. § 201.1611(1) (West 2009). Official campus student associations “may fund a program to provide legal counseling and services to students” of the college. MINN. STAT. ANN. § 136F.24 (West 2008). The money must be “from an account of the state college and university activity funds allocated to the student associations or other money assigned to them.” MINN. STAT. § 136F.24 (West 2008). Student associations “may purchase goods or materials through state purchasing authority.” MINN. STAT. ANN. § 136F.23 (West 2008).</p> <p>The governing body of postsecondary institutions may not increase mandatory student activity fees more than two percent in a year without approval of a majority of the student body. MINN. STAT. ANN. § 135A.0434(1) (West 2008).</p> <p>Students have three seats on the Board of Trustees for Minnesota State Colleges and Universities, one representing community colleges, technical schools, and state universities. MINN. STAT. ANN. § 136F.02(1) (West 2008). The governor appoints members with the advice and consent of the senate. MINN. STAT. ANN. § 136F.02 (1) (West 2008). There is also a student member on the Board of Regents for the University of Minnesota. MINN. STAT. ANN. § 137.023 (West 2008).</p>
Mississippi: Category 3	<p>The president of the Student Body President’s Council of Mississippi has a “reserved set at each meeting of the Board of Trustees of State Institutions of Higher Learning.” MISS. CODE ANN. § 37-101-3(1) (West 2009). The board must seek the advice and counsel of the Council. MISS. CODE ANN. § 37-101-3(1) (West 2009).</p>
Missouri: Category 2	<p>There is a nonvoting student representative on each Board of Regents or Governors of Central Missouri State University, Harris-Stowe State University, Missouri Southern State University, Missouri State University, Missouri Western State University, Northwest Missouri State University, Southeast Missouri State University. MO. ANN. STAT. §§ 174.020(1), 174.055(1) (West 2011). They are appointed by the governor from a list of three names submitted by the student government president, a citizen of the United States, and a resident of the state of Missouri. MO. ANN. STAT. § 174.055(2) (West 2011). The same is true for the University</p>

	<p>of Missouri and each other public institution of higher education: Lincoln University, MO. ANN. STAT. § 175.021(1)-(2) (West 2011); state colleges and universities, § 174.450(2); State Technical College of Missouri, § 178.632; University of Missouri, § 172.035(1)-(2).</p> <p>The student government association of Southwest Missouri State University is only considered a public body for the purpose of the Governmental Bodies and Records laws when participating in some decisional authority of the Board of Regents, or when exercising “de facto authority tacitly approved or accepted by the Board.” Mo. Att’y Gen. Op. No. 67-87 (July 31, 1987); <i>see</i> MO. ANN. STAT. § 610.010-.035 (West 2014).</p> <p>The law contemplates that students can establish fees but does not appear to expressly provide for those fees. <i>See</i> MO. ANN. STAT. § 173.1003(7) (West 2011) (“The term ‘tuition’ shall mean the amount of tuition and required fees, excluding any fee established by the student body of the institution, charged to a Missouri resident undergraduate enrolled in fifteen credit hours at the institution.”).</p>
<p>Montana: Category 1</p>	<p>The student government association has a meet and confer right related to collective bargaining: before the university enters collective bargaining with professional education employees, the student government may designate a representative to meet and confer with the Board of Regents and the faculty bargaining agent, to observe negotiations and participate in the employer’s bargaining team caucuses, and “meet and confer with the board of regents regarding the terms of the agreement prior to the execution of a written contract between the regents and the professional educational employees.” MONT. CODE ANN. § 39-31-302 (West 2009). The student is required to maintain confidentiality of the negotiations. MONT. CODE ANN. § 39-31-302 (West 2009).</p> <p>There is a student member on the Board of Regents, who is selected by the governor from a list of three names submitted by a student organization designated by the Board of Regents. MONT. CODE ANN. § 2-15-1508(3) (West 2009).</p> <p>The Board of Regents at any university may not allow security guards to carry firearms without first consulting with the student body government. MONT. CODE ANN. § 20-25-324 (West 2009).</p>

	<p>In the 1930s, state law provided that tuition “shall ever be free to all students who shall have been residents of the state for one year.” R. C. M. § 866 (1921); <i>State ex rel. Veeder v. State Bd. of Educ.</i>, 33 P.2d 516, 521–22 (Mont. 1934).</p> <p>Student associations’ student fees are exempted from state procurement requirements. MONT. CODE ANN. § 18-4-132(3)(c) (West 2009).</p> <p>Student associations may retain the interest earned on any investments of student fees they have. MONT. CODE ANN. § 20-25-451 (West 2009).</p>
Nebraska: Category 3	<p>There is a history of student strikes in Nebraska. <i>See, e.g., Larson v. Bd. of Regents of Univ. of Nebraska</i>, 204 N.W.2d 568, 570-71 (Neb. 1973).</p> <p>There are three nonvoting student members on the Board of Regents of the University of Nebraska; they are the student body president of the University of Nebraska at Lincoln, University of Nebraska at Omaha, and the University of Nebraska Medical Center. NEB. CONST. art. VII, § 10.</p>
Nevada: Category 1	<p>Nevada law gives the student bodies at each branch of the higher education system the ability to establish a student government. NEV. REV. STAT. ANN. § 396.547(1) (West 2014). The government’s bylaws are subject to the approval of the Board of Regents, but the government “is self-governing and independent of the administration of the System, financially and otherwise.” NEV. REV. STAT. ANN. § 396.547(2) (West 2014). The Board of Regents must collect a fee from undergraduate students at each branch for the student government upon request of the student government and approval by the Board. NEV. REV. STAT. ANN. § 396.547(3) (West 2014).</p> <p>The Board of Regents for the University of Nevada must establish regulations for student governments within the system of higher education requirements equivalent to those in the State Open Meetings law. NEV. REV. STAT. ANN. § 241.017 (West 2016).</p> <p>There is a student member on the Committee on the Estate Tax Account for the Endowment of the Nevada System of Higher Education, who is “appointed by the student governments of</p>

	<p>the Nevada System of Higher Education.” NEV. REV. STAT. ANN. § 375A.710(1)(d) (West 2011).</p> <p>There is a student member on the Educator Code of Ethics Advisory Group, who is appointed by the Superintendent of Public Instruction and must be a member of student government or the Nevada Youth Legislature. Assemb. 124, 2017 Leg., 79th Sess. § 4 (Nev. 2017).</p>
New Hampshire: Category 3	<p>There are two student trustees for the state university system. N.H. REV. STAT. ANN § 187-A:13(III)(a) (2008). They serve on a rotating basis between four campuses and are elected by the student body at each school responsible for providing the student trustee. N.H. REV. STAT. ANN § 187-A:13(III)(b) (2008). There are also two students on the board of trustees for the community college system, chosen the same way. N.H. Rev. Stat. N.H. REV. STAT. ANN § 188-F:4(II)(j) (2008).</p>
New Jersey: Category 1	<p>New Jersey law allows for optional supplemental fees, collected by the University. Charges for legislative organizations cannot be assessed on tuition bills, except for non-partisan organizations. The students at the institute authorize the fees by a majority vote, and students can decline to pay it. N.J. STAT. ANN. § 18A:62-22 (West 2013).</p> <p>At the following universities and colleges, there are two students on the Board of Trustees who are elected by the student government association and have almost equal authority to other board members: any state college established pursuant to Title 18A, Chapter 64 of New Jersey statutes, N.J. STAT. ANN. § 18A:64-3.1 (West 2013); Montclair State University, § 18A:64N-8; Rowan University, § 18A:64M-8. At county colleges, the Board of Trustees includes one student elected by the student body. N.J. STAT. ANN. §§ 18A:64A-8, 18A:64A-55 (West 2013).</p> <p>There are two students on the Commission on Higher Education, who the governor appoints from recommendations submitted by student government associations. N.J. STAT. ANN. § 18A:3B-13(a) (West 2010). Students also serve on the Higher Education Student Assistance Authority. N.J. STAT. ANN. § 18A:71A-4(a) (West 2013).</p> <p>Student organizations may not enter into an agreement for the direct merchandising of credit cards to students. N.J. STAT. ANN. § 18A:62-54 (West 2013).</p>

	<p>Student organization purchases and contracts are not subject to certain contracting requirements. N.J. STAT. ANN. § 18A:64A-25.5(a)(17) (West 2013).</p> <p>College student government associations must comply with certain auditing requirements. N.J. STAT. ANN. § 18A:64-44 (West 2013).</p>
New Mexico: Category 3	<p>One of the five members on each Board of Regents for almost all higher education institutions is a student member, selected by the governor from a list provided by the president of the institution after giving due consideration to the recommendations of the student body president of the institution. N.M. CONST. art. 12, § 13(A)-(C). For the University of New Mexico, there are seven members, one of whom is a student. N.M. CONST. art. 12, § 13(D).</p> <p>There is a student on the Higher Education Advisory Board who must be a leader of the student organization at their institution. N.M. STAT. ANN. § 9-25-10(B) (West 2012).</p> <p>Student organizations get certain consideration within the New Mexico Bingo and Raffle Act. N.M. STAT. ANN. § 60-2F-4(I) (West 2016).</p>
New York: Category 2	<p>The University of the State of New York may incorporate associations of students. N.Y. EDUC. LAW § 216 (McKinney 2009). The University of the State of the New York is a chartering and accreditation body. N.Y. EDUC. LAW § 207 (McKinney 2009).</p> <p>In the City University of New York system, the Board of Trustees may “impose and collect fees and charges for student government and other student activities and receive and expend them as agent or trustee.” N.Y. EDUC. LAW § 6206(7)(a)(iii) (McKinney 2016).</p> <p>The State University of New York (SUNY) system provides for student activity fee referenda through regulation. N.Y. COMP. CODES R. &amp; REGS. tit. 8, § 302.14(b) (West 2018).</p> <p>The SUNY Student Assembly was created by the SUNY Board of Trustees. <i>See Governing Documents</i>, SUNY SA, <a href="http://sunysa.org/governing-documents/">http://sunysa.org/governing-documents/</a> (last visited, Aug. 27, 2017). A lower court case from 1970 held that student activity fees assessed by the student body were essentially public funds, writing, “In the court's opinion it cannot be said that the</p>

officials of the University have no voice or control over appropriations or expenditures of the fund since appropriations may be made by the students only for the purposes permitted by the trustees. It follows, therefore, that appropriations and disbursements of the fund may be made only in accordance with the provisions of Section 355, paras. (3) and (4) of the Education Law.” *Stringer v. Gould*, 314 N.Y.S.2d 309, 311 (N.Y. Sup. Ct. 1970).

Student governments are also entitled to notice of certain meetings and actions. N.Y. EDUC. LAW §§ 353(2)(a), 6204(3)(d)(iii) (McKinney 2016); N.Y. ECON. DEV. LAW § 435(1) (McKinney 2012). There is a limited exemption from certain child labor laws for students sixteen years or older. N.Y. EDUC. LAW § 3215(4)(f) (McKinney 2015); N.Y. LAB. LAW § 132(4)(e). Student associations may provide group legal services to members through a group plan, but they must be “incidental and reasonably related to the primary purpose of the association.” N.Y. State Bar Ass’n, Ethics Op. 73-309 (1973).

At most community colleges, one member of the ten-member board of trustees is a student, elected by students according to “rules and regulations promulgated by the respective representative campus student association” following guidelines set by the college. N.Y. EDUC. LAW § 6306(1) (McKinney 2016); *see also* N.Y. EDUC. LAW § 6310(1) (McKinney 2016) (establishing the same at community college regions); N.Y. EDUC. LAW § 6003 (McKinney 2016) (for a SUNY college); N.Y. EDUC. LAW § 356(1) (McKinney 2009) (for local supervision councils for state-operated institutions). There are two students on the board of trustees for Cornell University. N.Y. EDUC. LAW § 5703(1)(d) (McKinney 2016). There is also a state Higher Education Services Corporation, including the students who are presidents of the Student Assembly of the SUNY, the United Student Senate of CUNY, and another student enrolled at a community college. N.Y. EDUC. LAW § 652 (McKinney 2009).

New York’s constitutional protection for freedom of speech and the press extends to student newspapers’ endorsements of student government candidates on public university campuses. N.Y. CONST. art. 1, § 8; *Husain v. Springer*, 494 F.3d 108, 137 (2d Cir. 2007).

	<p>At least one prisoner was president of an inmate student government representing students of a community college at the prison; the prisoner threatened a student strike and was disciplined for that. <i>Cabassa v. Kuhlmann</i>, 173 A.D.2d 973, 974 (N.Y. App. Div. 3d Dept. 1991).</p> <p>“Judicial scrutiny of the determination of disciplinary matters between a university and its students, or student organizations, is limited to determining whether the university substantially adhered to its own published rules and guidelines for disciplinary proceedings so as to ascertain whether its actions were arbitrary or capricious.” <i>Nawaz v. State Univ. of New York Univ. at Buffalo Sch. of Dental Med.</i>, 295 A.D.2d 944, 944 (N.Y. App. Div. 4th Dept. 2002) (quoting <i>Matter of Rensselaer Socy. of Engrs. v. Rensselaer Polytechnic Inst.</i>, 260 A.D.2d 992, 993 (N.Y. App. Div. 3d Dept. 1999)).</p> <p>Student organizations may work with universities to undertake charitable consumer good donation drives; in certain circumstances, student organizations may receive the profits from selling those goods. N.Y. EDUC. LAW § 239-a(4) (McKinney 2009).</p> <p>There is a financial aid advisory committee with four students “appointed after consultation with and recommendations from appropriate student organizations.” N.Y. EDUC. LAW § 653(6) (McKinney 2009).</p> <p>Student government leaders must get training and education about sexual assault and domestic violence. N.Y. EDUC. LAW § 6447(6) (McKinney 2016).</p>
North Carolina: Category 1	<p>The president of the student government is an ex officio member of the Board of Trustees for each of the sixteen institutions of higher education in the University of North Carolina. N.C. GEN. STAT § 116-31(d) (2017). The same is true for the School of Science and Mathematics, except the student president is a nonvoting member. N.C. GEN. STAT § 116-233(a)(8) (2017).</p> <p>The president of the University of North Carolina Association of Student Governments is an ex officio member of the Board of Governors of the University of North Carolina. N.C. GEN. STAT § 116-6.1(a) (2017). Under current law, they are a full voting member. N.C. GEN. STAT § 116-6.1(a) (2017). However, as of July 1, 2019, they will no longer have a right</p>



