

GEORGE MASON UNIVERSITY
MINUTES OF THE FACULTY SENATE
April 27, 2016
Continued May 4, 2016
Research Hall room 163, 3:00-4:15 p.m.

Senators present: Alan Abramson, Mark Addleson, Dominique Banville, Jim Bennett, Alok Berry, Lisa Billingham, Carol Cleaveland, Lloyd Cohen, James Conant, Richard Craig, Betsy DeMulder, Charlene Douglas, Michele Greet, Jesse Guessford, Mark Houck, Dimitrios Ioannou, Bijan Jabbari, Bruce Johnsen, Chris Kennedy, Larry Kerschberg, David Kravitz, David Kuebrich, Timothy Leslie, Daniel Menascé, Jim Metcalf, Linda Monson, Elavie Ndura, Robert Pasnak, Paula Petrik, Keith Renshaw, Catherine Sausville, Joe Scimecca, Suzanne Slayden, James Steele, Susan Trencher, Iosif Vaisman, Jenice View, Phil Wiest, Shelley Wong, S. David Wu, Stanley Zolek.

Senators absent: Peggy Agouris, Changwoo Ahn, Kenneth Ball, Doris Bitler Davis, Deborah Boehm-Davis, Henry Butler, Ángel Cabrera, Andrew Carle, Rick Davis, John Farina, Pamela Garner, Mark Ginsberg, Karina Korostelina, Kevin McCrohan, Kumar Mehta, Sarah Nutter, Thomas Prohaska, Pierre Rodgers, Mark Rozell, June Tangney, John Zenelis.

Visitors Signed In: Marisa Allison , PhD candidate, Sociology, Mason Coalition of Academic Labor (MCAL); LaShonda Anthony, Director, Academic Integrity, University Life; Nancy Bagwell, former extended studies student; Kushboo Bhatia, Outgoing Student Body President; Juliet Blank-Godlove, Dean of Students, University Life; Ric Chollar, Associate Director, LGBTQ Resources; Eve Dauer, University Registrar; Shannon Davis, Associate Professor of Sociology; Steven Dillingham, Assistant Registrar for Certification; Pat Donini, Assistant Vice President, Human Resources; Jessica Green, Student;; Layanne Hazim, Students Against Israeli Apartheid; Laura Jeneman, University Libraries; Dan Joyce, Associate Professor, School of Dance; Megan Kirk, HR Consultant, HR/Payroll and Vice Chair, Staff Senate; Meredith Lair, Associate Professor, History and Art History; Roger LeBlanc, Energy Outreach Coordinator, Office of Sustainability; Melody Lee, President, Asian Pacific American Coalition, junior, Marketing;; Michelle Lim, Faculty Initiatives Manager, Human Resources/Payroll; Elaine Mangulabnan, Asian Pacific American Coalition; Guilia Manno, Sustainability Outreach Coordinator;; Stephanie Milner, Assistant Director, Housing and Residence Life; Tera Monroe, Director, Residence Life; Patrick J. Moore, Associate Professor English Language, INTO Mason; Samantha Parsons, a graduating senior in Conflict Analysis & Resolution; Geoffrey Payne, a Junior in Conflict Analysis & Resolution; Nathan Pittman, Student Body President; Claudia Rector, Assistant Provost for Academic Affairs, Mike Sandler, Director, Strategic Communications; Maryam Saroughi , Student, CEHD; Nathan Tsuda, Asian Pacific American Coalition; Rodrigo Velasquez, graduating senior, Communication; Julian B. Williams, Vice President, Compliance, Diversity and Ethics; Esther Yook, Associate Professor, Communications.

Chair Charlene Douglas called the meeting to order at 3:00 p.m.

VI. Other New Business

Remarks from/on behalf of Student Groups

1. Shelley Wong & Student Concerns

Professor Shelley Wong was recognized and introduced four students to provide statements: Melody Lee, Rodrigo Valesquez, Geoffrey Payne, and Samantha Parsons to speak. Her full statement is in [Attachment A](#).

Statement of Melody Lee - [Attachment B](#)

Statement of Rodrigo Velasquez – [Attachment C](#)

Statement of Geoffrey Payne – [Attachment D](#)

Statement of Samantha Parsons – [Attachment E](#)

2. Kushboo Bhatia – President, Student Government

The Chair recognized Ms. Bhatia. She encouraged faculty to consider [Student Senate Resolution #31](#), **A Resolution to Incorporate Sexual Assault Resources on Campus into University Syllabi**. She emphasized that it could be a cultural change at the University: sending a message with faculty support that it is not acceptable on campus. Such a change could make students feel more supported. Finally, she reminded the Senate that the President's Sexual Assault Task Force recommended this language be required on syllabi.

