



**UN** **K** **KOCH**

**OUR COURTS**

**UNKOCH OUR COURTS:**  
**UNCOVERING CORPORATE INFILTRATION**  
**OF THE U.S. JUDICIAL SYSTEM**

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# EXECUTIVE SUMMARY

We know that the Koch network has invested in a coordinated effort to influence the education, nomination, and confirmation/election processes of judges/attorneys general across the country. We know that judges educated by Koch-sponsored seminars are statistically more likely to issue longer prison sentences and overturn regulations protecting workers and the environment. And we know the Koch network has been behind the “tough on crime” and “right on crime” movements that brought us mandatory minimums, “three strikes” laws, laws allowing juveniles to be tried as adults, and stand your ground laws.

These are not actions that demonstrate a commitment to a more just world. Rather, these are actions from actors whose expressed intent is to roll back social progress and protections in service of an ideological culture war that leaves marginalized communities in its wake.

We want to build alongside local organizations to track dark money influence, empower local activists with research training, and mobilize grassroots resistance to this corporate takeover of our courts that is harming communities of color and stripping the public of our reproductive freedoms, voting rights, LGBT rights, access to healthcare, and regulations that protect our environment. Together we have the power to protect institutions designed for public good and transform them.

In Solidarity,

A handwritten signature in black ink that reads "Jasmine D. Banks". The signature is written in a cursive, flowing style.

Jasmine D. Banks

# INTRODUCTION

*“I have a very simple rule, which is, I’m engaged in the battle of ideas.”*  
Leonard Leo, Washington Post, 2019<sup>1</sup>

Recognizing the value of controlling the production and dissemination of ideas, corporations and conservative foundations have invested in a long-term strategy to cultivate a talent pipeline of ideologically-groomed lawyers, legal scholars, and judicial candidates to reshape our nation’s judiciary. The Law and Economics Center at George Mason University has played, and continues to play, a central role in this growing politicization of our court system-- facilitating a rise in corporate-favoring judicial decisions that subsequently strip the public of our reproductive freedoms, voting rights, LGBT rights, access to healthcare, and regulations that protect our environment.

A recent study comparing opinions issued by judges before and after attending one of George Mason University’s Henry G. Manne Programs in Law & Economics concluded that attendance at just one of the programs led judges to issue longer prison sentences and overturn regulations protecting workers and the environment. The study

in the opinions they issued after exposure.<sup>2</sup> This suggests that these programs not only pose a threat to the public’s confidence in individual judges, but in the judiciary as an institution.

To date, the Law and Economics Center at George Mason University has educated over 5,000 judges and 700 attorneys general and senior attorneys general staff-- but it is just getting started. A funding prospectus for the fiscal year 2018 explains that the Center has launched a new Federal Judges Initiative and Attorneys General Initiative to take advantage of Donald Trump’s presidency-- which offers a “once-in-a-generation opportunity to shape the contours of federal law for decades to come.”<sup>3</sup> To expand their reach to potential new legal talent, the Antonin Scalia School of Law is now offering new complimentary online courses to other law schools-- other universities list Mason’s course alongside their own programs and collect the tuition dollars for the class, but George Mason University faculty would actually teach the class and gain access to student data along the way.<sup>4</sup>

This report will detail the ways in which wealthy donors associated with the Koch network are leveraging the appearance of objectivity provided by institutions of higher education to manipulate what the legal community, including federal judges, are being taught and gain access to new, sympathetic talent. These same donors then utilize their network and wealth to influence the nomination and confirmation processes, ensuring that sympathetic talent is placed in powerful positions across the country.<sup>1</sup>

This report argues that an overlooked strategy for protecting one public good, our nation’s court system, rests in protecting another public good—our colleges and universities.



also concluded that judges who did not attend one of the seminars themselves but were merely exposed to judges who did attend were more likely to use more corporate-favoring language

# 5 ACTIONS YOU CAN TAKE TO UNKOCH OUR COURTS!

## 1. Call on George Mason University to Disaffiliate from the Law & Economics Center

George Mason University, a public institution, playing host to the Law and Economics Center lends a seemingly-objective cover to a clearly-partisan effort to tip the courts in favor of private interests. The university's history with secrecy, influence from the Koch brothers, and close association with Leonard Leo should preclude it from offering any form of training to our nation's judges.

**Demand Disaffiliation NOW: [bit.ly/disaffiliate](https://bit.ly/disaffiliate)**

## 2. Prevent Your Law School from Partnering with George Mason University to Indoctrinate the Next Generation of Corporate-Favoring Lawyers

Corporations and conservative foundations are investing in the spread of "law and economics" programs to campuses across the country with the explicit goal of making the next generation of lawyers and judges doubt the value of regulation and become more sympathetic to corporate interests. Their newest strategy is to offer "complimentary classes" taught by George Mason University faculty to other law schools-- for free-- in order to access more and more young talent. No university should partner with a university with such a history of secrecy and influence from its private donors.

**Protect Your Campus NOW: [bit.ly/unkochcourts](https://bit.ly/unkochcourts)**

## 3. Organize Against Corporate Judges in Your State

We know the Koch network wants to seat sympathetic judges to benches across the country. When they are successful, we know those judges issue longer prison sentences and overturn regulations protecting workers and the environment. We need to expose judges who are affiliated with the Koch network and who have been trained by George Mason University's judicial seminars-- and build grassroots resistance to their appointment or election.

**Help Us Build a Movement in Your State: [bit.ly/unkochcourts](https://bit.ly/unkochcourts)**

## 4. Be a Watchdog

We need to keep tabs on judges and attorneys general who are trained by these programs in order to best block their ascension to power. You can help by tracking dark money in your state, keeping tabs on new judicial nominations or upcoming judicial elections, and tracking dark-money funded Senators who will have the power to confirm Trump's federal nominations.

**Volunteer to Get Trained as a Watchdog: [bit.ly/unkochcourts](https://bit.ly/unkochcourts)**

## 5. Be a Whistleblower

Already know about corruption happening in your courts? Have a lead on dark money influence in your state? Help us build a response by sharing what you know. We'll respect your confidentiality.

**Protect Democracy & Blow the Whistle: [bit.ly/unkochcourts](https://bit.ly/unkochcourts)**

# LEVERAGING HIGHER EDUCATION

In the past three years, UnKoch My Campus has supported student and faculty activism that resulted in exposing George Mason University's complicity in providing its major donors with influence over the education it provides.<sup>5</sup> Notably, these donors include the Charles Koch Foundation and the Federalist Society-- both of which fund the judicial education programs at the Law and Economics Center and are involved in efforts to influence the judicial and legislative branches of government to better favor big business.<sup>6</sup>



Documents related to a \$30 million donation from the Charles Koch Foundation and an anonymous donor on behalf of the law school revealed that the donors were given annual oversight over the law school's operations and the ability to withdraw its funding at any time should the donors not approve of the school's mission and deliverables. The funding was also contingent on Dean Henry Butler remaining in his leadership position.<sup>7</sup> Other documents revealed that the Charles Koch Foundation had, years prior, been given influence over faculty hiring and retention decisions in the university's economics department.<sup>8</sup>

Due to months of pressure applied by GMU law alumni, the university finally revealed the identity of the third-party beneficiary in charge of enforcing the 2016 gift agreement on behalf of the anonymous donor-- a nonprofit called the BH

Fund.<sup>7</sup> According to tax documents, the mission of the BH Fund is to promote "limited, constitutional government," and it is operated by a man by the name of Leonard Leo.<sup>1</sup>

Leonard Leo is the Executive Vice President of the Federalist Society—an organization funded by the Charles Koch Foundation and dedicated to injecting conservative legal thought into law schools across the country.<sup>1</sup> Email correspondence also obtained via public records request reveals that Leo and other employees of the Federalist Society are actively involved in advising the law school on student admissions, hiring decisions, the Federal Judges Initiative, and the placement of "Scalia Law conservative and libertarian alums in federal clerkships."

As reported by the Washington Post last month, Leonard Leo has been playing a critical role in advising Donald Trump on judicial nominees and using the same BH Fund to coordinate a concerted effort to raise millions of dollars for mass advertising and media campaigns to garner support for the confirmation of those nominees.<sup>1</sup>

This interference in hiring, promotion, and retention of faculty and other individuals in academic leadership positions, along with a donor's influence over the scholarly inquiry, programming, and use of university funds, violate the long-standing principles of academic freedom and faculty governance that exist to protect the independence of the university.<sup>10</sup>

# HISTORY OF LAW AND ECONOMICS

Buying this sort of influence over the production and dissemination of ideas was an intentional, pivotal strategy used by corporate leaders to make the nation's courts more sympathetic to big business. Using the concept of "law and economics," a campaign was advanced to influence the ideas the legal community was introduced to at the start of their careers and shift the way judges applied the law to cases involving corporations.

In the 1970s, the arms and ammunition corporation John M. Olin inherited from his father was spending large sums of money on litigation. His company was taking heat for its environmental practices, and the courts were posing a growing threat to Olin's generational wealth.

After consulting other wealthy industrialists, including Charles Koch, Olin grew committed to making the next generation of lawyers and judges doubt the value of regulation and become more sympathetic to corporate interests.<sup>11</sup>

Drawing inspiration from the infamous Powell Memorandum,<sup>12</sup> Olin ultimately decided that the most strategic way to influence the courts was to influence the education of future lawyers and judges themselves—he understood that influencing the ideas the legal community was introduced to at the start of their careers would provide a larger return on investment than seeking to influence the way individual lawyers and judges applied the law by intervening on a case by case basis.

With this, Olin set out to transform the education system in the United States to promote conservative legal thought in the nation's law schools. Through his own family foundation, Olin began funding law and economics programs at universities across the country-- first focusing on supporting students with an economics background in obtaining law degrees through fully-funded fellowship programs.<sup>11</sup>

A man by the name of James Piereson was recruited by the Olin Foundation to guide these "philanthropic" investments. Piereson was strategic—he knew that the Olin Foundation's

goal to infiltrate the nation's college campuses with "pre-ordained conclusions" that benefitted corporations would not be accepted by any reputable institution. This meant the ideological nature of Olin's programs had to remain hidden, and he found his cover in the concept of law and economics.<sup>11</sup>

***"... If you said to a dean that you wanted to fund conservative constitutional law, he would reject the idea out of hand. But if you said that you wanted to support law and economics, he would see that as a program with academic content and he would be much more open to the idea. Law and economics is neutral, but it has a philosophical thrust in the direction of free markets and limited government. That is, like many disciplines, it seems neutral but isn't in fact."***

**James Piereson**

One of the legal scholars Olin first invested in was Henry Manne, who founded the Law and Economics Center while at the University of Miami. In 1986, Manne became the Dean of George Mason University's Law School and brought the Law and Economics Center to Arlington, Virginia—right

# THE STRUCTURE OF SOCIAL CHANGE

Over the past decade, Charles Koch has become well known for coordinating a network of the nation's wealthiest free-market fundamentalists to spend hundreds of millions of dollars each year to seat legislators and enact self-interested policy at the state and national levels. The idea of taking leveraging the education system in the United States to achieve one's political goals continues to be used by Charles Koch and this donor network today.

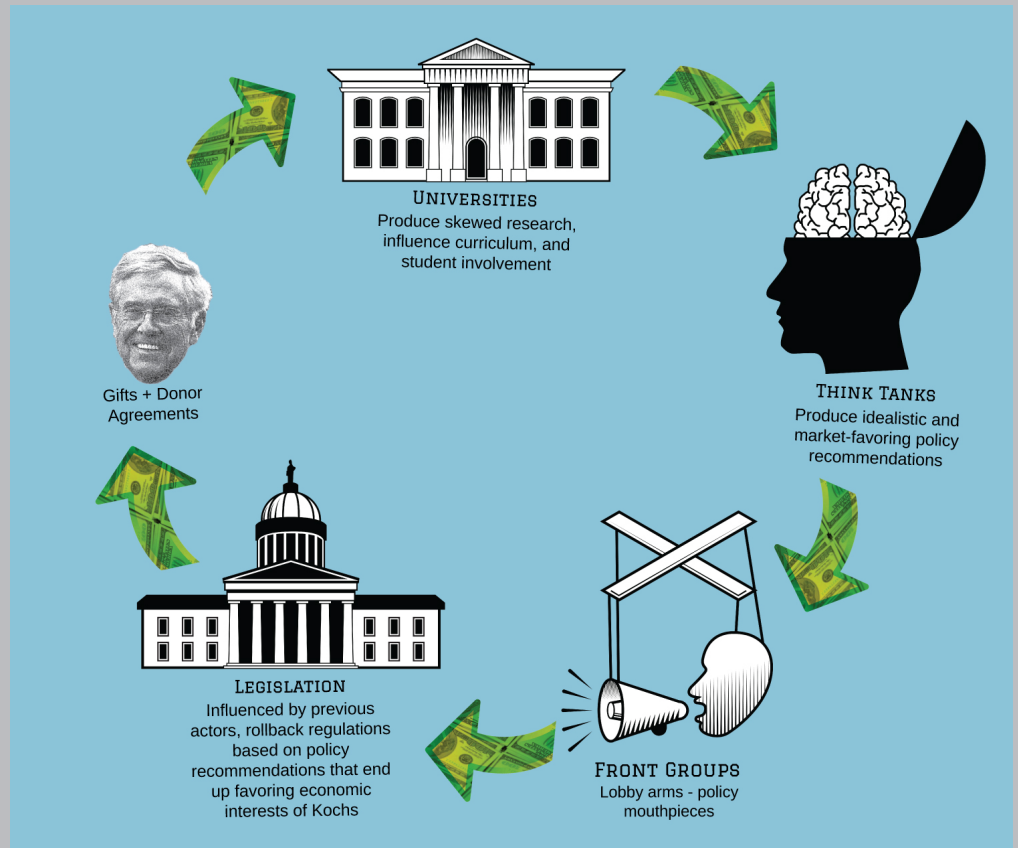
Using a strategy known as the Structure for Social Change, Koch and his donor partners invest in an infrastructure to produce ideas, policy papers, and advocacy networks, all of which are designed to facilitate the eventual implementation of favorable state and federal policies.<sup>18</sup>

By his own admission, Koch's university investments are the most crucial components of this infrastructure. The policy papers produced by his think-tanks are used to inform his political advocacy groups, and neither would be possible without the research produced within the universities receiving his money.<sup>19</sup>

According to Koch, investing in education supports the production of "scholarly research and writing which will provide [businessmen] with better understanding of the market system and better arguments in favor of this system." Additionally, education will allow the business community to "develop additional talent capable of doing the research and writing that undergird the popularizing of capitalist ideas."<sup>19</sup>

Universities also provide Koch with a "recruiting ground" to introduce young people to the "liberty movement," effectively aiding Koch in building consumer support for his policy products. In 2014, the Charles Koch Foundation described the motivations of its university investments to other wealthy donors as a means to "building state-based capabilities and election capabilities" by developing an "integrated" "talent pipeline" to achieve widespread support for, and adoption of, favorable policies at the state and federal levels.<sup>20</sup>

To this end, Koch has advised businessmen to support "only those programs, departments or schools that contribute in some way to [their] individual companies or to the general welfare of [the] free enterprise system."<sup>19</sup>





outside of the nation's capital. As soon as he arrived, Manne established an ideologically-homogenous faculty by firing as many existing professors as possible.<sup>13</sup>

Graduates of the fellowship programs Olin had established across the country provided Manne

with ideologically-aligned candidates to rebuild his faculty. Henry Butler, who would eventually become the Executive Director of the Law and Economics Center and now serves as the Dean of the Antonin Scalia School of Law, was one of Manne's first hires in 1986 after he completed an Olin Fellowship at the University of Chicago.<sup>13</sup>

***“Manne decided to conduct a bloodbath. He immediately fired every nontenured faculty member, offered buyouts to others, and gave a few of the survivors the opportunity to receive advanced degrees in economics. Manne recalls that George Johnson instructed him to ‘act fast, do anything you want to do now, because by next April they’ll be organized.’”***

**Steven M. Teles,  
The Rise of the  
Conservative Legal  
Movement**

## INADEQUATE PROTECTIONS

Ultimately, determining whether attendance at a continuing education programs like those hosted by the Law and Economics Center is appropriate is left to the discretion of individual judges. Several advisory opinions have been issued by the Codes of Conduct Committee to assist judges in this determination.