	<p>to vote. Act of Mar. 3, 2017, § 2, 2017 N.C. Sess. Laws 1 (2017).</p> <p>The president of the North Carolina Comprehensive Community College Student Government Association is a nonvoting ex officio member of the State Board of Community Colleges. N.C. GEN. STAT § 115D-2.1(b)(5) (2017). For each community college's board, the president of the student government or the chairman of the executive board of the student body is a nonvoting member. N.C. GEN. STAT § 115D-12(a) (2017).</p> <p>State law allows for special funds to be set up to handle certain fees, including dues of student organizations. N.C. GEN. STAT § 115C-448(a), (c) (2017). The university reports those holdings as a Trust and Agency Fund. N.C. GEN. STAT § 115D-54(e) (2017).</p> <p>Community colleges and the University of North Carolina may not deny student organizations recognition or access to funding available to other student organizations on the basis of their religious or political beliefs. N.C. GEN. STAT §§ 115D-20.2, 116-40.12 (2017).</p> <p>University Boards of Trustees may delegate authority with respect to student conduct and discipline to established student government agencies. <i>See</i> In re Carter, 137 S.E.2d 150 (N.C. 1964).</p> <p>Ex officio student members have an exemption from mandatory statements of economic interests which cover most public servants. N.C. GEN. STAT § 163A-187(a) (2017).</p> <p>At the University of North Carolina, students often have the right to hire an attorney in disciplinary proceedings; student organizations also have the right to be represented by an attorney in many circumstances. N.C. GEN. STAT § 116-40.11 (2017).</p> <p>University undergraduate court created by the student association is a public body subject to the state's Open Meeting laws. N.C. GEN. STAT § 143-318.10 (2017); DTH Pub. Corp. v. Univ. of N. Carolina at Chapel Hill, 496 S.E.2d 8, 8 (N.C. Ct. App. 1998).</p>
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<p>North Dakota: Category 3</p>	<p>Students at higher educational institutions have the right to representation during disciplinary proceedings in many circumstances. N.D. CENT. CODE § 15-10-56(1) (West 2008). Student organizations also have the right to representation in many circumstances. N.D. CENT. CODE § 15-10-56(2) (West 2008).</p> <p>There is a student member on the Board of Higher Education. N.D. CONST. Art. 8, § 6(2)(a). The student member is uncompensated. N.D. CENT. CODE § 15-10-08(1) (West 2008).</p> <p>The funds of student organizations are not considered public funds within the meaning of the state Depositories of Public Funds law. N.D. CENT. CODE § 21-04-01(1) (West 2008).</p>
<p>Ohio: Category 3</p>	<p>At the following state universities, there are two nonvoting student trustees that are appointed by the governor, with the advice and consent of the senate, from a group of five candidates selected according to the student governments' procedures as approved by the board of trustees:</p> <p>University of Akron, OHIO REV. CODE ANN. § 3359.01 (2012); Bowling Green State University, § 3341.02; Central State University, § 3343.02; University of Cincinnati, § 3361.01; Cleveland State University, § 3344.01; University of Miami, § 3339.01; Northeast Ohio Medical University, § 3350.10; Ohio University, § 3337.01; Shawnee State University, § 3362.01; University of Toledo, § 3361.01; Wright State University, § 3352.01; Youngstown State University, § 3356.01.</p> <p>At Ohio State University, as with the other universities, the board of trustees decides whether the student members appointed have voting rights. OHIO REV. CODE ANN. § 3335.02 (2012).</p>
<p>Oklahoma: Category 3</p>	<p>It is a proper use of student activity fee dollars to support student government. Okla. Att'y Gen. Op. No. 69-214 (July 31, 1969).</p> <p>Student government associations are sub entities of boards of higher education within the meaning of the Open Meeting Act, OKLA. STAT. tit. 25 § 301-14 (2018), and so they must comply with all requirements of the law. Okla. Att'y Gen. Op. No. 79-134 (June 18, 1979).</p>

<p>Oregon: Category 1</p>	<p>Student governments are public institutions and are required to obtain legal advice only from the Department of Justice. 48 Or. Att’y Gen. No. 8240 (Aug. 19, 1996), 1996 WL 475229. Student fees are required to be paid as a prerequisite of admission to public universities are public moneys. 37 Or. Att’y Gen. Op. No. 621 (May 30, 1975), 1975 WL 184568. Student governments are subject to Oregon’s public meetings law. 44 Or. Att’y Gen. Op. No. 69 (June 27, 1984), 1984 WL 192199.</p> <p>The board for each public university must collect mandatory incidental fees requested by the recognized student government. The student government establishes the process of establishing those fees, in consultation with the board, and the fees are allocated to the government. OR. REV. STAT. ANN. § 352.105(1) (West 2014). The board or the president of a university may refuse a fee, the use of a fee, or a decision to modify a fee, in certain circumstances. OR. REV. STAT. ANN. § 352.105(2) (West 2014). A decision to refuse a fee may be appealed to the Higher Education Coordinating Commission. OR. REV. STAT. ANN. § 352.105(4) (West 2014).</p> <p>When faculty of public universities form a union under Oregon’s public-sector labor law, members of student government are entitled to meet and confer with the university and with the faculty’s union prior to collective bargaining. OR. REV. STAT. ANN. § 243.778(1) (West 2009). During the course of collective bargaining, the representatives of the student government are allowed to attend and observe bargaining sessions, receive all written documents, comment during bargaining, and meet and confer with both parties prior to the execution of a written contract. OR. REV. STAT. ANN. § 243.778(2) (West 2009).</p> <p>Student governments have the right to participate in the process for determining tuition and mandatory enrollment fees. Before a university’s governing board authorizes or changes fees for programs under its supervision, the president of the university must transmit to the board the “joint recommendation” of the president and the student government. OR. REV. STAT. ANN. § 352.102(1)(3)(b)–(e) (West 2014).</p> <p>Student governments have the right to: on request, provide nonpartisan voter registration services; on request, receive an official class schedule and a list of contact information for</p>
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	<p>faculty for use in seeking faculty approval to provide voter registration classroom presentations; receive information regarding what address information students in on-campus housing must provide in order to receive election ballots. OR. REV. STAT. ANN. § 350.245 (West 2014).</p> <p>Student governments advise the governor on the appointment of the student member of the Oregon Health and Science University (OHSU) Board of Directors. OR. REV. STAT. ANN. § 353.040(2) (West 2014). At OHSU, any fee surpluses must be spent on programs advantageous to students “upon the recommendation” of the student government. OR. REV. STAT. ANN. § 353.050(13) (West 2014).</p> <p>Student health insurance law contemplates that a policy may be issued to a student government. OR. REV. STAT. ANN. § 743.550 (West 2003).</p> <p>Oregon student unions must follow the “viewpoint neutrality” standard in spending mandatory student fees. This does not apply to optional or refundable student-fees systems. Or. Att’y Gen. Op. No. 8289 (June 30, 2015), 2015 WL 4077218.</p>
<p>Pennsylvania: Category 2</p>	<p>The president of each institution in the State System of Higher Education (SSHE) has the power and duty to develop and implements policies and procedures, in conjunction with the local campus student government association, by which student organizations may be created. 24 PA. STAT. AND CONS. STAT. ANN. § 20-2010-A(3) (West 2016). Each president is tasked to, in cooperation with the student association, fix student activity fees and supervise their collection, retention, and expenditure. 24 PA. STAT. AND CONS. STAT. ANN. § 20-2010-A(6) (West 2016).</p> <p>There are three student members on the board of governors for the SSHE, selected by the presidents of the local campus student government associations. 24 PA. STAT. AND CONS. STAT. ANN. § 20-2004-A(a)(7) (West 2016).</p> <p>There is a council of trustees for each SSHE institution, and each has a student member appointed by the Governor. 24 PA. STAT. AND CONS. STAT. ANN. § 20-2008-A(b) (West 2016).</p> <p>State law defines student associations as “the officially recognized representative body of the student population of</p>

	<p>each institution.” 24 PA. STAT. AND CONS. STAT. ANN. § 20-2001-A(16) (West 2016).</p> <p>There is a college textbook policies advisory committee, which consists of four students who are appointed by the chairman of the committee from lists recommended by educational institutions in the state. 24 PA. STAT. AND CONS. STAT. ANN. § 20-2009-F(b)(8)(iii) (West 2016).</p>
Puerto Rico: Category 1	<p>Current student representatives elect one representative to the University of Puerto Rico’s University Board, P.R. LAWS ANN. tit. 18, § 605(a) (2001), through a secret ballot. P.R. LAWS ANN. tit. 18, § 602(c) (2001).</p> <p>The state government may consult with student organization regarding student boarding house regulatory compliance. P.R. LAWS ANN. tit. 10, § 2308 (2001).</p> <p>There is a law providing for broad rights to create a student council which recognizes that students are important members of the university community, requires the Board of Trustees for the University of Puerto Rico to establish a Student Council in each university campus and faculty, and student committees to advise the body regarding services and assistance. P.R. LAWS ANN. tit. 18, § 609(b) (2001). The Student Councils are the exclusive representatives of the students, and are elected by the vote of the students. P.R. LAWS ANN. tit. 18, § 609(b) (2001). Student councils establish school security plans, subject to regulations. P.R. LAWS ANN. tit. 18, § 13(d) (2001).</p>
Rhode Island: Category 3	<p>There is a student member of the council for post-secondary education, who is a nonvoting ex officio member. 16 R.I. GEN. LAWS § 16-59-2(a) (2013).</p>
South Carolina: Category 3	<p>The president of each student body at each state-supported institution is also an ex officio, nonvoting member of the board of trustees of that institution. S.C. CODE ANN. § 59-101-40 (2004).</p>
South Dakota: Category 3	<p>No such laws were found.</p>
Tennessee: Category 1	<p>The governor appoints one voting student member to the Tennessee Higher Education Commission each year. The student member is selected from a list of three nominees annually submitted by the commission. The chancellor of the board of regents may submit at most two candidates, the president of the University of Tennessee system may submit</p>

	<p>at most two candidates, and the presidents of state universities may each submit one candidate to the commission for consideration. TENN. CODE ANN. § 49-7-204(a)(1)(C) (West 2011).</p> <p>The governor appoints one nonvoting student member to the Board of Regents each year. The student member is selected from a list of three nominees submitted by the presidents of the government associates of all state colleges of applied technology and community colleges. TENN. CODE ANN. § 49-8-201(b) (West 2011). A similar process exists for the Board of Trustees at the University of Tennessee. TENN. CODE ANN. § 49-9-202(3) (West 2011).</p> <p>Students may increase activity or maintenance fees received by the student government association through a referendum, held at the election of the association and on the ballot with the candidates for office. TENN. CODE ANN. § 49-8-110(d)(1) (West 2011). The increased portion must be used for student projects, student activities, and student scholarships. TENN. CODE ANN. § 49-8-110(d)(2) (West 2011). The uses must be approved by the administrative body of the state university or community college. TENN. CODE ANN. § 49-8-110(d)(3) (West 2011).</p> <p>There is a Tennessee student assistance corporation with two student members, selected by the governor. TENN. CODE ANN. § 49-4-202(a) (West 2011), who are either selected from a list prepared by the Intercollegiate State Legislature (ISL), or from a general election at the ISL's annual general assembly. TENN. CODE ANN. § 49-4-202(c)(3) (West 2011).</p> <p>There is a student member on the state energy policy council. TENN. CODE ANN. § 68-204-104(a)(6) (West 2015).</p>
Texas: Category 2	<p>Student services fees are reserved for a number of activities, including student government. TEX. EDUC. CODE ANN. § 54.503(a)(1) (West 2012). Total fees collected under this section cannot exceed \$150 without a majority vote of the students or of the student government. TEX. EDUC. CODE ANN. § 54.503(f) (West 2012).</p> <p>The student government selects five candidates for a nonvoting student regent position from which the university system chancellor selects two that are forwarded to the governor, who then appoints one for each university system.</p>

	<p>TEX. EDUC. CODE ANN. § 51.355(c) (West 2012) (University System Board of Regents); TEX. EDUC. CODE ANN. § 51.356(d) (West 2012) (Institution Board of Regents); TEX. EDUC. CODE ANN. § 61.0225(b) (West 2012) (Texas Higher Education Coordinating Board).</p> <p>Student governments may also select members of a student fee advisory at each institution of higher education universities. TEX. EDUC. CODE ANN. §§ 54.506, 54.514, 54.5032, 54.5031, 54.5061 (West 2012).</p> <p>Subject to certain restrictions and procedures, the Board of regents of universities may impose additional fees. TEX. EDUC. CODE ANN. § 54.5111 (West 2012) (environmental service fee at Southwest Texas State University); TEX. EDUC. CODE ANN. § 54.5122 (West 2012) (recreational facility fee at The University of Texas at Arlington); TEX. EDUC. CODE ANN. § 54.5131 (West 2012) (international education fee at the University of Texas at Austin).</p> <p>For a general academic teaching institution to participate in the Student Endowment Scholarship and Internship Program, the student government may elect to participate and then a majority of the students must vote to approve an additional fee. TEX. EDUC. CODE ANN. § 56.243 (West 2012).</p>
<p>Utah: Category 2</p>	<p>There is a student member for the board of the state system of higher education, selected by the governor from a list of three nominees presented by the student body presidents of the institutions of higher education; the student may not be a student body president at the time of the nomination. UTAH CODE ANN. § 53B-1-104(1)(c) (West 2015).</p> <p>The board of trustees for many public institutions consists of the president of the associated students of the institution. UTAH CODE ANN. § 53B-2-104(1)(a) (West 2015).</p> <p>The president of each institution, with the approval of the institution’s Board, may enact rules governing student government and student affairs organization. UTAH CODE ANN. § 53B-2-106(2)(d) (West 2015).</p> <p>There is a regional advisory council created to advise the president of Utah State University regarding a comprehensive regional college, Utah State University Eastern. UTAH CODE</p>

	<p>ANN. § 53B-18-1201(1)(a) (West 2015). The president of the Student Association of Utah State University Eastern has a seat on that advisory council. UTAH CODE ANN. § 53B-18-1201(5)(c)(i) (West 2015).</p>
Vermont: Category 2	<p>The steering committee of the Vermont State Colleges Student Association appoints a student trustee to the board of trustees for the Vermont state colleges system. VT. STAT. ANN. tit. 16, § 2172(a)(2) (2014).</p> <p>There is a student member on the State Board of Education, VT. STAT. ANN. tit. 16, § 161 (2014) and the board of trustees for the state Agricultural College. VT. STAT. ANN. tit. 16 app. c. 1 § 1–2 (2016).</p>
Virginia: Category 3	<p>The Council selects student members for the student advisory committee for the State Council for Higher Education. VA. CODE ANN. § 23.1-201(A) (2016). The governing boards of state universities must appoint at least one student as a nonvoting, advisory representative. VA. CODE ANN. § 23.1-1300(H) (2016).</p>
Washington: Category 1	<p>Students may create or increase voluntary student fees for each academic year when passed by a majority vote of the student government or referendum before the student body. Voluntary fees may be used by a student government association for lobbying or to support a statewide or national organization to engage in lobbying. WASH. REV. CODE ANN. § 28B.15.610 (West 2014).</p> <p>Student governments may form a student advisory committee at each four-year institution to advise and assist in the administration of that institution about issues directly affecting students' ability to access and succeed in their educational programs, such as, the institution's budget, tuition and fee levels, and financial aid policies. WASH. REV. CODE ANN. 28B.15.190(1) (West 2014). Members may be appointed in a manner consistent with the policies of the student government. WASH. REV. CODE ANN. § 28B.15.190(1) (West 2014). The university must make available all non-confidential information requested by the committee that is necessary for it to provide informed recommendations, and must provide the opportunity to present recommendations before the board of regents or trustees before final administrative decisions. WASH. REV. CODE ANN. § 28B.15.190(3) (West 2014).</p>