No motion was made.

Nominations

1. Timothy Leslie is nominated to serve as Faculty Representative to the Undergraduate Curriculum Committee. No further nominations were made from the floor, and the nomination was approved.
2. Mark Addleson (SPGIA) is nominated to fill a vacancy on the Nominations Committee. No further nominations were made from the floor and the nomination was approved.

Resolutions

1. Renaming of the Law School

Senator David Kuebrich was recognized to speak on the renaming of the School of Law, stating that he had a motion. Chair Douglas noted this was not the same motion as the one approved by the Faculty Senate at its previous meeting. Senator Kuebrich presented prepared concerns (shown in full in [Attachment F](#)) before his motion:

The Faculty Senate proposes the following actions:

1. The Administration and Board of Visitors put the request for SCHEV approval and the enactment of the provisions of the grant proposals on temporary hold to allow for a more careful discussion of the many serious concerns expressed by faculty, students, staff, alumni, state legislators, and the general public. Rather than the current rushed process, it would be both prudent economic and educational policy and an appropriate show of respect for the GMU and larger community to a) allow a reasonable amount of time for all parties to gain a better understanding of the full meaning and implications of the grant agreements, b) make sure the above-stated concerns are adequately addressed, and c) allow the University to reach a careful decision that will best serve our students, faculty, staff and the larger public.
2. The Senate *ad hoc* Task Force on Donor Relations present the Senate at its first fall meeting with a detailed COI policy applicable to private donations.
3. The Senate *ad hoc task* Force on Donor Relations present the Senate at its first fall meeting with a detailed proposal for a committee charged with approving the creation and/or expansion of GMU affiliated centers and with monitoring their ongoing activities as well as those of already existing centers.

Discussion:

Senator: No one who has taken time to do math to show how it works financially.

Senator Bruce Johnsen, School of Law: I am the Director of Judicial Education at the Law and Economics Center. The LEC's judges institutes are not designed to influence judges. Attempting to do so would be impossible because judges are, by their profession, experts at avoiding attempts by shrewd lawyers to influence them. Instructors teach positive, scientific economics, not policy or ideology. The repeated criticism of the LEC's judges institutes is simply a transparent attempt to repeat a lie, and repeat it, and repeat it again in hopes it will become the truth.

Senator: Some of us may be intimidated by legal arguments, even if they are very clear. The Faculty Senate has right, obligation, and duty to use common sense.

Senator Lloyd Cohen, School of Law, then read the following statement – see [Attachment G](#).

Senator Kuebrich: What we are proposing aligns with AAUP precedents in avoiding the conflict of interest between donors and institutions who receive them. AAUP is quite clear important to have policies in place to prevent conflict of interest and to avoid the appearance of conflict of interests. There is lots of negative information about GMU from various places; we have responsibility to look at it. I am not accusing the School of Law of doing something improper, but trying to insure that there is no denial of academic freedom, that professors can teach and write whatever they wish.

Senator: I support the motion here because it's very important to develop code to apply to fundraising. The concerns raised given the current situation of the university about the commitment to fund centers needs to be thought through.

Senator: I deeply support academic freedom. I also want the university to have money to grow. From the language Dean Butler signed, donors could withdraw money, and that could have a coercive effect. I understand the School of Law's concerns about publicity, however I have several amendments for the resolution.

The resolution as amended was approved by a vote of 25 in favor, 12 opposed:

RESOLUTION II (May 4, 2016)

Note: Explanatory language added to provide adequate context for the resolutions is shown in [bracketed red font].

In view of concerns [discussed in the Faculty Senate meeting], the Faculty Senate proposes the following actions:

1. The Administration and Board of Visitors put the request for [State Council of Higher Education for Virginia] SCHEV approval and the enactment of the provisions of the grant proposals [related to the Law School gifts] on temporary hold to allow for a more careful discussion of the many serious concerns expressed by faculty, students, staff, alumni, state legislators, and the general public. Rather than the current rushed process, it would be both prudent economic and educational policy and an appropriate show of respect for the GMU and larger community to a) allow a reasonable amount of time for all parties to gain a better understanding of the full meaning and implications of the grant agreements, b) make sure the above-stated concerns are adequately addressed, and c) allow the University to reach a careful decision that will best serve our students, faculty, staff and the larger public.

2. The Senate *ad hoc* Task Force on Donor Relations present the Senate at its first fall meeting with a detailed COI policy applicable to private donations.

3. The Senate *ad hoc task* Force on Donor Relations present the Senate at its first fall meeting with a detailed proposal for a committee charged with approving the creation and/or expansion of GMU affiliated centers and with monitoring their ongoing activities as well as those of already existing centers.

