

## Donor Secrecy at Public Universities

10.18.18 | Linda J. Rosenthal, JD



George Mason University (GMU) is a “young university that, in just a short time” [since 1972] “has made impressive strides in size, stature and influence.” Now, “Virginia’s largest public research university” serves some 34,000 students; its main, “beautiful wooded” campus is in Fairfax, Virginia, only 15 miles from the nation’s capital.

But in late April 2018, a simmering controversy erupted. It shattered the calm of this bucolic setting and “rankled the academic world.” It did not “come as a surprise,” though. “Many scholars saw this as just the latest revelation of strings-attached giving with an ideological slant – another encroachment on the sacrosanct idea that teaching and research at universities, especially public ones like George Mason, must be immune from outside influence.”

### *The Donor Issue*

It has been more or less an open secret for years that the conservative billionaire industrialist Charles Koch has been funneling huge donations to many educational institutions around the United States – including George Mason University.

According to a 2014 news article, “[a]ctivists and journalists have long monitored” the higher education donations by Charles Koch because of the scope and breadth, which totaled about \$150 million between 2005 and 2015....” A group called UnKoch My Campus has revealed ties between Koch and the University of Kansas, Florida State University, and other institutions, noting it’s “not unusual for schools to resist disclosing the terms of Koch grants” where they “offered a lot of control to Charles Koch, in exchange for a few million dollars.”

Of course, the scope of this largesse goes well beyond Charles Koch alone; it includes his brother, David, and other billionaires – of both political ideologies.

A common feature of the GMU situation – as well as other ideologically fueled donations under

scrutiny in recent years – is that the money is funneled to a public university *through* an affiliated foundation – set up as an independent 501(c)(3) entity, but often with (too) close ties to the university. The foundation then becomes a useful vehicle to shield these transactions from public scrutiny.

### *The GMU Donor Controversy Explodes*

Students, faculty, and others in the GMU community have been concerned for years by the enormous flow of money coming in from Charles Koch and affiliated sources; for instance, since 2005, there has been an estimated \$50 million donated. Just a few years ago, the Koch Foundation gave \$10 million (along with another \$20 million from an anonymous donor) to rename the George Mason's law school in honor of the late Supreme Court Justice Antonin Scalia.

A group called Transparent GMU had been seeking records about these donations for about a year. Announcement in March 2018 of a new, \$5 million, gift to the economics department to create three faculty positions hardened their resolve.

The matter came to a head at a court hearing in late April 2018 in a lawsuit brought by Transparent GMU against the George Mason University Foundation after the community group's request for records was denied. The litigation was brought under Virginia's Freedom of Information Act on the grounds that since the "foundation conducts business on behalf of" the public university, it "should be considered an arm" of the university.

The Foundation's position has been that it is not subject to the records request because it operates independently: "The foundation is a private nonprofit entity that is not exercising any type of delegated government power or function....And if it isn't, that means it's not subject to the Freedom of Information Act." A spokesman added an additional argument: "philanthropists have the right to request anonymity when they make donations.

The judge did not make a ruling at the hearing; nevertheless, events moved swiftly in the week or so following it.

University President Angel Cabrera reiterated his long-standing position: "I feel compelled to once again affirm that all gifts accepted by the university, including this one, are strictly compliant with our principles of academic independence,"

### *The Donor Truth Spills Out*

Within days, some of the documents sought were released or leaked, and President Cabrera had to walk back from this position. He acknowledged that "some financial gift agreements accepted by the school 'fall short of the standards of academic independence' and raise questions about donor influence at the public institution."

What the documents revealed was, in many respects, as bad or worse than critics had feared: "...as George Mason grew from a little-known commuter school to a major public university and a center of libertarian scholarship, millions of dollars in donations from conservative-leading donors like the Charles Koch Foundation had come with strings attached."

From about 1990 through at least 2009, “entities controlled by the [Koch brothers]” had extraordinary access and control over faculty appointments, particularly in the economics department and at the Mercatus Center, a “Koch-funded think tank on campus that studies markets and regulations.” Selected professors “embraced unconstrained free markets.”

According to GMU associate professor Bethany Letiecq, a leader in the Transparent GMU group, the “documents demonstrated that the school had ‘ceded our authority and autonomy to one of the wealthiest industrialists in the world.’”

Following these revelations, the University president acknowledged that “some gift agreements... raised questions concerning donor influence in academic matters.” They “fall short of the standards of academic independence” he expects “any gift to meet.” He ordered an investigation and a review of the gift acceptance policy.

## *Conclusion*

This story has implications far beyond the specifics of George Mason University and strings-attached gifts from billionaires. “Foundations that raise, spend and invest private support for public universities have become staples of higher education in the last 40 years. They often refuse freedom of information requests, claiming that transparency laws governing their affiliated schools do not apply to independently operated 501(c)(3) nonprofits.”

But they have been described, properly, as “public bodies cloaked in a thin private veneer.” The Government Accounting Standards Board, an independent private-sector organization that sets accounting and financial reporting standards, considers the foundations to be “component units” of public universities” because they “fundraise for specific schools,” and those schools count on that money.

A few states, like California, Colorado, and Nevada require “at least some financial transparency from university foundations.” Others, like Illinois, Iowa, Kentucky, and Ohio have found them to be public bodies or at least to be doing public work.” Otherwise, these foundations are presumed private.