

Update to Report on “The Federalist Society’s Takeover of George Mason University’s Public Law School”

Allison Pienta
GMU Law Alum

December 2018

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]

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**.

Form 990 Department of the Treasury Internal Revenue Service	Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations) ▶ Do not enter social security numbers on this form as it may be made public. ▶ Go to www.irs.gov/Form990 for Instructions and the latest information.	OMB No. 1545-0047 2017 Open to Public Inspection
A For the 2017 calendar year, or tax year beginning and ending		
B Check if applicable:		
<input checked="" type="checkbox"/> Address change		
<input type="checkbox"/> Name change		
<input type="checkbox"/> Initial return		
<input type="checkbox"/> Final return/terminated		
<input type="checkbox"/> Amended return		
<input type="checkbox"/> Application pending		
C Name of organization BH Fund		D Employer identification number 81-1263832
Doing business as		E Telephone number (540) 341-8808
Number and street (or P.O. box if mail is not delivered to street address) Room/suite 2010 Corporate Ridge Drive 700		G Gross receipts \$ 24,339,910
City or town, state or province, country, and ZIP or foreign postal code McLean, VA 22102		H(a) Is this a group return for subsidiaries? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
F Name and address of principal officer: Leonard Leo 2010 Corporate Ridge Drive Ste. 700 McLean, VA 22102		H(b) Are all subsidiaries included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Part II Signature Block Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.	
Sign Here	Signature of officer: Leonard Leo, President Type or print name and title
	Date: 11/14/18



Federalist Society 2016 Annual Report

Under the March 31, 2016 Grant Agreement that renamed George Mason's Law School after the late Justice Antonin Scalia, an entity linked to the Federalist Society called the “BH Fund” was given “the right to enforce all of the Donor’s rights in th[e] Agreement.” This includes the right to “terminate th[e] Agreement without making all of the annual \$4 million contributions if “in its sole and absolute discretion” the Law School “is no longer principally focused on the School’s

Mission” (p. 3). The name of the “BH Fund” was initially redacted and only revealed by George Mason University after repeated demands for disclosure.

The BH Fund’s first Form 990 was signed on 11/14/18 by Leonard Leo, the Executive Vice President of the Federalist Society and the President of the BH Fund. Mr. Leo is the person who is credited with arranging the \$20 million anonymous grant. He is best known for preparing the list of Supreme Court nominees for Presidential-nominee Trump that led to the nominations of Neil Gorsuch and Brett Kavanaugh. In addition to the BH Fund, Mr. Leo is connected with the similarly-named BH Group, a Virginia LLC that made a \$1 million contribution to the Trump Inaugural Committee on December 22, 2016.



New York Magazine

NAME OF COMMITTEE (In Full) 58TH PRESIDENTIAL INAUGURAL COMMITTEE	
Full Name (Last, First, Middle Initial) or Full Organization Name A. BH GROUP, LLC	Date Donation Received MM / DD / YYYY 12 / 22 / 2016
Mailing Address 1655 FORT MYER DRIVE	Amount of This Donation 1000000.00
City ARLINGTON	Donor's Aggregate Donations To Date 1000000.00
State VA	Zip Code 22209
	Transaction ID : 253

[In a FEC filing](#), Mr. Leo listed himself as an employee of the BH Group that made the \$1 million contribution. According [The Wall Street Journal](#), federal prosecutors are now investigating “whether some of the [inaugural] committee’s top donors gave money in exchange for access to the incoming Trump administration.”

According to the Form 990, the BH Fund’s “mission” is “To promote the rule of law and limited, constitutional government” (p. 8).

Part I Summary
1 Briefly describe the organization's mission or most significant activities: To promote the rule of law and limited, constitutional government.

The Form 990 shows that in 2017 the BH Fund received \$24.25 million, all from one

unidentified donor (p. 21). In that same year, the BH Fund made grants of close to \$3 million to three organizations, including \$2.3 million to “America Engaged,” another Virginia 501(c)(4) non-profit created in 2016 whose President is also Leonard Leo (p. 24). Documents from the Virginia State Corporation Commission’s website disclose that the Directors of America Engaged include C. Boyden Gray, the eponymous donor to the Scalia Law School’s “C. Boyden Gray Center for the Study of the Administrative State” (pp. 34-35).

The [April 2018 UnKoch report](#) on the “Federalist Society’s Takeover” details Mr. Leo and the Federalist Society’s involvement in the development of Scalia Law School programs, fundraising, faculty selection, law school admissions and even judicial law clerk placements. Investigative journalist [Alex Kotch](#) has uncovered that 10 of 12 new faculty hires were connected to the Federalist Society.

After Donation Administered by Federalist Society Leaders, GMU Hired Professors Tied to...the Federalist Society

In TYT Investigates by TYT Investigates / May 18, 2018 / 0 Comments

At an [April 2018 ceremony](#), Mr. Gray proclaimed that the Center for the Study of the Administrative State, which had been founded by Trump anti-regulatory czar Neomi Rao, is “an indispensable component of the effort” to take down the “Administrative State and its supporting doctrines.” In soliciting a \$3 million “naming gift” from him, Dean Butler told Mr. Gray that it “would help ... to entice [Ms. Rao] to return home to Scalia Law after she dismantles the administrative state,” p. 255.