4. This Resolution is to be sent to the following parties:

- The GMU Board of Visitors – prior to the Board's May 5 meeting
- President Cabrera and Provost Wu
- SCHEV
- The entire GMU community

2. University Policy 1123 and the Grant Agreement between an anonymous donor and the GMU Foundation

Senator Suzanne Slayden was recognized and presented the following motion:

University Policy 1123 and the Grant Agreement between an anonymous donor and the GMU Foundation

MOTION

The Faculty Senate requests answers to these questions from the President and the Rector of the Board of Visitors:

Were the requirements of University Policy 1123 (Gift Acceptance Policy) discussed by GMUF or the administration at any time before or after the Grant Agreement for \$20 million and a naming opportunity was signed by the University/Foundation and an anonymous donor?

Does the quoted section of University Policy 1123 regarding funding requirements for a naming opportunity pertain to the Grant Agreement between the anonymous donor and the University/Foundation?

If the Policy does not pertain to this Agreement, why not?

In the event that the Donor discontinues funding before the entire \$20 million is disbursed, what action will the University take?

1. The George Mason University **Gift Acceptance Policy** (University Policy 1123) states in part (emphasis added): [<http://universitypolicy.gmu.edu/policies/gift-acceptance-policy/>]

I. SCOPE

This policy applies to all George Mason University and George Mason University Foundation staff for accepting gifts from donors through the University Foundation. This policy applies to the development, issuance and maintenance of gift acceptance agreements.

VIII. B Funding Requirements

The funding plan for a named opportunity must be in writing and must meet with the approval of the President of the University after consultation with the Gift Acceptance Committee, and the Board of Visitors when required. It may be determined that the naming will be delayed until agreed funding requirements are met.

Outright gifts and ***written enforceable pledges for up to five years may be used to fully or partially fund a named opportunity at face value.*** The President, after consultation with the Gift Acceptance Committee, must approve any pledge agreement that provides for any pledged amounts to be received beyond five years, prior to the pledge agreement being executed by the donor.

...

Namings associated with capital gifts will be conferred when 50% of the gift is received by Foundation. The exception is endowment gifts, which can be named upon receipt of a pledge.

2. The \$20 million Grant Agreement between the anonymous donor and GMUF includes this Foundation Grant Request and Proposed Grant Award Schedule (part 5.b.):

[\[http://www.gmu.edu/resources/facstaff/senate/Grant%20Agreement%20Redacted%204.7.16.pdf\]](http://www.gmu.edu/resources/facstaff/senate/Grant%20Agreement%20Redacted%204.7.16.pdf)

Foundation Grant Request Date	Donor Response and Proposed Contribution Date	Contributed Amount
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

The bold italics in the University Policy, above, indicate the requirements to be met for a naming opportunity.

These are the requirements that have been met: the plan is in writing; it has presumably been approved by the Gift Acceptance Committee and has been approved by the President and the BOV; and the contribution is a written pledge over five years.

However, the requirement for receiving 50% of the gift before naming is conferred has not been met, nor will it be met until \$10 million is received "on or about May 1, 2018".

3. Contrary to the apparent University Policy requirement of 50% received contribution, the Grant Agreement contains these statements:

"The University agrees that it shall convert to the School Name by no later than July 1, 2016." (part 8.a.)

and

"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." (part 5.a.)

The University has agreed to terms that apparently violate University Policy 1123.

Discussion:

Provost Wu: I asked legal counsel to provide clarification. Since Naming is not a capital gift, then the policy does not apply.

Senator Slayden: This is a very loosely worded gift policy, and appears to be lacking in its definition of capital gifts.

The resolution was approved and distributed with explanatory notes. ([Attachment H](#))

VII. Remarks for the Good of the General Faculty

Incoming Faculty Senate chair Keith Renshaw noted his appreciation for the students that came to speak, noting that he hoped for future collaboration together. He also thanked Charlene Douglas for her service (as chair of the Faculty Senate) and support.

VIII. Adjournment: The meeting adjourned at approximately 4:10 p.m.

Respectfully submitted,
Timothy Leslie
Secretary

ATTACHMENT A

Introduction of Students to Faculty Senate – Shelley Wong, Associate Professor, College of Education and Human Development

Chairperson Charlene Douglas, President Cabrera, Provost Wu, fellow senators and members of the George Mason faculty, staff and student community,

Dr. Douglas, I want to commend you for your outstanding leadership as Chair of the Faculty Senate. It has been my great pleasure to serve with Senators Linda Monson and Pierre Rogers as Sergeant at Arms during your tenure. Thank you Chair Douglas and Incoming Chair Renshaw for asking me to introduce the students who will speak to the Senate today

As a senator from the College of Education and Human Development, whose core values are ethical leadership, research informed practice, innovation, collaboration and social justice, it is my honor to introduce four students who live out these core values of ethical leadership, research informed practice, innovation, collaboration and social justice by bringing their concerns to the Faculty Senate today.