	<p>Student governments at four-year institutions may help fund child care at the school. WASH. REV. CODE ANN. § 28B.135.010 (West 2014).</p> <p>Student associations at colleges and universities are subject to certain contracting requirements. WASH. REV. CODE ANN. § 28B.10.640 (West 2014).</p> <p>Universities and colleges must consult with student associations prior to changing tuition every academic year. WASH. REV. CODE ANN. § 28B.15.067(5)(c) (West 2014). The board of trustees and board of regents for the institution can adopt guidelines for funding programs through student services and activities fees, but student representations must have an opportunity to provide their input before decision on spending can be made. WASH. REV. CODE ANN. § 28B.15.045(1) (West 2014). Certain universities may not charge students a technology fee without the written agreement of its student association. WASH. REV. CODE ANN. § 28B.15.051(1). They may not change the amount without the consent of the students, and the students may abolish the fee by a majority vote. WASH. REV. CODE ANN. § 28B.15.051(3)–(4) (West 2014).</p> <p>Universities may not change degree programs from being state supported to being “self-supporting and fee based” without giving students and student government associations at least six months’ notice, along with an estimate of tuition and fees. Wash. Rev. Code Ann. § 28B.15.071 (West 2014).</p> <p>The governing body of student associations at each public institution is subject to open meeting laws. WASH. REV. CODE ANN. § 42.30.200 (West 2018).</p> <p>Student associations at community or technical colleges may submit candidates to the governor for the student trustee position on the board of trustees. WASH. REV. CODE ANN. § 28B.50.102(1) (West 2014). Student associations may appoint a student representative to faculty tenure committees. WASH. REV. CODE ANN. § 28B.50.869 (West 2014). Some state funds are available for technical assistance to student associations at technical colleges. WASH. REV. CODE ANN. § 28A.300.380(2) (West 2014).</p>
<p>West Virginia: Category 2</p>	<p>The governing board of a public university may assess student fees for a student-run public interest research group, after</p>

	<p>students indicate their support for the fee in a manner and method established by the university's student government. W. VA. CODE ANN. § 18B-10-1(h) (LexisNexis 2016).</p> <p>West Virginia has a state advisory council of students to which each student government at each institution elects a student member. W. VA. CODE ANN. 18B-6-4 (LexisNexis 2016).</p> <p>Students elect one member to each board of governors for each institution. W. VA. CODE ANN. § 18B-2A-1(c)(3)(B) (LexisNexis 2016).</p>
Wisconsin: Category 1	<p>University students have the right to organize themselves in a manner they determine and to select their representatives to participate in institutional governance. WIS. STAT. ANN. § 36.09(5) (West 2012). The entire state university system is not an “institution” within the meaning of this statute, so they do not necessarily have the right to participate in system-wide governance. <i>Oshkosh Student Ass’n v. Bd. of Regents of Univ. of Wis. Sys.</i>, 279 N.W.2d 740 (Wis. App. 1979).</p> <p>University students have the primary responsibility of advising the chancellor of their university about policies relevant to student interests and needs. They also are responsible for the disposition of student fees spent to support campus student activities, subject to the final confirmation of the board of regents. WIS. STAT. ANN. § 36.09(5) (West 2012).</p> <p>The board of regents may “provide students with the opportunity” to pay a fee to support an inter-institutional student government organization, but it may not require students to pay the fee. WIS. STAT. ANN. § 36.27(6)(b) (West 2012).</p> <p>There are two students on the board of regents of the University of Wisconsin System: one traditional student and one non-traditional student over age 24, i.e. a parent or working. The student governments may make recommendations, but the governor appoints the student members. WIS. STAT. ANN. § 15.91 (West 2012). There is also one student on the board of the technical college system, selected by the governor. WIS. STAT. ANN. § 15.94(4) (West 2012).</p>
Wyoming: Category 3	<p>The president of the associated students of the University of Wyoming is an ex officio, non-voting, member of the</p>

	university's Board of Trustees. WYO. STAT. ANN. § 21-17-201 (2015).
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APPENDIX A.2: SURVEY OF STUDENT ASSOCIATION LAWS OF PRIMARY AND/OR  
SECONDARY EDUCATION

State	Legislative Framework
Arizona	In secondary school districts, the officers of the student body have the right to inspect the accounts of the student activities fund established by the school district. ARIZ. REV. STAT. ANN. § 15-1122(B) (2014). All money raised “by the efforts of students,” subject to some conditions, is student activities money. ARIZ. REV. STAT. ANN. § 15-1121 (2014).
Kentucky	In secondary education, public school districts may create a committee to develop a “code of student rights and responsibilities.” KY. REV. STAT. ANN. § 160.295(1) (West 2006). Two students must be on this committee and must be “elected by their peers in the local school district.” KY. REV. STAT. ANN. § 160.295(2)–(3) (West 2006).
Maryland	<p>The State Board of Education generally governs elementary and secondary educations and students have one seat on the Board. MD. CODE ANN., EDUC., § 2-202(a) (West 2012). The Maryland Association of Student Councils sends a list of two student nominees to the Governor, who must appoint the member from that list. MD. CODE ANN., EDUC., § 2-202(b)(4) (West 2012). The student member is a full member of the Board, except that they may not vote on some personnel issues. MD. CODE ANN., EDUC., § 2-202(c)(3) (West 2012).</p> <p>High school students within Prince George's County have one seat on the county's Board of Education. MD. CODE ANN., EDUC., § 3-1002(f)(1) (West 2012). The member must be in eleventh or twelfth grade and is elected by a meeting of the Prince George's Regional Association of Student Governments. MD. CODE ANN., EDUC., § 3-1002(g) (West 2012). In many counties, students have a seat on the County Board of Education; the student must be a representative of the student government association at their high school and may not attend executive sessions without an invitation by the board. Anne Arundel County, MD. CODE ANN., EDUC., § 3-2A-05(a) (West 2012); Carroll County, § 3-401(a), (f); Harford</p>

	<p>County, § 3-6A-01(b), (g); Howard County, § 3-701(a), (f); Montgomery County, §§ 3-901(a), 16-411(b); Queen Anne's County, § 3-10A-01(a), (e); St. Mary's County, § 3-1101(a), (f).</p> <p>Administrators in Caroline County and Talbot County select two students to be nonvoting members of the counties' Boards of Education. Caroline County, MD. CODE ANN., EDUC., § 3-3A-02(a), (f) (West 2012); Talbot County, MD. CODE ANN., EDUC., § 3-12A-06 (West 2012). Administrators in Allegany County and Charles County select one student to be a nonvoting member of the counties' Boards of Education. Allegany County, MD. CODE ANN., EDUC., § 3-201(b), (f) (West 2012); Charles County, § 3-501(a), (g). Garrett County Association of Student Councils adopts procedures for creating a list of four students, from which the county board selects the nonvoting member. MD. CODE ANN., EDUC., § 3-601(a), (f) (West 2012).</p> <p>There is a student member on the Boards of Education for the following counties: Baltimore County, MD. CODE ANN., EDUC., § 3-2B-05 (West 2012); Calvert County, § 3-301(a); Cecil County, § 3-4A-01(a); Dorchester County, § 3-5A-01; Frederick County, § 3-5B-01(a); Worcester County, § 3-1401(a). There is also a student member on the Baltimore City Board of School Commissions for the public-school system. MD. CODE ANN., EDUC., § 3-108.1(d) (West 2012).</p> <p>Some of these student members might be compensated or reimbursed for expenses. Anne Arundel County, MD. CODE ANN., EDUC. § 3-2A-07(b) (West 2012); Baltimore County, § 3-2B-06; Charles County, § 3-503(d); Howard County, § 3-703(a), (b); Montgomery County, § 3-902(a), (b); Prince George's County, § 3-1003(a), (b).</p>
Massachusetts	High school students have student advisory committees composed of elected students in each city, town, or regional school district. MASS. GEN. LAWS ch. 71 § 38M (2009).
Nebraska	In the secondary education context, many school districts can choose to include a nonvoting public high school student. NEB. REV. STAT. ANN. § 79-559(1) (West 2009). That student will be the student council president, the senior class representative or a representative elected by and from the entire student body. NEB. REV. STAT. ANN. § 79-559(1) (West 2009).

Nevada	<p>In the secondary education context, there is a student member on the State Board of Education who is appointed by the Governor and nominated by the Nevada Association of Student Councils in consultation with the Nevada Youth Legislature. NEV. REV. STAT. ANN. § 385.021(2)(d) (West 2014).</p> <p>Within many local school precincts, there are “organizational teams” with several statutory duties. At many middle schools, junior high schools, and high schools, the organization team must have one nonvoting student member, who is elected by the entire student body. NEV. REV. STAT. ANN. § 388G.720(1)(d) (West 2014).</p>
New Hampshire	<p>In the secondary education context, high schools may elect to have a student as a nonvoting member of the School Board. N.H. REV. STAT. ANN § 189:1-c (2008). That member is chosen according to procedures established by the student government of the school. N.H. REV. STAT. ANN § 194:23-f(II) (2008). The student government must “also establish a procedure for any public high school student in the school district to petition a student board member to present proposals and opinions to the school board.” N.H. STAT. ANN § 194:23-f(II) (2008).</p>
New Jersey	<p>In the secondary context, student governments may nominate one student from their school for a legislative intern program. N.J. STAT. ANN. § 52:13G-3 (West 2009). The New Jersey Association of High School Councils appoints a committee to review applications and makes a final selection of students for the program. N.J. STAT. ANN. § 52:13G-3 (West 2009).</p>
New York	<p>In some school districts, high school student governments may have a role in selecting an ex officio student member of the board of education. Central High School Districts, N.Y. EDUC. LAW § 1901(2) (McKinney 2007); Central School Districts, § 1804(12); city school districts of cities with less than one hundred twenty-five thousand inhabitants, § 2502(10); Union Free School Districts, § 1702(3).</p> <p>Primary and secondary students may sometimes create “a general organization of students.” N.Y. EDUC. LAW § 2503(9) (McKinney 2007); N.Y. EDUC. LAW § 2554(15) (McKinney 2014).</p>
North Carolina	<p>State law encourages all high schools and middle schools to “have elected student councils through which students have input into policies and decisions that affect them.” N.C. GEN. STAT. § 115C-81.50 (2017). For all other schools, they are</p>

	encouraged to have student councils. N.C. GEN. STAT. § 115C-81.50 (2017).
Puerto Rico	In the primary and secondary context, state law establishes a student council as the official representative of the student body of a school. The Student Council may organize activities, elect a student representative to the school board, present the opinion of the student body on academic offerings and services, state their opinions and present ideas regarding the school, and participate in drafting and implementing school disciplinary regulations. P.R. LAWS ANN. tit. 3, § 144 (2004). Students have the right to determine the composition of their student council. P.R. LAWS ANN. tit. 3, § 143z (2004).
South Carolina	A president of a high school student body serves on each school board, which has a local advisory committee to assist in the selection of components and curriculum materials. S.C. CODE ANN. § 59-32-30 (2004).
Tennessee	In the primary and secondary context, there is a student member on the State Board of Education, chosen from nominees submitted by local boards of education. The students must be juniors or seniors in high school. TENN. CODE ANN. § 49-1-301(a)(1), (6) (West 2011).  For local boards of education, they may select no fewer than four high school students to serve as advisory, nonvoting members. TENN. CODE ANN. § 49-2-202(f) (West 2011).
Utah	In the primary and secondary context, students may petition for a high school student to fill a nonvoting seat on the local school board by submitting a petition signed by 500 students or ten percent of the district, whichever is less. UTAH CODE ANN. § 20A-14-206(1)–(2) (West 2012).
West Virginia	In every school with students in grade seven or higher, the student body president or other student elected by the student body serves on a local school improvement council. W. VA. CODE ANN. § 18-5A-2(a)(7) (LexisNexis 2016).

## APPENDIX B: SURVEY OF STATE TENANT ASSOCIATION LAWS

Category 1: States that create expansive residential tenant rights

Category 2: States that offer protections for tenant union organizing, but have little to no statutory support for tenant unions

Category 3: States that have no general protections for residential tenant organizing

State	Statutory Framework
Alabama: Category 2	Alabama adopted the Uniform and Residential Landlord Tenant Act, which prohibits retaliation for organizing or being involved with a tenants' union. ALA. CODE § 35-9A-501(a)(3) (2014).
Alaska: Category 2	Alaska adopted the Uniform Residential Landlord Tenant Act, which prohibits retaliation for organizing or being involved with a tenants' union. ALASKA. STAT. § 34.03.310(a)(3) (2016).
Arizona: Category 2	<p>Arizona adopted the Uniform Residential Landlord Tenant Act, which prohibits retaliation for organizing or being involved with a tenants' union. ARIZ. REV. STAT. ANN. § 33-1381(A)(3) (2014). The same is true for tenant-landlord relationships governed by the Recreational Vehicle Long Term Rental Space Act. ARIZ. REV. STAT. ANN. § 33-2148(A)(3) (2014). The same is true in mobile home parks. ARIZ. REV. STAT. ANN. § 33-1491(A)(3) (2014).</p> <p>Arizona provides additional protections for tenants organizing tenants' associations in mobile home parks and recreational vehicle long-term rental spaces. Landlords may not prohibit tenants or tenant associations from meeting with consenting tenants in their recreational vehicles. ARIZ. REV. STAT. ANN. § 33-2132(D) (2014). Tenant associations and tenants may post notice of meetings on mobile home park bulletin boards and in newsletters. ARIZ. REV. STAT. ANN. § 33-1452(H) (2014). In addition, tenants may incorporate in order to provide a landlord written notice of the association's interest in purchasing the mobile home park. ARIZ. REV. STAT. ANN. § 33-1418(A) (2014).</p>
Arkansas: Category 3	No such laws were found.
California: Category 1	Landlords may not retaliate against tenants for organizing or participating in a "lessees' association." CAL. CIV. CODE §

1942.5(d) (West 2010). There is litigation seeking to enforce this prohibition. *See, e.g., Rich v. Schwab*, 162 Cal. App. 3d 739 (4th Dist. 1984).

Tenant union organizers and representatives of associations that advocate for tenants' rights are protected against charges of civil and criminal trespass upon entering residential property, if they enter upon the invitation of an occupant during reasonable hours or because of emergency circumstances. CAL. CIV. CODE § 1942.6 (West 2010).

If the purpose of this sentence is to emphasize that tenants may post political signs, I would recommend phrasing the sentence as follows: "Tenants have the right to post most political signs relating to an election, legislative vote, initiative, referendum, recall process, or issue before a public body for a vote." CAL. CIV. CODE § 1940.4 (West 2010).

In certain regulated housing developments, there are conditions upon which an owner may sell the property. For example, an owner may not be able to sell the property without otherwise permitting certain entities, such as a tenant association of the development, an opportunity to first submit a purchase offer. CA GOV'T CODE § 65863.11(c), (d)(1) (West 2008). There is a tax incentive associated with the sale of such a housing development to a tenant association. CAL. REV. & TAX. CODE § 24955(a), (b) (West 2004).

Master-metered residential public utility services in multi-unit structures (i.e., buildings or communities with one gas or electrical meter for the entire community), are prohibited from terminating tenants' services due to the owners' non-payment without making "every reasonable effort to continue service." CAL. PUB. UTIL. CODE § 10009.1(a), (i) (West 2013). Owners may be subject to civil liability allowing utilities to be shut off. *See* CAL. PUB. UTIL. CODE § 10009.1(f), (g) (West 2013); *see also* CAL. PUB. UTIL. CODE § 10009.1(k) (stating the statute preempts any other statute allowing punitive damages or "permitting the recovery of costs associated with the formation, maintenance, and termination of a tenants' association."). The same applies for districts furnishing utilities to mobile-home parks or labor camps, *see* CAL. PUB. UTIL. CODE § 16481.1 (West 2013), and for private utility providers; *see* CAL. PUB. UTIL. CODE § 777.1 (West 2004).



