



March 20, 2024

The Honorable Virginia Foxx
Chairwoman
House Committee on Education and the
Workforce
Washington, DC 20515

The Honorable Bobby Scott
Ranking Member
House Committee on Education and the
Workforce
Washington, DC 20515

Dear Chairwoman Foxx and Ranking Member Scott,

In advance of the House Committee on Education and the Workforce's markup on Thursday of the Respecting the First Amendment on Campus Act, H.R. 7683, I write to express the concerns of the Association of Public and Land-grant Universities (APLU). First, APLU must express disappointment that the legislation is being rushed to markup less than a week after introduction. The bill would have significant implications for public universities, but due to the process, we are only able to provide limited analysis and response.

APLU appreciates goals of the legislation to ensure institutions are upholding their obligations under the First Amendment and fostering learning environments in which students are exposed to a variety of perspectives. However, APLU does not believe the legislation contains appropriate solutions in furtherance of these goals. While APLU needs to conduct further analysis, we believe the bill would harmfully micromanage public university policies at the federal level, overriding the judgments of states and campus administrators who know the needs of their communities best, and raise the need for institutions to direct substantial resources to administration rather than in support of students.

The First Amendment combined with case law provides deep protections for free speech and association on campuses of public universities, while enabling institutions to put in place reasonable, view-point neutral restrictions to protect public safety and speakers while enabling their higher education mission. While some aspects of the legislation related to designated public forums reinforce existing precedent within some circuits, not all circuit courts have adopted such standards. The result of the legislation in some cases will restrict public universities' ability to protect the use of property for the campus community and likely make institutions greater targets by outsiders who seek to disrupt learning environments. As such, the bill would treat all public university outdoor property as if it was traditional public fora. However, public institutions own and maintain an incredible diversity of property including biological field stations, athletics fields, sewage plants, parking lots, residence halls, forests, etc. We find it highly unusual that Congress would insert itself into the designation of state property in ways it would likely never consider for other non-federal public lands.

APLU is also concerned with the manner in which the legislation will drive up legal expenses of institutions, diverting resources that could otherwise be devoted in furtherance of public universities' education, research, and community engagement missions. For examples, creating new private rights of action and conditioning receipt of Title IV on waiving sovereign immunity

are deeply concerning. Additionally, the legislation contains incredibly harsh penalties of loss of Title IV eligibility for what could be unintentional infractions due to ambiguities with the bill's extremely prescriptive standards. APLU questions the need for such penalties, waivers of sovereign immunity, and creation of private rights of action as the First Amendment provides adequate protections for free speech on campus and judicial remedies for institutional noncompliance.

Lastly, APLU is concerned by numerous provisions of the legislation that micromanage state university policies at the federal level, needlessly overriding the judgments of states and institutional leaders. For example, while we appreciate the need for students to be informed of campus policies and protections for free speech, it is unnecessary for Congress to prescribe the manner in which this occurs. The needs of training students and campus communities more broadly, especially during orientation, are incredibly demanding. The experience can sometimes lead to information overload as institutions must ensure students are informed of a vast array of academic and campus safety policies. It is remarkable overreach for Congress to get involved in what must be shared during a student orientation and makes it much more likely important information will not be absorbed by students. Similarly, prescriptive standards in the legislation regarding governance of student organization policies override the discretion of campus administrators who know the needs of their communities best.

APLU appreciates your consideration of our views and welcomes the opportunity to work together in furtherance of shared goals as the legislation moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Becker". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mark Becker
President
Association of Public and Land-grant Universities

CC: Members of the House Committee on Education and the Workforce