Most recently, Advisory Opinion #116 notes that both the Judges' Code and the Employees' Code prohibit participation in programs that might cause a neutral observer to question whether the seminars are being leveraged by its sponsors to curry influence over the judge or judicial employee. The opinion notes the importance of knowing the program's sources of funding, whether the topics covered in the seminar are likely to be related to the subject matter of litigation in which the sponsor or source of substantial funding is involved as a party, and whether it is viewed by the public as

having adopted a consistent political or ideological point of view equivalent to the type of partisanship often found in political organizations.<sup>14</sup>

This form of oversight places a major burden of proof on the judges themselves rather than the sponsoring program. Additionally, since most colleges and universities do not make their donor agreements public, there is no way for judges to determine whether donations from specific corporations or individuals were earmarked for specific seminars. Without proof of this, judges cannot determine if the topics covered in the seminar are related to the subject matter of litigation in which the source of substantial funding is involved.

The opinion also encourages judges to consider the sponsoring organization's stated mission, including any political or

ideological point of view it might have, and whether it engages in education, lobbying, or outreach to members of Congress, key congressional staffers, or policymakers in the executive branch.<sup>14</sup> These considerations are supported by Advisory Opinion #93, which states: “to qualify as an acceptable law-related activity, the activity must be directed toward the objective of improving the law, qua law, or improving the legal system or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.” It states that “a permissible activity, in other words, is one that serves the interests generally of those who use the legal system, rather than the interests of any specific constituency.”<sup>15</sup>

As this report has discussed, the concept of law and economics itself leans ideologically conservative.<sup>11</sup> Furthermore, judicial seminars on law and economics have admittedly focused on informing judges on the impacts their judicial decisions have on the business community, a specific constituency. We also know that the Law and Economics Center at George Mason University admittedly views their programs as means to help President Trump reshape the federal judiciary,<sup>3</sup> and it also hosts a Congressional Civil Justice Academy to provide educational programs for Members of the U.S. Congress and their staff.<sup>16</sup>

Furthermore, there is no requirement that state courts follow these advisory opinions issued by

the Judicial Codes of Conduct for the United States, and, based on a preliminary review of state judicial codes of conduct, states have vague (if any) guidelines related to the attendance of educational seminars.

There are also no regulations protecting against the privatization of judicial education by a single entity that has the potential to alter the judiciary as an institution, rather than simply impacting the decisions of a judge individually. Dr. Bruce Green of Fordham University argues that judicial regulation fails to account for the growing dominance of George Mason University’s judicial education program in comparison to other educational programs offered. When a single entity can essentially take over the field of judicial education on the subject of law and economics, their programs pose a risk not only to public confidence in the integrity of individual judges but to public confidence in the judiciary as an institution.<sup>17</sup>

The importance of considering the impact of these programs on the judiciary as an institution is supported by the new research conducted on George Mason University’s Henry G. Manne Programs in Law & Economics which concluded that judges who did not attend one of the seminars themselves but were merely exposed to judges who did attend were more likely to use more corporate-favoring language in the opinions they issued after exposure.<sup>2</sup>

# CONCLUSION

Conflicts of interest related to corporations footing-the-bill for judges to attend educational seminars, often referred to as “judicial junkets,” has been a topic of controversy for some time. Concerns have been raised that judges being flown to up-scale resorts and being wined and dined by the corporate donors that sponsor the seminars might later show favoritism to the corporations if they were to ever find themselves presiding over a case involving the company.

These concerns were raised before we had a clear understanding of the Koch network’s role in influencing these educational seminars and the role the seminars are clearly playing in cultivating a talent pipeline of ideologically-groomed lawyers, legal scholars, and judicial candidates to reshape our nation’s judiciary on the Koch network’s behalf. These seminars can no longer be addressed on a case by case basis. Instead, they must be understood as a major component of the Koch network’s overall strategy to mainstream the ideas and policies that benefit private interests.

This means that efforts to ensure a fair court system must include conversations not only about dark-money influence over the nomination and confirmation processes but dark-money influence over the mechanisms that have been put in place to groom the judges being installed in the first place. It is this battleground of ideas that the Koch network, including Leonard Leo, admits they are their most invested-- and it is where our attention is most lacking.



*President Donald J. Trump and Associate Justice Brett M. Kavanaugh at a courtesy visit in the Justices’ Conference Room prior to the investiture ceremony.*

# RECOMMENDATIONS

## **George Mason University must disaffiliate from the Law & Economics Center.**

George Mason University, a public institution, playing host to the Law and Economics Center lends a seemingly-objective cover to a clearly-partisan effort to tip the courts in favor of private interests. The university's history with secrecy, influence from the Koch brothers, and close association with Leonard Leo should preclude it from offering any form of training to our nation's judges.

## **Law schools must avoid partnerships with George Mason University.**

Corporations and conservative foundations are investing in the spread of "law and economics" programs to campuses across the country with the explicit goal of making the next generation of lawyers and judges doubt the value of regulation and become more sympathetic to corporate interests. Their newest strategy is to offer "complimentary classes" taught by George Mason University faculty to other law schools-- for free-- in order to access more and more young talent. No university should partner with a university with such a history of secrecy and influence from its private donors.

## **We need nimble, cross-issue mobilization against corporate judges in all 50 states.**

We know the Koch network wants to seat sympathetic judges to benches across the country. We need to expose judges who have been trained by George Mason University's judicial seminars or are otherwise affiliated with the Koch network-- and build grassroots resistance to their appointment or election. This grassroots response should be led by those most harmed by our court system-- communities of color, queer people, women, workers, and the poor.

## **We need nimble, cross-issue mobilization against Senators funded with dark-money in the upcoming 2020 elections.**

At the federal level, our Senate confirms the President's judicial nominees, and we know the Koch network wants to reshape our federal judiciary. During the upcoming 2020 Senate campaigns, we must send a message to Senators who are funded with dark money or are otherwise connected to the Koch network-- we do not trust them to block the confirmation of judges who do not serve the public good, so we will not elect them.

# CITATIONS

- <sup>1</sup>[https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/?utm\\_term=.d66934c05f38](https://www.washingtonpost.com/graphics/2019/investigations/leonard-leo-federalists-society-courts/?utm_term=.d66934c05f38)
- <sup>2</sup><http://elliottash.com/wp-content/uploads/2019/03/ash-chen-naidu-2019-03-20.pdf>
- <sup>3</sup>See Appendix A
- <sup>4</sup>See Appendix B
- <sup>5</sup><https://www.nytimes.com/2018/05/05/us/koch-donors-george-mason.html>
- <sup>6</sup><https://masonlec.org/donors/>
- <sup>7</sup>See Appendix C
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- <sup>13</sup>Steven M. Teles, *The Rise of the Conservative Legal Movement*
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- <sup>18</sup>See Appendix F
- <sup>19</sup><https://ia601206.us.archive.org/17/items/AntiCapitalismAndBusiness/Anti-Capitalism%20and%20Business.pdf>
- <sup>20</sup><https://ia601203.us.archive.org/9/items/FreedomPartnersLeveragingScienceAndUniversities/Freedom%20Partners%20Leveraging%20Science%20and%20Universities.pdf>

# APPENDIX A

GEORGE MASON UNIVERSITY SCHOOL OF LAW



## LAW & ECONOMICS CENTER FEDERAL JUDGES AND ATTORNEYS GENERAL INITIATIVES Funding Prospectus

The election of Donald Trump presents a historic opportunity for a new president to reshape the federal judiciary, reform the regulatory state, promote economic growth, and restore constitutional federalism. President Trump will have a rare opening to appoint hundreds of new federal judges before the end of his first term, exerting an influence on the judicial branch unlike any president since Ronald Reagan. At the same time, as the federal government retreats from its aggressive regulatory posture of recent years and returns more authority back to the states, state attorneys general will be called upon both to help effectuate many of these changes and to support or oppose parts of the president's policy agenda in the courts.

To take advantage of this once-in-a-generation opportunity to shape the contours of federal law for decades to come, the Law & Economics Center has launched a Federal Judges Initiative and an Attorneys General Initiative to develop special courses and curricula expressly designed to educate the new federal judges who will be appointed over the coming years and state AGs and their senior-most staff lawyers about the law and economics of these important policy matters.

For four decades, the Law & Economics Center (LEC) has provided the classroom where federal and state judges, state AGs, and other legal professionals have been trained in basic economics, accounting, statistics, regulatory analysis, and other disciplines. We believe that, if judges and other policymakers understand economics and the important interplay of economics and the law, they will be more likely to make sound decisions that support the rule of law and the free enterprise system, thereby allowing free and responsible individuals to engage in productive enterprises, create new economic opportunities, and generally determine their own courses in life. Our programs are designed to equip participants with the tools for understanding and appreciating the economic consequences of their policy decisions. And, since we began offering educational programs for legal professionals, over 5,000 judges and over 700 AGs and senior AG office attorneys have participated in one or more of our programs. But today, with the scope of federal policy in a period of enormous transition, our work is more important than ever.

### ABOUT THE LAW & ECONOMICS CENTER

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The Law & Economics Center at George Mason University's Antonin Scalia Law School is a national center for research and education that focuses on the timely and relevant economic analysis of legal and public policy issues confronting our nation. Because laws are incentives for changing behavior and achieving certain policy objectives, it is vital that the public servants who create and shape our laws understand economic concepts and theory. Experience has shown, however, that although judges and other policymakers may be experts in the law, they often have little familiarity with economics and struggle to identify the unintended consequences or the incentive structures created by particular legal decisions or public policies. We provide economics education to policymakers in the belief that such insight will foster a greater appreciation for the free enterprise system and the rule of law that undergirds it. As such, the LEC is a voice of economic reason in a policy arena dominated by hostility to the very industries that make it possible for our modern economy to thrive.

Since its inception in 1974, the LEC has recognized both the importance of developing timely, relevant, and unassailable research on public policy issues and the value of communicating research findings to those who directly shape our country's public policy discussions. We offer intellectually rigorous and balanced educational programs to federal and state judges, state attorneys general and their professional staff attorneys, U.S. congressional staff members, and other policymakers. In a typical year, more than 300 judges, 200 attorneys general staff lawyers, and 200 congressional staffers attend at least one of our programs; many attend more than one. These programs offer participants a solid grounding in the concepts and tools

used in economics, finance, accounting, statistics, and the scientific method, and participants also learn how to apply these fundamental principles to the analysis of a range of public policy issues related to banking, finance, health care, education, the environment, computer and communication technologies, and many others.

We are at a critical point in our nation's history, and the work of the LEC's Judicial Education Program (JEP) and Attorneys General Education Program (AGEP), in particular, has never been more important. The new presidential administration will have a significant impact on the make-up of the federal judiciary as well as the division of power between state and federal governments. The LEC stands ready to provide the training and education newly appointed federal judges and state attorneys general will need to play a constructive role in the public policy process.

## **ABOUT THE JEP AND AGEP**

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Federal and state judges are key players in the policy making process, and the Mason Judicial Education Program is the nation's preeminent provider of high-quality, balanced judicial seminars and conferences that focus on economic analysis and its relevance to the rule of law. The JEP's programs are designed to improve judicial knowledge as well as be timely, relevant, and intellectually stimulating. The LEC's flagship course offerings for judges are the Introductory and Advanced Economics Institutes for Judges. Over a full week of intensive classroom lectures and discussion, federal and state judges are given a solid grounding in economics, finance, and the scientific method, and the practical relevance of these disciplines is emphasized through the analysis of numerous cases. The judges leave the Economic Institutes equipped with a basic knowledge that will aid them in the performance of their jobs and enhance the judicial system.

Other JEP programs build on the legal and economic analysis skills taught in the Economics Institutes and apply them to individual topic areas, such as banking and financial markets, labor economics, energy and the environment, health care, and the economics of tort litigation. The purpose of these symposia and conferences is to provide judges with a deeper, more focused analysis of specific current legal and public policy issues in a dynamic format that combines lectures and debates over periods as short as two days to as long as a week. Leading attorneys and legal scholars provide a basic grounding in the fundamentals of important issues of the day and debate the issues from opposing viewpoints. These timely programs effectively alert the judiciary to emerging challenges in substantive legal matters.