	<p>A tenant association may file a motion in a receivership action concerning real property if conditions are substandard or the receiver's powers or duties are disputed or in controversy. CAL. CIV. PROC. CODE § 568.3(a), (b) (West 2011).</p> <p>Tenant associations may seek the appointment of a receiver as a remedy for substandard conditions in employee housing. CAL. HEALTH &amp; SAFETY CODE § 17062(c)(1)(A) (West 2006). Tenant associations may also enforce certain relocation remedies. CAL. HEALTH &amp; SAFETY CODE § 17062(c)(1)(A) § 17060.2(b)(1)(A) (West 2006).</p> <p>Tenant associations have no state constitutional right to distribute newsletters in privately-owned residential apartment complexes. <i>Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n.</i>, 29 P.3d 797, 803 (Cal. 2001).</p>
Colorado: Category 2	<p>Landlords may not retaliate against tenants for making complaints to the landlord or to governmental entities. COLO. REV. STAT. § 38-12-509(1) (2008).</p>
Connecticut: Category 2	<p>Connecticut prohibits landlords from retaliating against their tenants on the basis of the tenant's organization of, or involvement with, a tenants' union. CONN. GEN. STAT. § 47a-20(5) (West 2015). Connecticut also prohibits such retaliation against tenants of mobile homes. CONN. GEN. STAT. ANN. § 21-80a(a)(5) (West 2008).</p> <p>When a landlord seeks to convert a renter building into a condominium, tenant organizations have an exclusive right to purchase during the first thirty days after giving notice to tenants. CONN. GEN. STAT. ANN. § 47-88b(j) (West 2015).</p> <p>Tenants of state housing projects have organizational rights. The housing authority must designate a tenant organization as the recognized jurisdiction-wide organization if its governing board was elected in a jurisdiction-wide election and it satisfied regulations promulgated by the federal Department of Housing and Urban Development with some exceptions. Election procedures are established by federal regulation. CONN. GEN. STAT. ANN. § 8-41 (West 2014).</p> <p>If public housing authorities intend to begin renovations or disposition of real property, tenant associations have the right to notice and the authority must implement a resident participation plan. CONN. GEN. STAT. § 8-64(c)(b) (West 2014). The public housing authorities must negotiate the</p>

	<p>plan’s provisions in good faith, and make “all reasonable efforts to enter into a signed agreement.” CONN. GEN. STAT. § 8-64(c)(b) (West 2014). The plan must include, but is not limited to, notification rights, provisions for tenant organization involvement, identification of opportunities for residents to participate in selection panels to choose development partners and consultants, and access to all important documents. CONN. GEN. STAT. § 8-64(c)(b) § 8-64c(c)(1), (2), (5), (6) (West 2014).</p> <p>For state or federally assisted housing, the state may assist tenant organization in managing the facility. CONN. AGENCIES REGS. § 8-367a-4(a) (2015).</p> <p>Tenants and tenant organizations in state public housing have a grievance procedure established by regulation. <i>See</i> CONN. AGENCIES REGS. § 8-68f-20 (2015).</p> <p>For managed residential communities that offer assisted living services, the community must employ an on-site service coordinator who has the responsibility of establishing a tenant council. CONN. AGENCIES REGS. § 19-13-D105(c)(5)(B)(iv) (2015).</p> <p>Residents of mobile homes have the right to form an association. If the owner intends to discontinue use of the land as a mobile home park, such an association representing at least twenty-five percent of the units in the park has the right to purchase the land through a statutory procedure. CONN. GEN. STAT. ANN. § 21-70(f)(3) (West 2008).</p>
Delaware: Category 2	<p>In general, landlords may not retaliate against tenants who organized or are officers in a tenants’ organization. DEL. CODE ANN. tit. 25, § 5516(a) (2009).</p> <p>The state established a Council on Housing to advise the Governor, Housing Director and General Assembly. DEL. CODE ANN. tit. 31, § 4040(a) (2009). One of the eleven members of the Council must be a member of a tenant organization. DEL. CODE ANN. tit. 31, § 4040(c) (2009).</p> <p>In manufactured home communities, if the owner intends to convert the land to multiunit usage, the owner must give written notice to tenants and to any tenants’ association. DEL. CODE ANN. tit. 25, § 7105(a) (2009); <i>see also</i> DEL. CODE ANN. tit. 25, § 7102 (2009) (defining tenant association as a</p>

	<p>group of half or more of the tenants in the manufactured home community). The tenants’ association has an exclusive option to purchase the portion of the community the owner intends to convert, and has ninety days from receiving the notice to notify the owner of its intent to exercise that option. DEL. CODE ANN. tit. 25, § 7105(a)(2) (2009). If the option is not exercised, then the option converts to a right of first refusal, such that the owner may not sell it to any purchaser without offering the land on the same terms to the tenants’ association. DEL. CODE ANN. tit. 25, § 7105(a)(3) (2009). Tenants may not be evicted until three years after giving notice of this intention. DEL. CODE ANN. tit. 25, § 7105(a)(4) (2009). Tenants have an exclusive right to purchase a unit in the new land, if the tenants’ association does not exercise its options. DEL. CODE ANN. tit. 25, § 7105(c) (2009). Similar rules apply if the owner intends to convert a manufactured home community to a condominium or cooperative community. <i>See</i> DEL. CODE ANN. C. tit. 25 § 7108 (2009); <i>see also</i> DEL. CODE ANN. tit. 25, § 7104(2) (2009) (setting out additional requirements related to this conversion); DEL. CODE ANN. tit. 25, § 7109 (2009) (assigning certain obligations of an owner to a tenant association that exercises its purchasing options); DEL. CODE ANN. tit. 25, § 7113(a)(2) (2009) (failure to give a tenants’ association its purchase option voids or makes voidable any subsequent sale or purchase of the property or any unit therein); DEL. CODE ANN. tit. 25, § 7112(c) (2009) (tenants’ associations may bring actions to stay eviction proceedings under this Chapter).</p> <p>Landlords may not retaliate against tenants for participating in a manufactured home tenants’ organization. DEL. CODE ANN. tit. 25, § 7023(a) (2009).</p> <p>Tenants’ associations and groups of tenants have the right to use community centers available for community use in these manufactured home communities, free of charge. DEL. CODE ANN. tit. 25, § 7008(m) (2009). The landlord must honor requests to use it within fourteen days of receiving the request. DEL. CODE ANN. tit. 25, § 7008(m) (2009).</p>
<p>District of Columbia: Category 1</p>	<p>Tenants in the District of Columbia are afforded several statutory rights to organize. D.C. CODE § 42-3505.06(b) (2001). Tenants have the right to: “(1) Self-organization; (2) Form, join, meet, or assist one another within and without tenant organizations; (3) Meet and confer through representatives of their own choosing with an owner; (4)</p>

Engage in other concerted activities for the purpose of mutual aid and protection; and (5) Refrain from such activity.” D.C. CODE § 42-3505.06(b) (2001). Tenant organizers (who cannot be an employee or representative of the current or prospective owner) have the right to canvass in multifamily housing accommodations in many circumstances, and they always have that right if they are accompanied by a tenant. D.C. CODE § 42-3505.06(b), (c) (2001). Owners may not interfere with most self-organization activities. *See* D.C. CODE § 42-3505.06(d)(1)–(8) (2001) (listing seven specific activities in addition to “[a]ny other activity reasonably related to the establishment or operation of a tenant organization”).

### **The Tenant Opportunity to Purchase Act**

In accommodations with five or more units, tenants may form a tenant organization, which is an incorporated legal organization capable of holding real property. D.C. CODE § 42-3404.11(1) (2001). An owner seeking to sell must give the tenant organization a reasonable period, of at least 120 days, to negotiate a contract of sale. D.C. CODE § 42-3404.11(2) (2001). The owner must provide certain statutorily required information to the tenants without delay. D.C. CODE § 42-3404.11(2) (2001) (stating each day of delay extends the negotiation period by one day). A tenant organization may be afforded between 120 and 240 days of additional time to seek financing. D.C. CODE § 42-3404.11(3) (2001). If the owner does not sell the property within 360 days after complying with this negotiation period, the owner’s obligation to negotiate with the tenant organization arises again. D.C. CODE § 42-3404.11(4) (2001).

Certain appraisal rights are afforded to tenant organizations. *See* D.C. CODE § 42-3404.02 (2001). A tenant organization is entitled to information about any offers of sale from owners, and to challenge the appraisal of the property. D.C. CODE § 42-3404.02(a), (a-1)(5)(A) (2001).

The owner is also required to extend an offer of sale to tenants, independent of the tenant organization. D.C. CODE § 42-3404.03 (2001).

Tenant organizations have the right of first refusal, which can be exercised for fifteen days after the owner provides them

	<p>with a third party's contract to purchase. D.C. CODE § 42-3404.08 (2001).</p> <p>Tenant associations have priority in the development of low-income housing under the Homestead Housing Preservation Program. D.C. CODE § 42-2106(a) (2001). A tenant association is defined, under this program, as an organization that represents fifty-one percent or more households in "a condominium or cooperative housing association. D.C. CODE § 42-2103(12) (2001).</p> <p>Tenant organizations have standing to assert claims in their names on behalf of their members in most situations. <i>See</i> D.C. CODE § 42-3502.16a(a) (2001) (stating three conditions must be met: (1) at least one member of the tenant organization has standing "in their own right"; (2) at least one member has "provided the tenant organization with written authorization" to represent that member; and (3) the member's participation is not required to proceed with the claim or relief required).</p> <p>There was a TOPA Application Assistance Pilot Program to assist tenant organizations in applying for assistance in exercising a first right of purchase. The program offered pre-application legal and technical assistance of up to \$45,000. D.C. CODE § 42-3404.14 (2001) (expired).</p> <p>Enforcement of many tenant organization statutory rights must be exercised through administrative proceedings before the Mayor, D.C. CODE § 42-3405.03(a) (2001), or through civil actions. D.C. CODE § 42-3405.03 (2001).</p> <p>DC has established an Office of the Tenant Advocate, which educates tenants on their rights and on the formation of tenant organizations, represents the interests of tenant organizations, and advises and assists tenant organizations. D.C. CODE § 42-3531.07(1)-(4) (2001).</p> <p>Ambiguity in these statutes should be resolved in favor of strengthening the rights of tenants and tenant organizations. D.C. CODE § 42-3405.11 (2001).</p> <p>Tenant organizations may conduct elections over an owner's proposal to convert property, where the head of household for each unit is qualified to vote. D.C. CODE § 42-3402.03(a) (2001). The election is held by the tenant organization, subject to certain conditions, not a state agency, and coercion</p>
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	<p>to influence the vote is prohibited. D.C. CODE § 42-3402.03(h) (2001).</p> <p>Tenant organizations may be formed at any time in accommodations with five or more units. D.C. CODE § 42-3404.02a (2001).</p>
<p>Florida: Category 2</p>	<p>It is illegal for a landlord to retaliate against a tenant who “organized, encouraged, or participated in a tenant organization.” FLA. STAT. ANN. § 83.64(1)(b) (West 2018).</p> <p>Tenants of mobile home parks have the right to peaceably assemble in open public meetings, to organize or communicate among themselves about problems relating to the mobile home park in common areas and recreational areas, and to canvass the mobile home park. FLA. STAT. ANN. § 723.054(1)–(3) (West 2012). Tenants have the right to invite anyone to the mobile home park without paying fees. FLA. STAT. ANN. § 723.051(1) (West 2012). Mobile home owners also have a specific right to invite candidates for public office, public officers, and representatives of a tenant organization to common and recreational areas at reasonable times, and in a reasonable manner, for an open public meeting. FLA. STAT. ANN. § 723.055 (West 2012). Mobile home owners have the right to enforce their “right of assembly” and “right to hear outside speakers,” FLA. STAT. ANN. §§ 723.054, 723.055 (West 2012), and in court. FLA. STAT. ANN. § 723.056 (West 2012).</p> <p>A mobile home park owner may not retaliate against home owners for organizing, encouraging, or participating in a homeowners’ association. FLA. STAT. ANN. § 723.0615(b) (West 2012).</p> <p>Mobile home owners can form a homeowners’ association. § 723.075(1). The association must represent at least two-thirds of owners within the park, and be formed as a for-profit or non-profit corporation. FLA. STAT. ANN. § 723.075(1) (West 2012). Upon incorporation and service of notice, the association becomes the representative of all mobile home owners, including those who did not join the association, in all matters related to this chapter. FLA. STAT. ANN. § 723.075(1) (West 2012).</p> <p>After incorporating, the association must “notify the park owner in writing of such incorporation and advise the park</p>

	<p>owner of the names and addresses of the officers” of the association. FLA. STAT. ANN. § 723.076(1) (West 2012). The association must also notify the park owner of changes in the names or addresses of certain officers or agents. FLA. STAT. ANN. § 723.076(1) (West 2012).</p> <p>The association has the right to request the following information from the park owner: the park owner’s “name and address,” “the park owner’s agent for service of process,” and the “legal description of the park.” FLA. STAT. ANN. § 723.076(2). The park owner must also notify the association of changes related to that information. FLA. STAT. ANN. § 723.076(2) (West 2012).</p> <p>The association must “file a notice of its right to purchase the mobile home park.” FLA. STAT. ANN. § 723.076(3) (West 2012).</p> <p>Florida law regulates the bylaws, articles of incorporation, powers and responsibilities, and elections of the association. <i>See</i> FLA. STAT. ANN. §§ 723.077–723.0791 (West 2012).</p> <p>If the mobile home park is organized through subdivisions, with multiple owners, lot owners may either create a traditional homeowners’ association or a mobile home subdivision homeowners’ association. FLA. STAT. ANN. § 723.0751(1) (West 2012).</p> <p>Florida law requires a mobile home park owner to follow statutory requirements in order to sell the park. <i>See</i> FLA. STAT. ANN. § 723.071 (West 2012). First, they must notify the officers of the homeowners’ association of the price and terms and conditions of the sale. FLA. STAT. ANN. § 723.071(1)(a) (West 2012). Then, the tenants have the right to purchase the park, at the price and terms set by the owner, within forty-five days. FLA. STAT. ANN. § 723.071(1)(b) (West 2012). If, after expiration of the forty-five days, the park owner decides to offer the park at a lower price than that specified in their original notice to the home owners, the park owner must give the association another ten days to meet the price and terms and conditions for executing a contract. FLA. STAT. ANN. § 723.071(1)(c) (West 2012). The park owner is required to disclose the terms of any subsequent offers to third parties to the association. FLA. STAT. ANN. § 723.071(2) (West 2012). These same rules apply to the sale of facilities exclusively serving a mobile home subdivision. <i>See</i> FLA.</p>
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	<p>STAT. ANN. § 723.074 (West 2012). Park owners may not evict home owners due to sale or land use changes without following the sale procedures. FLA. STAT. ANN. § 723.061(1)(d)(1) (West 2012).</p>
Georgia: Category 3	No such laws were found.
Hawaii: Category 3	<p>Tenant organizations have the right to sue in the organization's name to abate nuisances. HAW. REV. STAT. ANN. § 712-1271(1) (LexisNexis 2016).</p> <p>Resident advisory boards are established for public housing projects. HAW. CODE R. § 15-181-21(a) (LexisNexis 2018).</p>
Idaho: Category 3	<p>Landlords of floating homes may not retaliate against home owners for organizing a tenants' or homeowners' association. IDAHO CODE § 55-2715(3) (2012).</p> <p>“[T]enants in a floating home marina have the right to organize a tenant or homeowners association to further their mutual interests . . .” IDAHO CODE § 55-2716(1) (2012). After forming their association, tenants must notify the landlord. IDAHO CODE § 55-2716(1) (2012). The landlord is required to “meet and confer with homeowners or their representatives” within thirty days following “a request concerning: rule changes; maintenance of facilities; addition or deletion of services or facilities; or rental agreements. IDAHO CODE § 55-2716(2)(a)–(d) (2012) (internal punctuation omitted).</p> <p>A “resident organization” under this statute is defined as “a tenant or homeowner’s association, whether or not incorporated.” IDAHO CODE § 55-2704(5) (2012). This definition includes no minimum membership requirement. (i.e., minority unions are allowed).</p> <p>Landlords of manufactured home and mobile home communities may not retaliate against residents for organizing community resident associations. IDAHO CODE § 55-2015(3) (2012).</p> <p>Community residents in manufactured and mobile home communities have the right to organize an association for their mutual interest, to peacefully assemble, and to freely associate. IDAHO CODE § 55-2013A(1) (2012). Community resident associations have the right to use community facilities, “subject to reasonable notice and community</p>



