

A Student Review of FSU Gift Acceptance Policy:

Undue Influence and Charles Koch Foundation

A joint report from FSU Progress Coalition and UnKoch My Campus

UNKOCH MY CAMPUS

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Introduction

This document is to serve as public comment for the 2015 revision of Florida State University's [gift acceptance and counting policy](#), otherwise known as FSU Policy 8-1. The comment period closes June 3rd. This gift policy determines if and how the FSU Foundation accepts private donations, and as such, directly affects faculty governance and academic freedom. This report is intended to reveal several necessary revisions, as well as to serve as comment on the revisions currently being proposed by FSU administration.

As this gift policy is responsible for preventing undue donor influence, we have reviewed it relative to the agreement between the Charles Koch Foundation and the FSU Foundation. We identify policy and governance issues that currently expose students and faculty to excessive donor influence. We find that current gift policy contains language that is vague and ineffective, and worse, several provisions that are being clearly violated by the Koch agreement. This weak and unenforced gift policy allows the Koch Foundation, and other donors, to make “gifts” whose conditions violate academic policy. An account of the particular violations of academic policy is included in the form of a report by the 2011 Faculty Senate Ad Hoc committee which, records requests now reveal, was drastically revised before being released. This, like several other documents this report references, are being released publicly for the first time, having been retrieved by public records requests over the past 6 months.

The report goes on to examine the revisions proposed the by FSU Foundation. These revisions are found to introduce vague language while weakening existing policy for the largest donors. Our recommendations and revisions to the gift policy are included at the end of the report, based on the concerns laid out below.

Ralph Wilson
ralph.wilson.ralph@gmail.com
FSU Progress Coalition
Unkoch My Campus

1. Background

Counting Policy

In the context of university fundraising, “counting” refers to a contribution being counted towards a university fund-raising goal. The Florida State University Foundation oversees charitable donations to FSU, and the FSU Research Foundation oversees grant money awarded for sponsored research. Grants are not generally counted toward fundraising goals. The gift/grant distinction is central to university advancement professionals whose careers are tied to fundraising campaigns with specific dollar targets. In the case of FSU, there is the \$1 billion “Raise the Torch” campaign. The gift/grant distinction is also of great interest to donors, as it determines whether their contribution is tax deductible.

The Charles Koch Foundation and Florida State University

In 2008, the FSU Foundation and the Charles Koch Foundation (CKF) signed a gift agreement in the form of a Memorandum of Understanding ([2008 MOU](#)). This agreement established the Program for the Study of Political Economy and Free Enterprise (SPEFE) and the Program for Excellence in Economic Education (EEE). The agreement has been described locally¹, nationally², and internationally³ as granting undue influence to the Koch Foundation. The memorandum outlined conditions under which CKF would provide funding for faculty, instructors, curricular and extracurricular undergraduate programming, and a postdoctoral program within the Department of Economics.

The agreement was made public in 2011 by FSU faculty members calling attention to violations of governance and academic freedom policies. Later that year, the agreement was reviewed by a Faculty Senate Ad Hoc committee which documented numerous concerns and recommendations in a [report](#). President Eric Barron and the Student Senate immediately affirmed these findings. It has since been discovered that this report was heavily revised before being released. The [full text of the unedited version](#) is included and discussed in Chapter 4.

In 2013, the MOU was amended and reauthorized ([2013 MOU](#)). This was not generally known until being made public by FSU students in the spring of 2014. No notice had been given to the public,

¹ [United Faculty of Florida-FSU Statement Regarding Donor Agreements](#), Jan 2015

² [Center for Public Integrity](#), Sept 2014

³ [The Guardian](#), Sept 2014

the faculty, or even the members of the Faculty Senate Ad Hoc committee. Since 2008, further agreements have been made between CKF that involve several partner donors and establish a growing program of Graduate Fellowships.

