



July 8, 2024

Chairman Jason Smith
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Ranking Member Richard Neal
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

RE: Markup of H.R. 8914 – the University Accountability Act and H.R. 8913 – the Protecting American Students Act

Dear Chairman Smith and Ranking Member Neal:

On behalf of the American Council on Education and the undersigned higher education associations, we write to express our serious concerns about two bills — H.R. 8914, the University Accountability Act, and H.R. 8913, the Protecting American Students Act — scheduled to be marked up by the committee on Tuesday, July 9.

There is no doubt campuses faced stern tests this past academic year in seeking to balance two pillars of American higher education: protecting both student safety and freedom of expression. Protests over the war in Gaza that followed the Oct. 7 Hamas attack on Israel often presented difficult questions and choices for campus leaders. There is no one-size-fits all playbook for dealing with such heated and emotional demonstrations, with responses to different situations depending on a multitude of variables. Public colleges and universities must adhere to the First Amendment, and private, nonprofit colleges and universities are bound to adhere to free speech principles under their own policies and, in some cases, state law.

However, there are some core principles that campus leaders have applied, including protecting students while ensuring they still have every chance to learn, to speak out, and to challenge their own institutions and the wider society. It is critical to maintain safe and productive campus learning environments while not being afraid of the educational possibilities inherent in civil confrontation and debate. But it is also of paramount importance to set clear rules and policies and ensure they are observed, with enforcement and consequences when they are not, and to not tolerate violence and other illegal actions. Protestors cannot be allowed to infringe on the rights of other students, and those who knowingly break the rules must be ready to accept the consequences. Campus leaders are clarifying policies and procedures, including regarding use of outdoor spaces, student conduct rulebooks, and enhanced enforcement mechanisms, to make sure they are ready for the upcoming fall semester.

We strongly believe that the current legal requirements of Title VI and its enforcement mechanisms, centered at the Office of Civil Rights (OCR) of the Department of Education, already provide robust defenses against hate-based discrimination, including incidents based on antisemitism and Islamophobia. The numerous Title VI investigations launched by OCR against institutions since Oct. 7, and recent resolution agreements between OCR and investigated institutions, underscore the extensive power and authority of the federal government to intervene and mandate changes to campus policies and operations.

H.R. 8914, on the other hand, would undermine the current Title VI enforcement framework. Rather than helping campuses and the Department of Education do a better job meeting challenges related to the types of protests that took place over the past few months, it would spawn costly and time-consuming litigation, with the potential for the imposition of onerous fines. This would unnecessarily drain institutional resources away from effective compliance with Title VI, while doing little to protect students against hate-based discrimination.

The second bill we are addressing in this letter, H.R. 8913, would make an already bad and misguided policy worse. We opposed the enactment of the excise tax on investment income (26 U.S.C. § 4968) (hereinafter “endowment tax”) as part of the Tax Cuts and Jobs Act. It imposed an unprecedented and damaging tax on the charitable resources at certain private non-profit colleges and universities, undermining the teaching and research mission of the affected institutions without doing anything to lower the cost of college, enhance access, or address student indebtedness. For similar reasons, we oppose H.R. 8913. It would exacerbate the damage resulting from the current policy by extending the tax to additional institutions by lowering the threshold for the endowment tax by excluding non-U.S. citizens/permanent residents from the endowment-per-student calculation.

While the current and potential institutions subject to the tax are diverse – from liberal arts colleges to research universities and stand-alone medical schools – they all share a tremendous commitment to student financial aid and access. In fact, many have led the nation in providing debt-free access to low- and middle-income students, relying heavily on institutional and endowment resources. Instead of expanding the endowment tax as proposed in H.R. 8913, we urge the Committee to repeal it entirely or reform the tax in ways proposed by then Ways and Means Member Rep. Brendan Boyle (PA-02) in H.R. 5152, the Higher Education Endowment Tax Reform Act (117th Congress), which would have mitigated the effect of the tax on covered institutions that choose to devote more resources to student financial aid.

For all these reasons, we urge the Committee to withdraw H.R. 8914 and H.R. 8913 from the coming markup. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted Mitchell".

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 Public and Land-grant Universities
National Association of Independent Colleges and Universities