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May 19, 2021

The Honorable Chuck Schumer  
United States Senate  
S-221, The Capitol  
Washington, DC 20510

The Honorable Mitch McConnell  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

Dear Leader Schumer and Leader McConnell,

On behalf of the undersigned higher education associations, I write in strong opposition to amendment #1911 being offered by Senator Sullivan as part of the consideration of S.1260, the “U.S. Innovation and Competition Act of 2021.” This amendment would establish broad and problematic affirmative requirements that private and public institutions of higher education attest that they “protect” free speech and religious freedoms, and explain how they do it, as a condition of receiving funding from the National Science Foundation (NSF).

We firmly oppose this amendment for several reasons. Private colleges and universities are not subject to the First Amendment, and yet the amendment would require them to certify that they have policies consistent with it. Moreover, the amendment does not include an exemption for religious institutions which may have policies that balance the free exchange of ideas with deeply held religious views and beliefs, consistent with their religious missions. In addition, this amendment would impose an impossible-to-carry-out requirement on institutions to police freedom of speech off-campus and in private settings (i.e. “including extramural speech of staff and students”). It ignores existing institutional policies and state laws. The amendment’s requirement for an “attestation” could open the door to False Claims Act liability for private institutions and the potential for frivolous lawsuits. Finally, the amendment puts the responsibility for enforcement of these requirements with the NSF, a federal science agency that is ill-equipped to take on such a role.

This amendment is deeply flawed and would create enormous policy implications for our institutions, faculty, staff, and students. If Congress is going to consider such a dramatic shift in policy, it should only be done in regular order, with public hearings that allow for stakeholder input.

For all of these reasons, we strongly oppose this amendment.

Sincerely,

A handwritten signature in black ink that reads "Ted Mitchell". The signature is written in a cursive style with a large, prominent "T" and "M".

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 Jesuit Colleges and Universities

Association of Public and Land-grant Universities

National Association of Independent Colleges and Universities