Also amended, in 2013, was the gift acceptance policy of the FSU Direct Support Organizations ([FSU Gift 2013](#)), including the FSU Foundation. This revision was a direct result of the 2011 controversy surrounding the Koch agreement. In a 2011 letter, President Barron specifically [wrote](#), “I have tasked Vice President Jennings to review Foundation policies and to take actions to ensure that all gift agreements adhere to our academic principles.” These revisions were approved and implemented in 2013.

When donor gift agreements impact academics, oversight from the FSU Foundation is relied upon to protect academic policy. The following report surveys ineffective and apparently violated gift policy provisions that allowed the approval of the 2008 and 2013 MOU with the Charles Koch Foundation. It also surveys the violations of academic policy that resulted from the Koch MOU.

2. Effectiveness of Existing Gift Policy and Governance

The Role of the Vice President for Advancement

According to the FSU’s Office of University Advancement [website](#), the office oversees the FSU Foundation “[u]nder the leadership of Vice President Tom Jennings.” Dr. Jennings also serves as the President of the FSU Foundation, with a seat on the Foundation’s Board of Trustees (and all seven standing committees). The university defines a conflict of interest as “any conflict between the private interests of the [individual] and the public interests of the University” (FSU [Faculty Handbook](#), pg 39). Clearly, it is in the (private) interest of the FSU Foundation President to maximize the amount of contributions that are counted toward the \$1 billion fundraising goal, while it is the role of the VP of Advancement to oversee the Foundation and protect the (public) interests of the university.

In a 2014 [memo](#)⁴ sent to President Thrasher from the Deans Development Committee, seven Deans of various FSU Colleges raise the concern that:

⁴ retrieved through a records request.

An organizational structure exists that, through no fault of the incumbent administrators, undermines accountability. The positions of Vice-president for University Advancement and President of the FSU Foundation are held by the same person, which blurs the lines of authority between the University and the Foundation as well as complicating the relationship between the President of the Foundation and the Executive Vice-president of the Foundation.

This conflict is made worse given the explicit oversight authority granted to the Vice President for University Advancement in FSU's gift policy. The entirety of Section 12 simply states, "Exceptions to any of the requirements summarized in the Gift Acceptance and Counting Policies above can only be granted by the Vice President for University Advancement. Written documentation approving any exception must be obtained" ([FSU Gift 2013](#) and [2015](#), pg 37). In other words, University oversight enforcing this policy consists of Dr. Jennings as Foundation President seeking written permission from Dr. Jennings as Vice President for Advancement .

Despite the broad authority to grant exceptions in Section 12, several specific instances are given as examples of the VP of Advancement's exception-granting power, including: any policies regarding real estate appraisal (6.3), all policies and procedures regarding the Real Estate Foundation (6.21), and any part of the gift policy (12). Several troublesome circumstances specifically require the authorization of the VP, including: allowing donors to serve on committees (1.1.7), accepting securities that are not publicly traded (2.1), accepting pledge durations longer than 5 years (3.2, 3.4), accepting anonymous gifts of questionable legality/desirability (10). Section 1.1.7 is written so that the decision to allow donors to serve on committees also requires the approval of the Provost or Vice President of Academic Affairs (though, like everything else in the gift policy, this requirement is subject to exception as allowed per Section 12).

This governance structure creates an inherent conflict of interest that can not be continued in good faith. The Deans point out in their memo that "[t]he Foundation's leadership advises and informs its Board, which in turn is a strong advocate of the Foundation without

regard for the effectiveness with which the Foundation serves the university.” We recommend that this clear appearance of impropriety be resolved before any new policy is finalized.

Ineffective Language

Several places in the gift policy are of concern simply because the wording is so weak as to make it unclear what is forbidden or allowed.

