

June 3, 2020

Chairman Lamar Alexander
Ranking Member Patty Murray
Committee on Health, Education, Labor, and Pensions
428 Senate Dirksen Office Building
Washington, DC 20510

Chairman Alexander and Ranking Member Murray:

As our nation struggles to emerge from the first phase of the COVID-19 pandemic and attempts to safely resume a broad array of economic activity, the U.S. Chamber of Commerce has aggressively lobbied Congress to immunize businesses from legal liability if they carelessly risk coronavirus infection for employees or customers and it results in harm.¹ Lobbyists representing higher education, led by the American Council on Education, are also now asking for immunity from liability.² The undersigned organizations representing students, consumers, and workers strongly oppose proposals to immunize colleges because it would remove accountability for those that engage in careless actions that make their students or workers sick. If students or workers contract COVID-19 due to bad practices by a college or university, those harmed deserve the right to seek justice.

Each year, students and families will pay or finance hundreds of billions of dollars in higher education expenses.³ The decision to pursue higher education is often one of the largest financial decisions an individual or family will make in a lifetime. Amid unprecedented uncertainty about when and how colleges will safely resume educating tens of millions of people, current and prospective students and their families need to be able to trust that their college will act reasonably to keep them safe.

Immunity from legal liability could empower the worst actors in the higher education sector to gamble with students' lives. For example, Liberty University, a member of the higher education

¹ U.S. Chamber of Commerce, *Implementing a National Return to Work Plan: Resolution of Regulatory and Legal Liability Issues* (Accessed on June 3, 2020); <https://www.uschamber.com/coronavirus/implementing-national-return-to-work-plan#liability>; Horsley, S. *As Businesses Reopen, A Fight Is Brewing Over Worker Safety Lawsuits*, NATIONAL PUBLIC RADIO (May 6, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/05/06/851262646/as-businesses-reopen-a-fight-is-brewing-over-worker-safety-lawsuits>

² American Council on Education, *Letter to Congress Requesting Immunity from Liability* (2020); <https://www.acenet.edu/Documents/Letter-Congress-pandemic-liability-052820.pdf>

³ National Center on Education Statistics, *Fast Facts: Expenditures* (Accessed on June 3, 2020); <https://nces.ed.gov/fastfacts/display.asp?id=75>

lobbying group that has been a leading proponent of creating this immunity,⁴ has already ignored recommendations by public health officials and reopened its campus, placing thousands of students at risk.⁵ As could have been predicted, Liberty's students quickly fell ill.⁶ If lawmakers bestow legal immunity on the higher education sector, it would validate such reckless decisions and encourage others to similarly ignore basic steps that would help keep students and workers safe.

As Congress considers lobbyists' demands for immunity, lawmakers should also evaluate any potential action in the context of past abuses by many of the worst actors in higher education. In the wake of the last recession, for-profit colleges aggressively marketed themselves as a refuge from a weak labor market.⁷ Instead of delivering on promises of financial success for students and alumni, many of the largest schools pursued brazen schemes to defraud students by peddling bogus job placement statistics and false claims about the economic value of these degrees.⁸ Years later, after saddling borrowers with billions of dollars in debt and driving money back to executives and investors, some of these schools collapsed under the weight of their own lies and abuses.⁹ Others that survived converted to private, nonprofit status, blending into the ranks of the schools now lobbying for this unprecedented legal protection.¹⁰ Common across the most predatory schools during the prior era: a relentless drive to exploit economic anxiety and upheaval in pursuit of revenue.

The recent bipartisan Congressional Review Act vote rejecting the Trump Administration's "Borrower Defense" rulemaking was, in part, a rebuke of an effort by the Department of Education to restore schools' authority to use forced arbitration to block access to the courts. This regulatory maneuver was similarly intended to shield predatory schools from liability for their abuses. If granted immunity now, lawmakers would be inviting bad actor schools to exploit students and employees in the midst of this pandemic, putting their lives in jeopardy.

⁴ American Council on Education, *Membership Directory* (Accessed on June 2, 2020); <https://www2.acenet.edu/crm/members-directory/>

⁵ Noor, P., *'It is ungodly': students react to Liberty University reopening*, THE GUARDIAN (March 31, 2020); <https://www.theguardian.com/us-news/2020/mar/31/liberty-university-reopening-coronavirus-jerry-falwell-jr>

⁶ Arciga, J., *Nearly a Dozen Liberty University Students Sick With Coronavirus Symptoms After Falwell Reopened Campus*, THE DAILY BEAST (March 29, 2020); <https://www.thedailybeast.com/nearly-a-dozen-liberty-university-students-sick-with-coronavirus-symptoms-after-falwell-reopened-campus>

⁷ U.S. Senate Committee on Health, Education, Labor and Pensions, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (2012); https://www.help.senate.gov/imo/media/for_profit_report/PartI.pdf