Melody Lee, President of the Asian Pacific American Coalition, is a junior studying Marketing

Rodrigo Valesquez, a graduating senior in Communication

Geoffrey Payne, a Junior in Conflict Analysis & Resolution

and Samantha Parsons, a graduating senior majoring in Conflict Analysis & Resolution.

It is important for the Faculty Senate to hear the voices of our students and to discuss ways that we can, as the Faculty Senate, support the more than 2000+ students, faculty, staff and community in their efforts to be heard and their demands answered.

<https://www.change.org/p/dr-%C3%A1ngel-cabrera-reinstatement-of-dr-shaoxian-yu-as-the-associate-director-of-gmu-odime>

For these reasons, I am pleased to formally recognize Melody Lee, Rodrigo Valesquez, Geoffrey Payne and Samantha Parsons who will be making statements on the separation of Dr. Shaoxian Yu and concerns regarding the name change of the Law School. Through these statements, they will be representing a broad coalition of student organizations, including:

Filipino Cultural Association
Vietnamese Student Association
Korean-American Student Association
Japanese Student Association
Alpha Alpha Chapter of Kappa Phi Lambda
Sorority, Inc.

George Mason University Colony of Pi
Delta Psi Fraternity, Inc.
Lambda Colony of Kappa Phi Gamma
Sorority, Inc.
Thai Student Association
Mu Chapter Lambda Pi Chi Sorority Inc.

Muslim Student Association
Society of Hispanic Professional Engineers
Beta Delta Chapter Chi Upsilon Sigma
National Latin Sorority, Inc.
Caribbean Student Association
Ms. Black GMU
My Natural
George Mason Colony of Phi Iota Alpha
Fraternity, Inc.
Aguilas Mentoring Program
First Gen Mason
Hispanic Student Association
Alpha Delta Chapter Upsilon Lambda

Fraternity, Inc.
Pride Alliance
Transgender/Queer Mason
GMU Arrows & Aces
African Student Association
Black Student Association
Collegiate Black Men
Mason DREAMers
Students Against Israeli Apartheid
Native American and Indigenous Alliance
Mason Coalition of Academic Labor
GMU Student Power

Attachment B

Statement of Melody Lee, Junior

Email: mlee36@masonlive.gmu.edu or melodyjlee36@gmail.com

Background on APAC:

The Asian Pacific American Coalition (APAC) is a student organization that serves as a voice for the Asian Pacific American (APA) student population at George Mason University. APAC consists of enthusiastic Mason students from diverse backgrounds and cultures who work together to promote APA perspectives and heritage year-round and to show that the participation of APA students are essential to the growth of the Mason community. APAC works to foster positive change now and in the future on the Mason campus.

We're here to discuss a pressing issue that has been all over social media, and that issue is the separation of Dr. Yu. For those who don't know who Dr. Yu is, Dr. Yu was our beloved faculty advisor who advised many of our APA organizations here at Mason. He has constantly been coming out to support our events and is one of the only staff members who we, as the APA students, feel comfortable reaching out to for anything. Dr. Yu is very well-loved, well-known and well-respected among our community. Now, within Mason's Office of Diversity, Inclusion and Multicultural Education (ODIME) there aren't any Asian American staff members. For a school that prides itself in Diversity, how is it possible that there is not a single person, in the Office of Diversity, with the same heritage as us available to satisfy our wants and needs. Over the past couple of years, we've created a relationship with him that cannot be replaced.

A few months ago, the university decided to 'separate him without cause' and without giving him an explanation. They removed him almost immediately, leaving many of our organization's advisor-less without any communication between us and administration as to what was going on.

If the university found a large enough reason(s) behind this separation, how is it possible that we the students who worked so closely with him over the past few years have absolutely no complaints? We enjoy working with him every year, as it is obvious that he truly cares for his students. Once we heard about the separation, it spurred a movement among the asian american community as well as other organizations/concerned students. We decided to take a stand, and finally do what we know is right. We released a list of demands, a letter of solidarity and a petition which received over 2,000 signatures within 2 weeks. We've had several meetings with administration, leaving each meeting unsatisfied and with no answers. They keep saying they are listening to what we're saying, however if that's true, then they are choosing to ignore the biggest thing that we are crying out for right now. We want our advisor back, we want our mentor back, we want our friend back. We don't want anyone else.