Gift vs. Grant (CASE vs. IRS)

Section 7 of FSU’s current gift policy distinguishes the FSU Foundation from the FSU Research Foundation. It states that the FSU Foundation “solicits gifts and charitable grants from private sources for all approved University programs for which **no services and/or products are required,**” whereas the FSU Research Foundation administers “awards funded with private monies for research and development activities of University faculty, staff, and students for which services and/or products are required and there is a commitment of University personnel” (pg 33). The latter are not charitable donations and are not tax deductible.

Though this distinction suffices to allow for compliance with IRS regulations, the gift policy goes on to explain important, more nuanced gift acceptance guidelines. It states that the FSU Foundation “intend[s] to follow the guidance provided on the acceptance and counting of charitable grants by the Council for Advancement and Support of Education (CASE).⁵” The specific guidance is taken from one of CASE’s “advancement products,” namely CASE’s *Reporting Standards and Management Guidelines for Education Fundraising (4th Edition)*.⁶

However, a [public document](#) from the Arizona State University Foundation website points out that CASE guidelines “confuse the issue” of what is a gift or a grant when compared

⁵ [CASE](#) is a professional association serving advancement (fundraising) professionals working on behalf of educational institutions. They also offer a variety of [advancement products](#) and services, and provide [standards and an ethical framework](#) for the profession. Dr. Tom Jennings, a [self described](#) “respected leader” in CASE, currently serves on the CASE District III Board of Directors and leads its Legislative Advocacy Committee.

⁶ This resource itself is not publicly available, despite the fact that it is being used as the basis of university policy. A spiral bound copy is [available from CASE](#) at a list price of \$78.50.

to the legal definitions established by the IRS. Indeed, FSU's gift policy allows the Foundation very broad interpretive power over what counts as a gift as opposed to a grant. As "per the CASE Reporting Standards":

... a grant is defined as a contribution received by an institution for either unrestricted or restricted use in the furtherance of the institution [...]. An institution may determine what a donor calls a grant is, for internal recordkeeping, a gift. (FSU Gift 2013, pg 32)

The policy goes on to clarify that tax deductible contributions do "not include corporate grants for programs in which the grantor receives a product or service **commensurate with the fee paid**" (pg 32, emphasis added). On the very next page, the policy claims that the Foundation solicits donations "for which no services and/or products are required." This suggests that the Foundation currently reserves the right to count a grant, for which the donor receives *some* services, as a gift. No guidelines or resources are cited for how it might be determined that a service is "commensurate" with the fee paid. This would allow the Foundation to count such a conditional grant toward their fundraising goal, and offer a tax relief to the donor.

In contrast, Villanova University's [gift acceptance policy](#) bases their definition of gift entirely on IRS guidelines, specifically [Internal Revenue Code §170\(c\)\(2\)\(B\) and \(D\)](#), and [IRS Publication 526](#):

Villanova defines a philanthropic grant according to current **federal tax law**.

A philanthropic grant is a voluntary donation made, without expectation of exchange for anything of significant commercial value ...

...

Philanthropic grants are processed by the Office of University Advancement and are counted towards the University's fundraising totals. Sponsored research grants

or contracts are processed by the Office of Research Administration, and are, with few exceptions, not counted in fundraising totals. (Villanova Gift Policy, pg 14)

Interestingly, there are more than 40 places in the FSU gift policy where IRS compliance is explicitly mentioned, but there is not a single mention of IRS compliance in the gift vs. grant section (Sec. 7). In contrast, section 4.0 stipulates that the value of non-cash gifts be reported “[p]er CASE and FASB guidelines and IRS regulations” (pg 10). In sec 4.11, the charitable status of non-cash gift is reported “[p]er CASE guidelines and IRS regulations” (pg 15). Yet the gift vs. grant distinction is made solely “[p]er the CASE Reporting Standards” (pg 32). Given the extensive and explicit inclusion of IRS regulations in other parts of the gift policy, it seems that the exclusion in section 7 may well be intentional.

The other consequence of not adhering to IRS definitions (and using CASE’s instead) is that, if a donor’s contribution is improperly counted as a “gift” and processed through the FSU Foundation, then it is improperly counted as tax deductible and shields the donor from significant tax liability on what may be very large donations.

