

January 15, 2020

Roxanne Rothschild
Executive Secretary
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570-0001

RE: Jurisdiction—Nonemployee Status of University and College Students Working in Connection with Their Studies, 29 CFR Part 103, RIN 3142-AA15

Dear Ms. Rothschild:

The American Council on Education, the Association of American Universities, the College and University Professional Association for Human Resources, the Council for Christian Colleges & Universities, the Council of Independent Colleges, and the National Association of Independent Colleges and Universities (hereinafter referred to as the “Signatories”) thank you for the opportunity to submit these comments in response to the above-referenced Notice of Proposed Rulemaking (“Proposed Rule”) issued by the National Labor Relations Board (“NLRB or Board”) and published at 84 Federal Register 49691 on September 23, 2019. For the reasons set forth below, the Signatories support the Board’s Proposed Rule establishing that students performing services in connection with their studies are not employees under the Act.

I. Statement of Interest

The Signatories’ members include private higher education institutions subject to the National Labor Relations Act (“Act” or “NLRA”) and employees at those institutions responsible for labor relations. Detailed descriptions of the Signatories, reflecting their broadly representative voice and interest in this rule-making, are found in an Appendix to this letter.

II. Comments

The Board first asserted jurisdiction over private colleges and universities 50 years ago.¹ For the vast majority of time since, the Board has taken the position that the relationship between students and their higher education institutions is primarily academic and not suited to the NLRA's collective bargaining framework, which was designed for an industrial setting. Finding that the services these students perform are attendant to and inseparable from student status, the Board has repeatedly concluded that students who perform service for compensation for their private college or university are not employees under the Act.

However, at times the Board has taken the opposite position, holding that students are employees under the NLRA. During the last two decades, the Board's varied positions on the issue of students has roughly tracked which political party controls the agency rather than proffered evidence of changed circumstances concerning the relationship between students and institutions—as that relationship has not materially changed over the years.

The Board's periodic departure from longstanding precedent began in 2000, when, for the first time in the NLRA's then 65-year history, the Board's Democratic majority ruled in *New York University*² (“*NYU*”) that certain graduate assistants at the university were employees within the meaning of the Act. By imposing collective bargaining on a fundamentally educational relationship, the Board in *NYU* abandoned well-established law that had been grounded in “sound policy” and approved by both “courts and Congress.”³ Then, in 2004, the Board under Republican control, returned to the norm by issuing *Brown University*⁴ (“*Brown*”). That decision overruled *NYU* and recognized once again that student assistants are not “employees,” because the nature of their relationship with the university is “primarily an educational one, rather than an economic one.”⁵ After a dozen more years, a Democratically controlled Board overruled *Brown* in its 2016 *Columbia University* decision⁶ (“*Columbia*”).

The three years since the *Columbia* decision have seen a number of private universities facing disruption and turmoil on their campuses, amidst uncertainty about whether and when the worm will turn again. In April 2018, teaching and research assistants at Columbia University went on strike in an effort to force the university to negotiate a contract.⁷ At the University of Chicago, graduate students engaged in a strike in June

¹ *Cornell University*, 183 NLRB 329 (1970).

² *New York University*, 332 NLRB 1205 (2000).

³ *NYU* at 1209 (Member Hurtgen, concurring).

⁴ *Brown University*, 342 NLRB 483 (2004).

⁵ *Id.* at 489.

⁶ *Columbia University*, 364 NLRB No. 90 (2016).

⁷ Douglas-Gabriel, Danielle, “Columbia graduate students strike over university’s refusal to negotiate a contract.” *Wash.Post*, 24 Apr. 2018. <https://www.washingtonpost.com/news/grade-point/wp/2018/04/24/columbia-graduate-students-strike-over-universitys-refusal-to-negotiate-a-contract/>.

2019 seeking university recognition of their union.⁸ At the end of 2019, Harvard graduate teaching and research assistants went on a month-long strike as leverage in contract negotiations, refusing to “administer exams, grade papers, or complete research until their demands are taken seriously by the university.”⁹

In an effort to promote consistency and predictability for the private higher education landscape, which litigation on this issue has not (and really cannot) provide, the Board has sensibly decided to address the issue under its rule-making authority. Specifically, the Board’s Proposed Rule states that “[s]tudents who perform any services, including, but not limited to, teaching or research assistance, at a private college or university in connection with their undergraduate or graduate studies are not employees within the meaning of Section 2(3) of the Act.”¹⁰

The Signatories support addressing the issue of student coverage under the Act via rulemaking, and generally support the Board’s Proposed Rule as drafted. It sensibly revives and cements well-understood, longstanding precedent and takes into consideration the unique circumstances of the relationship between students and their college or university. The Signatories hope that by taking this approach the Board will curb its recent tendency to vacillate on students’ employee status.

