June 11, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Leader McConnell, Minority Leader Schumer, Speaker Pelosi, and Minority Leader McCarthy:

As president of the Association of Public and Land-grant Universities (APLU), I write to urge that Congress include temporary and limited liability protections for public universities in the next COVID-19 supplemental measure.

APLU is a research, policy, and advocacy organization dedicated to strengthening and advancing the work of public universities. Annually, our 203 U.S. member campuses enroll 4.3 million undergraduates and 1.2 million graduate students, award 1.2 million degrees, employ 1.1 million faculty and staff, and conduct $46.8 billion in university-based research.

Public universities have prioritized the safety and welfare of students, faculty, and staff. As the COVID-19 pandemic upended life across the U.S. in March, our nation’s universities rapidly transitioned thousands of classes online in order to stave off transmission of the virus while providing aid to support students most impacted by the pandemic. Institutions also promptly adopted Center for Disease Control safety guidelines and supplied the necessary Personal Protective Equipment (PPE) for essential campus personnel.

As colleges and universities assess the extent to which they can reopen campuses for education and research, their top priority remains the welfare and safety of the campus population and surrounding communities. Many institutions are considering delivering large lecture classes online, coupled with in-person discussion sections. With a limited number of classrooms and labs, there will possibly be more evening and Saturday classes to facilitate social distancing. Many institutions are thinking of eliminating breaks in the fall semester to reduce the possibility of students leaving and returning to campus with the virus. Schools are considering messaging campaigns to encourage use of masks and hand hygiene. Controlling the flow of traffic in high density areas and randomized testing are also part of university strategies.
There is no one-size-fits-all solution. What may make sense for one campus may not fit with another, but the commonality is the level of care and thoughtfulness of public university strategies with priority to the safety of the campus community. Our website links to a number of our member institution’s communications on plans to reopen.

Nevertheless, despite appropriate and exhaustive efforts to prioritize the safety of the campus community, institutions fear that excessive lawsuits and extended and expensive court battles will needlessly hinder our mission while frustrating the public good. Even with institutions taking every appropriate precautionary measure it is impossible to completely eliminate risk. The specter of costly, protracted litigation looms large. For public universities, litigation will be a significant drain on state entities at a time they can least afford it.

Universities are not islands. By design, they are anchors in their communities. Students patronize local restaurants and grocery stores and have off campus social life. They work at local businesses. They volunteer for area non-profits. Many live off campus and commute using public transportation. Each visit off campus carries a risk of contracting COVID-19 and transmitting it to others once back on campus. This risk is particularly acute at universities because students trend younger and are more likely to be asymptomatic carriers of the virus as a result. Universities can do only so much about these dangers.

To be clear, APLU does not seek an ironclad, impenetrable shield from liability for public universities. Rather, we believe temporary and limited liability protections are both appropriate and in furtherance of the public good. We recognize there are some policymakers with good faith concerns that such protections might seemingly absolve institutions from their responsibilities to prioritize the health of campus communities including students, faculty, and staff. Policymakers are right to scrutinize requests for liability protections to ensure they are not inadvertently creating incentives for willful and grossly negligent misconduct to the detriment of public health. Like most policy, the key is balance. A limited protection conditioned on institutions complying with appropriate health agency guidance and not acting in a grossly negligent manner can help provide that appropriate balance. Such protections will help public universities appropriately reopen and go back to work in advancing education, research, and community engagement.

It is critical for our nation’s short and long-term economic future that universities reopen as appropriate and are not hindered in doing so due to fear of litigation. The economy has taken a significant downturn due to the global pandemic leaving a staggering number of Americans unemployed. Colleges and universities will play an essential role in rebuilding the economy.

As employers of 2.3 million faculty and staff and as institutions that are educating and preparing 19.4 million students to be part of the workforce of tomorrow, our nation’s public colleges and universities are uniquely situated to contribute to the public good. Additionally, as enterprises conducting $52.8 billion in research, public research universities play a key role in identifying cures, developing new technologies, and ensuring the needs of their communities are met. Across the entire higher education sector, colleges and universities last year directly employed 3.6 million individuals. When factoring in those individuals who work for companies that do a
significant amount of business with a college or university, higher education accounts for approximately 6.7 million U.S. jobs, equaling more than $383 billion in labor income. The total gross output of these institutions is nearly $1 trillion. In many cases, APLU institutions are the largest or one of the largest employers in their states and a primary economic driver for the communities in which they are located.

In addition to contributing positively to the economy, colleges and universities continue to be at the forefront of efforts to develop innovative technologies and vaccines to combat the virus. With over 100,000 lives lost due to the virus, public research universities are essential in the race for a cure. For example, colleges and universities with medical schools and hospitals are widely recognized for treating COVID-19 patients; a public research university is credited for inventing the first FDA-approved at-home test to detect the virus; numerous colleges and universities are rapidly testing various promising vaccines; and others are designing a rapid-response supply chain to quickly deliver COVID-19 medications when they become available.

Our nation’s public research universities need support to deliver on their mission.

Thank you for your consideration of temporary and limited liability protections for public universities related to COVID-19. Please let me know how APLU can be a resource.

Sincerely,

Peter McPherson
President
Association of Public and Land-grant Universities