



July 29, 2020

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
Room H-305, The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Room H-204, The Capitol
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
Room S-230, The Capitol
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Room S-221, The Capitol
Washington, D.C. 20510

Re: COVID-19 Limited Liability Protections

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

On behalf of the American Council on Education and the undersigned higher education associations, I am writing today in support of S. 4317, the “SAFE TO WORK Act,” which will provide temporary and targeted liability protections related to the COVID-19 pandemic. These protections are essential to safeguard higher education institutions and systems, as well as their affiliated nonprofits, healthcare providers, and research enterprises, from excessive and speculative lawsuits arising out of the pandemic. In addition to our support of this bill, we urge Congress to include the provisions in S. 4317 in the Phase IV COVID-19 relief package.

Our nation’s colleges and universities have whipsawed from emptying out in mid-March and closing out the spring semester with remote learning experiences to planning and preparing for a new academic year when the only certainty is that the pandemic’s effect on higher education will remain uncertain for the foreseeable future. A safe and sensible return to in-person learning and related campus experiences is essential to educating our nation’s future workforce, preserving employment for millions, and helping restart America’s economy. That is, and will remain, the ultimate goal. Near term, as colleges and universities contemplate how to proceed this fall, their decisions are not premised on making a trade-off between safety and the economy. The overriding concern is keeping students, faculty, staff, and local communities safe.

But as colleges and universities assess how quickly and completely campuses can resume full operations, they are facing enormous uncertainty about COVID-19-related standards of care and corresponding fears of huge transactional costs associated with defending against COVID-19 spread lawsuits, even when they have done everything within their

power to keep students, employees, and visitors safe, if as seems inevitable someone gets sick on campus despite their best efforts. To blunt the chilling effect this will have on otherwise reasonable decision-making leading to our nation's campuses resuming operations in a safe and sensible manner, we ask that Congress pass the proposed temporary COVID-19-related liability protections contained in S. 4317. They are essential for higher education institutions and systems, affiliated entities, as well as their faculty, staff, and volunteers. We are not seeking a free pass to avoid responsibility. These protections will be conditioned on following applicable public health standards, and they preserve recourse for those harmed by truly bad actors who engage in egregious misconduct. Moreover, the protections contained in S. 4317 are limited in duration and scope, and do not make permanent changes to federal law. They also allow states to provide additional protections if they choose to do so.

Academic medical centers are at the intersection of education, research, and patient care, and now are on the front lines of fighting COVID-19. In the midst of an unprecedented health care crisis that is straining our health care system, we must support our health care facilities and professionals as they meet the demands of their patients and communities, including protecting those serving from unwarranted legal action related to COVID-19. In addition, campus health and counseling centers and their health care providers will be instrumental in ensuring the health and well-being of students while they are on-campus by providing COVID-19-related physical and mental health care in the coming academic year. While several states have taken action, a federal legislative approach is necessary to ensure a consistent level of protection is available for every health care facility and provider that is responding in good faith to prepare for and treat patients during the pandemic.

Colleges and universities, including their health care facilities and research enterprises, are engaged in every sector of critical infrastructure necessary to support American communities. In addition to educating and training our country's future workforce, they provide health services, cultural resources, spectator sports venues, and recreational amenities to their communities. Our medical schools, teaching hospitals, and research labs are working around the clock to find the best treatments and vaccines for COVID-19. Moreover, our higher education institutions maintain full service utilities, telecommunications, and computing networks; they provide housing and food services; and they operate transportation networks, hotels, retail shops, daycares, gyms, and museums. To support this broad array of activities, they directly employ tens of thousands of skilled workers in various trades, from electricians and linemen to plumbers and HVAC technicians; from landscapers and painters to carpenters and fabricators.