Attachment C

Statement of Rodrigo Velasquez, Senior

Email: rvelasgu@gmu.edu or rvelasgu3@gmail.com

I would like to start with quoting University

Life, "University Life Operational Strategy:

In an effort to serve our stakeholders and deliver a best-in-class return-on-investment for students and their families, University Life will increase transparency and accountability of our operations by using data to inform decision-making, identifying opportunities for increased efficiencies, and determining the effectiveness of our programs and services."

Not only has this entire process NOT been transparent, but counterproductive to student success. Instead of studying for finals or preparing for graduation, we are here advocating for our friend and family member, Dr. Shaoxian Yu.

Dr. Yu was a champion for students, something not seen to that degree at University Life. Outside of Asian heritage students, Dr. Yu was a leader and advisor for first-generation

college students, students of different cultural heritages, undocumented students, students of different sexualities and gender expressions, and students whose voices and interests were not supported by our campus.

Since his separation, students have felt the immediate impact of his absence. Nobody can replace what Dr. Yu has been our mentor and advisor; for a majority of us he is the reason we are here today...he went out to reach to ODUM members. Without Dr. Wu and staff members in that office, students won't be here. We know what we want – over 2,000 members of our community (have signed a petition?) We need him here...We are not afraid of taking with you – we will keep at this, we will not give up.

From you. The faculty senate, we ask that: You join us in a statement of support, calling on Rose Pascarell to reinstate Dr. Shaoxian Yu to his position in ODIME. We understand that none of us have the authority to do so outside of Rose. We call on Faculty Senate in joining APAC, supporting allies organizations. And fellow Faculty senators in asking Rose to do what is right for students and the Mason community: reinstate Dr. Yu.

Attachment D

Student Statements on the GMU Law School Name Change

Geoffrey Payne, Junior Email:
gpayne2@gmu.edu

As a wide coalition of student groups, we argue that changing the name of the law school to bear the late Supreme Court Justice Antonin Scalia's name would negatively impact students, faculty, and staff who identify as women, people of color, and/or LGBTQ. In the United States, Scalia's name and judicial record has had and will continue to have a long withstanding influence in lending power and a voice to structural racism (such as in *Shelby County v. Holder*), homophobia (such as in *U.S. v. Windsor*), and sexism (such as in *U.S. v. Virginia*).

As a gay and transgender student, I would feel less safe at Mason, because the name change would lend credibility to judicial opinions and public statements which fanned the flames of homophobia and transphobia. Scalia was an active and vocal opponent of LGBTQ rights – likening banning homosexuality to laws banning murder – and has a record of standing against these communities and making light of their struggles. The name change also lends credibility and authority to authored opinions that support segregation, discrimination, and structural violence. One such example is the 2015 case of *Fisher v. University of Texas*

where Scalia stated: “There are those who contend that it does not benefit African-Americans to get them into the University of Texas where they do not do well, as opposed to having them go to a less- advanced school, a less –a slower-track school where they do well”.

Merging our university’s legacy with that of Scalia is not only contrary to our values of diversity and accessibility, it also lends weight to opinions that uphold and extend various forms of oppression and violence. Protecting this action by invoking “diversity of belief ‘ is a wrongful and willful co-optation of diversity. Valuing diversity is meant to invoke respect for all. It is acceptable to have differing political opinions, but Scalia’s name and legacy convey neither respect nor unity: they symbolize the power and control to undermine our right to exist.

Therefore, I stand with the women, LGBTQ people, and people of color at George Mason University that Justice Scalia’s legacy has negatively impacted, to ask you, the faculty senate, that you *offer an official request to the university, as well as the State Council on Higher Education in Virginia, that the name change be halted.*

Attachment E

Samantha Parsons, Senior
Email: sparson6@gmu.edu

We strongly urge the faculty senate request the Law School name-change be halted. We also view the name-change itself as a symptom of a much deeper problem: undue donor influence and our university's lack of consultation with important university stakeholders, such as faculty and students. For the past three years, student groups across the country have been researching the impacts of Charles Koch Foundation 's involvement in higher education through large donations. This national movement started due to concerns raised by students right here at GMU.

As demonstrated in the handout we provided, donations from the Charles Koch Foundation have resulted in significant violations of academic freedom and shared governance, including giving the Foundation veto power over tenure and non-tenure track-hiring, and making grants conditional on the selection of department chairs, influence over curriculum, and the ability to dictate predetermined research goals. Because the Koch Foundation is our university's largest private donor, we have been trying to meet with President Cabrera and the GMU Foundation to discuss our fears that similar undue influence is taking place at GMU. Despite our continued pleas, our concerns have been ignored. This has made us feel as if donors are considered more important stakeholders at our school than we are. Just last week at the Faculty Senate meeting President Cabrera said he personally calls donors to

speak with them when there is a change in department and school administrators, yet we, the students of GMU who fund this university through our tuition rates that go up every year, cannot get him to speak to us.