	<p>facility rules.” IDAHO CODE § 55-2013A(1). Associations must notify the landlord after being organized. IDAHO CODE § 55-2013A(1).</p> <p>An association interested in purchasing the community may give the landlord written notice of its intent, and also request that the landlord notify the association upon entering into a listing agreement with a real estate broker. IDAHO CODE § 55-2013A(2) (2012). Upon receiving the association’s notice and request, the landlord must inform the association within fifteen days if it enters into a listing agreement with a real estate broker to sell some or all of the community. § 55-2013A(4).</p>
<p>Illinois: Category 3</p>	<p>Illinois’s Federally Assisted Housing Preservation Act of 1989 (“the Act”) defines a “tenant association” as “an association, corporation or other organization that represents at least a majority of the tenants in the assisted housing building.” 310 ILL. COMP. STAT. ANN. 60/3(g) (West 2008). “Assisted housing” developments are those that receive government funding under several programs. 310 ILL. COMP. STAT. ANN. 60/3(e) (West 2008).</p> <p>Owners of such a project cannot sell or otherwise dispose of their property (with a few exceptions, <i>see</i> 310 ILL. COMP. STAT. ANN. 60/8 (West 2008) without giving their tenants twelve months of notice. 310 ILL. COMP. STAT. ANN. 60/4(a) (West 2008). Within sixty days of receiving that notice, tenants may notify the owner they formed a tenant association. 310 ILL. COMP. STAT. ANN. 60/4(b) (West 2008). The association may enter into an agreement with a non-profit corporation or private purchaser to represent the residents and maintain the development to retain certain affordable housing standards. 310 ILL. COMP. STAT. ANN. 60/4(b) (West 2008). The non-profit corporation or private purchaser then assumes all rights and responsibilities attributed to the tenant association under the Act. 310 ILL. COMP. STAT. ANN. 60/4(b) (West 2008).</p> <p>Within sixty days of the tenant association complying with the above requirements, the owner must, before “otherwise disposing of the property,” give the tenant association a bona fide offer for sale. 310 ILL. COMP. STAT. ANN. 60/5 (West 2008). The tenant association must then notify the owner in writing of its intent to purchase within ninety days. 310 ILL. COMP. STAT. ANN. 60/6(a) (West 2008). The owner, after</p>

	<p>receiving notice of the tenant association’s intent to purchase, must respond to reasonable requests to produce relevant documents, such as monthly expenses, a list of tenants, and a statement of the vacancy rate over the last two years. 310 ILL. COMP. STAT. ANN. 60/6(b) (West 2008).</p> <p>The tenant association must make a bona fide offer to purchase within ninety days after it notifies the owner of its intent to purchase. 310 ILL. COMP. STAT. ANN. 60/7(a) (West 2008). If the parties cannot agree on a sales price, the price will be set on a statutory formula. <i>See</i> 310 ILL. COMP. STAT. ANN. 60/7(b) (West 2008). Each party will select and pay for an appraisal of the building, and the sales price will be equal to the development’s “fair market value, based on its highest and best use, without affordability restrictions. . . .” 310 ILL. COMP. STAT. ANN. 60/7(b) (West 2008). The tenant association must agree to close the sale within 90 days of signing the purchase contract. 310 ILL. COMP. STAT. ANN. 60/7(c) (West 2008).</p> <p>The tenant association or its tenants may bring a civil action against an owner who violates the Act. 310 ILL. COMP. STAT. ANN. 60/10.1 (West 2008).</p> <p>Resident Councils established by the federal Department of Housing and Urban Development have three seats on many local government housing authorities under state law. 310 ILL. COMP. STAT. ANN. 10/3 (West 2008).</p> <p>If owners of certain affordable housing developments intend to cause the prepayment of a mortgage loan, tenants have the right to form an association and purchase the developments. 20 ILL. COMP. STAT. ANN. 3805/8.1(c) (West 2015).</p>
Indiana: Category 3	<p>The Indiana Housing and Community Development Authority provides tenant programs and services, which include advising tenants “in the creation of tenant organizations which will assume a meaningful and responsible role in the planning and carrying out of housing affairs.” IND. CODE ANN. § 5-20-1-2(7) (West 2008).</p>
Iowa: Category 2	<p>Landlords may not retaliate against tenants for organizing or becoming a member of a tenants’ union. IOWA CODE ANN. § 562A.36(1)(c) (West 1992) (Uniform Residential Landlord and Tenant Act); IOWA CODE ANN. § 562B.32(1)(c) (West</p>

	1992) (manufactured home communities and mobile home parks).
Kansas: Category 2	Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. KAN. STAT. ANN. § 58-2572(a)(3) (West 2008) (governing residential tenants, KAN. STAT. ANN. § 58-25,125 (West 2008) (mobile home parks).
Kentucky: Category 2	Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. KY. REV. STAT. ANN. § 383.705(1)(c) (West 2006) (residential tenants).  This state provides certain services to tenants living in low-income housing, including advisory services for creating tenant organizations to "which will assume a meaningful and responsible role in the planning and carrying out of housing affairs." KY. REV. STAT. ANN. § 198A.010(16)(g) (West 2006).
Louisiana: Category 3	No such laws were found.
Maine: Category 2	Courts may not terminate a tenancy if the tenant proves the action was in retaliation for the tenant's membership in "an organization concerned with landlord-tenant relationships." ME. STAT. tit. 10, § 9097(1-A)(A) (2009); ME. STAT. tit. 14, § 6001(4) (2003).
Maryland: Category 2	In Montgomery County, landlords may not retaliate against tenants for membership in a tenants' organization. MD. CODE ANN., REAL PROP. § 8-206(b)(3) (West 2012).  Landlords may not include in a rental agreement a provision permitting the landlord to evict tenants "solely as retaliation . . . for planning, organizing, or joining a tenant organization." MD. CODE ANN., REAL PROP. § 8-208(d)(8) (West 2012).  Park owners of mobile home parks may not retaliate against tenants for participating in any tenants' organization. MD. CODE ANN., REAL PROP. § 8A-1301(a)(2)(iii) (West 2012).  In certain publicly assisted housing, there is a right of first refusal for tenant organizations in some circumstances when the owner intends to sell or convey the property. MD. CODE ANN., HOUS. & CMTY. DEV. § 7-204(a)(1)(iii) (West 2006); <i>see</i> § 7-201(b)(3) (requiring owners give tenant associations notice of their intent to sell, transfer, or fail to renew an

	<p>assisted housing project); <i>see also</i> MD. CODE REGS. 05.10.04.01(A)(1) (2011) (permitting tenant associations to register with the state government to receive any offers of first purchase sent to the state by an owner).</p>
<p>Massachusetts: Category 2</p>	<p>Tenants may raise as a defense to proceedings for summary process for possession of land that the action was brought in retaliation for organizing or joining a tenants' union. MASS. GEN. LAWS ch. 239 § 2A (2004).</p> <p>Any person who retaliates against a tenant for their tenant union activities is liable for damages of not less than one month's rent or more than three month's rent, or actual damages, whichever is greater, along with costs and attorney's fees. MASS. GEN. LAWS ch. 186 § 18 (2014).</p> <p>Manufactured housing community residents may form an association that has a right of first refusal to the sale of the property. <i>See</i> MASS. GEN. LAWS ch. 140 § 32R (2002). Operators may not terminate a tenancy for membership in a tenants' association. 940 MASS. CODE REGS. 10.08(4)(a) (1996); <i>see also</i> 940 MASS. CODE REGS. 10.01 (1996) (defining operator as "a person who directly or indirectly owns, conducts, controls, manages, or operates any manufactured housing community, and his/her agents or employees.") Operators must give residents and tenants associations written notice of permitted increases in rent or charges, reductions in services, or other changes in terms and conditions of tenancy at least thirty days before the change. 940 MASS. CODE REGS. 10.03(10) (1996).</p> <p>Massachusetts law provides for tenant organizations in public housing developments. <i>See</i> MASS. GEN. LAWS ch. 121B (2017). Tenants' organizations may sue to rectify serious health or safety issues, MASS. GEN. LAWS ch. 121B § 32 (2017), have a role in filling positions on housing and redevelopment authority boards, and receive training from the state on overseeing the authority's operation and planning. MASS. GEN. LAWS ch. 121B § 5 (2017).</p> <p>Public housing authorities must meet and confer with tenant organizations about complaints and grievances. MASS. GEN. LAWS ch. 121B § 32 (2017). If there are multiple tenant organizations in a housing project, the authority is only required to meet with the two largest tenant organizations. MASS. GEN. LAWS ch. 121B § 32 (2017).</p>

	<p>The definition of “tenant organization” for publicly-assisted affordable housing projects is, “an organization established by the tenants of publicly-assisted housing for the purpose of addressing issues related to their living environment and which meets regularly, operates democratically, is representative of all residents in the development, is completely independent of owners, management and their representatives and which has filed a notice of its existence with [the Community Economic Development Assistance Corporation]” MASS. GEN. LAWS ch. 40T § 1 (2004).</p> <p>In publicly assisted affordable housing, tenant organizations are entitled to notice of any termination in affordability restrictions affecting public housing. § 2. Owners of publicly assisted housing developments must give the state government a purchase option before selling the affordable housing. MASS. GEN. LAWS ch. 40T § 3(a) (2004).</p> <p>Regulations govern the formation of a local tenant organization in public housing, and their rights and responsibilities. 760 MASS. CODE REGS. 6.09 (2018). The regulations also establish a grievance procedure for Local Tenant Organizations. 760 MASS. CODE REGS. 6.08 (2018).</p>
<p>Michigan: Category 2</p>	<p>A judgment for eviction must not be entered if the eviction was based on the landlord’s retaliation against a tenant for its involvement in lawful tenant actions, including membership in a tenant organization. MICH. COMP. LAWS ANN. § 600.5720(1)(c) (West 2013).</p> <p>If a housing project with affordability restrictions is at risk of having the restrictions terminated within a two-year period, the state may acquire and manage the property, unless there is no tenant organization with the ability and interest in acquiring the project. MICH. COMP. LAWS ANN. § 125.1422c(b)(ii)(B) (West 2006).</p> <p>The Urban Homesteading in Multifamily Public Housing Act (“the Act”) defines a resident organization as a group of residents of not fewer than fifty percent of total residents of a specific housing project who contract with a housing commission to manage the project for at least five years with the intent to acquire the project. MICH. COMP. LAWS ANN. § 125.2722 (West 2006). The Act allows local governments to authorize a housing commission that makes multifamily</p>

	<p>properties available for purchase to resident organizations. MICH. COMP. LAWS ANN. § 125.2723 (West 2006). Resident organizations may contract to manage the housing project for at least five years and then acquire it if it meets certain requirements. MICH. COMP. LAWS ANN. § 125.2724 (West 2006); <i>see</i> MICH. COMP. LAWS ANN. § 125.2726 (West 2006) (listing requirements). The housing commission will then transfer legal ownership to the organization for a nominal fee, and for the assumption of any bonds or notes issued due to federal funds. MICH. COMP. LAWS ANN. § 125.2725(1) (West 2006).</p> <p>The Act subsequently allows qualified buyers to apply to acquire the public housing units they reside in. MICH. COMP. LAWS ANN. § 125.2727(1) (West 2006). If the qualified buyer desires to sell their unit within five years of acquiring it, the resident organization or successor has a right of first refusal to the unit. MICH. COMP. LAWS ANN. § 125.2729 (West 2006).</p>
Minnesota: Category 2	<p>Housing-related neighborhood organizations may bring actions for violations of landlord-tenant law on behalf of a tenant. MINN. STAT. ANN. § 504B.395 subd. 1(2), (3) (West 2014). Such organizations are defined at MINN. STAT. ANN. § 504B.001 subd. 5 (West 2014).</p> <p>These organizations may request an inspection of a facility, and may receive the result of the inspection as to any discovered code violations. MINN. STAT. ANN. § 504B.185 subds. 1, 2 (West 2014).</p> <p>Landlords may not retaliate against residents for filing a complaint, whether individually or through a neighborhood organization. MINN. STAT. ANN. § 504B.441 (West 2014). The Housing Finance Agency was authorized to make loans with or without interest to support “innovative housing loans,” which included democratic residents’ associations plans to operate multifamily or cooperative long-term affordable housing, but this statute is now repealed. MINN. STAT. ANN. § 462A.05 (West 2008).</p> <p>In manufactured home parks, landlords may not retaliate against residents for participating in a resident association. MINN. STAT. ANN. § 327C.12(3) (West 2011).</p>

	Residents in a park may create a resident association if fifty-one percent of residents give their written authorization. MINN. STAT. ANN. § 327C.01 subd. 9a (West 2011).
Mississippi: Category 3	No such laws were found.
Missouri: Category 3	No such laws were found.
Montana: Category 2	<p>Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. MONT. CODE ANN. § 70-24-431(1)(c) (West 2009). Members elect officers at a meeting at which a majority of the members are present. MONT. CODE ANN. § 70-24-314 (West 2009).</p> <p>Landlords may not retaliate against residents of mobile home parks for organizing or becoming a member of a tenants' union or resident association. MONT. CODE ANN. § 70-33-431(1)(c) (West 2009).</p> <p>Residents of mobile home parks have the right to form a resident association. <i>See</i> § 70-33-314. Officers are elected at a meeting at which a majority of the members are present, and landlords and their employees may not be members or attend meetings unless specifically invited. MONT. CODE ANN. § 70-33-314(1) (West 2009). Landlords may not interfere with or prevent the attendance of an invitee at a resident association's meeting. MONT. CODE ANN. § 70-33-314(1) (West 2009).</p> <p>There is a tax incentive for park operators to sell mobile home parks to tenant associations. <i>See</i> MONT. CODE ANN. § 15-31-163 (West 2009).</p>
Nebraska: Category 2	Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. NEB. REV. STAT. ANN. § 76-1439(1)(b) (West 2013). Landlords of mobile home parks may also not retaliate against tenants for organizing or becoming a member of a tenants' union. NEB. REV. STAT. ANN. § 76-14,106(1)(c) (West 2013).
Nevada: Category 2	Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. NEV. REV. STAT. ANN. § 118A.510(1)(c) (LexisNexis 2018).
New Hampshire: Category 2	Retaliation is a defense that tenants may bring against eviction actions, except in cases where the tenant owes the landlord one week's rent or more. N.H. REV. STAT. ANN. § 540:13-a (2007). State law creates a rebuttable presumption that any possessory action brought by a landlord following a

