

## **Talking Points on Proposed Amendment No. 1911 by Senator Sullivan on Freedom of Speech**

### **Background**

- Sen. Dan Sullivan (R-AK) is considering an amendment to S.1260, the “U.S. Innovation and Competition Act of 2021” that would establish broad and problematic requirements for attestations from private and public institutions of higher education around protections of free speech, viewpoint diversity, religious liberty, and prohibitions on discrimination.
- Colleges and universities would need to 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).

### **Talking Points**

- Private colleges and universities are not subject to the First Amendment, but the amendment would require them to certify that they have policies consistent with the First Amendment.
- The amendment ignores existing institutional policies and state laws and the requirement for an “attestation” from colleges and universities, and could open the door to False Claims Act liability for private institutions and the potential for frivolous lawsuits.
- Senator Sullivan’s 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.
- The amendment would impose an impossible-to-carry-out requirement on institutions to police freedom of speech off-campus and in private settings.
- 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.