Through their law enforcement and litigation decisions, state attorneys general are also among the most important policymakers in the country, and their work often has broad economic impacts. The Mason Attorneys General Education Program offers courses that provide state AGs and their senior staff attorneys with a broad-based understanding of economics and its relevance to pressing public policy debates of the day. Similar to the Judicial Education Program, the AGEP offers Economics Institute programs for attorneys general senior staff members to instruct them in the basic concepts of law and economics with a focus on applications in the public policy arena. The AGEP also runs conferences, seminars, and workshops where participants use their basic economics skills to analyze specific policy issues commonly addressed by state AG offices.

To date, more than 5,000 federal and state court judges representing all 50 states and the District of Columbia have participated in at least one of the LEC's judicial education programs, and the AGEP has hosted more than 700 attorneys general senior staff attorneys from 47 U.S. states and territories. These programs are tested and proven, and they provide the blueprint for two new and extraordinarily timely LEC initiatives addressing the specific needs of newly appointed federal judges and state attorneys general.

## **FEDERAL JUDGES INITIATIVE**

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The inauguration of Donald Trump as President in January 2017 will mean significant changes for America's federal government, and few will be as significant as the changes coming to the federal judiciary. There are currently 127 vacancies on the federal bench, and an additional 17 federal judges have already announced that they will retire or take senior status this year. Dozens more will retire or take senior status within the next four years. With the White House and Senate

controlled by the same party, President Trump will have an opportunity to nominate as much as one fourth of the federal judiciary by the end of his first term.

Most newly appointed federal judges come from law firms, state benches, and other government service, and all such judges would benefit from educational programs that give them the tools to understand and appreciate the economic consequences of their court decisions. For forty years, the Law & Economics Center has provided the classroom where federal judges have been trained in basic economics, accounting, statistics, regulatory analysis, and other disciplines. And we stand prepared to do it again.

To meet this new challenge, we have launched a Federal Judges Initiative within our Judicial Education Program, which will develop a series of special courses and curricula specifically designed for training the new federal judges who will be appointed over the coming years. Although those programs will enroll fewer participants than our typical course offerings that attract both federal and state judges, their value will be that they are more focused on the specific, cutting-edge issues of particular interest to new federal judges. They will also cover topics expected to be highly relevant to the current presidential administration's policy agenda, such as the economics of health care and health financing, financial services regulation, environmental and energy regulation, health and safety regulation, privacy, labor and employment law, and telecommunications regulation.

Our first dedicated Federal Judges Initiative program will be held in October 2017, in the form of a three-day symposium on Judicial Deference and Regulatory Agency Science, a topic that will be particularly relevant as the new president and Congress revise the federal government's approach to regulatory policy on a variety of fronts, including health care, environmental protection, energy policy, and consumer safety regulation. This program will provide in-depth analysis of the intellectual foundations of regulatory and administrative law and prepare judges to more closely examine the decision-making of expert agencies and their regulatory methods. Topics to be addressed include the development and use of scientific evidence, understanding cost-benefit analysis and its place in administrative law, the political economy (and real motivations) of regulatory agencies, and many other issues essential to understanding how regulations are shaped, applied, and enforced.

Other programs will address such topics as the economics of health care, health technology, and the market for health services; financial regulation and securities law; antitrust law and competition economics; the economics of federal preemption and competitive federalism; cost-benefit analysis and an understanding of risk; among many others. We expect each of these programs will be approximately two to four days in duration, and that they will feature top faculty drawn from leading academics as well as public and private sector experts.

These topical programs will be supplemented with a number of specially-tailored Case Analysis Workshops that provide an opportunity for judges to hone their economic analysis skills through practical application. Over two-days of intensive programming, the judge participants and our expert faculty jointly study a number of real legal cases that illuminate various economic principles, such as transaction costs and opportunity costs, accurate calculation of damages, asset valuation, and bargaining theory and the structuring of effective incentives. We have asked Federal Appeals Court Judge Douglas H. Ginsburg, who is a professor at the Antonin Scalia Law School, to collaborate with another LEC faculty member in leading the judge participants in an analysis of the legal and economic principles at play in each case. Moreover, each session will be augmented by additional expert faculty members who will be on hand to enrich the discussions.

We also plan to reserve one of our annual Economics Institutes for Judges as a seminar specifically tailored to federal judges. The curriculum would be tweaked to include not only our normal slate of topics, but also subjects of particular interest to federal judges, such as securities law, banking law, the law of federal preemption, etc. In total, we anticipate hosting between five and seven dedicated events through our new Federal Judges Initiative during the coming academic year—though the number may rise if funding permits. And we will ramp up programming in the coming years as more new judges are nominated and confirmed to the federal bench.



To ensure the widest possible reach, Judge Ginsburg has also agreed to help us develop a judicial recruiting and mentoring program that will leverage our extensive network of distinguished Judicial Education Program alumni to enroll new judges in Federal Judges Initiative programs. This roster of veteran JEP judges and our 16-member Judicial Advisory Board will be asked to help recruit new judges, mentor them through their legal and economics training, and attend various Federal Judges Initiative courses together with their mentees. To help manage this mentoring program and the enhanced recruitment needed to fully enroll the Initiative's many courses, we have hired an outreach coordinator—an attorney with extensive experience in both state and federal government—with the primary task of working with the judicial mentors, helping them recruit new judges into the program, establishing his own relationships with the new federal judges, and working with faculty to develop and facilitate Federal Judges Initiative and AG Initiative programming.

The expected influx of new federal judges during the coming three to four years represents a once-in-a-generation opportunity for the LEC to help mentor the federal judiciary's evolution for years to come. We are poised to seize the opportunity and take advantage of it to help train the judges that have such important influence over law and public policy.

## **ATTORNEYS GENERAL INITIATIVE**

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Much as our new Federal Judges Initiative will focus on training newly appointed judges for the special challenges associated with adjudicating the regulatory and constitutional disputes expected to arise in the coming four years, our new Attorneys General Initiative will focus on training state AGs and their senior staff attorneys to play a constructive role in the looming debates over the balancing of regulatory power between national and state governments. The LEC will direct our programmatic offerings to help educate AG staff from around the country in the legal and economic principles needed to prepare for these discussions.

Over the next several years, as the federal government is expected to withdraw from many areas of law and regulation in which it has been especially active in recent decades—such as health care, environmental regulation, energy policy, labor and employment law, and financial regulation—state AGs will have increased opportunities to influence these changes. Efforts by federal agencies to reform regulatory policies and devolve power to the states will no doubt be challenged in court, so state AGs can play a constructive effort in shaping the future of the state and federal regulatory balance. And, should the locus of power on various regulatory fronts shift to the states, AGs and their professional staff attorneys can play an active role in shaping the new structure and implementation of state regulatory policy. The purpose of our Attorneys General Initiative is to prepare state AGs and their staff members to play a role in these important legal and regulatory changes.

Although this initiative builds on the LEC's traditional resources and efforts, we see it as a novel and distinct supplement to traditional LEC programs in terms of the intensity of our recruitment efforts and the focus of various programs. Our general AGEF program offerings will continue to train AG staff on important matters that arise in the special context of state law enforcement, but programs offered through our Attorneys General Initiative will be tooled specifically to provide substantive knowledge on the important constitutional and regulatory issues AGs and their staff members will confront as federal power shifts to the states.

Like our special focus on recruiting new federal judges, the AGs Initiative will also take special efforts to bring additional AGs and more of their staff members to LEC programming, and to devote extra time and effort to mentoring those who participate. Through our extensive programming over the past decade, we already have very close relationships with a number of state AGs. We will leverage these existing relationships to help us recruit new participants—particularly to help ensure that the AGs themselves, and not only their staff members, participate in our educational programs. To do so, we expect to hold a number of Attorneys General Summits that focus on specific topic areas.

Each of the Attorneys General Summits will help participants gain subject-matter knowledge and a deeper understanding of the complex regulatory and litigation environment in which these issues will arise. In areas such as health care, financial services, consumer protection, and environmental policy, AGs can play an active and productive role in creating a new regulatory framework that advances federalism, the rule of law, and pro-growth policy. And the LEC intends to help the nation's AGs play that constructive role.

## BUDGET

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### FY 2018 Judicial Education Program Budget

\$144,000	Introductory Economics Institute for Judges (1 @ 144,000 per program)
132,000	Federal Judges Economics Institute (1 @ 132,000 per program)
161,000	Advanced Economics Institute for Judges (1 @ 161,000 per program)
336,000	Federal Judges Initiative Case Analysis Seminars (3 @ 112,000 per program)
312,000	Federal Judges Initiative Symposia (2 3- or 4-day events @ 156,000 per program)
169,000	JEP Symposium on Civil Justice Issues (1 @ 169,000 per program)
134,000	American College of Business Court Judges (1 @ 134,000 per program)
325,000	Staff
17,000	Administrative & Materials Cost

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**\$1,730,000**      **Total Program Expenses**

### FY 2018 Attorneys General Education Program Budget

\$152,000	Introductory Economics Institute for AGs (1 @ 152,000 per program)
126,000	Consumer Credit Academy (1 @ 126,000 per program)
164,000	Public Policy Institute on Financial Services (1 @ 164,000 per program)
183,000	Attorneys General Initiative Events (1 4-day event @ 183,000 per program)
105,000	Attorneys General Initiative Events (1 2-day event @ 105,000 per program)
129,000	Staff
11,000	Administrative & Materials Cost

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**\$870,000**      **Total Program Expenses**

## CONTRIBUTIONS

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The Law & Economics Center relies on the generosity of individuals, foundations, and corporations to achieve its mission. A list of current donors may be found on our website at [www.MasonLEC.org](http://www.MasonLEC.org).

Contributions in support of the Law & Economics Center may be made to the George Mason University Foundation – a 501(c)(3) corporation established to support the activities of George Mason University. The George Mason University Foundation's Tax Identification Number is 54-1603842. Contributions are tax deductible.

Checks in support of the LEC should be made payable to "George Mason University Foundation," with a use of funds designated for "Law School/LEC," and mailed to:

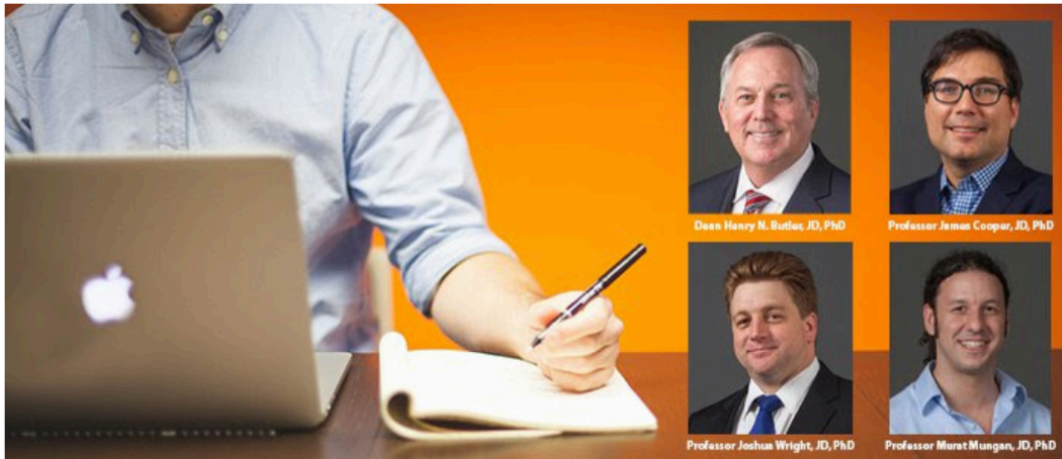
Todd J. Zywicki  
Executive Director, Law & Economics Center  
George Mason University School of Law  
3301 Fairfax Drive, Suite 440  
Arlington, VA 22201

## CONTACT

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For additional information, please contact Todd J. Zywicki, Executive Director of the LEC, at [tzywick2@gmu.edu](mailto:tzywick2@gmu.edu) or 703.993.9484.

# APPENDIX B



## Complimentary Online Course for Your JD Students

*"This course was terrific—the instructors provided a simplified, yet in-depth explanation of the concepts, which I found extremely interesting. I learned things that will definitely have application in practice!"*

Dear Professor McCluskey,

I am writing to make you aware of an opportunity our law school makes available to law schools nationwide—a **complimentary** online 2 or 3 credit course, **Economics for Lawyers**. Your school charges and collects its own tuition for the course.

Conceptualized and taught by your colleagues in law and economics, Professors Joshua Wright, James Cooper, Murat Mungan, and myself, the course exposes students to the essential economics, statistics, and financial and accounting concepts- the understanding of which we all recognize as valuable to budding lawyers.

The mechanics are simple:

- Your school lists our course among yours for Summer or Fall Registration. (If they need to credential me—one of the instructors—as a visiting faculty member, that's fine.)
- After your students register, you give us their names, and the students will access the course through our learning management platform.
- Your students will have opportunities for assessment throughout the course and can collaborate and converse with their classmates and professor. 24/7 technical support is provided as well.
- Your school's academic policies will be strictly followed, including your grading policy. Students pay tuition to your school, which awards the credit.

I recently emailed your dean about this exciting opportunity for your students. We've been running the course for a year with success; over 30 law schools have participated to date.

Please encourage your dean to [email](#) me about the course. I am happy to answer questions.

Sincerely,



Henry N. Butler, J.D., Ph.D.  
Dean  
George Mason University Foundation Professor  
Executive Director, Law & Economics Center  
Antonin Scalia Law School  
George Mason University



Antonin Scalia Law School, George Mason University  
3301 Fairfax Drive  
Arlington, VA 22201  
703.993.8000

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# APPENDIX C

## GRANT AGREEMENT

This grant agreement (this "Agreement") is made effective on March 31, 2016 (the "Effective Date"), between **George Mason University Foundation, Inc.**, a Virginia nonprofit corporation (the "Foundation"), **George Mason University** (the "University"), an instrumentality of the Commonwealth of Virginia, and an anonymous donor, a United States citizen, whose lawyer and agent for the purposes of this Agreement is [REDACTED] of the law firm [REDACTED] (the anonymous donor and [REDACTED] are collectively referred to as the "Donor"), for the benefit of the George Mason University School of Law (the "School"). The term of this Agreement shall begin on the Effective Date and shall continue in perpetuity (the "Term"), unless earlier terminated pursuant to the terms and conditions of this Agreement. The Foundation, the University, and the Donor are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. **Promoting Academic Freedom.** The Donor's grant is intended to help promote an environment at the University and the School where ideas can be exchanged freely and useful knowledge will benefit the well-being of individuals and society. Thus, the Parties agree that the academic freedom of the University, the School, and their faculty, students, and staff is critical to the success of the School's research, scholarship, teaching, and service.