	<p>“meeting or gathering with other tenants for any lawful purpose” was retaliation. N.H. REV. STAT. ANN. §§ 540:13-a(III), 540:13-b(IV) (2007).</p> <p>Senior citizens have the right to be free from retaliation for making a complaint or joining a tenant association. N.H. REV. STAT. ANN. § 161-M:3(II)(e) (2014).</p> <p>Residents of mobile home parks may not be evicted for joining a tenant organization. N.H. REV. STAT. ANN. § 205-A:2(XI) (2011).</p> <p>Manufactured housing park owners may not sell or transfer the park without giving sixty days’ notice to each tenant of their intent to sell, and of the price, terms and conditions of an acceptable offer the park owner received. N.H. REV. STAT. ANN. § 205-A:21(I)(a)(1), (2) (2011). The park owner must consider any offer received from the tenants or a tenants’ association during those sixty days, and must negotiate in good faith with the tenants concerning a potential purchase. N.H. REV. STAT. ANN. § 205-A:21(II) (2011). Failure to comply with this statute incurs a penalty of \$10,000 or ten percent of the sales price, whichever is greater. N.H. REV. STAT. ANN. § 205-A:22(I) (2011).</p> <p>New Hampshire has a statewide board of manufactured housing, which includes “[o]ne member appointed by the Governor, from a list of [two] persons nominated by the Mobile/Manufactured Homeowner and Tenants Association of New Hampshire.” N.H. CODE ADMIN. R. ANN. MAN. 102.01(a)(3) (LexisNexis 2018); N.H. REV. STAT. ANN. § 205-A:25(I)(c) (2011). New Hampshire also has an installation standards board, which consists of nine members, including “one member of a cooperative manufactured housing park, nominated by the Mobile/Manufactured Homeowner and Tenants Association of New Hampshire.” N.H. REV. STAT. ANN. § 205-D:2(I)(f) (2011).</p>
New Jersey: Category 2	<p>Landlords may not evict “or institute any actions against a tenant to recover possession of premises” as a reprisal for the tenants’ organization, membership, or involvement in activities of “any lawful organization.” N.J. STAT. ANN. § 2A:42-10.10(c) (West 2010). Landlords also may not evict tenants for failing or refusing to comply with terms of the tenancy which the landlord altered as reprisal for the tenant’s involvement with a lawful organization. § 2A:42-10.10(d); E.</p>



	<p>&amp; E. Newman, Inc. v. Hallock, 281 A.2d 544, 546 (N.J. Super. Ct. App. Div. 1971).</p> <p>New Jersey adopted the Tenant Protection Act of 1992 (“the Act”), which provides significantly enhanced tenant rights. The Act creates individual rights and protection for low-income tenants in certain “qualified” counties. <i>See</i> N.J. Stat. Ann. §§ 2A:18-61.42–67. (West 2015). The Act also creates a collective tenant organization right: If a public utility determines that it is not feasible to bill each tenant individually, the utility must permit a tenants’ organization representing the tenants of the premises to accept billing. N.J. STAT. ANN. § 2A:18-61.60 (West 2015). If the “tenants’ organization agrees to accept billing for a utility service, the tenants . . . [must be] permitted to deduct from their respective rental payments to the landlord of the premises an amount corresponding to the tenant’s contribution towards the currently due utility payment and the arrearage, . . . provided that any contribution by a tenant to the arrearage shall not exceed 15 percent of the tenant’s rental payment . . . .” N.J. STAT. ANN. § 2A:18-61.61 (West 2015).</p>
New Mexico: Category 2	Landlords may not retaliate against residents for organizing or becoming a member of a residents’ union. N.M. STAT. ANN. § 47-8-39(A)(2) (West 2003).
New York: Category 1	<p>Landlords may not “interfere with the right of a tenant to form, join or participate in the lawful activities of any group, committee or other organization formed to protect the rights of tenants . . . .” or harass, punish, or otherwise retaliate against a tenant for exercising these rights. N.Y. REAL PROP. LAW § 230 (McKinney 2018). Landlords may not serve a notice to quit or bring an eviction action against tenants in retaliation for participating in activities of a tenants’ organization. § 223-b(1)(c). Additionally, manufactured home park owners and operators may not retaliate against tenants for participation in a tenant organization. N.Y. REAL PROP. LAW § 233(n)(1)(c) (McKinney 2018).</p> <p>Tenant groups “have the right to meet without being required to pay a fee in any location on the premises” devoted to common use of all tenants, “including a community or social room where use is usually subject to a fee”, as long as the meeting is “at reasonable hours and without obstructing access to the premises.” N.Y. REAL PROP. LAW § 230(2) (McKinney 2018). Locations of common use include the lobby of the building. <i>See</i> Jemrock Realty Co. v. 210 West</p>

101st St. Tenants Ass'n, 257 A.D.2d 477, 478 (N.Y. App. Div. 1st Dep't. 1999).

For limited-profit housing companies, the commissioner or supervising agency must promulgate regulations that recognize tenants' associations and cooperators' advisory councils and require housing companies to meet regularly with association or council representatives to discuss project matters. N.Y. PRIV. HOUS. FIN. LAW § 32-a(1) (McKinney 2015). Any tenant, tenants' association, or cooperators' advisory council may audit the books of the project owner. N.Y. PRIV. HOUS. FIN. LAW § 32-a(5) (McKinney 2015). The project owner is required to share certain other information with the tenant association. N.Y. PRIV. HOUS. FIN. LAW § 23-a(8) (McKinney 2015) (regarding refinancing applications), N.Y. PRIV. HOUS. FIN. LAW § 32-a(5) (McKinney 2015) (permitting tenants and tenant associations to audit the books).

In those same properties, if the owner takes a loan under a state program for capital improvements, the owner is required to participate in bimonthly meetings with state officials and the tenant organization that represents a majority of tenants to hear advice or comments about implementation, until all the money has been spent. N.Y. PRIV. HOUS. FIN. LAW § 22-b(3) (McKinney 2015).

In limited dividend housing properties, tenants' associations also have a right to certain information. N.Y. PRIV. HOUS. FIN. LAW § 84-a (McKinney 2015) (regarding energy audits).

Tenants' associations may sponsor group personal insurance. N.Y. INS. LAW § 3454(9)(B) (McKinney 2015). Tenants' associations are exempt from some licensing requirements if they manage some residential property. *See* N.Y. REAL PROP. LAW § 440-a (McKinney 2015). They may also bring certain proceedings to recover real property. § 721(11).

Tenants' associations have a role on an advisory council for housing in the New York City civil court system. N.Y. CITY CIV. CT. ACT § 110(g) (McKinney 1989). Tenants have representatives on many municipal rent guidelines boards, although not tenant associations. N.Y. UNCONSOL. LAW §§ 8624, 26-510 (McKinney 2013).

	Resident associations in manufactured home parks may be eligible for state loans to establish park cooperatives. N.Y. PRIV. HOUS. FIN. LAW § 1122(1), (5) (McKinney 2014).
North Carolina: Category 3	No such laws were found.
North Dakota: Category 3	No such laws were found.
Ohio: Category 2	<p>Landlords may not retaliate against tenants for joining “with other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement.” OHIO REV. CODE ANN. § 5321.02(A)(3) (West 2016).</p> <p>Low-income housing programs may provide grants to foster tenant associations. OHIO REV. CODE ANN. § 174.03(A)(4) (West 2015).</p>
Oklahoma: Category 3	No such laws were found.
Oregon: Category 2	<p>Landlords may not retaliate against a tenant for its organization or membership in a tenant union. OR. REV. STAT. § 90.385(1)(c) (West 2010).</p> <p>In manufactured dwelling and floating home spaces, tenants have a right of assembly and canvassing. OR. REV. STAT. § 91.920 (West 2010). Any renter may canvass the facility on any matter relevant to membership in a tenants’ association. OR. REV. STAT. § 91.920(3) (West 2010). Renters may peacefully assemble in open meetings and communicate among themselves on any matter. OR. REV. STAT. § 91.920(2) (West 2010). Tenant association members may also collect delinquent dues owed by an existing member of a tenants’ association. OR. REV. STAT. § 91.920(4) (West 2010). Tenants’ associations may use common areas. OR. REV. STAT. § 90.528(3) (West 2010). Tenants may participate in political activity. OR. REV. STAT. § 90.755(1), (2) (West 2010). Landlords are required to provide prospective and existing renters a “one-page summary about the tenants’ association.” OR. REV. STAT. § 90.510(1)(j) (West 2010).</p> <p>In marinas, tenants’ associations or marina purchase associations have certain rights. <i>See</i> OR. REV. STAT. § 90 (West 2010). These include the right to be notified if the marina is subject to a listing agreement for sale, OR. REV. STAT. § 90.805(2) (West 2010), or if the owner receives an offer to purchase that he or she intends to consider, OR. REV.</p>

	<p>STAT. § 90.810(1)(a) (West 2010), the right to negotiate with the owner for purchase, and the right of first refusal in some circumstances, OR. REV. STAT. § 90.820(2) (West 2010).</p> <p>For mobile home parks, certain state funds are available for assistance to tenant associations to purchase or preserve a mobile home park or manufactured dwelling park, including technical assistance and loans. OR. REV. STAT. § 456.581(1), (2) (West 2016).</p>
Pennsylvania: Category 2	<p>Landlords may not terminate or decline to renew a lease due to a tenant's participation in a tenants' organization or association. 68 PA. CONS. STAT. ANN. § 250.205 (West 2004). A tenants' organization or association is "a group of tenants organized for any purpose directly related to their rights or duties as tenants." 68 PA. CONS. STAT. ANN. § 250.102 (West 2004).</p> <p>Tenant organizations bringing a successful action under the state's Expedited Eviction of Drug Traffickers Act ("the Act") may recover the cost of the suit, including reasonable attorney fees from the landlord. 35 PA. CONS. STAT. ANN. § 780-171 (West 2012). Tenant organizations have standing under the Act. 35 PA. CONS. STAT. ANN. § 780-155(2) (West 2012). The legislative finding of the Act establishes that: "Tenants should be empowered to take legal action to protect and enforce their own rights to live in a peaceful community. Tenant organizations should have access to the courts and should, therefore, be afforded legal standing to initiate eviction for drug-related criminal activity on or in the immediate vicinity of the leased residential premises." 35 PA. CONS. STAT. ANN. § 780-152(8) (West 2012).</p>
Puerto Rico: Category 3	No such laws were found.
Rhode Island: Category 2	<p>Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. 34 R.I. GEN. LAWS § 34-18-46(a)(3) (2011).</p> <p>Tenant associations of mobile home parks have certain rights of first refusal in many circumstances when an owner intends to sell, along with many other rights. 31 R.I. GEN. LAWS § 31-44-3 (2010) (establishing general tenant rights), 31 R.I. GEN. LAWS § 31-44-3.1(a) (2010) (establishing right of first refusal). Mobile home parks owned by a resident association must meet certain statutory requirements. 31 R.I. GEN. LAWS § 31-44-14 (2010).</p>

	<p>There are certain purchase rights for tenant associations in federally insured or assisted housing. 34 R.I. GEN. LAWS § 34-45-7(3)(i) (2011). Tenant associations also have certain information rights. 34 R.I. GEN. LAWS § 34-45-5(d)(1), 34-45-6(a)(2)(2) (2011). There is also a right of first refusal in some circumstances. 34 R.I. GEN. LAWS § 34-45-8(d) (2011).</p>
South Carolina: Category 3	No such laws were found.
South Dakota: Category 2	Landlords may not retaliate against lessee for organizing or becoming a member of a tenants' union. S.D. CODIFIED LAWS § 43-32-27(3) (2004).
Tennessee: Category 3	No such laws were found.
Texas: Category 2	<p>Landlords may not retaliate against a tenant for establishing or participating in a tenant organization. TEX. PROP. CODE ANN. § 92.331(a)(4) (2014).</p> <p>The state contemplates that tenant organizations will purchase low-income housing tax credit property. If the organizations do not, the state may by rule develop a program to do so. TEX. GOV'T CODE ANN. § 2306.6727 (2016).</p> <p>Tenant organizations have a right of first refusal when an owner sells a low-income housing tax credit property under some circumstances. § 2306.6726(a), (b)(2)(C).</p> <p>There are certain administrative rules governing rights of first refusals for tenant organizations when landlords have agreed to it. <i>See</i> 10 TEX. ADMIN. CODE § 10.407 (West 2018).</p>
Utah: Category 3	<p>“Residents in a mobile home park may form a resident association and participate in a regional, state or national resident association or advocacy group.” UTAH CODE ANN. § 57-16-16(2)(a)(i), (ii) (West 2016) (internal punctuation omitted). “A resident association may limit membership to owners of manufactured homes within a mobile home park if the purpose of the resident association is to purchase some or all of the mobile home park.” UTAH CODE ANN. § 57-16-16(2)(b) (West 2016). There may be more than one association, but the park operator is not required to recognize any association other than the primary one. UTAH CODE ANN. § 57-16-16(2)(c)(i), (ii) (West 2016). The association may elect officers and adopt bylaws “at a meeting at which a majority of members are present.” UTAH CODE ANN. § 57-16-16(3)(a), (b) (West 2016).</p>

	<p>Associations must provide seven days' notice of a resident association meeting to all residents, and any resident may attend a meeting regardless of their membership in the association. UTAH CODE ANN. § 57-16-16(4)(a), (b) (West 2016). An association's officer is not personally responsible for the acts of the association or its members. UTAH CODE ANN. § 57-16-16(5)(a) (West 2016).</p> <p>An owner or operator may not: "be a member of a resident association," "attend a meeting of the resident association unless given a written invitation," "unlawfully interfere with the resident association's operations," interfere with a resident's right to contact a state health department," or "harass or threaten a resident association." UTAH CODE ANN. § 57-16-16(6)(a)–(e) (West 2016).</p> <p>An association may not "impose fees, dues or assessments . . . unless a majority of the members agree to [their] imposition," or "harass or threaten a park operator." UTAH CODE ANN. § 57-16-16(7)(a), (b) (West 2016). An operator must permit the association to hold meetings within the park, and may not unreasonably prohibit the right of free expression. UTAH CODE ANN. § 57-16-16(8), (9) (West 2016). An association "may schedule with the park operator the use of the mobile home park's common facilities . . . free of charge," at least once a week. UTAH CODE ANN. § 57-16-16(7)(10)(a), (c) (West 2016).</p> <p>An operator may not retaliate against a resident for their actions against the landlord. UTAH CODE ANN. § 57-16-16(6), (11) (West 2016) (prohibiting, <i>inter alia</i>, harassing or threatening a resident association, interfering with a resident's right to complain to state agencies, and retaliating against a resident for filing a lawsuit against them).</p>
Vermont: Category 2	<p>Landlords may not retaliate against tenants for organizing or becoming a member of a tenants' union. VT. STAT. ANN. tit. 9, § 4465(a)(3) (2014).</p> <p>Mobile home park owners may not retaliate against residents who organize or become a member of a residents' association. VT. STAT. ANN. tit. 10, § 6247(a)(C) (2018); VT. STAT. ANN. tit. 27, § 1364(f) (2012).</p>

Virginia: Category 2	Landlords may not retaliate against tenants for organizing or becoming a member of a tenants’ organization. VA. CODE ANN. §§ 55-225.18(A); -248.39(A) (2012).  In manufactured and mobile home parks, landlords may not retaliate against tenants for organizing or becoming a member of a tenants’ organization. § 55-248.50(A).
Washington: Category 3	No such laws were found.
West Virginia: Category 3	State law bans retaliatory eviction for tenant union organizing or membership in house trailers, mobile homes, manufactures homes, and modular homes. W. VA. CODE ANN. § 37-15-7(a)(3) (West 2016).
Wisconsin: Category 2	Under the Wisconsin Administrative Code, landlords may not retaliate against tenants for joining or attempting to organize a tenants’ union. WIS. ADMIN. CODE ATCP § 134.09(5)(b) (2016). Within manufactured home communities, landlords may not retaliate against tenants for their membership in a tenants’ union. § 125.08(2)(b).  The state may lawfully appropriate funds to a tenant union. Hopper v. City of Madison, 256 N.W.2d 139, 141 (Wis. 1977).
Wyoming: Category 3	No such laws were found.