However, the Signatories also ask the Board to consider clarifying the Final Rule to recognize that campus employment by students will not make them employees under the Act, even in situations where the services the students provide are not directly connected to their studies. Such positions benefit students in sundry ways and circumstances, enhancing their educational opportunities and college experience, and developing skills that will serve them well as citizens and in future placements.¹¹ Set forth below, we articulate our support for and requested changes to the Proposed Rule in greater detail.

⁸ Rhodes, Dawn, “‘We wanted a union then, and we deserved a union then’: University of Chicago grad student workers go on strike.” Chicago Trib., 4 Jun. 2019. <https://www.chicagotribune.com/news/breaking/ct-met-university-of-chicago-graduate-student-strike-20190604-story.html>.

⁹ Douglas-Gabriel, Danielle, “Harvard graduate students strike after year-long contract negotiations with the university.” Wash. Post, 3 Dec. 2019. <https://www.washingtonpost.com/education/2019/12/03/harvard-graduate-students-strike-after-year-long-contract-negotiations-with-university/>.

¹⁰ 84 Fed.Reg.49699.

¹¹ See *San Francisco Art Institute*, 226 NLRB 1251 (1976). As noted in an oft-cited footnote in the United States Supreme Court’s *Bakke* decision:

[A] great deal of learning occurs informally... As a wise graduate of ours observed in commenting on this aspect of the educational process, "People do not learn very much when they are surrounded only by the likes of themselves."

* * * *

In the nature of things, it is hard to know how, and when, and even if, this informal "learning through diversity" actually occurs. It does not occur for everyone. For many, however, the unplanned, casual encounters with roommates, fellow sufferers in an organic chemistry class, student workers in the library, teammates on a basketball squad, or other participants in class affairs or student government can be subtle and yet powerful sources of improved understanding and personal growth.

A. The Board Should Not Assert Jurisdiction Over Students that Have a Primarily Academic Relationship with Colleges and Universities

Fundamental elements of the student-institutional relationship underscore the appropriateness of the Proposed Rule, and the decades-long precedent that informs it:

- Students must first and foremost be enrolled at the college or university before performing any services on campus.
- The students are *admitted* to the college or university, not *hired* by institutions. Admission is not based on qualifications to perform services on campus, but is instead focused on academic qualifications.
- As part of “financial aid” packages, students are routinely offered opportunities for campus employment, with their eligibility contingent on remaining enrolled as a student at the college or university. Their eligibility for this aid-based employment ceases when they complete the degree or their enrollment ends for other reasons.
- It is almost always the case that students work for a relatively limited period of time, and generally do so sporadically over the course of their academic program (e.g., some students serve as a teaching assistant for one semester and may not do so again for more than several years, if ever).
- In order to subsidize the costs of graduate students’ education and the cost of living while they are enrolled, universities often waive tuition or award scholarships, stipends, and grants, as well as provide free health insurance—none of which traditionally have been considered “wages.”
- Students are the *consumers* of educational services, and any economic relationship they have with their college or university is secondary to their educational relationship.

This is the case whether or not the students’ work requirements are directly connected to their studies. As the Board determined in *San Francisco Art Institute*,¹² a unit composed of undergraduate student janitors—at least one of whom had worked for more than 2 years—were not entitled to the Act’s protections due to (1) “the brief nature of the students’ employment tenure;” (2) the nature of the students’ compensation, which included tuition remission and work study funds; and (3) “the fact that students are concentrated primarily with their studies rather than with their part-time employment.”¹³

Bowen, Admissions and the Relevance of Race, Princeton Alumni Weekly 7, 9 (Sept. 26, 1977).

Regents of the Univ of Cal. v. Bakke, 438 U.S. 265, 312 n.48 (1977).

¹² *San Francisco Art Institute*, 226 NLRB 1251 (1976).

¹³ *Id.* at 1251-2.