The Federalist Society and the Charles Koch Foundation have also been heavily involved in a new “Federal Judges Initiative” under the auspices of Law School’s Law and Economics Center (with the Charles Koch Foundation contributing over one-half of the first year’s budget). The FJI is designed to train “newly confirmed judges” in, among other things, the “tricks agencies to portray their proposed regulations as having substantial benefits.” Program materials say that The Federalist Society will “recruit newly confirmed judges into the programs” so they are “armed with the tools necessary” to deal with federal agencies (pp. 62-63).

New FOIA documents reveal that on October 4, 2018, immediately following the unveiling of the Scalia Statue at the Law School with six Supreme Court justices, including the Chief Justice, in attendance, Mr. Leo and the Federalist Society “co-hosted” a “private luncheon” with Scalia Law School Dean Butler (p. 102).

When asked by [BuzzFeed in November 2017](#) about the BH Fund’s role in overseeing the Law School, Mr. Leo said that “he is “responsible for making sure that the law school remains true to its principles over the course of the gift.” He added, “Those principles are not all that different from what you would expect from any academic institution: a commitment to academic freedom and a due respect for intellectual diversity and the freedom of expression. And in particular a commitment to excellence.” Mr. Leo made no mention to BuzzFeed of the BH Fund’s stated “mission” of “promoting ... limited, constitutional government” or the many conflicts from his interconnected positions and relationships.

In [May 2018](#), Dean Butler dismissed UnKoch’s earlier report on the BH Fund as based on “the bizarre assertion that the fund is somehow a third-party beneficiary,” despite the Federalist Society’s extensive involvement with the Law School and the provision in the March 2016 Grant Agreement that through a shell entity it has been given the “right to enforce all of the Donor’s rights in th[e] Agreement” in its “sole and absolute discretion.” At the same time, Dean Butler acknowledged that he has been using at least \$700,000 *annually* of the scholarship revenues from the Grant Agreement to fund two of the Law School’s ideological centers, including the C. Boyden Gray Center for the Study of the Administrative State.

Dean Henry N. Butler Addresses Recent Media Surrounding George Mason University and the Law School



RESPONSE: The entire discussion of the BH Fund is disjointed, including the bizarre assertion that the fund is somehow a third-party beneficiary.

SPECIFIC RESPONSE ON THE USE OF THE \$30 MILLION GIFTS: Provost Wu is correct. After the money is used to pay for scholarships for students, it becomes general revenue to the law school and can be allocated at the dean's discretion. If sufficient law school revenue is available, revenue can be used to support the Center for the Study of the Administrative State and the Liberty & Law Center.

A Form 990 return for the George Mason University Foundation further indicates that

a significant part of the revenues has been allocated to increase the salary of Dean Butler himself via an increase in the “non-state” component of his pay, so that his pay now exceeds the University President (pp. 60-61).

In *Of Serfs and Lords* (Rowman & Littlefield, 2018), former Assistant GMU Law School Dean Richard Kelsey, who is a “committed conservative,” devotes a chapter to the economics of this \$20 million Grant Agreement and finds that after the first five years it will cost George Mason much more than it takes in because of the hiring of faculty who are not needed to teach the School’s law students according to traditional student-faculty ratios. *Id.* at 63-72. Dean Kelsey concludes that “if a donation is locking a dean in place in securing twelve members of an ideological movement, increasing staff, and building out ideological centers, should it be private in a public university? *It should not.*”

An August 2018 FOIA request reveals that despite University policy that “name changes” like renaming the Law School “must be reviewed by the University’s Gift Acceptance Committee,” the University’s “Gift Acceptance Committee did *not* review ... the March 2016 Grant Agreement with the anonymous donor,” which included the third party beneficiary provision (p. 57). Instead, Dean Butler fast-tracked the Grant Agreement through to “informal approval” in less than two weeks with the help of the head of the University’s Board of Visitors, former Republican Congressman Tom Davis, and other officials eager for the additional private funding (p. 257). The recent October 9, 2018 “Gift Agreement Report” by an internal review committee at George Mason University appointed by University President Angel Cabrera flags the \$20 million Grant Agreement provision for oversight of the Law School by a third party beneficiary as “representative” of those “posing potential challenges” (pp. 215, 229). The “Recommended Policy Principles” in the Report state that “Gifts must be intended for public benefit rather than for private interest” and that “[p]artnerships and support from the corporate sector will only be accepted that enable the institution to better achieve its mission without compromising its principles and will only be accepted if disclosed within the confines of University policies” (p. 229).

For each *Gift Review Criteria* area, the Committee:

- > Identified key factors to be considered during the analysis of gift agreements.
- > Noted examples of past gift agreement language posing potential challenges.

Representative of Marked Language

Agreement #40: "Section 7A: Third Party Beneficiary - The Parties agree that REDACTED is a **third party beneficiary** of this Agreement. REDACTED and the Donor have previously agreed that the Donor has given REDACTED the right to enforce all 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 REDACTED."

Recommended Policy Principles Derived from Leading Practices

- > Partnerships and support from the corporate sector will only be accepted that enable the institution to **better achieve its mission** without compromising its principles and will only be accepted if disclosed within the confines of University policies.
- > Gifts must be intended for **public benefit** rather than for private interest.

Dean Butler left a similar history behind at Northwestern University School of Law, where he led the Searle Center on Law, Regulation, and Economic Growth before he returned to George Mason in 2010. [According to Northwestern's current Dean](#), corporate sponsorships of judicial education programs "ended the moment Butler left," with the current Dean categorically stating that Northwestern's legal programs must be "free from any real or perceived conflict of interest." Based on the Gift Agreement Report, the University's Provost has now made recommendations to George Mason's Board of Visitors at the Board's December 12, 2018 meeting which are under consideration.