2. **The School.** The Donor desires to support the School to advance the School's and University's educational missions as follows:

a. **The School's Mission and Dean.** As stated in the Law School's grant proposal, which is hereby incorporated into and made part of this Agreement, and attached as Attachment A (the "Proposal"), the University has informed the Donor, and the Donor is relying on such representation, that **the School's mission is to become a national leader in legal education by applying tools of economics and other social sciences to the study of legal doctrine, process, and institutions, (the "School's Mission").** Dr. Henry N. Butler, who was selected by the University, is currently the dean of the School (the "Dean"). **The Parties believe the Dean is a critical part of advancing the School's Mission; therefore, if the individual holding the Dean position changes, the University shall immediately notify the Donor.**

b. **The Scholarships.** To support the School's Mission, the University desires to create a merit-based scholarship program to attract approximately 57 students per academic year through the School's 2020-21 academic year (the "Scholarships"), so that the School awards 285 Scholarships in aggregate. The School shall award the Scholarships based on criteria created by the School and approved by the Dean as more fully described in the Proposal. The University deems the funds from the Scholarships to be tuition received by the University.

3. **The University's Commitment to and Support for the School.**

a. **Generally.** The School shall provide funding for at least ten years from the Effective Date for **twelve new Faculty positions, additional Staff positions, and support for the Center for the Study of the Administrative State and the Center for Liberty & Law, as more fully described in the Proposal** (collectively referred to as the "School Support"). The University shall use its best efforts to ensure at all times that qualified individuals hold the Faculty positions and Staff positions and that the Faculty positions and Staff positions do not become vacant for any significant period of time and that if they become vacant, they are refilled. The School has the sole and absolute discretion to determine and carry out all selection, research, scholarship, teaching, and service at the School.

b. **Funding for the School Support.** The University shall use its normal funding for the School along with the funds raised for the Scholarships, including the Contributed Amount (as defined in Section 4), which the University deems to be tuition, to provide the School Support.

4. **The Donor's Support for the Scholarships.** Subject to the terms of this Agreement, the Donor agrees to contribute funds to the Foundation to support the Scholarships, which the University deems as tuition that provides funding for the School Support (all or part of such funds are referred to as the "Contributed Amount[s]"). The maximum aggregate Contributed Amount under this Agreement is \$20,000,000.

5. **Foundation Grant Request; Proposed Grant Award Process and Schedule.**

a. **The Foundation Grant Request.** The Foundation shall submit an annual written proposal according to the schedule below to the Donor for the Donor's consideration (the "Foundation Grant Request") and an accounting of the expenditure of any Contributed Amount previously received. If the Donor approves the Foundation Grant Request, the Donor shall make a contribution up to the amount listed in the below schedule to the Foundation, and the Foundation agrees to accept such Contributed Amount on behalf of the University as stated in the below schedule. If the Donor, in its sole and absolute discretion, does not approve the Foundation Grant Request, the Donor is under no obligation to contribute any funds to the Foundation or the University.

b. **Foundation Grant Request and Proposed Grant Award Schedule**

<b>Foundation Grant Request Date</b>	<b>Donor Response and Proposed Contribution Date</b>	<b>Contributed Amount</b>
On or about May 1, 2016	On or about July 1, 2016	Up to \$4,000,000
March 1, 2017	On or about May 1, 2017	Up to \$4,000,000
March 1, 2018	On or about May 1, 2018	Up to \$4,000,000
March 1, 2019	On or about May 1, 2019	Up to \$4,000,000
March 1, 2020	On or about May 1, 2020	Up to \$4,000,000

c. **The Fund.** The Foundation shall place all of the Contributed Amount in a segregated and restricted fund on its books and records called the "Scalia Legacy Fund for the George Mason University School of Law" (the "Fund"). The Fund shall be used solely to support the Scholarships as stated in this Agreement.

d. **Contingent Funding.** The Donor's support under this Agreement is expressly contingent upon the Foundation and the University collectively raising \$10,000,000 from other donors to provide funding for the Scholarships (the "Additional Donor Support"), which, pursuant to Section 3.b., the University deems to be tuition to provide the School Support. Therefore, the Donor shall not provide any of the Contributed Amount or be obligated to fulfill any other obligation until the Foundation and the University collectively receive the Additional Donor Support and provide the Donor with notice of receipt of the Additional Donor Support.

6. **Contributed Amount Used Solely for Educational Purposes for the Scholarships.**

a. **Tax Status.** According to IRS records, the Foundation is an organization described within the meaning of Internal Revenue Code (the "Code") sections 501(c)(3) and 509(a)(1). The University has furnished the Donor with records showing that it is an organization described in Code section 170(c)(1) or 511(a)(2)(B). The Foundation and the University agree to immediately notify the Donor if their respective tax statuses change.

b. **Educational Purpose.** The Contributed Amount will be expended solely for the Scholarships, which is: (i) a public purpose described in Code section 170(c)(1); and (ii) an educational purpose described in Code section 170(c)(2)(B). The Contributed Amount will not be used to influence legislation as described in Code section 170(c)(2)(B), to influence the outcome of any election, for a political campaign or intervention, to carry on any voter registration drive, or any other purpose that would jeopardize the Donor's tax treatment of the Contributed Amount as a charitable contribution.

c. The Scholarships. The Foundation and the University shall use all Contributed Amounts solely to support the Scholarships as stated in this Agreement and shall return to the Donor any Contributed Amount not expended for the Scholarships.

## **7. Third Party Beneficiaries.**

a. BH Fund. The Parties agree that BH Fund, a Code section 501(c)(4) Virginia non-stock corporation, is a third party beneficiary of this Agreement. BH Fund and the Donor have previously agreed that the Donor has given BH Fund the right to enforce all of the Donor's rights in this Agreement, including the right to enforce the naming recognition described in Section 8. The Foundation and the University are not directly or indirectly entitled to the benefit of any waivers, indemnities, releases, or other provisions contained in any agreement between the Donor and BH Fund.

b. The Antonin Scalia Estate. The Parties agree that the Estate of Antonin Scalia (the "Estate"), as represented by its executor, and, upon its termination, any of its successors or assigns, are third party beneficiaries of this Agreement. During the lifetimes of the grandchildren of Justice Scalia who were age sixteen (16) or older at the time of his death, the Donor has given the Estate, and, upon its termination, any of its successors or assigns, the right to direct the University to stop use of the "School Name" (defined below) if, in their good faith opinion, the School has changed such that its continued use of the name would reflect unfavorably upon the reputation or legacy of the Justice. The School is to receive notice of this decision in accordance with Section 9(k), along with an opportunity to respond within sixty (60) days of such notice; provided, however, that the Estate and its successors and assigns retain sole discretion to determine whether to stop use of the School Name pursuant to this Section 7(b). Use of the School Name will be discontinued within two years of receiving notice pursuant to Section 9(k) from the Estate or its successors or assigns. If the Estate or its successors or assigns exercise the right to direct the University to stop use of the School Name, the Donor has the right, in its sole and absolute discretion, to terminate this Agreement.

## **8. School Name.**

a. Naming Recognition. In recognition of the Donor's desire to honor United States Supreme Court Justice Antonin Scalia, the University shall rename the School so that its official name is "The Antonin Scalia School of Law at George Mason University" (the "School Name"). In informal oral or written communication the School Name may be shortened to "The Scalia School of Law," "The Scalia Law School," "Scalia Law," or similar formations. The School Name shall be prominently displayed at or about all means of ingress/egress to the facility where the School is housed, and shall be printed, embossed, or otherwise included, at University expense, on all letterhead, envelopes, business cards, news or press releases, announcements and other printed materials relating to the School or events occurring at the School. The University shall use its best efforts to cause third parties that, with the authorization or cooperation of the University, refer to the School in formal communication (including, by way of example and not limitation, speaking engagements, program materials, publications, videos, and internet communications), to incorporate the full and complete School Name in all such references to the School. The University agrees that it shall convert to the School Name by no later than July 1, 2016.

b. State Council of Higher Education for Virginia Approval of the School Name. This Agreement is contingent upon the approval of the State Council of Higher Education for Virginia of both the School Name and the de-naming provisions of Section 7(b).

c. Similar Academic Programs. The School Name shall be linked to any academic units the University creates in furtherance of the School's Mission, including any branches, affiliates, satellites, or other

locations worldwide. Accordingly, the University hereby states that any academic unit with a material focus similar to the School's Mission must solely be known as, and conducted under the auspices of, the School Name.

d. Publicity. The Foundation and the University shall allow **BH Fund** to review and approve the text of any proposed publicity about the conversion to the School Name, which includes or mentions the Donor or the amount to be contributed pursuant to this Agreement.

e. The Donor's Rights. If the Donor, in its sole and absolute discretion, determines that the School or any academic unit bearing the School Name is no longer principally focused on the School's Mission, the Donor has the right to pursue any remedy available at law or equity, and has the right to terminate this Agreement. The Donor has the right to enforce the naming recognition described in this Section 8, in addition to the rights under Section 7(b) of the Antonin Scalia Estate and its successors and assigns. The Parties agree that irreparable damage may occur to the Donor in the event that the University breaches any of the terms of this Section 8. The Parties further agree that, in the event of any such breach, the Donor may seek specific performance of the terms of this Section 8, in addition to any other remedy available at law or equity.

## 9. General Provisions.

a. **The Donor has the right in its sole and absolute discretion to terminate this Agreement or discontinue or withhold any Contributed Amount if: (i) the Foundation or the University has not fully complied with any provision set forth in this Agreement; (ii) the Foundation or the University are not providing the School Support as stated in the Proposal; or (iii) such action is necessary to comply with any law applicable to the Foundation, the University, or the Donor. Such termination shall be deemed effective upon the expiration of thirty (30) days from the date notice was provided by the Donor to the Foundation or the University. In the event of termination of the Agreement, the Foundation and the University each agree to return all unexpended Contributed Amounts to the Donor within fifteen (15) days of the Donor's request.** The Foundation and the University each represent and warrant that they are not relying on the Donor's proposed funding under this Agreement to incur any obligation or take any action or inaction.

b. The Foundation and the University acknowledge that the Donor has requested anonymity in connection with or as a condition of donating the Contributed Amount. The Foundation and the University agree to keep confidential and not to disclose to any third party the existence of or contents of this Agreement without express written approval from the Donor, except as otherwise may be required by law, including but not limited to the Virginia Freedom of Information Act. If the Foundation is required to disclose the existence of or the content of this Agreement to any third party, the Foundation agrees to provide the Donor prompt written notice in advance of such disclosure. If a request is made of the University to disclose the existence of or the content of this Agreement, the University agrees to provide the Donor prompt written notice of such request.

c. The terms contained in this Agreement supersede all prior oral or written agreements and understandings between the Parties related to the matters contained in this Agreement and shall constitute the entire agreement between the Parties with respect to the matters contained in this Agreement.

d. In the event of a conflict between the provisions stated in the body of this Agreement and those stated in the Proposal, this Agreement shall control.

e. This Agreement shall not be modified or amended except by a writing duly executed by the Parties to this Agreement, provided, however, that any modification or amendment of Section 7(b) shall also be agreed to in writing by the Antonin Scalia Estate as represented by its Executor and, upon its termination, by its successors or assigns.



f. The provisions of this Agreement are deemed severable and should any part, term, or provision of this Agreement be construed by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, and provisions will not be affected thereby.

g. No delay or failure on any Party's part to enforce any right or claim which it may have hereunder shall constitute a waiver of such right or claim. Any waiver by any Party of any term, provision, or condition of this Agreement, or of any subsequent default under this Agreement in any one or more instances shall not be deemed to be a further or continuing waiver of such term, provision, or condition or of any subsequent default hereunder.

h. Other than the third party beneficiaries named in Section 7, this Agreement does not confer any rights or remedies upon any third party other than the Parties to this Agreement and their respective successors and permitted assigns.

i. This Agreement will be governed, interpreted and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of law provisions. The Parties agree that any action or proceeding filed relating to this Agreement will be commenced and maintained exclusively in the state courts located in Arlington County, Virginia, or the federal courts located in the Eastern District of Virginia. Each of the Parties hereby expressly consents to the exclusive personal jurisdiction of such courts for any such action or proceeding.

j. The Foundation and the University may not transfer or assign their respective interests in the Agreement or any amount to be contributed pursuant to this Agreement without the express written consent of the Donor. The Donor has the right to assign its rights in this Agreement to any third party for any reason.

k. All notices, approvals, or requests in connection with this Agreement shall be in writing and shall be deemed given when delivered personally by hand or one business day after the day sent by overnight courier (in each case with written confirmation of receipt or transmission, as the case may be) at the following address (or to such other address as a Party may have specified by notice to the other Party pursuant to this provision):

If to the Foundation:  
George Mason University Foundation  
Office of the President, MS 1A3  
4400 University Drive  
Fairfax, Virginia 22030

If to the University:  
George Mason University  
Office of the President, MS 3A1  
4400 University Drive  
Fairfax, Virginia 22030

If to the Donor:



If to the Donor, carbon copy to:



l. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement or direction. Copies of signatures (whether facsimile or other electronic transmission) to this Agreement shall be deemed to be originals and may be relied upon to the same extent as the originals.

*[Signature Page Follows]*

The Parties have hereby executed this Agreement as dated below, but agree that this Agreement is effective as of the Effective Date.

**GEORGE MASON UNIVERSITY  
FOUNDATION, INC.**

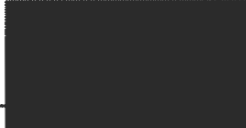
By: Janet Bingham

Name: Janet Bingham

Title: President

Date: 3-31-16

**DONOR**

By: 

Name: 

Title: 

Date: 3.31.2016

**GEORGE MASON UNIVERSITY**

By: Angel Cabrera

Name: Angel Cabrera

Title: President

Date: 3.31.16

# APPENDIX D

AGREEMENT BETWEEN  
THE MERCATUS CENTER AND GEORGE MASON UNIVERSITY  
REGARDING THE ESTABLISHMENT OF A PROFESSORSHIP

8/18/09  
sent copy to  
Brian Hooks &  
original to Jan  
White

THIS AGREEMENT is made July 27, 2009 between the Mercatus Center, Inc., 3301 North Fairfax Drive, Arlington, Virginia 22201 ("Mercatus") and George Mason University, Fairfax, Virginia ("the University").