Additionally, in many cases, work requirements imposed on students are vital components of their academic curriculum, not work conducted for the college or university. When teaching, conducting research, supervising undergraduates in a laboratory, grading papers and exams, or performing other such work, students are not working at a trade for wages but are instead furthering their education. This learning-by-doing is inseparable from pursuit of degrees, and various Board decisions have certified this fact:

- “[Work obligations] cannot be divorced from the other functions of being a ‘graduate student;’”¹⁴
- “Teaching is so integral to [students’] education that they will not get the degree until they satisfy that requirement;”¹⁵
- “[T]he doctorate is a research degree, and independent investigation is required in order to earn it.”¹⁶

These requirements are not work in the traditional sense but rather are meant to support and augment the education students are receiving. They are a major component of the curriculum created and implemented by colleges and universities to enhance students’ academic opportunities and to enable students to develop skills necessary to become teachers and scholars in their own right, or professional leaders outside of academia. They are part and parcel of a student’s education and are evidence of *student* status, not employment.

Students have a primarily educational relationship to their institutions, and work requirements are often vital to postsecondary education. Such work cannot and should not be used as a means of imposing principles designed for the industrial setting on an academic relationship.

B. The Principles of the NLRA and the Processes of the NLRB Are Incompatible with the Realities of the Relationship Between Students and Their College or University

The NLRA was designed to govern the relationship between management and labor in the industrial workplace, not relationships between students and a college or university. As the Supreme Court stated in *Yeshiva v. NLRB*¹⁷ (“*Yeshiva*”), “[t]he Act was intended to accommodate the type of management-employee relations that prevail in the pyramidal hierarchies of private industry.”¹⁸ In this case the Supreme Court made clear that “[t]he ‘business’ of a university is education,” and the “principles developed for use in the

¹⁴ *Brown* at 489.

¹⁵ *Id.* at 488.

¹⁶ *Leland Stanford*, 214 NLRB 621 at 622 (1974).

¹⁷ *NLRB v. Yeshiva*, 444 US 672 (1980).

¹⁸ *Id.* at 680 (citing *Adelphi University*, 195 NLRB 639 at 648 (1972)).

industrial setting cannot be ‘imposed blindly on the academic world.’”¹⁹ In essence, “[t]he lecture hall is not the factory floor.”²⁰ The Act simply was not designed to govern educational relationships and imposing the Act’s constraints on such relationships will undermine academic integrity to the detriment of students, their education, and their relationship with their college or university.

Case law makes clear that when determining employee status, the employer-employee relationship should be viewed in its entirety; the focus should be on the primary nature of the relationship²¹ as well as the underlying principles of the statute in question.²² As explained above, the primary nature of the relationship between students and their college or university is educational, not economic, and the Board clarified in its Proposed Rule that the NLRA “contemplates a primarily economic relationship between employer and employee.”²³

Additionally, the NLRA is incompatible with other laws and regulations that inform, and in some respects govern, the relationship between institutions and students. The extensive list of federal requirements (both regulatory and legislative) imposed on higher education institutions “[focus] on access, availability, affordability and effectiveness, all of which relate to the ability of students to satisfy *educational* objectives.”²⁴ Congress did not contemplate or attempt to harmonize the obligations of these other laws and regulations with the NLRA or vice versa, because it never intended the Act to apply to students.

Member Miscimarra identified examples of incompatibilities between student rights to organize under the NLRA and other federal law: “[C]urrent Board law, if applied to university student assistants, may contradict federal educational requirements,” including the Family Educational Rights and Privacy Act (“FERPA”), Pub. L. 93-380 (1974); 20 U.S.C. § 1232g), which restricts the disclosure of students’ educational records, and the Higher Education Act of 1965, which restricts the use of data collected on financial aid forms, Pub. L. 89-329 (1965). *Columbia*, slip op. at 27. Another example of significant import is Title IX of the Education Amendments of 1972, 20 U.S.C. Sect. 1681 *et seq.*, where the Department of Education is poised to issue a Final Rule that further clarifies

¹⁹ Id. at 681 (citing *Syracuse University*, 204 NLRB 641 at 643 (1973)).

²⁰ *Columbia* at 24 (then-Member Miscimarra, dissenting).

