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...
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.

In a FEC filing, Mr. Leo listed himself as an employee of the BH Group that made the $1 million contribution. According to 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).

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.

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.

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).
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.