APPENDIX C: SURVEY OF STATE FACILITY RESIDENT ASSOCIATION LAWS

Category 1: States that significantly expand residents’ rights and resident council power beyond the federal level

Category 2: States that provide limited supplemental rights, including many which extend the right to organize to other facilities and institutions

Category 3: States that provide no additional substantive rights to residents and resident council

State	Statutory Framework
Alabama: Category 2	Alabama State Board of Health Regulations provide residents various rights, including the right to organize and participate in resident grounds in each facility, the right to meet with others, and the right to present grievances and

	<p>recommendations to the facility, which must act on and listen to those submissions. ALA. ADMIN. CODE r. 420-5-10-.08 (2016) (providing the right to dignity, self-determination, and participation in resident and family groups). 420-5-10-.05 (2016) (requiring nursing facilities to notify residents of many rights, creating a grievance process, and providing for resident privacy including when participating in family and resident group meetings); 560-X-10-.14 (providing similar rights in Long Term Care facilities).</p> <p>Facilities may only make some elections as to the frequency of resident meals if resident groups agree to it. ALA. ADMIN. CODE r. 420-5-10.12(6)(d) (2016).</p>
Alaska: Category 3	No such laws were found.
Arizona: Category 2	<p>Residents have the right to participate in a resident group. ARIZ. ADMIN. CODE § R9-10-410(B)(4)(i) (2016).</p> <p>Facilities may only extend the time between evening meals and breakfast beyond certain limits if resident groups agree. ARIZ. ADMIN. CODE § R9-10-423(B)(4)(d)(i) (2016).</p>
Arkansas: Category 1	<p>The Office of Long-Term Care establishes a residents' council within each long-term facility. The councils' duties include reviewing the facility's procedure for implementing residents' rights, recommending changes or additions in the facility's policies or procedures, representing residents in their complaints, and assisting in early identification and resolution of problems. ARK. CODE ANN. § 20-10-1006(a) (West 2011).</p> <p>The facility administrator must designate a staff coordinator and space within the facility for the residents' council. The residents' councils may exclude the staff coordinator from any meeting, but the staff coordinator must assist the council. ARK. CODE ANN. § 20-10-1006(b) (West 2011). Failure to comply with this law and the Office's rules is a Class C violation under which civil penalties can be imposed. ARK. CODE ANN. § 20-10-1006(d) (West 2011).</p> <p>Residents of long-term care facilities have rights created by statute. ARK. CODE ANN. § 20-10-1204 (West 2011). Each long-term care facility must make public a statement of rights and responsibilities of facility residents and treat the residents according to that statement. ARK. CODE ANN. § 20-10-1204(a) (West 2011). At a minimum, the statement must</p>



	<p>assure each resident of the right to present grievances, recommend changes in policies and services to facility personnel, and join with other residents or individuals to work for improvements in resident care, freedom from restraint, interference, coercion, discrimination, or reprisal. ARK. CODE ANN. § 20-10-1204(a)(17)(A)(i) (West 2011). Residents also have the right to organize and participate in resident groups in the facility and to have the resident's family meet in the facility with the families of other residents. ARK. CODE ANN. § 20-10-1204(a)(18) (West 2011).</p> <p>It is a Class C violation when a facility fails to comply with the regulatory and statutory requirements to maintain a residents' council. 016.06-16-4000 ARK. CODE R. § 4007 (LexisNexis 2018).</p>
California: Category 1	<p>Licensed health facilities must establish and maintain a resident council. CAL. HEALTH &amp; SAFETY CODE § 1418.2(a) (West 2016). The law creates detailed requirements as to the conduct of the councils. CAL. HEALTH &amp; SAFETY CODE § 1418.2 (West 2016)</p> <p>State law also provides for broad associational rights at licensed residential care facilities for the elderly. CAL. HEALTH &amp; SAFETY CODE § 1569.157(a) (West 2008).</p> <p>Operators of continuing care retirement communities must hold certain meetings and share certain information regarding associational rights. They must give advance notice of meetings, make available certain financial information, and give residents representation on the provider's governing body. CAL. HEALTH &amp; SAFETY CODE § 1771.8 (West 2007).</p>
Colorado: Category 1	<p>Residents have the right to participate in residents' councils. 6 COLO. CODE REGS. § 1011-1:5-15.1(C)(1) (2016).</p> <p>A resident council must be established in facilities with seventeen or more beds. It must have the opportunity to meet without staff. It also must meet at least monthly with the administrator and a staff representative to voice concerns and make recommendations. Staff must respond to those suggestions in writing before the next regular meeting. Meeting minutes must be maintained for review by residents. 6 COLO. CODE REGS. § 1011-1:7-13 (2018).</p>

<p>Connecticut: Category 2</p>	<p>Residents have the right to organize, maintain and participate in a patient-run resident council. CONN. GEN. STAT. ANN. § 19a-550(b)(17) (West 2011) .</p> <p>There is an Executive Board of the Statewide Coalition of Presidents of Resident Councils, which advocates for quality of care and services for long-term care facility residents. CONN. AGENCIES REGS. § 17b-411-7(a) (2015).</p> <p>For managed residential communities that offer assisted living services, the community must employ an on-site service coordinator who has the responsibility of establishing a tenant council. CONN. AGENCIES REGS. § 19-13-D105(c)(5) (2015).</p> <p>At a state-run residential veterans' program, the Department of Veterans' Affairs assists veterans in a Transitional Living Center establish a residents' council and its by-laws. CONN. AGENCIES REGS. § 27-102l(d)-90(4)(A)(iv) (2015).</p> <p>Continuing care facilities must conduct a resident satisfaction survey every two years and make available the results of that survey to the residents' council. CONN. GEN. STAT. ANN. § 17b-523b(b) (West 2016).</p> <p>There are certain provisions for facilities in financial distress that include notice requirements to the residents' council. CONN. GEN. STAT. § 17b-527(b), (e) (West 2016). The same is true for facility construction plans. CONN. GEN. STAT. ANN. § 17b-526(b) (West 2016).</p> <p>There is a Long-Term Care Advisory Council that includes the president of the Coalition of Presidents of Resident Councils. CONN. GEN. STAT. ANN. § 17b-338(a)(3) (West 2016).</p>
<p>Delaware: Category 3</p>	<p>No such laws were found.</p>
<p>District of Columbia: Category 2</p>	<p>Residents at assisted living residences have the right to organize and participate in resident groups, hold meetings, invite staff or visitors to the meetings, and have designated staff persons assist and respond to written requests resulting from the meetings. D.C. CODE § 44-105.05(a)(7) (2001).</p> <p>Independent living programs, D.C. MUN. REGS. tit. 29, § 6345.1 (2002), and youth shelters, runaway shelters,</p>

	<p>emergency care facilities, and youth group homes must also establish and maintain a residents' council. D.C. MUN. REGS. tit. 29, § 6271.1 (2001).</p>
<p>Florida: Category 1</p>	<p><b>Nursing Homes</b> Residents at nursing homes FLA. STAT. § 400.022 (West 2018), and assisted living facilities have the right to organize and participate in resident groups. FLA. ADMIN. CODE ANN. r. 58A-5.0182 (LexisNexis 2018).</p> <p>The Gold Seal Program is an award to recognize excellent nursing home facilities. FLA. STAT. ANN. § 400.235(2) (West 2012). It is awarded by a Panel on Excellence in Long-Term Care to which the Florida Life Care Residents Association appoints one member. FLA. STAT. ANN. § 400.235(3)(a) (West 2012).</p> <p><b>Continuing Care Facilities</b> Residents at continuing care facilities have the right of self-organization, the right to be represented by an individual of their own choosing, and the right to engage in concerted activities for the purpose of keeping informed on the operation of the facility that is caring for them or for the purpose of other mutual aid or protection. FLA. STAT. ANN. § 651.081(1) (West 2005). Continuing care facilities must establish a residents' council, through an election. FLA. STAT. ANN. § 651.081(2)(a) (West 2005). The council must provide a forum for residents to submit issues or make inquiries related to but not limited to subjects impacting quality of life and cultural environment. FLA. STAT. ANN. § 651.081(2)(b) (West 2005). The activities of the residents' council are independent of the provider. FLA. STAT. ANN. § 651.081(2)(c) (West 2005). The council must adopt its own bylaws and governance documents. FLA. STAT. ANN. § 651.081(2)(d) (West 2005)</p> <p>Residents councils have certain rights to notice by having a copy of the full annual statement and most recent financial audit distributed to them. FLA. STAT. ANN. § 651.091(2)(d) (West 2005). Certain vender contracts must be accessible to residents and resident councils. FLA. STAT. ANN. § 651.1151(3) (West 2005).</p> <p>Resident councils may elect a member to represent them before the governing body of the provider. FLA. STAT. ANN. § 651.085(2) (West 2005). The governing body of the</p>

	provider must give the residents' council notice and an opportunity to meet and confer regarding maintenance fee increases. FLA. STAT. ANN. § 651.085(1), (4) (West 2005).
Georgia: Category 2	Residents at long-term care facilities must be permitted to form resident councils to address any issues and to meet without staff if they desire. The facility must provide them space, and may not compel attendance. GA. CODE ANN. § 31-8-121 (2012); GA. COMP. R. & REGS. 111-8-50-.04(i) (2013). Residents have the right to voice complaints and recommend changes. GA. CODE ANN. § 31-8-118(c) (2012).  Residents at assisted living facilities have the right to form resident councils. GA. COMP. R. & REGS. 111-8-63-.25(1)(w) (2012).  Residents at personal care homes have the right to form a resident council. GA. COMP. R. & REGS. 111-8-62-.25(1)(u) (2012).
Hawaii: Category 3	No such laws were found.
Idaho: Category 3	Residents have the right to organize and participate in resident groups, and to meet in the facility. IDAHO CODE § 39-3316(14) (2011); IDAHO ADMIN. CODE r. 16.03.22.550(14) (2006). Residents have the right to privacy with regard to communications and meeting of family and resident groups. IDAHO CODE § 39-3316(2) (2011); IDAHO CODE § 39-3516(2) (2011); IDAHO ADMIN. CODE r. 16.03.22.550(2) (2006); IDAHO ADMIN. CODE r. 16.03.19.200(1) (2006).
Illinois: Category 3	There is an Illinois long-term care council, which includes two members representing long-term care facility resident councils or family councils. 20 ILL. COMP. STAT. 105 / 4.04a(f) (West 2015).
Indiana: Category 2	Residents have the right to form and participate resident councils to discuss alleged grievances, facility operation, residents' rights, or other problems. 410 IND. ADMIN. CODE 16.2-5-1.2(o) (2018) (residential care facilities); 410 Ind. Admin. Code 16.2-3.1-3(g) (2018) (comprehensive care facilities). The facility must develop and implement policies for investigating and responding to complaints and grievances made by individuals or the resident or family councils. 410 IND. ADMIN. CODE 16.2-5-1.2(o)(4) (2018) (residential care facilities); 410 Ind. Admin. Code 16.2-3.1-

	3(l) (2018) (comprehensive care facilities); 410 Ind. Admin. Code 16.2-3.1-7 (comprehensive care facilities).
Iowa: Category 2	Individuals have the right to organize and participate in resident groups. IOWA ADMIN. CODE r. 441-30.5(4)(a) (2014) (state resource centers); IOWA ADMIN. CODE r. 441-29.6(4)(b) (2013) (mental health institutes); IOWA ADMIN. CODE r. 441-81.13(8)(c)(1) (2018) (nursing homes).
Kansas: Category 1	Facility operators must “ensure the facilitation of the organization of” at least one resident council. KAN. ADMIN. REGS. § 26-41-106(a) (2009) (assisted living facilities and residential health care facilities); KAN. ADMIN. REGS. § 26-43-106(a) (2009) (adult day care facilities). Residents in boarding facilities have the right to organize and participate in resident groups. KAN. ADMIN. REGS. § 28-39-153(c)(1) (1997).
Kentucky: Category 3	Residents at licensed nursing facilities have the right to organize and participate in resident groups. 902 KY. ADMIN. REGS. 20:300(6)(3)(a) (2018).
Louisiana: Category 2	Residents at nursing facilities have the right to organize and participate in resident groups. LA. ADMIN. CODE tit. 50, § 10161(M)(2)(r) (2018). It is a Class D violation for facilities to fail to allow residents access to an established Residents Council. LA. ADMIN. CODE tit. 50, § 10167(C)((7)(f) (2018).  Residents at adult residential care facilities have the right to a formal process and structure for resident associations to advise the director of adult residential care facilities regarding services and life at the facility. LA. ADMIN. CODE tit. 48, § 6859(a) (2018). They also have a right to grievance procedure. LA. ADMIN. CODE tit. 48, § 6859(b) (2018).
Maine: Category 2	Residents have the right to organize and participate in resident groups. 10-144-113 ME. CODE R. § I.5.1 (LexisNexis 2018) (residential care facilities); 10-144-110 ME. CODE R. § 10.U.1 (LexisNexis 2017) (nursing facilities).  Long-term care facilities must inform residents of their right to establish a council. ME. STAT. tit. 22, § 7923(1) (long-term care facilities) (2004); 10-144-110 ME. CODE R. § 10.V.1(a). (LexisNexis 2017) (nursing facilities). The resident council is responsible for, inter alia, recommending changes, establishing procedures to inform residents about their rights, and inform the administrator about the opinions and concerns of the residents. ME. STAT. tit. 22, § 7923(2) (2004) (long-

	<p>term care facilities); 10-144-110 ME. CODE R. § 10.V.2. (LexisNexis 2017) (nursing facilities). The administrator must designate a staff member not related to the administrator to assist the residents' council. ME. STAT. tit. 22, § 7923(3) (2004); 10-144-110 ME. CODE R. § 10.U.5 (LexisNexis 2017) (nursing facilities).</p>
<p>Maryland: Category 1</p>	<p>Residents at comprehensive care facilities and extended care facilities have the right to organize and participate in resident groups. MD. CODE REGS. 10.07.09.08(F)(1) (2017).</p> <p>Continuing care providers' governing bodies must have at least one subscriber on their governing boards, MD. CODE ANN., HUM. SERVS. § 10-427(a)(1) (West 2007), and must confer with the resident association at each of the provider's facilities before the subscriber joins the governing body. MD. CODE ANN., HUM. SERVS. § 10-427(a)(4) (West 2007).</p> <p>Nursing homes must have quality assurance committees, which must prepare monthly reports to be presented to the residents' council. MD. CODE ANN., HEALTH-GEN. § 19-1410(b)(3)(iv) (West 2018).</p> <p>Assisted living programs must make reasonable attempts to cooperate with family and resident councils. MD. CODE REGS. 10.07.14.13(B)(1) (2017).</p> <p>When proposing a sale or transfer of ownership of a continuing care facility, the provider must schedule a meeting with the resident association to discuss the proposed sale or transfer. MD. CODE REGS. 32.02.01.22(C)(4) (2016).</p>
<p>Massachusetts: Category 1</p>	<p>Residents at long-term care facilities, nursing homes, retirement homes, and homes for the aged may establish residents' associations to promote their interests and provide for the general welfare of residents. MASS. GEN. LAWS ch. 93, § 76(a) (2006).</p> <p>These may receive a copy of the facility's financial disclosure statement, submit comments on matters that may affect the health and welfare of residents, request and receive information regarding major modification or renovation of the facility, and receive information regarding the purpose and intended funding of all financial reserves kept by the provider. MASS. GEN. LAWS ch. 93, § 76(f) (2006).</p>

	When an operator seeks to transfer ownership of the facility, there is a hearing process for which resident councils must get notice. 105 MASS. CODE REGS. 153.022(B)(1) (2016).
Michigan: Category 3	Long-term care ombudsman programs must assist in the development and work of resident councils when invited. MICH. COMP. LAWS § 400.586h(f) (1987).
Minnesota: Category 1	In continuing care facilities, residents may form residents' association to "deal with common interests related to their residency." MINN. STAT. § 80D.20(1) (2013). Residents have the right to inspect the provider's annual budget and monthly expenditure statements. MINN. STAT. § 80D.20(3) (2013).  Residents at veterans' homes have the right to organize, maintain and participate in a resident advisory council. MINN. R. 9050.1070(6) (2017).  Each program at a mental health services residential program must have a resident council through which residents have an opportunity to express their feelings and thoughts. MINN. R. 9520.0630(3) (2017).
Mississippi: Category 3	No such laws were found.
Missouri: Category 3	No such laws were found.
Montana: Category 3	Residents at swing-bed hospitals have the right to privacy of communications and meetings with family and resident groups. MONT. ADMIN. R. 37.40.416(5) (2009).
Nebraska: Category 3	Residents have the right to form and participate in resident groups. 175 NEB. ADMIN. CODE § 4-006.04(20) (2007).
Nevada: Category 3	Regulations define resident councils as "a group of residents of a facility for long-term care that is formed to discuss concerns about the facility, communicate those concerns to the staff of the facility and cooperate with the staff in developing solutions to the concerns." NEV. ADMIN. CODE § 427A.018 (2010). The Ombudsman may assist in forming and in the activities of residents' councils. NEV. ADMIN. CODE § 427A.044 (2010).
New Hampshire: Category 1	Patients at residential care and health facilities have the right to privately communicate, associate, and meet with anyone, including family and resident groups. N.H. REV. STAT. ANN. § 151:21(XII) (2005). Senior citizens have the right to be free from retaliation for making a complaint or joining a tenant association. N.H. REV. STAT. ANN. § 161-M:3(II)(e) (2014).