²¹ *NLRB v. Town & Country Elec., Inc.*, 516 US 85 (1995) (Board’s interpretation of “employee” to include company workers who are also paid union organizers is consistent with the purposes of the Act); *Goodwill Indus. of Denver & United Food & Commercial Workers Int’l Union, Local No. 7, AFL-CIO-CLC*, 304 NLRB 764 at 765 (1991) (disabled individuals who work for Goodwill maintained a “clearly rehabilitative” relationship, “not [one] primarily guided by economic or business considerations,” so the disabled workers did not fit into the meaning of “employee” under the Act; *Brevard Achievement Center, Inc.*, 342 NLRB 982 at 984 (2004) (individuals who work in a “‘primarily rehabilitative’ relationship[s] . . . are not statutory employees”); *Goodwill Industries of Denver*, 304 NLRB 764 at 765 (1991).

²² *WBAI Pacifica Found.*, 328 NLRB 1273 at 1275 (1999) (“the principle that employee status must be determined against the background of the policies and purposes of the Act.”); *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177 (1941) (examining the policies of the Act in considering employee status of strikers).

²³ 84 Fed. Reg. 49693 (citing *Brevard Achievement Center* at 984-985).

²⁴ *Columbia* at 27 (then-Member Miscimarra, dissenting) (emphasis in original).

institutional obligations and student expectations where a student worker is subjected to sexual harassment in the campus workplace.

As noted by the Supreme Court, “[t]he Board has not been commissioned to effectuate the policies of the [Act] so single-mindedly that it may wholly ignore other and equally important Congressional objectives.”²⁵

Furthermore, the NLRA does not contemplate the non-economic consequences of allowing its processes to infringe on an academic relationship. The primary goal of students when attending a college or university is to receive an education and obtain a degree, but in order to achieve this goal, they make one of the largest financial investments they will make in their lifetime. It is the best interest of students to obtain the education that costs so much as quickly as possible.²⁶ If students are allowed to qualify as employees under the Act, not only could a union become the exclusive representative of that group of students—despite diverse and varied needs of the individual students in an academically competitive environment—but the union would have the *use of economic weapons* against economic adversaries. If students and their college or university are turned into economic adversaries, significant financial consequences are possible—and frankly probable—for students.

The use of economic weapons, such as strikes and lockouts, is the inevitable and intended consequence of collective bargaining; as the Board expressed in *American Baptist Homes*,²⁷ “[t]he presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system.”²⁸ Economic weapons, however, were never intended for use in the relationship between students and their college or university. Member Miscimarra outlined the potential consequences of the use of economic tactics in labor disputes between students and their college or university. These include:

- loss, suspension, or delay of academic credit;
- suspension of stipends and tuition waivers;
- potential replacement;
- loss of tuition previously paid;
- academic suspension; and/or
- potential discharge or expulsion.²⁹

Should any of these occur, a student will be delayed or blocked entirely from attaining their degree. In its decision in *Columbia*, the Board ignored “what hangs in the balance

²⁵ *Southern Steamship Co. v. NLRB*, 316 US 31 at 47 (1942).

²⁶ *Columbia* at 23 and 26 (then-Member Miscimarra, dissenting).

²⁷ *American Baptist Homes of the West d/b/a Piedmont Gardens*, 364 NLRB No. 13 (2016).

²⁸ *Id.* at 9 (citing *NLRB v. Insurance Agents’ International Union*, 361 US 477 at 487–489 (1960)).

²⁹ *Columbia* at 29-30 (then-Member Miscimarra, dissenting).

when a student's efforts to attain an undergraduate or graduate degree are governed by the risks and uncertainties of collective bargaining and the potential resort to economic weapons by students and universities."³⁰ The NLRB will not be able to protect students from such consequences if they allow these individuals to qualify as employees under the Act.

Moreover, the relationship between students and the faculty with whom they work would be at risk if collective bargaining and its consequences are permitted. In the course of earning their degrees, students develop close relationships with their faculty mentors and engage in intellectual discourse with them throughout their tenure as students. These relationships often form collaborations that last throughout their careers. This critical student-teacher relationship is vital to higher education. It fosters flexibility, creativity, and critical thinking among students and ensures quality in educational programs. However, the collective bargaining process would necessarily insert third parties, whose priorities are economic, not educational, into the learning process. This would have a potentially profound, deleterious impact on the educational relationship among the students, the faculty, and their college or university.

