

September 18, 2020

The Honorable Adam Smith
Chairman
U.S. House of Representatives
Armed Services Committee
Washington, DC 20515

The Honorable Mac Thornberry
Ranking Member
U.S. House of Representatives
Armed Services Committee
Washington, DC 20515

The Honorable James Inhofe
Chairman
United States Senate
Committee on Armed Services
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
United States Senate
Committee on Armed Services
Washington, DC 20510

Dear Chairman Smith, Ranking Member Thornberry, Chairman Inhofe, and Ranking Member Reed,

We write today regarding the language concerning memorandums of understanding (MOUs) establishing Confucius Institutes (CIs) that is included in the House- and Senate-passed versions of the Fiscal Year 2021 National Defense Authorization Act (NDAA).

We support and agree in principle with the three provisions that would be required in CI contracts. Our institutions take seriously the threat of foreign influence and interference, and in the past few years we have worked with senior federal officials, including the FBI, the Office of the Director of National Intelligence, as well as Senators and Representatives, to inform our institutions about these threats. However, we are concerned that this sets a dangerous precedent for the federal government, especially the new authority granted to the U.S. Department of Education (ED) as outlined in the Senate bill, which would allow the agency to review and presumably invalidate a contract. The agency has no experience or expertise to make such judgements and current law explicitly prohibits ED from being involved in academic matters. Instead, we urge you to accept the language that is in the House bill, which would incorporate advisement from the higher education community and the National Academies.

In July 2018, we sent a letter¹ to all colleges and universities with CIs to alert them to the bicameral, bipartisan concerns regarding malign foreign influence and the need for transparency regarding CIs. The letter included language asking college and university leaders to review and ensure that each campus' individual MOU protects the academic freedom of the institutions, prohibits the application of foreign laws on a campus, and grants full managerial authority to the institution of higher education. Since that time, many institutions have updated their MOUs, and a significant number of schools have made the decision to shutter their CIs for various reasons.

¹ <https://www.acenet.edu/Documents/Letter-on-Confucius-Institutes.pdf#search=Confucius%20institutes>

It is extremely problematic that the language included in Sec. 1090 of the Senate-passed NDAA allows the Department of Education to interfere with non-federal academic partnerships. Given this Department's aggressive behavior regarding Sec. 117, the part of the Higher Education Act that covers foreign gifts and contracts, and its willingness to exceed the clear language of the statute, we believe that ED would use this language to interfere in other academic matters. In addition, we are concerned that the Senate language is at odds with the provisions included in the *General Education Provisions Act* (GEPA) 20 U.S. Code §3403, which states, "No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system..."²

We urge you to accept the similar House-passed NDAA language (Sec. 1797) in the conference negotiations. The House language would require institutions to disclose the provisions in their MOUs for the purposes of being eligible for Department of Defense funding. It would also require an independent review of these MOUs, in consultation with the higher education community and the National Academies of Science, Engineering, and Medicine (NASEM) of the submitted MOUs.

We look forward to continuing to work with you to address these important issues.

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 Catholic Colleges and Universities
Association of Governing Boards of Universities and Colleges
Association of Public and Land-grant Universities
Association of Jesuit Colleges and Universities
NAFSA: Association of International Educators
National Association of Independent Colleges and Universities

² <https://www.law.cornell.edu/uscode/text/20/3403>