Unfortunately, all colleges and universities, two- and four-year, public and private nonprofit, are facing unprecedented challenges as a result of the COVID-19 pandemic. The impact on the operations and revenues of many institutions has been catastrophic, for some even existential, which has had a terrible ripple effect in communities large and small. Institutions are spending millions to purchase personal protection equipment and cleaning supplies, to modify facilities to de-densify their campuses, and to establish testing plans and vendor relationships to implement those plans. We conservatively estimate that colleges and universities will spend approximately \$74 billion on these costs

as they prepare for the fall semester. This estimate does not include factors that will undoubtedly have significant impacts on institutions, such as declining state support, loss of charitable donations, enrollment declines, and financial need for students given the difficult financial environment.

In the wake of prior crises, Congress came together to pass timely and targeted liability protections with strong bipartisan support because lawmakers understood the acute economic threat of lawsuits at moments of maximum economic vulnerability. While Congress has acted to provide some limited COVID-related liability protections for volunteer healthcare providers and some manufacturers of PPE in the CARES Act, much more must be done. While some governors and state legislatures have enacted COVID-19 liability limitations, this is a national problem requiring a national solution.

Higher education's need for temporary and targeted liability protections and relief is clear. We urge Congress to act now.

Sincerely,



Ted Mitchell
President

On behalf of:

Achieving the Dream
ACPA-College Student Educators International
Alabama Association of Independent Colleges and Universities
American Association of Colleges of Nursing
American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of Presidents of Independent Colleges and Universities
American Association of State Colleges and Universities
American College Health Association
American Council on Education
American Dental Education Association
APPA, "Leadership in Educational Facilities"
Associated Colleges of the Midwest
Association for Biblical Higher Education
Association of Advanced Rabbinical and Talmudic Schools
Association of American Medical Colleges
Association of American Universities
Association of Catholic Colleges and Universities
Association of Chiropractic Colleges
Association of Community College Trustees

Association of Governing Boards of Universities and Colleges
Association of Independent California Colleges and Universities
Association of Independent Colleges and Universities in Massachusetts
Association of Independent Colleges and Universities of New Jersey
Association of Independent Colleges and Universities of Ohio
Association of Independent Colleges and Universities of Pennsylvania
Association of Independent Colleges and Universities of Rhode Island
Association of Independent Colleges of Art & Design
Association of Independent Kentucky Colleges and Universities
Association of Jesuit Colleges and Universities
Association of Presbyterian Colleges and Universities
Association of Public and Land-grant Universities
Association of Research Libraries
Association of Vermont Independent Colleges
Coalition of Urban and Metropolitan Universities
College and University Professional Association for Human Resources
Commission on Independent Colleges and Universities in New York State
Conference for Mercy Higher Education
Connecticut Conference of Independent Colleges
Consortium of Universities of the Washington Metropolitan Area
Council for Advancement and Support of Education
Council for Christian Colleges & Universities
Council for Higher Education Accreditation
Council of Graduate Schools
Council of Independent Colleges
Council of Independent Colleges in Virginia
Council of Independent Nebraska Colleges Foundation
EDUCAUSE
Federation of Independent Illinois Colleges and Universities
Georgia Independent College Association
Great Lakes Colleges Association
Hispanic Association of Colleges and Universities
Independent Colleges and Universities of Florida
Independent Colleges and Universities of Missouri
Independent Colleges and Universities of Texas
Independent Colleges of Indiana
Independent Colleges of Washington
International Association of Baptist Colleges and Universities
Iowa Association of Independent Colleges and Universities
Kansas Independent College Association
Louisiana Association of Independent Colleges and Universities
Maryland Independent College and University Association
Michigan Independent Colleges & Universities
NASPA - Student Affairs Administrators in Higher Education
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Schools and Colleges of the United Methodist Church

National Collegiate Athletic Association
Network of Colleges and Universities, Evangelical Lutheran Church in America
North Carolina Independent Colleges and Universities
Oregon Alliance of Independent Colleges & Universities
State Higher Education Executive Officers Association
Tennessee Independent Colleges and Universities Association
Transnational Association of Christian Colleges and Schools
UPCEA
West Virginia Independent Colleges and Universities
Wisconsin Association of Independent Colleges and Universities
Work Colleges Consortium