Finally, the timeliness of the Act's collective bargaining processes and procedures are poorly suited for students. The Act's procedures, including but not limited to representation elections, pre-election proceedings, unfair labor practice charges, and litigation to resolve any or all of these processes, take immense amounts of time. Students are in their positions for a fixed duration, potentially only weeks or months during a semester. Their time in their position is limited, and any dispute involving those students is likely to come to a resolution long after the individual has left that role. Even the *student* status of the individual will likely terminate prior to the conclusion of a Board case affecting him or her. The processes of the Board are not designed to accommodate the rapidly shifting relationship students have with their college or university, and if imposed regardless of this incompatibility, students will only see the negative side of collective bargaining during their tenure.

C. Collective Bargaining for Students Would Permit Encroachment on Universities' Control Over Academic Matters

Imposing collective bargaining upon the relationship between students and their college or university will undeniably undermine higher education institutions' freedom to control the academic elements of that relationship. In *Brown*, the Board properly recognized that none of the subjects of collective bargaining can be separated from the core educational concerns and academic decisions of a university: "the broad power to bargain over all Section 8(d) subjects would, in the case of graduate student assistants, carry with it the

³⁰ Id. at 25 (then-Member Miscimarra, dissenting).

power to intrude into areas that are at the heart of the educational process.”³¹ Collective bargaining would infringe on “traditional academic decisions, including course length and content, standards for advancement and graduation, administration of exams, and many other administrative and educational concerns.”³² Collective bargaining “would intrude upon decisions over who, what, and where to teach or research – the principal prerogatives of an educational institution,”³³ and “once academic freedoms become bargainable, ‘Board involvement in matters of strictly academic concern is only a petition or an unfair labor practice charge away.’”³⁴

Examples of such infringement already exist, despite Member McFerran’s claims in her dissent to the Proposed Rule that students petitioning for union representation have focused on legitimate “bread-and-butter” concerns since *Columbia* was issued.³⁵ For example, graduate students at Southern Illinois University sought to bargain for the “freedom to create syllabi, select course materials and to determine grades,”³⁶ topics at the core of university instruction. At Temple University “graduate students bargained for an Affirmative Action Plan for ‘the selection of graduate and undergraduate candidates for admission,’ and increased ‘funding for Future Faculty Fellowships targeted towards graduate students from minority groups,’”³⁷ despite the fact that who shall be admitted and under what circumstances goes to the heart of graduate and undergraduate education. Graduate students at the University of Wisconsin bargained for provisions that prevent faculty from evaluating student teachers through unannounced visits.³⁸ University of Michigan graduate students sought a contract provision that non-native English speakers who passed a qualifying test would “not be pulled from their teaching assignment on the grounds that they lack English language proficiency,”³⁹ even if classroom performance was inconsistent with the test results.

The evidence already demonstrates the clear problems inherent in allowing students to collectively bargain. The NLRA does not place limits on the duty to bargain, and vital academic decisions will be inappropriately drawn into labor negotiations. While some state laws do limit the scope of collective bargaining with respect to academic and curriculum-related matters,⁴⁰ no such limits exist under the Act, but the need for such

³¹ *Brown* at 492.

³² *Brown* at 490 (citing *St. Clare’s Hospital*, 229 NLRB 1000 at 1003 (1977)).

³³ *Brown* at 490.

³⁴ *Brown* at 490 (citing *St. Clare’s Hospital* at 1003).

³⁵ Proposed Rule at 49697 (Member McFerran, dissenting).

³⁶ See *Agreement Between the Board of Trustees of Southern Illinois University and The SIUC Graduate Assistants United, IEA-NEA, July 1, 2010 – June 30, 2014*, at 11 (available at <http://laborrelations.siu.edu/common/documents/labor-contracts/2010-2014-gau.pdf>).

³⁷ See *The New School, 02-RC-143009, Opposition to Petitioner’s Request For Review* at 36, fn. 5 (Aug. 20, 2015).

³⁸ See *Agreement between the State of Wisconsin and the Teaching Assistants’ Association, November 7, 2009-June 30, 2009*, at 29 (available at <http://taa-madison.org/wp-content/uploads/2016/08/2009contract.pdf>).

³⁹ *GEO 2010-11 Bargaining Platform* at 2 (available at http://www.geo3550.org/wp-content/uploads/2011/01/GEO_2010-11_Bargaining_Platform_101210.pdf).

⁴⁰ *Illinois Educational Labor Relations Act*, 115 ILCS § 5/4 (excluding from collective bargaining “matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of

state laws clearly confirms the potential infringement into academic matters that should be solely determined by colleges and universities.

