

# The Washington Post

*Democracy Dies in Darkness*

## A shield from lawsuits could help our schools resume teaching and research

Opinion by **Editorial Board**

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PUBLIC HEALTH measures to stop the novel coronavirus from spreading have forced necessary but disruptive changes on institutions across U.S. society, and nowhere has the adjustment been more dramatic than in higher education. From online classes to canceled commencement ceremonies, the spring semester of 2020 will long be remembered as a time that tested the resilience of colleges and universities as never before.

And schools are determined to resume in-person operations as safely as possible in the fall, both to fulfill their educational missions and to salvage their badly stressed finances. Of 1,035 institutions surveyed by the Chronicle of Higher Education, some 63 percent plan to bring students back. They are spending millions to supply masks, retrofit facilities for social distancing and step up testing, according to the Wall Street Journal. This is the price of short-term reopening — which is itself the precondition for long-term viability.

What institutions of higher education do not yet have is assurance that they will not be met with costly litigation if, as seems inevitable, someone gets sick on campus despite their best efforts. The issue extends well beyond students, faculty and staff

to the broad range of people — maintenance contractors, performing artists, tourists — who may come onto college property on any given day. Given the importance of higher education, and the economic pressures it faces, there's a case for providing general protection that will shield schools making good-faith, scientifically sound safety efforts. Certainly if there is to be such protection for profit-making corporations, as Senate Majority Leader Mitch McConnell (R-Ky.) insists (and as may indeed be justified in some cases), it should be extended to these pillars of the nonprofit sector.

The best approach is probably not to legislate an exemption based on following some set of best practices. There is simply no prescription that would apply to the huge variety of institutions, large and small, rural and urban. Rather, the goal should be a requirement that plaintiffs prove they were harmed due to something more than mere negligence, the usual benchmark in tort law. How, exactly, to enact that heightened standard is also up for debate: Tort law is the province of the states, so, ultimately, they would have to decide. Congress could encourage them by conditioning aid to the states on it during the next economic stimulus package.

Liability protection is not a panacea; higher ed has other legal defenses without it, anyway, including the existing requirement that plaintiffs prove a causal link between a university's conduct and their alleged illness. Nor should there be any relaxation of other responsibilities institutions may have under health and safety laws enforced by regulation. Still, a shield from expensive and time-consuming lawsuits — temporary and narrowly targeted only to coronavirus-related complaints — would help our nation's institutions of higher learning resume teaching and research, to the maximum extent state and local governments permit.