WHEREAS Mercatus has received an offer of assistance from the Charles G. Koch Charitable Foundation ("Koch") to create the Mercatus Professorship at the Mercatus Center at George Mason University ("Professorship"); and

WHEREAS Mercatus deems it in its interest to support the academic excellence and advancement of the University; and

WHEREAS the University deems it in its interest to attract a qualified faculty member to their department of Economics to fulfill the objectives of the Professorship (as herein described);

NOW THEREFORE, Mercatus and the University enter into this Agreement to create a tenured faculty position within George Mason University ("GMU Faculty Position") to be occupied by the initial holder of the Professorship (that is, the candidate selected as a result of the procedures detailed in this document, the "Professor"). In consideration of the University's creation of the GMU Faculty Position, Mercatus agrees to contribute \$1,000,000 to the George Mason University Foundation as scheduled in Section 5, *infra*.

The final say in all faculty appointments lies in specified GMU procedures, involving academic approval and final approval by the Board of Visitors. Nothing in this document shall be construed as overriding such procedures. Alterations in the terms or conditions of this Agreement can be instituted only upon mutual agreement of the parties to the agreement and acceptance of any changes is likewise subject to the rules and procedures of George Mason University.

1. Objectives and Requirements of the Professorship. The objective of the Professorship is to advance the understanding, acceptance and practice of those free market processes and principles which promote individual freedom, opportunity and prosperity including the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions and social norms upon which they rely. The occupant of the Professorship ("Professor") shall hold a doctorate degree and shall be qualified in and committed to the foregoing principles. The objectives of the Professorship shall be accomplished through teaching, research, publishing, print and electronic media and such other means as may reasonably be deemed to comport with the mission of Mercatus. The primary academic affiliations of the Professor will be GMU and Mercatus. At the conclusion of each academic year, the occupant shall provide the Selection Committee and the Advisory Board with a brief summary of the principal activities, accomplishments and expenditures of the Professorship for the previous year and a budget and plan for the subsequent academic year. Any additional objectives or requirements for the Professorship shall be decided by unanimous vote of the Selection Committee (Section 2, *infra*).

In addition to an annual report by the Professor to the Selection Committee and Advisory Board, the president of Mercatus will report to these same bodies on how the Professor has contributed to the mission of Mercatus, as well as the purposes defined in the grant underwriting the Professorship. Substantive contributions to Mercatus programs include 5 or more per year of the following:

- Teaching in a Capitol Hill Campus course or event;
- Producing a research product (e.g., an article published in a refereed journal, a working paper of suitable quality, a useful database, a public interest comment), decided jointly with the President and General Director of Mercatus, and which is closely related to the Center's mission of producing highly credible research about the underlying sources of prosperity and poverty;
- Participating in a minimum of three Mercatus fundraising or public relations events;
- Supervising a student supported by Mercatus on a research project related to the Mercatus mission (e.g., a research project in Regulatory Studies, a dissertation, other research likely to significantly advance the student's knowledge and skills).

Substituting these contributions with alternative activities is allowable upon unanimous approval of the selection committee.

2. Selection Committee. The Selection Committee shall have five (5) members. The decision-making rule for the Selection Committee shall be majority vote, except in the case of changing or providing additional objectives or requirements, in which case the decision-making rule shall be by unanimous vote. The members of the Initial Selection Committee (i.e., the Selection Committee that chooses an Initial Professor as defined in Section 4, infra) will be: the President or Executive Director of Mercatus or the most closely corresponding position, two (2) members designated by Koch, one of whom must be a member of the GMU faculty, the Chair of the GMU department where it is anticipated the Professor will receive the majority or all of his appointment, and one (1) member of the same department, to be designated by the department Chair. In addition to the Selection Committee, candidates will also interview with specific members of Mercatus staff appointed by Mercatus General Director, President, Executive Director, and Chief Operating Officer. The Selection Committee will take staff evaluations into account when making hiring decisions. In the event that the selection committee and the Provost do not come to an agreement on selecting a candidate for the Professorship, the donated funds would be returned to the donor if it is then an entity described in Section 501(c)(3) of the Internal Revenue Code. If the donor is an individual or an entity that is not described in Section 501(c)(3), the donated funds would be redirected to other charitable and educational activities selected by Mercatus in its sole discretion.

3. Structure of Professorship. The Professorship will exist at Mercatus in perpetuity in accordance with the terms and conditions of the agreement between Mercatus and Koch (Appendix A). An invitation to occupy the Professorship will require a majority vote of the Selection Committee. Through this Agreement, the University agrees to provide the Initial Professor with a tenured faculty position at George Mason University ("GMU Faculty Position"), with all the privileges and protections associated with that title, at an annual salary of the appropriate amount. The University agrees to pay the university salary and provide full university benefits for the GMU Faculty Position as long as an Initial Professor qualifies for a tenured faculty position at George Mason University and otherwise remains qualified for the Professorship (as determined by the Advisory Board at its sole discretion). For purposes of this agreement and the separate agreement in Appendix A, Initial Professor shall refer to any individuals chosen by the Initial Selection Committee and ratified by GMU to occupy both the Professorship and the GMU Faculty Position prior to September 1, 2014.

The Professorship shall be operated exclusively for charitable and educational purposes within the purview of Section 501(c)(3) of the Internal Revenue Code of 1954 or such section or comparable section as hereinafter amended. No part of the funds shall inure to the benefit of any private individual and/or business corporation and no part of the activities of the Professorship shall consist of carrying on

or otherwise attempting to influence legislation or participating or intervening in any political campaign on behalf of any candidate for public office.

4. Advisory Board. Through the agreement between Mercatus and Koch (Appendix A), an Advisory Board shall be created to receive an annual summary of the activities, accomplishments, and expenditures of the Professorship and to review the administration of the agreement and a budget and plan for the subsequent academic year. In doing so, it shall have the right to:

- Consult with the Selection Committee or the Mercatus Center or Koch regarding the qualifications of candidates for the Professorship;
- Discuss with the Grantees (the Mercatus Center and GMU) and their representatives/affiliates, their administrative officers or trustees, the appointment of an occupant of the Professorship and any other matters relating to carrying out the purposes for which the Professorship is established;
- Ensure compliance with the terms of this Agreement through appropriate administrative or legal channels;
- Make periodic assessments of the Professor's performance and/or activities; and
- Make a determination (based on the individual's performance or otherwise) that the Professor filling the Professorship is no longer qualified to do so, and upon this determination will submit in writing to Koch and to Mercatus a recommendation that the Professor be removed from the Professorship, and that Mercatus withhold the payment of additional funds under this agreement during a vacancy in the Professorship.

The Advisory Board shall have no authority or control, either directly or indirectly over the funds received by Mercatus, over the administration of the Professorship or the selection of the occupant of the Professorship except through its determination of an occupant's continued qualification to fill the Professorship and shall only act as a body that has a continuing interest in seeing that the terms and conditions of this Agreement and the obligations of Mercatus, GMU and their representatives/affiliates are carried out.

5. Payment Schedule. Mercatus will make the first payment of \$200,000 to the George Mason University Foundation on or before August 31, 2009. Each of the additional five (5) annual payments (\$160,000) shall be paid on or before the last day in August each year beginning in 2010 and ending in 2014. In the event that the Professorship may be vacant during any portion of this period, payments may be suspended during such period of vacancy. When the vacancy is filled, payments will then be resumed and the payment schedule extended correspondingly so that the total amount to be paid will remain the same. The payment schedule will be as follows:

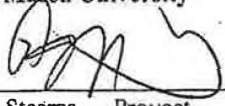
<u>On or before</u>	<u>Amount</u>
August 31, 2009	\$200,000
August 31, 2010	\$160,000
August 31, 2011	\$160,000
August 31, 2012	\$160,000
August 31, 2013	\$160,000
August 31, 2014	\$160,000

No additional service fee or tax will be applied to this contribution.

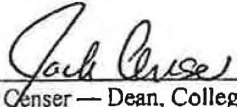
6. State Law Provisions. This Agreement shall be governed by the laws of the state of Virginia. In addition, to the extent an amendment does not conflict with federal law, the agreement may be amended by mutual agreement of the parties.

IN WITNESS WHEREOF, the Mercatus Center and the University have executed this Agreement on the date first stated above.

George Mason University

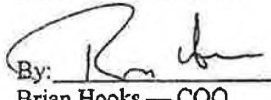
By:   
Peter N. Stearns — Provost

Date: 8-13-09

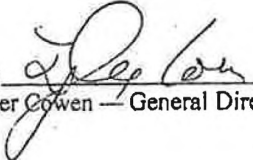
By:   
Jack Censer — Dean, College of Arts & Sciences

Date: 8/10/09

Mercatus Center, Inc.

By:   
Brian Hooks — COO

Date: 7/29/09

By:   
Tyler Cowen — General Director

Date: 8/3/09

**AGREEMENT BETWEEN  
THE MERCATUS CENTER AND THE CHARLES G. KOCH CHARITABLE FOUNDATION  
REGARDING THE ESTABLISHMENT OF A PROFESSORSHIP**

**THIS AGREEMENT** is made July 27, 2009 between The Charles G. Koch Charitable Foundation (“Koch”) and the Mercatus Center, Inc. (“Mercatus”), a qualified exempt charitable organization. The purpose of this Agreement is to memorialize the structure, purposes, and recruitment process for the Mercatus Professorship (the “Professorship”) at the Mercatus Center at George Mason University (“GMU”), and to clarify the relationship between the Professor and Mercatus.

The initial challenge was made by Menlo F. Smith to raise funds for 5 professorships at GMU at a total of \$5 million. Mr. Smith offered to assist in finding one or more grants totaling \$1.25 million toward the effort, which was then matched by the Charles G. Koch Charitable Foundation with an additional \$1.25 million. This initial \$2.5 million to be raised by Mr. Smith and pledged by the Koch Foundation is contingent upon at least an additional \$2.5 million in grants or commitments -- intended to match the amount of the Smith and Koch monies -- to be secured by December 31, 2006. The additional \$2.5 million must be raised for the purpose of supporting these professorships. In the event that these additional funds are received by December 31, 2006, GMU and Koch agree to the terms of this Agreement in full. Requisite funds were raised within the appropriate timeframe and this challenge was met.

The terms of this Agreement shall not be amended without the consent, in writing, of Koch and Mercatus.

The final say in all faculty appointments lies in specified GMU procedures, involving academic approval and final approval by the Board of Visitors. Nothing in this document shall be construed as overriding such procedures. Alterations in the terms or conditions of this Agreement can be instituted only upon mutual agreement of the parties to the agreement and acceptance of any changes is likewise subject to the rules and procedures of George Mason University.

1. Property Transfer. In order to establish the Professorship at the Mercatus Center at George Mason University (“Professorship”), Koch shall assist in finding one or more grants to be paid to Mercatus in the sum of \$500,000 under the schedule of three annual installments as stipulated in Section 5, infra.; the first to be received in July of 2009.
2. Objectives and Requirements of the Professorship. The objective of the Professorship is to advance the understanding, acceptance and practice of those free market processes and principles which promote individual freedom, opportunity and prosperity including the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions and social norms upon which they rely. The occupant of the Professorship (“Professor”) shall hold a doctorate degree and shall be qualified in and committed to the foregoing principles. Notwithstanding any provision to the contrary herein, the Professorship position shall be publicly referred to as the “Charles G. Koch Professor.” The objectives of the Professorship shall be accomplished through teaching, research, publishing, print and electronic media and such other means as may reasonably be deemed to comport with the mission of Mercatus. The primary academic affiliations of the Professor will be GMU and Mercatus. At the conclusion of each academic year, the occupant shall provide the Selection Committee and the Advisory Board with a brief summary of the principal activities, accomplishments and expenditures of the Professorship for the previous year and a budget and plan for the subsequent academic year. Any

additional objectives or requirements for the Professorship shall be decided by unanimous vote of the Selection Committee (Section 3, *infra*).

In addition to an annual report by the Professor to the Selection Committee and Advisory Board, the Mercatus president will report to these same bodies on how the Professor has contributed to the mission of Mercatus, as well as the purposes defined in the grant underwriting the Professorship. Substantive contributions to Mercatus programs include 5 or more per year of the following:

- Teaching in a Capitol Hill Campus course or event;
- Producing a research product (e.g., an article published in a refereed journal, a working paper of suitable quality, a useful database, a public interest comment), decided jointly with the President and General Director of Mercatus, and which is closely related to the Center's mission of producing highly credible research about the underlying sources of prosperity and poverty;
- Participating in a minimum of three Mercatus fundraising or public relations events;
- Supervising a student supported by Mercatus on a research project related to the Mercatus mission (e.g., a research project in Regulatory Studies, a dissertation, other research likely to significantly advance the student's knowledge and skills).

Substituting these contributions with alternative activities is allowable upon unanimous approval of the Selection Committee.

3. Selection Committee. The Selection Committee shall have five (5) members. The decision-making rule for the Selection Committee shall be majority vote, except in the case of changing or providing additional objectives or requirements, in which case the decision-making rule shall be by unanimous vote. The members of the Initial Selection Committee (i.e., the Selection Committee that chooses an Initial Professor as defined in Section 4, *infra*) will be: the President or Executive Director of Mercatus or the most closely corresponding position, two (2) members designated by Koch, one of whom must be a member of the GMU faculty, the Chair of the GMU department where it is anticipated the Professor will receive the majority or all of his appointment, and one (1) member of the same department, to be designated by the department Chair. In addition to the Selection Committee, candidates will also interview with specific members of Mercatus staff appointed by Mercatus General Director, President, Executive Director, and Chief Operating Officer. The Selection Committee will take staff evaluations into account when making hiring decisions. In the event that the selection committee and the Provost do not come to an agreement on selecting a candidate for the Professorship, the donated funds would be returned to the donor if it is then an entity described in Section 501(c)(3) of the Internal Revenue Code. If the donor is an individual or an entity that is not described in Section 501(c)(3), the donated funds would be redirected to other charitable and educational activities selected by Mercatus in its sole discretion.