The funding for the law school is contingent upon several stipulations: the name change, the continued retention of the current Dean, and that the law school continues to focus on the same intellectual content as it is today. We feel this violates faculty governance and academic freedom, as it allows the donor to dictate the Dean & the intellectual focus of an entire school for years to come. Furthermore, we are angry that faculty, staff, students, and other stakeholders at this university are not respected enough to be engaged in the decisions around accepting such stipulations, stipulations that will ultimately dictate the direction of our university, its image, and what we stand for.

From the university administration, we maintain our ask of the past two years: *all grant agreements and memorandums of understanding with private donors must be made transparent and public.*

From you, the faculty senate, we ask that: *the faculty senate ask for the establishment of an oversight committee, which would be composed of faculty, students, and other university stakeholders, that would review private donations before they are accepted, particularly focusing on the stipulations attached to the acceptance of the grant.*

ATTACHMENT F

Second Senate Motion Regarding the Renaming of the Law School

Last week the Faculty Senate passed a motion that expressed “deep concern” about the proposed name change of our Law School and the accompanying gift agreements. This motion adds several additional concerns and proposed steps for addressing them.

CONCERNS

1. The grant agreements require the University to make complex organizational changes the exact nature and implications of which are not clear. For instance, it seems problematic, given the University’s limited resources and the Law School’s declining enrollment, to commit **tax-payer monies (add hyphen)** to create two new centers affiliated with the Law School and to hire twelve new law professors (~~some at~~ **six at** tenured, senior levels), as well as an unspecified number of **support** staff, and to also provide the support that accompanies such positions: ~~for example~~, retirement, medical and insurance benefits, offices, travel monies, etc. Such a large financial commitment to this one project has the potential to distort the

University's future development by denying funds to other equally important academic programs.

2. The grant agreements link the funding of the promised scholarships to the ongoing service of the current Dean, Dr. Henry N. Butler: "if the individual holding the Dean position changes, the University shall immediately notify the Donor." This constitutes a violation of longstanding practices of faculty governance.

It is the responsibility of the Law School Faculty and the GMU Administration, not outside donors, to determine who is appointed and continues to serve as Dean. To tie gifts totaling thirty (30) millions of dollars to the ongoing tenure of Dean Butler is unacceptable. If during the first five years of the terms of the grant, the period in which the funds are to be contributed, the Faculty and/or Administration wishes to discuss the removal of Dean Butler because they believe it might be in the best interests of the School's faculty or students, or for any other reason, the deliberations would be burdened with an unacceptable conflict of interest. Furthermore, since the term of the grant from the Charles Koch Foundation is "ten years" and that of the anonymous donor is "in perpetuity" (a legal term whose definition seems partially contingent upon the type of legal document in which it is employed), it is not fully clear for how long the Administration and Faculty are legally obligated to consider the wishes of the donors.

3. The grant agreements also appear to be somewhat risky for the University and to give too much leverage to the Donors. All of the money is not given up front: it is to be made in five annual installments. If the Donors decide the Foundation and/or University are not living up to any of the "provisions set forth in the agreement," then the Donors can end the agreement within 30 days and demand the return of "all unexpended Contributed Amounts" within an additional 15 days. Especially troubling is the provision in the agreement with the Anonymous Donor that if s/he "determines that the School or any academic unit bearing the School Name is no longer principally focused on the School's Mission, then the donor has "the right to pursue any remedy available at law or equity, and has the right to terminate this agreement." In addition to the implied financial risk, this clause seems to give the Anonymous Donor an improper amount of influence over determining the intellectual content of the Law School's mission.

4. The extensive negative public criticism of the Law School is deeply troubling. Although the School of Law has a distinguished faculty and enjoys a high ranking among our nation's law schools, it also receives a goodly amount of criticism--from sources that have considerable credibility with the public. A small sampling of recent critiques would include articles in the newsletter of the Center for Public Integrity (2013), the *Washington Post* (2014), the *Huffington Post* (2014), and the Associated Press (2016). Much of the criticism is directed

toward the special seminars offered to judges, attorneys-general, and other public officials by the Law School's Law and Economics Center (directed by Professor Butler until last summer when he became Dean). The information provided in the news articles strongly implies that the seminars do not provide a balanced range of economic views and are insufficiently transparent about who funds them. The articles suggest the seminar presentations are, in important respects, a camouflaged form of lobbying designed to influence the attendees to make decisions that will serve the economic interests of the corporations and wealthy donors who contribute to the LEC.

