



September 17, 2024

The Honorable Mike Johnson  
Speaker of the House  
U.S. House of Representatives  
H-232 The Capitol  
Washington D.C. 20515

The Honorable Hakeem Jeffries  
House Minority Leader  
U.S. House of Representatives  
H-204, The Capitol  
Washington D.C. 20515

Dear Speaker Johnson and Minority Leader Jeffries:

On behalf of the undersigned higher education associations, we write regarding H.R. 3724, the End Woke Higher Education Act, which will be considered by the U.S. House of Representatives this week. Title II of H.R. 3724 incorporates the provisions of H.R. 7683, the Respecting the First Amendment on Campus Act. We opposed the Respecting the First Amendment on Campus Act during its consideration by the Committee on Education and the Workforce. We now ask you to remove Title II from H.R. 3724 as it would undermine efforts to protect free speech on campus and provide safe learning environments free from discrimination. If Title II is not removed from the underlying bill, we would urge you and your members to oppose the bill if it is considered on the floor.

Colleges and universities are strongly committed to fostering open, intellectually engaging debate enriched by a diverse set of voices and perspectives. Freedom of speech, free inquiry, and academic freedom are fundamental to the quest for knowledge and to the educational mission of higher education institutions. Institutions take seriously their obligations to uphold the laws protecting these freedoms, which, for public institutions, include the First Amendment. Consistent with these obligations, institutions must also provide safe learning environments that are free from discrimination and harassment and in compliance with applicable federal and state laws, including Title VI of the Civil Rights Act. Any proposed federal legislation in this area must reflect these twin institutional obligations.

Despite Title II's purported aims of ensuring that public institutions uphold First Amendment protections and provide clarity regarding campus speech policies, Title II would instead create new counterproductive federal mandates, undermining the goals it seeks to advance. Title II would impose a rigid, highly prescriptive, and costly regulatory and enforcement framework on nearly 1,900 public colleges and universities. Already subject to the protections afforded by the First Amendment, public institutions would have to implement a new campus-wide compliance scheme on top of existing policies and practices. As an example of the difficult and costly mandates that the legislation would impose, it would require institutions to develop "objective, content- and view-point neutral and exhaustive standards" in allocating funds to student organizations, which are extraordinarily varied. This could create a regulatory quagmire.

Under Title II's enforcement provisions, failure to comply with even minor reporting or disclosure requirements could result in loss of Title IV funding for an entire award year and often significantly longer. Penalizing students with a loss of financial aid does nothing to further the goals of this legislation and is disproportional to the underlying violation. While the bill exempts private institutions from some of its most onerous requirements, the legislation would nonetheless create a dangerous precedent that encourages further governmental intrusions into matters of academic freedom and institutional autonomy, which would undoubtedly have a chilling effect on private institutions as well.

In addition to the needlessly harsh penalty of loss of Title IV aid, the legislation would also spawn costly and time-consuming litigation by creating a new federal cause of action allowing individuals to sue a public institution for damages for any violation of Title II's requirements. Adding this new cause of action on top of existing legal remedies is unnecessary, duplicative, and would harmfully drain institutional resources away from efforts to protect students and campus free speech. Further, the bill would take the unprecedented and troubling step of waiving a public institution's sovereign immunity rights under the 11th Amendment based on its receipt of Title IV funding.

Given the recent focus of the Education and the Workforce Committee and other House Committees on incidents of antisemitism and the need for campuses to provide safe, discrimination-free environments for all students, we are mystified by Title II's inclusion of provisions that would tie the hands of campus administrators to address these issues, likely making campuses less safe. For example, the bill would mandate that any publicly accessible area of the campus be designated as a "public forum," open to anyone—even if they are not a student, staff, or faculty member—making it more difficult for institutions to secure their campuses against outside agitators like the kind seen in some recent protests over the Israel-Hamas war. Further, Title II would prohibit institutions from factoring in potential student and public reactions when determining security fees for events, limiting their ability to safely manage controversial speakers and events which necessarily entail far greater security costs.

Rather than respecting the First Amendment and what has been done to apply its principles across a wide range of higher education institutions, the provisions in Title II of H.R. 3724 would undermine campus efforts to foster free speech and ensure student safety. We are particularly concerned with the impact this legislation would have on campuses' ability to prevent discrimination and hateful incidents at a time of widespread national tension. We urge the House to remove Title II from H.R. 3724, the End Woke Higher Education Act, or vote against the broader bill if it reaches the floor with Title II included.

Sincerely,

Ted Mitchell



President

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
Association of Public and Land-grant Universities  
National Association of Independent Colleges and Universities