	<p>Administrative rules define a resident council at the state veteran's home as, an internal organization that includes all residents, requires no membership fees, and is organized to improve residential programs and services, help residents participate in the community's affairs, promote friendship, and disseminate information. N.H. CODE ADMIN. R. ANN. VE-H. 202.01(r) (LexisNexis 2018).</p> <p>At the state veterans' home, there is a complaint process for residents, where suggestions for improvements in the quality of the services are transferred to the residents' council. N.H. CODE ADMIN. R. ANN. VE-H. 204.03(b) (LexisNexis 2018).</p>
New Jersey: Category 1	<p>Residents must have the opportunity to organize and participate in a resident council. N.J. ADMIN. CODE § 8:43-11.1(c) (LexisNexis 2018); N.J. ADMIN. CODE § 5:27A-11.1 (LexisNexis 2018) (at residential health care facilities); N.J. ADMIN. CODE § 8:36-12.1 (LexisNexis 2018) (at personal care homes and assisted living facilities); N.J. ADMIN. CODE § 8:39-4.1(a)(29) (LexisNexis 2018) (at long-term care facilities).</p> <p>Residents at assisted living facilities and personal care homes have the right to organize and participate in a resident council. N.J. STAT. ANN. § 26:2H-128(b)(35) (West 2007). Personal care homes and assisted living providers must post and distribute a notice of resident rights including to right to participate in a resident council. N.J. ADMIN. CODE § 8:36-4.1(a) (LexisNexis 2018).</p> <p>Residents at continuing care retirement communities may serve or participate in a local, state, or national residents' association without discrimination or reprisal. N.J. STAT. ANN. § 52:27D-360.3(c) (2010).</p> <p>Residents councils in nursing homes must have the opportunity to meet at least monthly. N.J. ADMIN. CODE § 8:85-2.5(e)(3) (LexisNexis 2018).</p> <p>There is a continuing care advisory council, which includes three residents of continuing care retirement communities recommended by the Organization of Residents Associations of New Jersey. N.J. STAT. ANN. § 52:27D-357(a) (2010).</p>
New Mexico: Category 2	Residents at continuing care facilities have the right to organize a resident association and engage in concerted



	<p>activities. N.M. STAT. ANN. § 24-17-13(A) (2011). Each continuing care facility must encourage and facilitate the establishment of a resident association. The facility’s administration must meet at least quarterly with the resident association, or if one does not exist, with interested residents. The provider must give all residents at least seven days’ advance notice of the meeting, post the meeting agenda in a conspicuous place and make copies available, and if the resident association requests, ensure that a member or an authorized representative of the board of directors, general partnership, or owner of the facility attends the meeting. N.M. STAT. ANN. § 24-17-13(B) (2011).</p> <p>Residents at assisted living facilities have the right to organize and participate in a resident association. N.M. CODE R. § 7.8.2.33(D)(11)(o) (LexisNexis 2018).</p> <p>Resident associations at continuing care facilities are entitled to notice of violations of the Continuing Care Act by their facility. N.M. STAT. ANN. § 24-17-16 (A) (2011). Resident associations may request a conference with the state agency on aging, have the right to attend any such meeting between the provider and the agency, N.M. STAT. ANN. § 24-17-16(C) (2011), and must receive any report of compliance submitted by the facility. N.M. STAT. ANN. § 24-17-16(E) (2011). Resident associations are also entitled to an annual disclosure statement. N.M. STAT. ANN. § 24-17-4(A) (2011).</p>
<p>New York: Category 1</p>	<p>Residents have the right of self-organization, to be represented by individuals of their choosing, and the right to engage in concerted activity. N.Y. PUB. HEALTH LAW § 4612(1) (McKinney 2012) (continuing care retirement communities); N.Y. PUB. HEALTH LAW § 4665(1) (McKinney 2012) (fee-for-service continuing care retirement communities’ demonstration program). The board of directors or other governing body of the community must meet at least four times a year with the residents’ representatives and must hold a general meeting of all residents once a year. N.Y. PUB. HEALTH LAW § 4612(2) (McKinney 2012) (continuing care retirement communities); N.Y. PUB. HEALTH LAW § 4665(2) (McKinney 2012) (fee-for-service continuing care retirement communities’ demonstration program).</p> <p>To apply for certain state funds, adult living facilities must get its spending plan approved by the residents’ council at the</p>

	<p>facility. The council has a statutory obligation to “adopt a process” to identify resident priorities and needs, and the facility’s application for the funds needs a signed attestation from the president of the council. Funds from this program must be spent consistent the plan or to council approval. N.Y. SOC. SERVS. LAW § 461-s(3) (McKinney 2003).</p> <p>Resident councils have a role in health care facility safe patient handling committees, N.Y. PUB. HEALTH LAW § 2997-k(1) (McKinney 2015), and in facility ethics review committees, N.Y. PUB. HEALTH LAW § 2994-m(3) (McKinney 2015).</p>
North Carolina: Category 3	<p>Regulations establish resident council meetings as a type of planned group activity at family care homes. 10A N.C. ADMIN. CODE 13G.0905(d) (West 2018).</p>
North Dakota: Category 3	<p>North Dakota had regulations establishing the composition of resident councils at the North Dakota Veterans’ Home, but repealed them effective April 1, 2008. N.D. ADMIN. CODE 86-03-05-07 (2016).</p> <p>Ombudspersons support the development of long-term care resident councils and family councils. N.D. ADMIN. CODE 75-03-25-03(11) (2016) (state long-term care ombudsman); N.D. ADMIN. CODE 75-03-25-05(7) (2016) (local ombudsman).</p>
Ohio: Category 3	<p>No such laws were found.</p>
Oklahoma: Category 1	<p>Each resident care home must establish a residents’ advisory council that must meet at least monthly, and be a forum for soliciting recommendation and presenting complaints on behalf of residents. OKLA. ADMIN. CODE § 310:680-3-8(a), (c), (g) (2016).</p> <p>Residents at nursing homes have the right to private communications with family and resident groups. OKLA. STAT. tit. 63, § 1-1918(B)(2) (2011).</p> <p>For nursing homes, rest homes, and specialized homes to apply to start a new facility, their minutes must be reviewed by family and residents’ councils from the applicant’s other holdings in the state. OKLA. STAT. tit. 63, § 1-853.1(A)(3) (establishing standards for granting applications) (2011); OKLA. STAT. tit. 63, § 1-852(E)(2) (establishing standards for investigating applications) (2011).</p>
Oregon: Category 1	<p>A residents’ council is defined as “a body of residents of a continuing care retirement community,” elected by the</p>

	<p>residents and recognized by the provider as representing the interests of the residents. OR. REV. STAT. § 101.020(19) (West 2010).</p> <p>Residents’ councils have the right to meet with the provider at least twice a year, and to freely discuss subjects of their choice at that meeting. OR. REV. STAT. § 101.115(8) (West 2010). The provider is required to give residents at least 45 days’ notice of proposed changes in fees, regular periodic charges, or services. At least 30 days before an increase in periodic charges takes effect, the provider must meet with the residents’ council or all residents of the community to discuss why the increase is needed and to make available specific financial information. OR. REV. STAT. § 101.112(2) (West 2010).</p> <p>Providers must review their budgets with the council and must make financial statements available to the council. OR. REV. STAT. § 101.112(3) (West 2010). Minutes meetings of governing bodies must be made available to any resident. OR. REV. STAT. § 101.112(5) (West 2010). At least one resident from each community operated in Oregon must be allowed to participate as a nonvoting resident representative on the governing body. OR. REV. STAT. § 101.112(6) (West 2010). That representative must be elected by the residents’ council or by the residents. OR. REV. STAT. § 101.112(7) (West 2010). The provider must pay travel expenses for resident representatives to attend meetings of the governing body and committees. OR. REV. STAT. § 101.112(9) (West 2010).</p>
Pennsylvania: Category 3	No such laws were found.
Puerto Rico: Category 3	No such laws were found.
Rhode Island: Category 3	No such laws were found.
South Carolina: Category 3	Residents at nursing homes have the right to meet as a group to address resident issues, make recommendations, and suggest ways to improve resident care and services.” S.C. CODE ANN. REGS. 61-17 § 101(DDD) (West 2018).
South Dakota: Category 3	Residents have the right to privacy and confidentiality, including meetings of resident groups. S.D. ADMIN. R. 44:80:09:07 (2015) (residential hospice facilities); S.D. ADMIN. R. 44:70:09:08 (2012) (assisted living centers).
Tennessee:	No such laws were found.

Category 3	
Texas: Category 2	<p>The elderly have a set of rights including a right of access to resident councils. TEX. HUM. RES. CODE. ANN. § 102.003(g) (West 2013).</p> <p>Residents at assisted living facilities have the right to have access to resident councils. 40 TEX. ADMIN. CODE § 92.125(a)(3)(R) (West 2018).</p> <p>Residents at nursing homes have the right to organize and participate in resident groups. 40 TEX. ADMIN. CODE § 19.706(a) (West 2018). The facility must listen to and consider the views and act on the grievances and recommendations of residents and families, provide private spaces for groups, provide a designate staff person to assistance and respond to written requests, and allow staff or visitors to attend meetings. 40 TEX. ADMIN. CODE § 19.706(d) (West 2018).</p> <p>Residents at nursing facilities have the right to privacy with regard to participation in resident groups. 40 TEX. ADMIN. CODE § 19.407(1) (West 2018).</p>
Utah: Category 2	<p>Residents at assisted living facilities may organize and participate in resident groups. UTAH ADMIN. CODE r. 432-270-9(8) (2018).</p> <p>There are veterans' nursing home advisory boards for each home, which has one appointee of the resident council for that home. UTAH CODE ANN. § 71-11-7(1), (2)(a) (West 2017). The long-term care ombudsman must assist with the development of resident councils. UTAH ADMIN. CODE r. R510-200-22 (2018).</p>
Vermont: Category 1	<p>Residents at continuing care retirement communities have the right to self-organization and to engage in activities for the purpose of keeping informed, or for the purpose of other mutual aid. VT. STAT. ANN. tit. 8, § 8011(a) (2013). Annually, the governing body of a facility must hold a meeting with the residents of that facility for the purpose of discussing at a minimum several statutory subjects. VT. STAT. ANN. tit. 8, § 8011(b) (2013).</p> <p>Nursing homes must respond to written requests from council meetings. VT. STAT. ANN. tit. 33, § 7301(3)(A) (2014). They must consult with the resident council regarding</p>

	<p>disbursement of supplemental payments. 12-2 VT. CODE R. § 200:9.5(c) (2018).</p> <p>Residents at nursing homes have a right to a quality of life, including the right to voice grievances, and recommend changes. 12-4 VT. CODE R. § 200:4.4 (2018). They have a right to immediate access to any representative of the State, the ombudsperson, and any other person of the resident’s choosing. 12-4 VT. CODE R. § 200:4.4(a) (2018). They have the right to organize and participate in resident or family councils. 12-4 VT. CODE R. § 200:4.4(b) (2018). They have the right to participate in resident groups in the facility. 12-4 VT. CODE R. § 200:4.4(c) (2018). Finally, “When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operation decisions affecting resident care and life in the facility.” 12-4 VT. CODE R. § 200:4.4(j) (2018).</p> <p>Residents of disability facilities have the right to form resident councils. 12-4 VT. CODE R. § 204:6.16 (2018).</p>
Virginia: Category 3	<p>Virginia does not offer significant protections to residents’ councils. However, until its repeal in 2017, a Virginia regulation required the following: Assisted living facilities were required to permit and encourage the formation of resident councils, and assist residents in establishing them. 22 VA. ADMIN. CODE § 40-72-810(A) (2016). The resident council had to be composed of residents, and could extend membership to family, advocates, friends, and others. 22 VA. ADMIN. CODE § 40-72-810(B) (2016). The facility had to assist residents in scheduling meetings, providing space and notice for meetings, providing assistance to attend meetings, and preparing reports of meetings for dissemination to all residents. 22 VA. ADMIN. CODE § 40-72-810(C) (2016). The resident council had to work to improve the quality of life of residents, discuss the services offered and make recommendations, and perform other functions that the council determines. 22 VA. ADMIN. CODE § 40-72-810(E) (2016). The facility had to annually remind residents that they may establish a resident council, if one does not exist. 22 VA. ADMIN. CODE § 40-72-810(F) (2016).</p>
Washington: Category 3	No such laws were found.
West Virginia: Category 2	The state or regional long-term care ombudsperson can access records of any long-term facility reasonably necessary,

	<p>including grievance committee meeting minutes, to investigate complaints filed against long-term care facilities. W. VA. CODE § 16-5L-12(b) (LexisNexis 2016).</p> <p>Regulations provide that residents at nursing homes have the right to personal privacy regarding accommodations, medical treatment, written communications, personal care, visits, and meetings of family and resident groups, but this does not require the nursing home to provide a private room for each resident. W. VA. CODE R. § 64-13-5.3.f(2016). They have the right to organize, maintain, and participate in resident groups in the nursing home. W. VA. CODE R. § 64-13-5.5.d.1 (2016). The nursing home shall respond in writing to oral and written requests from resident and family council meetings. Resident councils and family councils shall be encouraged to make recommendations regarding nursing home policies. W. VA. CODE R. § 64-13-5.5.d.6 (2016).</p> <p>Ombudspersons must contact the president of the residents' council when making unannounced facility visits. W. VA. CODE R. § 76-5-9.1.1 (1995).</p>
Wisconsin: Category 2	<p>Residents at nursing facilities have the right to organize and participate in resident groups. WIS. STAT. § 49.498(3)(a)(7) (2017). The resident's family also has the right to meet in the nursing facility with the families of other residents in the nursing facility. WIS. STAT. § 49.498(3)(a)(7) (2017).</p> <p>Residents at nursing facilities have the right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups, except that this subdivision may not be construed to require provision of a private room. WIS. STAT. § 49.498(3)(a)(3) (2017).</p> <p>The state board on aging and long-term care is tasked with establishing resident councils. WIS. STAT. § 16.009(2)(g) (2012).</p>
Wyoming: Category 3	No such laws were found.