III. Conclusion

The Signatories thank the Board for issuing this Proposed Rule and attempting to resolve this issue for private colleges and universities and the students they serve. Stability is needed for educational success of both students and higher education institutions, but only through enduring policy can such stability be achieved.

Additionally, the Signatories thank the Board for the opportunity to comment on this Proposed Rule via the notice-and-comment process. This process ensures more comprehensive feedback from stakeholders, guaranteeing the Board additional volume and depth that it would not have received if it had simply requested amicus briefs in connection to a specific case. Moreover, the notice-and-comment process produces enduring policy that will be less vulnerable to shifting political winds. Through this process the Board will be able to adopt and fine-tune a bright-line rule that, without being constrained by the facts and issues presented in a specific case, will allow the Board to explain in detail the full scope of the rule and how it is to be applied and followed.

The Signatories look forward to working with the Board as it moves forward on this important issue.

Sincerely,



Ted Mitchell
President

services, its overall budget, the organizational structure and selection of new employees and direction of employees”); California Government Code § 3562(q) (University of California) (excluding from collective bargaining: admission requirements for students, conditions for awarding degrees, and content and supervision of courses, curricula, and research programs); Washington Revised Code § 41.56.203 (Washington State University) (excluding from collective bargaining the ability to terminate individuals if they are not meeting academic requirements, the amount of tuition and fees, the academic calendar, and the number of students to be admitted to a particular class or section); Maine Revised Statutes Annotated, Title 26, § 965(1)(c) (excluding “educational policies” from scope of bargaining).

On behalf of:

American Council on Education

Association of American Universities

College and University Professional Association for Human Resources

Council for Christian Colleges & Universities

Council of Independent Colleges

National Association of Independent Colleges and Universities

APPENDIX

Interest of the Signatories

The **American Council on Education (ACE)** mobilizes the higher education community to shape effective public policy and foster innovative, high-quality practice. As the major coordinating body for the nation's colleges and universities, our strength lies in our diverse membership of more than 1,700 colleges and universities, related associations, and other organizations in America and abroad. ACE is the only major higher education association to represent all types of U.S. accredited, degree-granting institutions: two-year and four-year, public and private. Our members educate two out of every three students in all accredited, degree-granting U.S. institutions.

The **Association of American Universities (AAU)** is a non-profit organization, founded in 1900 to advance the international standing of United States research universities. AAU's mission is to shape policy for higher education, science, and innovation; promote best practices in undergraduate and graduate education; and strengthen the contributions of research universities to society. Its members include 63 U.S. public and private research universities.

The **College and University Professional Association for Human Resources (CUPA-HR)**, the voice of human resources in higher education, represents more than 31,000 human resources professionals at over 2,000 colleges and universities. Its membership includes 93 percent of all U.S. doctoral institutions, 79 percent of all master's institutions, 58 percent of all bachelor's institutions, and over 500 two-year and specialized institutions.

The **Council for Christian Colleges & Universities (CCCU)** is a higher education association of more than 180 Christian institutions around the world, including more than 150 in the U.S. and Canada. The CCCU's mission is to advance the cause of Christ-centered higher education and to help our institutions transform lives by faithfully relating scholarship and service to biblical truth.

The **Council of Independent Colleges (CIC)** is an association of 768 nonprofit independent colleges and universities, state-based councils of independent colleges, and other higher education affiliates, that works to support college and university leadership, advance institutional excellence, and enhance public understanding of independent higher education's contributions to society. CIC is the major national service organization for the leaders of the small to mid-size, teaching-focused independent colleges and universities sector of American higher education. CIC member institutions have a track record of pioneering new educational ideas and practices that are often emulated by larger, less nimble universities. At these institutions, it is very much the case that the relationship to students is primarily academic and students performing services in

connection with their studies are not employees under the Act; therefore, CIC fully supports the position outlined in the above letter.

National Association of Independent Colleges and Universities (NAICU) serves as the unified national voice of independent higher education and reflects the diversity of private, nonprofit higher education in the United States. Member institutions include major research universities, church-related colleges, historically black colleges, art and design colleges, traditional liberal arts and science institutions, women's colleges, two-year colleges, and schools of law, medicine, engineering, business, and other professions. With more than 3 million students attending independent colleges and universities, the private sector of American higher education has a dramatic impact on our nation's larger public interests.