A decision about the truth or falsity of this journalism is beyond the scope of this resolution. The present point is that this negative criticism damages the reputation of our university and higher education in general. It also raises the possibility that the LEC may be better serving the interests of its donors than fulfilling its mission to serve the public good. Accordingly, it seems important to make sure these allegations of conflict of interest are either disproven or properly resolved before the Law School further develops the two additional centers—the Center for the Study of the Administrative State and the Center for Liberty and Law—to be funded by these grants. Unfortunately, at the present moment the University doesn't have a COI policy that governs private donations.

Attachment G

Statement of Senator Lloyd Cohen, School of Law

Statement to Faculty Senate 5/4/2016

So much pernicious error to refute, so little time.

Before this meeting I asked my law school colleagues to provide me with a list of the accusations they wanted me to counter and the arguments and evidence they thought most appropriate. Alas, it was overwhelming. Unless I was provided a couple of hours—please don't—it would be impossible. Instead I will respond to the broad ignoble spirit of this resolution.

Consider the irony of this body's proposed resolution: In purporting to take a stand in favor of academic freedom this body would adopt a statement that constitutes one of the most egregious attacks on academic freedom not only in the history of this university but in higher education in this country.

This body is prepared to accuse the faculty and administration of the

school of law of selling out its integrity, independence, and academic values for a pottage-all while hiding under the gutless guise of expressing "concerns" about public perceptions and other weasel words designed to disguise what this really is-an unprecedented assault on the academic freedom of one unit of this university by a mob of faculty from the rest of the university.

And let's not kid ourselves-the whole world knows what is going on here. If this were a gift from George Soros to create the Harry Blackman Law School we would not be here today. The political agenda of this body is transparent.

And it is the transparency of this political agenda to *attack* academic freedom cloaked in the garb of a purported *defense* of academic freedom that leads me to call on every Senator to think about the principle that you would be voting for today if you go along with this statement.

Indeed, if this assault is in the name of defending academic freedom, then that concept has lost all meaning.

Consider the barely-concealed contempt for the law school faculty and administration that we would voluntarily sell-out our right to faculty governance and academic freedom for a donor and that the provision that requires the law school to notify the donor in the event of a change of leadership violates the principle of faculty governance.

This is nonsense. The donor reaffirms its commitment to academic freedom and faculty self-governance in the document itself. More than that, however, the argument of the Resolution demonstrates the embarrassing logical fallacies and dead-ends into which such thinking leads. For the donor does not request any say into decisions regarding the Dean. They do not ask for any right or authority to choose whether the dean is fired or authority over the appointment of a new dean. They simply ask to be notified if the Dean is terminated and they have a right to withdraw support if they are not satisfied that their money is going to be spent as intended. They ask for no recoupment or disgorgement of funds donated in previous years.

Thus, the idea that this amounts to a conflict of interest or infringement on academic freedom is simply tendentious nonsense. The law school retains unfettered rights to teach what it wants to teach and be led by whom it wants to be led. The donor-like every single donor that supports this university-retains the right to stop providing support if they don't like how their money is being spent.

Indeed, so illogical and hate-filled is the Resolution that it fails to understand that *it is the university that benefits* from the donor's commitment to provide support for several years instead of on an annual basis. The alternative is that the donor simply decide whether to contribute every year-the multi-year period of the gift simply allows the law school to plan its affairs more predictably. How does that possibly create a conflict of interest or infringe academic freedom? Indeed, it is the very opposite.

Perhaps most appalling and cowardly is Paragraph 4 of the resolution, which justifies an intensive inquiry into the curriculum and pedagogy of the school of law. Leave aside the astonishing labeling of such outlets as the *Huffington Post* and George Soros's Center for Public Integrity as "credible" sources, which says more about the biases of those who have drafted the resolution than those sources. Leave aside the inability of the Resolution's drafters to be able to distinguish between an opinion piece and actual reporting. The law school and the Law and Economics Center is long-accustomed to attacks by activist groups advancing a political mission. But to have our colleagues at the university join the lynch-mob with this thinly-veiled political attack is disappointing.

Consider the insulting principle that the Resolution would advance. For over 40 years the Law and Economics Center has been providing cutting-edge instruction in economics for judges and law professors. During that time the LEC has educated thousands, perhaps tens of thousands, of judges at all levels. These are sophisticated people who every day have professional advocates stand before them to try to persuade them to side with their clients. Are we really to believe that these thousands and thousands of skeptics are susceptible to brainwashing? Does this body really want to be on record as taking the position that the hundreds of law professors that attend the LEC's programs every year are ignorant sheep unable to think for themselves?

And does this body really believe that the dozens of distinguished academics, including Nobel prize winners who have taught in these programs are simply tools of "the corporations and wealthy donors who contribute to the LEC"?