4. Structure of Professorship. The Professorship will exist at Mercatus in perpetuity in accordance with the terms and conditions of this Agreement. An invitation to occupy the Professorship will require a majority vote of the Selection Committee. Additionally, through a separate agreement between the Mercatus and George Mason University (Appendix A) any Initial Professor will have a tenured faculty position within George Mason University ("GMU Faculty Position"), afforded all the privileges and protections associated with that title. Mercatus will enter into that agreement with the University in reliance upon fulfillment of this Agreement. George Mason University will pay the university salary and provide full university benefits for the GMU Faculty Position as long as an Initial Professor qualifies for a tenured faculty position at George Mason University and otherwise remains qualified for the Professorship (as determined by the Advisory Board at its sole discretion). For purposes of this Agreement and the separate agreement in Appendix A, Initial Professor shall refer to any individuals



chosen by the Initial Selection Committee and ratified by GMU to occupy both the Professorship and the GMU Faculty Position prior to September 1, 2014.

Should an initial holder of the Professorship vacate the position after September 1, 2014, Mercatus will have sole discretion, with the concurrence of the Advisory Board, to bestow the Mercatus position on the subsequent holder including the option of transferring the professorship to an existing GMU professor or other Mercatus Scholar whose work is consistent with the original intent of this Agreement.

5. Payment Schedule. The first Koch-arranged payment of \$200,000 shall be made to Mercatus on or before July 31, 2009. Each of the additional two (2) annual payments (\$150,000 each) shall be paid on or before the last day in July each year beginning in 2010 and ending in 2011. In the event that the Professorship may be vacant during any portion of this period, payments may be suspended during such period of vacancy. When the vacancy is filled, payments will then be resumed and the payment schedule extended correspondingly so that the total amount to be paid will remain the same. The payment schedule will be as follows:

<u>On or before</u>	<u>Amount</u>
July 31, 2009	\$200,000
July 31, 2010	\$150,000
July 31, 2011	\$150,000

No additional service fee or tax will be applied to this grant.

6. Receipt and Management of Funds. The grantors or any other persons or entities may make additional contributions of cash or other real or personal property to support the work of the Professorship. All contributions shall be subject to the terms and conditions of this Agreement. Any funds being held for the Professorship shall be invested to produce optimal income and/or growth with reasonable risk and any such income shall be utilized for the benefit of the Professorship.

7. Safeguard of Philanthropic Intent & Educational Objectives. In order to preserve and safeguard the philanthropic and educational intent of this Agreement and the educational objectives of GMU and Mercatus, the latter entities shall have full and unfettered discretion to administer the Professorship as they deem appropriate, provided that such administration shall be consistent with the terms of this Agreement and in accordance with the objectives, purposes and principles set forth in this Agreement.

The Professorship shall be operated exclusively for charitable and educational purposes within the purview of Section 501(c)(3) of the Internal Revenue Code of 1954 or such section or comparable section as hereinafter amended. No part of the funds shall inure to the benefit of any private individual and/or business corporation and no part of the activities of the Professorship shall consist of carrying on or otherwise attempting to influence legislation or participating or intervening in any political campaign on behalf of any candidate for public office.

8. Advisory Board. An Advisory Board shall be created consisting of one representative named by Koch; one representative to be named by Mercatus; and a third representative to be named by the first two representatives. These representatives shall serve so long as they are willing and able to do so and shall be replaced by the same means. The Advisory Board shall have the responsibility of reviewing the administration of Sections 2 through 7 of this Agreement and a budget and plan for the subsequent academic year. In so doing it shall have the right to;

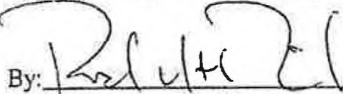
- Consult with the Selection Committee or the Mercatus Center or Koch regarding the qualifications of candidates for the Professorship;
- Discuss with the Grantees and their representatives/affiliates, their administrative officers or trustees, the appointment of an occupant of the Professorship and any other matters relating to carrying out the purposes for which the Professorship is established;
- Ensure compliance with the terms of this Agreement through appropriate administrative or legal channels;
- Make periodic assessments of the Professor's performance and/or activities; and
- Make a determination (based on the individual's performance or otherwise) that the Professor filling the Professorship is no longer qualified to do so, and upon this determination will submit in writing to Koch and to Mercatus a recommendation that the Professor be removed from the Professorship, and that Mercatus withhold the payment of additional funds under this Agreement during a vacancy in the Professorship.

The Advisory Board shall have no authority or control, either directly or indirectly over the funds received by Mercatus, over the administration of the Professorship or the selection of the occupant of the Professorship except through its determination of an occupant's continued qualification to fill the professorship and shall only act as a body that has a continuing interest in seeing that the terms and conditions of this Agreement and the obligations of Mercatus, GMU and their representatives/affiliates are carried out.

9. State Law Provisions. This Agreement shall be governed by the laws of the state of Virginia. In addition, to the extent an amendment does not conflict with federal law, the Agreement may be amended by mutual agreement of the parties.

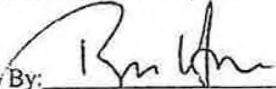
IN WITNESS WHEREOF, Mercatus and Koch have executed this Agreement on the date first stated above.

**Charles G. Koch Foundation**

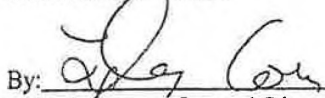
By:   
Richard Fink — President

Date: 7/29/09

**Mercatus Center, Inc.**

By:   
Brian Hooks — COO

Date: 7/31/09

By:   
Tyler Cowen — General Director

Date: 8/3/09

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Omar al-Ubaydi

**Agreement between the Mercatus Center and George Mason University regarding the establishment of a Professorship**

The initial challenge was made by Menlo F. Smith to raise funds for 5 professorships at GMU at a total of \$5 million. Mr. Smith offered to assist in finding one or more grants totaling \$1.25 million toward the effort, which was then matched by the Charles G. Koch Charitable Foundation with an additional \$1.25 million. This initial \$2.5 million to be raised by Mr. Smith and pledged by the Koch Foundation is contingent upon at least an additional \$2.5 million in grants or commitments -- intended to match the amount of the Smith and Koch monies -- to be secured by December 31, 2006, The additional \$2.5 million must be raised for the purpose of supporting these professorships. In the event that these additional funds are received by December 31, 2006, GMU and Mercatus agree to the terms of this Agreement in full. Requisite funds were raised within the appropriate timeframe and this challenge was met.

This Agreement is made May 3, 2007 between the Mercatus Center, Inc., 3301 North Fairfax Drive, Arlington, Virginia 22201 ("Mercatus") and George Mason University, Fairfax, Virginia ("the University").

Whereas Mercatus has received a pledge of support from George Mason University (GMU) to create a Professorship at the Mercatus Center at George Mason University ("Professorship"), which has been accepted as part of the above challenge in lieu of cash in amount of \$1 million toward the total \$5 million requirement; and

Whereas Mercatus deems it in its interest to support the academic excellence and advancement of the University, and

Whereas the University deems it in its interest to attract a qualified faculty member to their department of Economics to fulfill the objectives of the Professorship (as herein described),

Mercatus and the University enter into this Agreement to create a tenure-track faculty position within George Mason University ("GMU Faculty Position") to be occupied by the initial holder of the Professorship (that is, the candidate selected as a result of the procedures detailed in this document, the "Professor").

The final say in all faculty appointments lies in specified GMU procedures, involving academic approval and final approval by the Board of Visitors. Nothing in this document shall be construed as overriding such procedures. Alterations in the terms or conditions of this Agreement can be instituted only upon mutual agreement of the parties to the agreement and acceptance of any changes is likewise subject to the rules and procedures of George Mason University.

1. Objectives and Requirements of the Professorship. The objective of the Professorship is to advance the understanding, acceptance and practice of those free market processes and principles which promote individual freedom, opportunity and prosperity including the rule of law, constitutional government, private property and the laws, regulations,

organizations, institutions and social norms upon which they rely. The occupant of the Professorship ("Professor") shall hold a doctorate degree and shall be qualified in and committed to the foregoing principles. The objectives of the Professorship shall be accomplished through teaching, research, publishing, print and electronic media and such other means as may reasonably be deemed to comport with the mission of Mercatus. The primary academic affiliations of the Professor will be GMU and Mercatus. At the conclusion of each academic year, the occupant shall provide the Selection Committee and the Advisory Board with a brief summary of the principal activities, accomplishments and expenditures of the Professorship for the previous year and a budget and plan for the subsequent academic year. Any additional objectives or requirements for the Professorship shall be decided by unanimous vote of the Selection Committee (Section 2, infra).

In addition to an annual report by the Professor to the Selection Committee and Advisory Board, the president of Mercatus will report to these same bodies on how the Professor has contributed to the mission of Mercatus, as well as the purposes defined in the grant underwriting the Professorship. Substantive contributions to Mercatus programs include 5 or more per year of the following:

- Teaching in a Capitol Hill Campus course or event;
- Producing a research product (e.g., an article published in a refereed journal, a working paper of suitable quality, a useful database, a public interest comment), decided jointly with the President and General Director of Mercatus, and which is closely related to the Center's mission of producing highly credible research about the underlying sources of prosperity and poverty;
- Participating in a minimum of three Mercatus fundraising or public relations events;
- Supervising a student supported by Mercatus on a research project related to the Mercatus mission (e.g., a research project in Regulatory Studies, a dissertation, other research likely to significantly advance the student's knowledge and skills).

Substituting these contributions with alternative activities is allowable upon unanimous approval of the selection committee.

2. Selection Committee. The Selection Committee shall have five (5) members. The decision-making rule for the Selection Committee shall be majority vote, except in the case of changing or providing additional objectives or requirements, in which case the decision-making rule shall be by unanimous vote. The members of the Initial Selection Committee (i.e., the Selection Committee that chooses an Initial Professor as defined in Section 4, infra) will be: the President or Executive Director of Mercatus or the most closely corresponding position, two (2) members designated by the two donors that initiated the challenge, one of whom must be a member of the GMU faculty, the Chair of the GMU department where it is anticipated the Professor will receive the majority or all of his appointment, and one (1) member of the same department, to be designated by the department Chair. In addition to the Selection Committee, candidates will also interview with specific members of Mercatus staff appointed by Mercatus General Director,

President, Executive Director, and Chief Operating Officer. The Selection Committee will take staff evaluations into account when making hiring decisions.

3. Structure of Professorship. The Professorship will exist at Mercatus in perpetuity in accordance with the terms and conditions of the agreement between Mercatus and the Donor (Appendix A). An invitation to occupy the Professorship will require a majority vote of the Selection Committee. Through this Agreement, the University agrees to provide the Initial Professor with a tenured faculty position at George Mason University ("GMU Faculty Position"), with all the privileges and protections associated with that title, at an annual salary of the appropriate amount. The University agrees to pay the university salary and provide full university benefits for the GMU Faculty Position as long as an Initial Professor qualifies for a tenured faculty position at George Mason University and otherwise remains qualified for the Professorship (as determined by the Advisory Board at its sole discretion). For purposes of this agreement and the separate agreement in Appendix A, Initial Professor shall refer to any individuals chosen by the Initial Selection Committee and ratified by GMU to occupy both the Professorship and the GMU Faculty Position prior to September 1, 2013.

The Professorship shall be operated exclusively for charitable and educational purposes within the purview of Section 501(c)3 of the Internal Revenue Code of 1954 or such section or comparable section as hereinafter amended. No part of the funds shall inure to the benefit of any private individual and/or business corporation and no part of the activities of the Professorship shall consist of carrying on or otherwise attempting to influence legislation or participating or intervening in any political campaign on behalf of any candidate for public office.

4. Advisory Board. An Advisory Board shall be created and made up of three members of the selection committee to be appointed by the Mercatus executive director to receive an annual summary of the activities, accomplishments, and expenditures of the Professorship and to review the administration of the agreement and a budget and plan for the subsequent academic year. In doing so, it shall have the right to:
  - Consult with the Selection Committee or the Mercatus Center or the grantor regarding the qualifications of candidates for the Professorship;
  - Discuss with the Grantees and their representatives/affiliates, their administrative officers or trustees, the appointment of an occupant of the Professorship and any other matters relating to carrying out the purposes for which the Professorship is established;
  - Ensure compliance with the terms of this agreement through appropriate administrative or legal channels;
  - Make periodic assessments of the Professor's performance and/or activities; and
  - Make a determination (based on the individual's performance or otherwise) that the professor filling the Professorship is no longer qualified to do so, and upon this determination will submit in writing to GMU and to Mercatus a recommendation that the professor be removed from the Professorship.

The Advisory Board shall have no authority or control, either directly or indirectly over the administration of the Professorship or the selection of the occupant of the Professorship except through its determination of an occupant's continued qualification to fill the professorship and shall only act as a body that has a continuing interest in seeing that the terms and conditions of this agreement and the obligations of Mercatus, GMU and their representatives/affiliates are carried out..

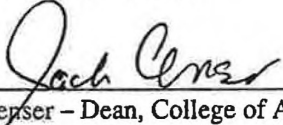
5. State Law Provisions. This Agreement shall be governed by the laws of the state of Virginia. In addition, to the extent an amendment does not conflict with federal law, the agreement may be amended by mutual agreement of the parties.

IN WITNESS WHEREOF, the Mercatus Center and the University have executed this Agreement on the date first stated above.

George Mason University

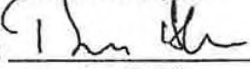
By:   
Peter N. Stearns - Provost

Date: 6/6/07

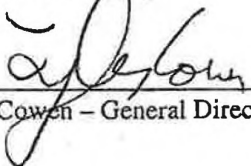
By:   
Jack Censer - Dean, College of Arts & Sciences

Date: June 6, 2007

Mercatus Center, Inc.

By:   
Brian Hooks - COO

Date: 6/11/07

By:   
Tyler Cowen - General Director

Date: 6/11/07

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# George Mason University Foundation, Inc.

## MEMORANDUM OF UNDERSTANDING

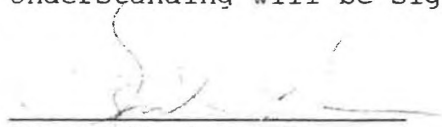
This agreement, made and entered into on the 25th day of September, 1990 between George W. Johnson, President, George Mason University and the George Mason University Foundation, Inc., constitutes a statement regarding the use of funds contributed to the Koch Chair in International Economics Endowment Fund in the George Mason University Foundation, Inc.