⁸ Kamenetz, A., *Corinthian Colleges Mised Students On Job Placement, Investigation Finds*, NATIONAL PUBLIC RADIO (November 17, 2015); <https://www.npr.org/sections/ed/2015/11/17/456367152/corinthian-mised-students-on-job-placement-investigation-finds>

⁹ Douglas-Gabriel, D., *Feds found widespread fraud at Corinthian Colleges. Why are students still paying the price?*, THE WASHINGTON POST; <https://www.washingtonpost.com/news/grade-point/wp/2016/09/29/feds-found-widespread-fraud-at-corinthian-colleges-why-are-students-still-paying-the-price/>

¹⁰ Shireman, R. *These Colleges Say They're Nonprofit—But Are They?* THE CENTURY FOUNDATION (August 24, 2018); <https://tcf.org/content/commentary/colleges-say-theyre-nonprofit/>

Our concerns extend beyond the health and safety of the millions of students. Colleges and universities are some of the largest employers in their communities, employing more than four million people nationwide.¹¹ These workers include not only faculty and administrative staff, but also healthcare providers, food service workers, and the cleaning and maintenance workers responsible for reopening campuses across the country. Last month, a wide array of 140 organizations representing workers, consumers, and seniors wrote the Senate Judiciary Committee to oppose immunity proposals, explaining that the federal government “has substantially stepped back from its role to protect the health and safety of workers during this pandemic, and is dangerously relying on employers to self-police. Under these circumstances, the specter of unsafe workplaces is a significant concern Immunity would only exacerbate these problems.”¹² These very same concerns apply no less to colleges.

For more than a decade, schools have increasingly outsourced essential functions to independent contractors that employ predominantly low-income workers. These workers are also among the communities hardest hit by the public health effects, communities of color. For example, in a 2018 survey of food service workers at the City University of New York, 96% identified as a person of color.¹³ Almost 50% were living below the federal poverty line for a family of two.¹⁴ Limiting corporate liability and enacting widespread immunity will subject these workers, who are already most at risk, to being forced to either return to potentially unsafe environments or face longer term unemployment consequences. Over the past few months, too many struggling workers have had to make the impossible trade-off between their health and their financial security. We should not add to an already devastating crisis by allowing more companies and schools to make these decisions with impunity then removing the only recourse of those who are harmed.

Students depend on schools to make responsible decisions that protect the health and safety of their campuses and communities. Students lack the power to dictate the terms on which colleges will demand a return to academic life, potentially forcing students to choose between pursuing a higher education and staying safe. Students' and workers' access to justice offers a critical counterweight to the economic pressure that may drive colleges to reopen too quickly and hastily, without proper attention to health and safety.

¹¹ National Center for Education Statistics, *Enrollment and Employees in Postsecondary Institutions, Fall 2017 and Financial Statistics and Academic Libraries, Fiscal Year 2017* (January 2019); <https://nces.ed.gov/pubs2019/2019021REV.pdf>

¹² Public Citizen et. al, *Letter to U.S. Senate Judiciary Committee Opposing COVID Immunity for Businesses* (May 12, 2020); https://www.citizen.org/wp-content/uploads/Covid-Coalition-Letter-to-Senate-Judiciary_final-5-12-2020.pdf

¹³ Retail Action Project, *Struggling to Feed Their Own Families: A Survey of CUNY's Food Service Workers* (2018); https://d3n8a8pro7vhmx.cloudfront.net/rwdsu/pages/390/attachments/original/1522074292/CUNY_report.pdf?1522074292

¹⁴ *Id.*

For these reasons, we urge you to reject higher education lobbyists' demands to grant immunity from legal liability to colleges and universities. To discuss the concerns outlined in this letter, please contact Alexis Goldstein at Americans for Financial Reform (alexis@ourfinancialsecurity.org) or Mike Pierce at the Student Borrower Protection Center (mike@protectborrowers.org).

Americans for Financial Reform

Student Borrower Protection Center

Autistic Self Advocacy Network

Center for Responsible Lending

Clearinghouse on Women's Issues

Consumer Action

Consumer Federation of America

Consumer Federation of California

Consumer Reports

Consumer Watchdog

Consumers for Auto Reliability and Safety

Demos

Education Reform Now Advocacy

Hildreth Institute

Housing & Economic Rights Advocates

Jacksonville Area Legal Aid, Inc.

National Consumer Law Center (on behalf of its low-income clients)

National Indian Education Association

PHENOM (Public Higher Education Network of Massachusetts)

Project on Predatory Student Lending

Public Justice Center

Public Law Center

Robert Shireman, Director of Higher Education Excellence, The Century Foundation

SC Appleseed Legal Justice Center

Service Employees International Union

The Collaborative

The Institute for College Access and Success (TICAS)

THE ONE LESS FOUNDATION

U.S. Public Interest Research Group (PIRG)

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Women's Rights and Empowerment Network