But let me identify one more disturbing consequence of this resolution. The resolution states, "A decision about the truth or falsity of this journalism is beyond the scope of this resolution. The present point is that this negative criticism damages the reputation of our university and higher education in general. ... Accordingly, it seems important to make sure these allegations of conflict of interest are either disproven or properly resolved...."

Is this really the position on academic freedom to which this body wants to commit itself. "*The truth or falsity of this journalism is beyond the scope of this resolution.*" Mere "criticism"-- whether *true or false*--is sufficient to convene an academic star chamber to investigate?

Indeed, consider this--this very body and the instigators of this attack have received "negative criticism" from national media outlets (as opposed to "positive criticism"?) in recent days for laughable and nakedly political conduct in prosecuting this case. Is that criticism sufficient to launch an investigation into those professors who have sponsored the Resolution?

Does anybody in this room really want to teach at a university where mere criticism is sufficient to convene a tribunal of faculty drawn from remote disciplines of the university *for the sole purpose* of determining whether the *substantive content* of your lectures might be thought to fail some ideological litmus test because the tribunal subjectively believes that your research might "serve the economic interests" that they dislike?

Indeed, perhaps one of the greatest ironies of this resolution is that it is the current Executive Director of the LEC, Todd Zywicki, is probably most responsible for the decision last year to abolish George Mason's speech code, thereby earning a green-light rating from FIRE. And I note as well, that I and the prior Dean, Dan Polsby has proposed a standard on Free Speech and Free Assembly to this body a decade ago, a standard that a representative from FIRE said should be a model for all universities. It was received by this body like a lead balloon and went nowhere.

Those of us who-teach law are fond of quoting the conclusion to Robert Bolt's famous play, "A Man of All Seasons", "Why Richard, it profits a man nothing to give his soul for the whole world... but for Wales?"

The thrust of this body's resolution today is to accuse the faculty and administration of betraying its soul of academic freedom for Wales, or worse: for scholarship money. And, uses this attack as a mean-spirited and hypocritical attack on academic freedom in the hypocritical name of academic freedom.

In conclusion, given the central subject matter of this resolution, I will quote an appropriate source to summarize this barely-concealed attack on academic freedom. One of Justice Scalia's most famous dissents was written in 1988 in the case of *Morrison v. Olsen* when Scalia stood alone as a sole dissenter in voting to strike

down the independent counsel statute on the grounds that although Democrats would enjoy turning loose the monster of an unaccountable prosecutor during the Reagan administration, they would rue the day when the principle was turned against them-as they did during the Clinton Administration.

At the time, Scalia warned the country that the foul principle at the heart of the statute was manifest and should be rejected. He wrote, "Frequently an issue of this sort will come before the Court clad, so to speak, in sheep's clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf."

This Resolution today is a wolf that comes as a wolf. There is no pretense that this resolution is anything but an unprecedented, insulting, and egregious violation of academic freedom. And I ask this body to consider the principle for which they vote today.

I call upon this body to reject this Resolution.

ATTACHMENT H

Resolution (May 4, 2016)

*Note: Explanatory language added to provide adequate context for the resolutions is shown in **[bracketed red font]**.*

University Policy 1123 and the Grant Agreement Between an anonymous donor and the GMU Foundation

MOTION:

The Faculty Senate requests answers to these questions from the President and the Rector of the Board of Visitors:

1. Were the requirements of University Policy 1123 (Gift Acceptance Policy) **[specifically, those in the final paragraph of Section VIII.B]** discussed by GMUF or the administration at any time before or after the Grant Agreement for \$20 million and a naming opportunity was signed by the University/Foundation and an anonymous donor?
2. Does the quoted section of University Policy 1123 regarding funding requirements for a naming opportunity **[see below*]** pertain to the Grant Agreement between the anonymous donor and the University/Foundation?
3. If the Policy does not pertain to this Agreement, why not?

4. In the event that the Donor discontinues funding before the entire \$20 million is disbursed, what action will the University take?

This Resolution is to be sent to the following parties:

- The GMU Board of Visitors – prior to the Board’s May 5 meeting
- President Cabrera and Provost Wu
- SCHEV
- The entire GMU community

* The funding plan for a named opportunity must be in writing and must meet with the approval of the President of the University after consultation with the Gift Acceptance Committee, and the Board of Visitors when required. It may be determined that the naming will be delayed until agreed funding requirements are met.

Outright gifts and written enforceable pledges for up to five years may be used to fully or partially fund a named opportunity at face value. The President, after consultation with the Gift Acceptance Committee, must approve any pledge agreement that provides for any pledged amounts to be received beyond five years, prior to the pledge agreement being executed by the donor.

...

Namings associated with capital gifts will be conferred when 50% of the gift is received by Foundation. The exception is endowment gifts, which can be named upon receipt of a pledge.