### Purpose of the Fund

Grants and contributions to the Koch Chair in International Economics Endowment Fund are to be held in the George Mason University Foundation, Inc. The purpose of this account is to provide funding for an eminent scholar who will occupy the chair.

### Procedures

The President of George Mason University will be the Project Director of this account in the George Mason University Foundation, Inc. The fund will be maintained as an endowment with the corpus of the fund remaining intact. Interest earned annually is to be spent only on the occupant of or support for the Koch Chair and in compliance with all Commonwealth of Virginia regulations for the Eminent Scholars Program. All requests for disbursements from the Koch Chair in International Economics account must be accompanied by receipts or other appropriate back-up. Any change in this Memorandum of Understanding will be signed by the Project Director.

  
George W. Johnson  
President  
George Mason University

  
Elizabeth C. Dahlin  
Vice President  
George Mason University  
Executive Director  
George Mason University  
Foundation, Inc.

---

4400 University Drive, Fairfax, Virginia 22030-4444 (703) 764-7841

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#### Advisory Board

Dr. Dorothy I. MacConkey

Memorandum of Understanding

Purpose of the Fund

Initial grants of \$250,000 each will be provided by the Charles G. Koch Charitable Foundation and the David H. Koch Charitable Foundation to establish the Koch Chair in International Economics. The funds will be held in a separate account within the George Mason University Foundation, Inc. The purpose of the account is to provide funding for an eminent scholar who will occupy the chair.

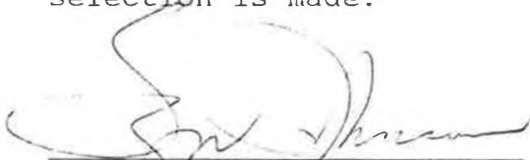
Procedures


George W. Johnson, President, George Mason University, will be the Project Director of this account in the George Mason University Foundation, Inc. The corpus of the fund is to remain intact. Interest accrued each year is to be spent only on the occupant of or support for the Koch Chair and in compliance with all Commonwealth of Virginia regulations for the Eminent Scholars Program.

Location and Selection

Primary location of the Koch Chair will be in the Center for the Study of Market Processes (CSMP). The occupant of the Koch Chair will hold a joint professorship there as well as in the Center for Global Market Studies. The university will provide on a continuing basis the additional funds and support necessary to attract an eminent scholar to fill the Koch Chair.

If the chair is vacated, a Nominating Committee chaired by the Director of the Center for the Study of Market Processes (CSMP) will make recommendations for the President's consideration. Also serving on the committee will be the Provost, an additional tenured faculty member from CSMP, the Dean of the School of Arts and Sciences and an outside representative jointly chosen by the Charles G. Koch Charitable Foundation and the David H. Koch Charitable Foundation. All nominees will meet all existing and appropriate university criteria for comparable faculty positions. Both foundations will be notified by the President when a final selection is made.

  
\_\_\_\_\_  
George W. Johnson  
President  
George Mason University

  
\_\_\_\_\_  
David H. Koch  
President  
David H. Koch Charitable  
Foundation



# APPENDIX E

## Elizabeth I Woodley

---

**From:** Leonard Leo <leonard.anthony.leo@gmail.com>  
**Sent:** Sunday, August 02, 2015 10:25 PM  
**To:** Henry N Butler  
**Cc:** Alison Price  
**Subject:** Re: [REDACTED] -GMU Student Prospect

That is great.

Sent from my iPad

> On Aug 2, 2015, at 9:41 PM, Henry N Butler <hnbutler@gmu.edu> wrote:

>

> Leonard,

>

> Absolutley!

>

> I will work with the admissions office to make sure we get together.

>

> Thanks for your help.

>

> Onward and Upward!

>

> Henry

>

> Henry N. Butler

> Dean and Professor of Law

> George Mason University School of Law

> 3301 Fairfax Drive

> Arlington, VA 22201

> 703.993.8644 (office)

> 224.330.0540 (mobile)

> hnbutler@gmu.edu

>

> -----Original Message-----

> From: Leonard Leo [mailto:leonard.anthony.leo@gmail.com]

> Sent: Sunday, August 2, 2015 8:54 PM

> To: Henry N Butler <hnbutler@gmu.edu>

> Subject: [REDACTED] --GMU Student Prospect

>

>

> Dear Henry,

>

> [REDACTED] resume attached, has been at RAGA and doing very good work. His father is a senior executive at [REDACTED], and that is how we were introduced. [REDACTED] is very interested in Mason, has applied, and is visiting Friday.

> Would you have time to meet him briefly?

>

> Best,

> Leonard

## Elizabeth I Woodley

---

**From:** peter.redpath@fed-soc.org  
**Sent:** Sunday, August 23, 2015 5:50 PM  
**To:** Henry N Butler  
**Cc:** David Bernstein; Leonard Leo  
**Subject:** Re: [REDACTED] Law, ranked 4th in class)

Thank you. He's very excited. I'll keep my eyes and ears open for more for the Spring.

Sent from my iPhone

On Aug 23, 2015, at 2:37 PM, Henry N Butler <[hnbutler@gmu.edu](mailto:hnbutler@gmu.edu)> wrote:

Peter,

Just wanted to make sure that you are aware that we closed the deal with [REDACTED]. He was in classes last week.

Thanks for your help.

Onward and Upward!

Henry

Henry N. Butler  
Dean and Professor of Law  
George Mason University School of Law  
3301 Fairfax Drive  
Arlington, VA 22201  
703.993.8644 (office)  
224.330.0540 (mobile)  
[hnbutler@gmu.edu](mailto:hnbutler@gmu.edu)

---

**From:** Peter Redpath [<mailto:peter.redpath@fed-soc.org>]  
**Sent:** Tuesday, August 18, 2015 2:51 PM  
**To:** Henry N Butler <[hnbutler@gmu.edu](mailto:hnbutler@gmu.edu)>  
**Subject:** [REDACTED] Law, ranked 4th in class)

Here's the resume of the student I mentioned over the phone. He leaves town tomorrow and starts school next week. He's open to transferring.

Peter K. Redpath, Esq.  
Vice President & Director, Student Division  
The Federalist Society for Law & Public Policy Studies  
1776 I (Eye) St., N.W.  
Suite 300  
Washington, DC 20006  
202-822-8138 (phone)  
202-296-8061 (fax)

**Elizabeth I Woodley**

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**From:** Henry N Butler  
**Sent:** Tuesday, October 27, 2015 7:45 AM  
**To:** Leonard Leo  
**Subject:** Re: Adjunct Prospect

Leonard,

We're on it.

Thanks.

Henry

Henry N. Butler  
Dean and Professor of Law  
George Mason University School of Law

On Oct 27, 2015, at 7:27 AM, Leonard Leo <[leonard.leo@fed-soc.org](mailto:leonard.leo@fed-soc.org)> wrote:

Dear Henry,

See below. Worth reaching out to.

Best,  
Leonard

----- Forwarded message -----  
From: "[REDACTED]"  
Date: Oct 27, 2015 6:55 AM  
Subject: Good to see you  
To: "Leonard Leo" <[lleo@fed-soc.org](mailto:lleo@fed-soc.org)>  
Cc:

Leonard:

[REDACTED]

**Elizabeth I Woodley**

---

**From:** Leonard Leo <leonard.leo@fed-soc.org>  
**Sent:** Friday, May 06, 2016 9:32 AM  
**To:** Henry N Butler; Todd J Zywicki  
**Subject:** Fwd: Follow-up  
**Attachments:** [REDACTED].pdf; ATT00001.htm; [REDACTED] Resume - 2016.pdf; ATT00002.htm

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

Not sure if you are looking to hire, or, that he ultimately might want to make the jump over, but [REDACTED] might be worth taking a look at.

Sent from my iPad

Begin forwarded message:

**From:** [REDACTED] >  
**Date:** May 6, 2016 at 9:03:37 AM EDT  
**To:** Leonard Leo <leonard.leo@fed-soc.org>  
**Subject:** Follow-up

Leonard,

It was good to catch-up during lunch the other day.

Per our discussion, attached please find the last excerpt for me from the [REDACTED] and my resume.

With appreciation,

[REDACTED]

[REDACTED]

[REDACTED]

## Elizabeth I Woodley

---

**From:** Leonard A. Leo <ll@leonardleo.com>  
**Sent:** Thursday, November 03, 2016 2:51 PM  
**To:** Henry N Butler; Todd J Zywicki  
**Subject:** Pat Hofer

Hear he's under consideration. A great guy. Smart, affable, strategic.

Sent from my iPad

---

**Subject:** [REDACTED]  
**From:** "Henry Butler" <henrynbutler@gmail.com>  
**Date:** 6/19/2017, 8:33 AM  
**To:** "Leonard A. Leo" <ll@leonardleo.com>

Leonard,

[REDACTED] turned us down as new Executive Director of the LEC. Overwhelming personal reasons. Major bummer.

[REDACTED]

Thanks for all your help.

Best,

Henry

Henry N. Butler  
henrynbutler@gmail.com  
224.330.0540 (mobile)

## Elizabeth I Woodley

---

**From:** Ryan N Lodata  
**Sent:** Tuesday, May 02, 2017 4:54 PM  
**To:** jonathan.bunch@fed-soc.org  
**Cc:** Todd J Zywicki  
**Subject:** RE: Introduction

Good afternoon, Mr. Bunch –

Thank you for your offer of assistance on these initiatives. I've heard great things about you, so I look forward to working with you.

Should you require assistance on any matter or have suggestions on how to further advance the LEC's projects, please do not hesitate to reach out to me.

Best,

Ryan

Ryan Lodata  
Law & Economics Center  
Antonin Scalia Law School, George Mason University  
3301 Fairfax Drive | Arlington, VA 22201  
Phone: 703.993.8175 | Cell: 804.370.7349

---

**From:** Todd J Zywicki  
**Sent:** Tuesday, May 02, 2017 4:25 PM  
**To:** jonathan.bunch@fed-soc.org  
**Cc:** Ryan N Lodata  
**Subject:** Introduction

Jonathan:

Thanks for your time today. I'm checking those dates in May and will be back to you soon.

In the meantime, I wanted to introduce you to Ryan Lodata, who will be the LEC's Outreach Coordinator for the Federal Judge's Initiative and Attorneys General Initiative. So **Ryan will be the one keeping track of nominations, confirmations, and recruitment of judges for our programs. He may be in touch with you from time-to-time to compare notes and the like. Thanks for your offer to help us out with these projects. I look forward to working together.**

Best wishes,  
-Todd

Todd J. Zywicki  
Executive Director, George Mason Law & Economics Center and GMU Foundation Professor of Law  
Co-Author, *Consumer Credit and the American Economy* (Oxford 2014)  
Editor, *Supreme Court Economic Review*  
Antonin Scalia Law School at George Mason University  
(m) 703-300-3874

## Elizabeth I Woodley

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**From:** J.W. Verret [REDACTED] gmail.com>  
**Sent:** Monday, June 05, 2017 10:12 PM  
**To:** Anna Francis; Jonathan Bunch  
**Cc:** Nelson Lund  
**Subject:** Intro between Fed Soc and the Scalia Law Clerkship coordinator

Jonathan and Anna,

Wanted to write to introduce you both. Jonathan works at Fed Soc on many important projects. Anna Francis runs our clerkship program. I also cc our faculty clerkship committee chairman Professor Lund.

We are hoping to place Scalia Law Alumni who are current members of our Fed Soc student chapter, alumni who were active in Fed Soc, and other Scalia Law conservative and libertarian alums in federal clerkships.

We wonder if there may be an opportunity to get such candidates in front of judges incoming under the new administration as they seek clerks under atypical timeframes.

Hope you can help us Jonathan, and thanks for your time in connecting with Anna Francis.

J.W.

--

J.W. Verret

Associate Professor (banking & securities law)  
Antonin Scalia Law School  
& Senior Scholar, Mercatus Center  
George Mason University

3301 Fairfax Drive  
Arlington, VA 22201  
[REDACTED]@gmail.com

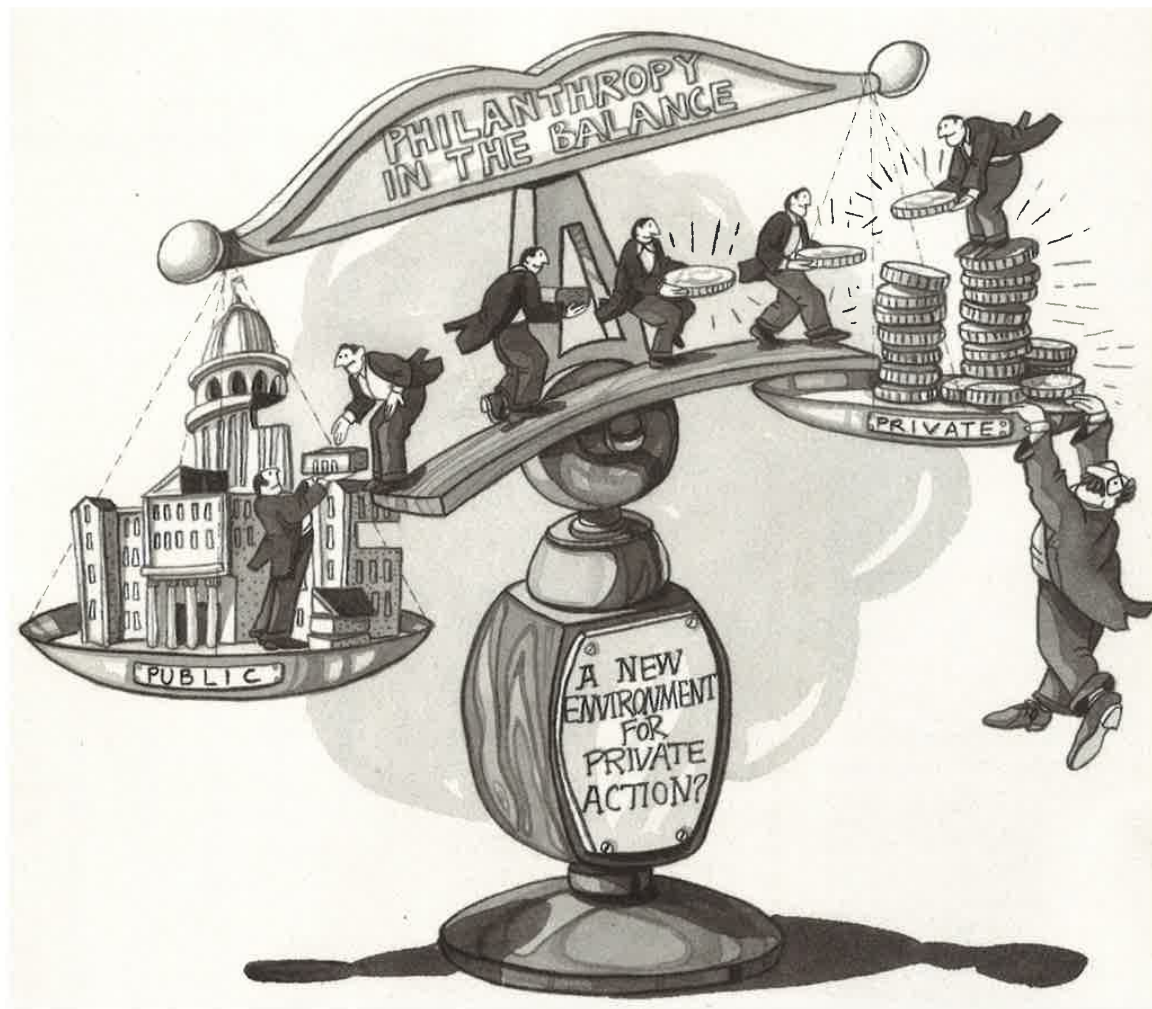


# PHILANTHROPY

Winter 1996

Volume X

Number 1



Proceedings of The Philanthropy Roundtable's  
1995 Annual Meeting

FEATURING:

Robert Bothwell • Richard Fink • Steve Forbes • Stephen Goldsmith  
Heather Higgins • Leslie Lenkowsky • William Lehrfeld

A PUBLICATION OF THE PHILANTHROPY ROUNDTABLE

## From Ideas to Action: The Roles of Universities, Think Tanks, and Activist Groups

by Richard H. Fink

As grantmakers, all of us face the constant challenge of making our grants as effective as possible. We must choose between a multitude of organizations competing for funding. But what can guide us to ensure our grants will lead to lasting improvements in society? A haphazard approach certainly will not accomplish this. A strategy or plan is needed to maximize the impact of our limited resources.

Universities, think tanks, and citizen activist groups all present competing claims for being the best place to invest resources. As grantmakers we hear the pros and cons of the different kinds of institutions seeking funding.

The universities claim to be the real source of change. They give birth to the big ideas that provide the intellectual framework for social transformation. While this is true, critics contend that investing in the universities produces no tangible results for many years and even decades. Also, since many academics tend to talk mostly to their colleagues in the specialized languages of their respective disciplines, their research, even if relevant, usually needs to be adapted before it is useful in solving practical problems.

The think tanks and policy development organizations argue that they are most worthy of support because they work on real-world policy issues, not abstract concepts. They communicate not just among

themselves, but are an immediate source of policy ideas for the White House, Congress, and the media. They claim to set the action agenda that leaders in government follow. Critics observe, however, that there is a surfeit of well-funded think tanks, producing more position papers and books than anyone could ever possibly read. Also, many policy proposals, written by



“works” with little experience outside the policy arena, lack realistic implementation or transition plans. And all too often think tanks gauge their success in terms of public relations victories measured in inches of press coverage, rather than more meaningful and concrete accomplishments.

Citizen activist or implementation groups claim to merit support because they are the most effective

at really accomplishing things. They are fighting in the trenches, and this is where the war is either won or lost. They directly produce results by rallying support for policy change. Without them, the work of the universities and policy institutes would always remain just so many words on paper, instead of leading to real changes in people’s lives.

Others point out, however, that their

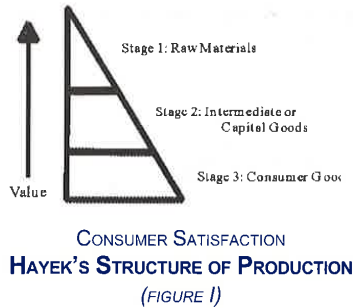
commitment to action comes at a price.

*As grantmakers we can and should play a role in accelerating the process of change by gauging the climate for an idea, judging its stage of development, and then structuring our support accordingly.*

— Richard Fink

Because activist groups are remote from the universities and their framework of ideas, they often lose sight of the big picture. Their necessary association with diverse coalitions and politicians may make them too willing to compromise to achieve narrow goals.

Many of the arguments advanced for and against investing at the various levels are valid. Each type of institution at each stage has its strengths and weaknesses. But more importantly we see that institutions at all stages are crucial to success. While they may compete with one another for funding and often belittle each other’s roles, we at the Koch Foundation view them as complementary institutions, each critical for social transformation.



**HAYEK'S MODEL OF PRODUCTION**

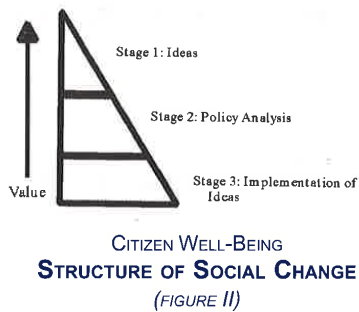
Our understanding of how these institutions "fit together" is derived from a model put forward by the Nobel laureate economist Friedrich Hayek.

Hayek's model illustrates how a market economy is organized and has proven useful to students of economics for decades. While Hayek's analysis is complicated, even a modified, simplistic version can yield useful insights for grantmakers.

Hayek described the "structure of production" as the means by which a greater output of "consumer goods" is generated through savings that are invested in the development of "producer goods"—goods not produced for final consumption.

The classic example in economics is how a stranded Robinson Crusoe is at first compelled to fish and hunt with his hands. He only transcends subsistence when he hoards enough food to sustain himself while he fashions a fishing net, a spear, or some other producer good that increases his production of consumer goods. This enhanced production allows even greater savings, hence greater investment and development of more complex and indirect production technologies.

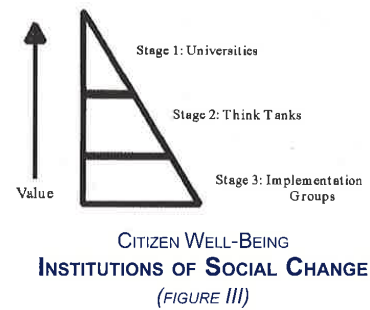
In a developed economy, the "structure of production" becomes



quite complicated, involving the discovery of knowledge and integration of diverse businesses whose success and sustainability depend on the value they add to the ultimate consumer. Hayek's model explains how investments in an integrated structure of production yield greater productivity over less developed or less integrated economies.

By analogy, the model can illustrate how investment in the structure of production of ideas can yield greater social and economic progress when the structure is well developed and well integrated.

This is not a suitable forum for elaborating the riches of Hayek's model. For simplicity's sake, I am using a snapshot of a developed economy, as Hayek did in parts of *Prices and Production*, and I am aggregating a complex set of businesses into three broad categories or stages of production (Figure I). The higher stages represent investments and businesses involved in the enhanced production of some basic inputs we will call "raw materials." The middle stages of production are involved in converting these raw materials into various types of products that add more value than these raw materials have if sold directly to consumers. In this model, the later stages of production are involved in the packaging, transformation, and distribution of the output of the



middle stages to the ultimate consumers.

Hayek's theory of the structure of production can also help us understand how ideas are transformed into action in our society. Instead of the transformation of natural resources to intermediate goods to products that add value to consumers, the model, which I call the Structure of Social Change, deals with the discovery, adaptation, and implementation of ideas into change that increases the well-being of citizens (Figure II). Although the model helps to explain many forms of social change, I will focus here on the type I know best—change that results from the formation of public policy.

**APPLYING HAYEK'S MODEL**

When we apply this model to the realm of ideas and social change, at the higher stages we have the investment in the intellectual raw materials, that is, the exploration and production of abstract concepts and theories. In the public policy arena, these still come primarily (though not exclusively) from the research done by scholars at our universities. At the higher stages in the Structure of Social Change model, ideas are often unintelligible to the lay person and seemingly unrelated to real-world problems.

*Continued on page 34*

*Fink, continued from Page 11*

To have consequences, ideas need to be transformed into a more practical or useable form.

In the middle stages, ideas are applied to a relevant context and molded into needed solutions for real-world problems. This is the work of the think tanks and policy institutions, such as the Heritage Foundation, the Reason Foundation, the Cato Institute, or the Pacific Research Institute. Without these organizations, theory or abstract thought would have less value and less impact on our society.

But while the think tanks excel at developing new policy and articulating its benefits, they are less able to implement change. Citizen activist or implementation groups like Citizens for a Sound Economy, the National Taxpayers' Union, or Defenders of Property Rights are needed in the final stage to take the policy ideas from the think tanks and translate them into proposals that citizens can understand and act upon. These groups are also able to build diverse coalitions of individual citizens and special interest groups needed to press for the implementation of policy change (Figure III; see page 11).

#### **LESSONS FOR GRANTMAKERS**

What lessons can be drawn from the Structure of Social Change model for grantmakers? First of all, funding is required at all stages to produce sustainable social change. The model tells us that we need to have all stages strong and functioning to maximize output in the final stage. Also, it is vital to promote the development of pipelines or connections between the stages, for the model tells us that the output of one stage is the input for the next. Therefore, projects that promote

linkages and complementarity between groups at the different stages are an important investment for grantmakers.

Secondly, the model also indicates that, in order to have an impact, grantmakers should fund projects tied to the real-world needs of citizens. The focus of grantmakers on the real problems caused by government regulation and interventionist policies is a good example of institutions from all three stages contributing to the solution of a practical problem. As the result of grant makers' increased investment in research — both inside and outside the universities — during the 1950s and 1960s, a market-oriented intellectual framework was further

articulated and directed toward specific problems areas. In the 1970s and 1980s, the development and growth of think tanks, as well as the policy proposals they produced, were a result of the enhanced output of ideas from this previous investment in research. In the 1980s and 1990s, citizen activist groups emerged and grew, using the market-oriented proposals developed in the think tanks to press for policy changes that reduce government regulation.

Thirdly, the Structure of Social Change model suggests that grantmakers should use their support to encourage organizations to continually reassess where they have a comparative advantage. As the structure of social change evolves there will be market forces that will increase the division of labor and specialization. Most institutions excel in one area or stage, and not in others. For example, within the world of public policy, the Cato Institute has a comparative advantage as a think tank. It excels at publishing studies, hosting forums, and crafting free-market policy positions. Cato is successful because it realizes what its comparative advantage is, and does not try to duplicate the work of the universities or the implementation groups.

Fourthly, the Structure of Social Change model informs us that we should also seek to fund ideas at the level that is appropriate to their development at any given time. The concept of flatter and lower tax rates, for example, is an idea that has been discussed and developed for many years at the university and think tank level. It is soon to be on the table for legislative debate that will lead to defeat, modification, or adoption. Additional funding therefore is now critical at the citizen activist or implementation

## **Being Served at the Roundtable**

**Thinking of starting a foundation, and want to ensure it carries out your intentions?**

**Do you already have a foundation, but not enough time to handle all the requests?**

**Need advice and information on effective programs?**

**Not sure how to handle all the rules and regulations?**

**The Philanthropy Roundtable can assist in all aspects of foundation management — constructing a mandate, developing programs, and formulating administrative procedures. We can refer you to the best legal and tax advisors in the business. We can put you in touch with other grantmakers who will share their advice and experience.**

**The Roundtable exists to serve those donors, especially, who haven't the time or manpower to do everything themselves.**

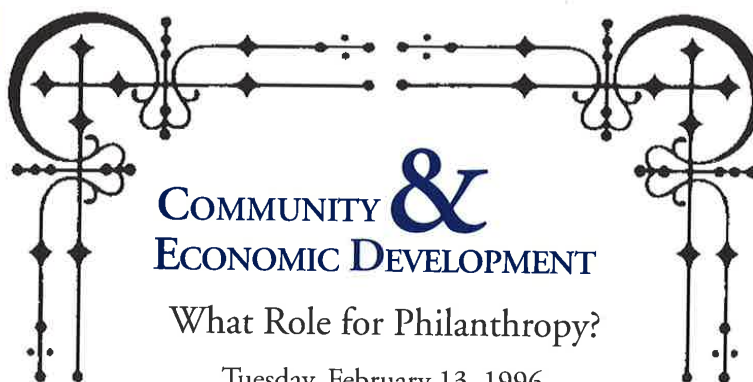
**Call us for help at (317) 639-6546.**

group level for those who feel that this is a priority issue. Other ideas are in need of more fundamental development, so it is important to concentrate funding for these on universities and research organizations. As grantmakers we can and should play a role in accelerating the process of change by gauging the climate for an idea, judging its stage of development, and then structuring our support accordingly.

Finally, the model implies that we need to invest in sound institutions and in productive people at every stage, since without them many good ideas may not have consequences. Grants can be used to strengthen institutions and encourage them to develop cultures based on key core values, solid management systems, and effective incentive and learning systems. Grantmakers can also help in identifying, educating, and supporting productive people within organizations. While these factors warrant a more systematic articulation than is possible here, each factor is critical to building effective and sustainable social progress.

We at the Koch Foundation find that the Structure of Social Change model helps us to understand the distinct roles of universities, think tanks, and activist groups in the transformation of ideas into action. We invite other grantmakers to consider whether Hayek's model, on which ours is based, is useful in their philanthropy. Though I have confined my examples to the realm of public policy, the model clearly has much broader social relevance. ●

*Richard H. Fink is president of the Charles G. Koch and Claude R. Lambe charitable foundations and senior vice president of Koch Industries.*



## COMMUNITY & ECONOMIC DEVELOPMENT

### What Role for Philanthropy?

Tuesday, February 13, 1996

2:00 p.m. - 5:00 p.m.

Reception Following

The Westin Hotel  
Denver, Colorado

A regional meeting of The Philanthropy Roundtable, open to individual donors, corporate giving representatives, foundation staff and trustees, and trust and estate officers.

#### DISCUSSION LEADERS

**William Hybl**

*Chairman*

*El Pomar Foundation*

**Linda Tafoya**

*Executive Director*

*Adolph Coors and Castle Rock Foundations*

#### FEATURED SPEAKERS

**Howard Husock**

*Director of Case Studies in Public Policy  
JFK School of Government, Harvard University*

**Chip Mellor**

*President and General Counsel  
Institute for Justice*