Vague Language in 1.1.7

Consider Section 1.1.7 of the current gift policy:

... It is the preference of Florida State University that a donor not serve on committees involved in the selection or evaluation of students or faculty members who would benefit from the gift, unless authorized by the Vice President for University Advancement and the Provost/Executive Vice President for Academic Affairs. If approval is given to serve on such a committee, care must be taken that the donor does not control more than 49 percent of votes and that the donor does not possess perceived additional control by virtue of his ability to make additional gifts. (FSU Gift [2013](#) and [2015](#), pg 5)

By using language such as “it is the preference” and “care must be taken”, the university at once condemns and allows excessive donor influence. Such a committee was established by the Koch Foundation and a CKF representative serves on it (to be explained in more detail in the next section). This violates the “preference” above.

Furthermore, none of the appropriate “care” is being taken regarding this advisory board. Firstly, the requirement that a donor “not control more than 49 percent of the votes” is clearly meant to prevent the donor from having veto power, yet this presumes that the committee voting rule is simple majority. A CKF representative controls 33% of the vote on the three person advisory board, but because the voting rule is unanimity, they retain veto power. Secondly, the remaining two board members are faculty members that Koch selects, who are beholden to CKF’s objectives under penalty of defunding through the 2013 MOU (to be explained in more detail in the next section). This is a clear example of CKF exerting “additional control by virtue of [their] ability to make additional gifts.” Again, the language is so weak that these egregious circumstances are not a violation of anything other than preference and prescribed caution.

Section 1.1.7 continues with further, weaker language (discussed at length in the next section):

... Conditional pledges are those that place requirements on the university to perform some task or take some action that it might not otherwise initiate. [...] *The university discourages the acceptance* of conditional pledges. (FSU Gift 2013, pg 4, emphasis added)

Not only does this fail to protect the university from donor conditions, but it is inexplicably vague language that has no place in policy.

Previous Gift Policy (2005)

Prior to the 2013 version of the gift policy, such policies were outlined in the 2005 Florida State University Fund-Raising Policy and Procedure Statement ([FSU Gift 2005](#)) for the Florida State University Foundation. The section analogous to 1.1.7 read much more resolutely:

7. The donor of a gift *may not* serve on any selection, evaluation or advisory committees involved in the selection or evaluation of students or faculty members who would benefit from the gift, unless authorized by the University President (FSU Gift 2005, pg 11, emphasis added)

Also in the 2005 gift policy, blanket authority to grant exceptions is granted, though not to a single individual:

The following policies and procedures set forth the guidelines for FSU's fund-raising program. The Foundation Board of Trustees or its Executive Committee may grant exceptions to these policies, where appropriate. (FSU Gift 2005, pg 4)

This was the policy at the time that the 2008 and 2013 MOU's were signed with CKF. Unless explicit authorization was given at the time by the President, the Foundation Board, or the Foundation Executive Committee, both Koch MOU are in clear violation of this policy as they establish an entirely Koch appointed committee, where the donor has veto power over use of Koch funds. This is detailed in the following chapter.

3. Violations of Current Gift Acceptance Policy

FSU's gift policy is the only policy that would be able to prevent a donor from attaining excessive influence over academic decisions. Effective gift policy would forbid agreements that contain provisions explicitly allowing for the violation of academic principles. Enforcement of

effective policy would, in effect, prevent the authorization of agreements with such provisions. The following is an account of FSU gift policies that are currently being violated by the agreements with the Charles Koch Foundation. These provisions are almost entirely unchanged in the [2015 revisions](#) the Foundation has proposed.

Violations of Section 1.1.7

Section 1.1.7.

A donor may not retain any explicit or implicit control over the use of a gift after acceptance by the institution. ... ([FSU Gift 2013](#), pg 4)

This clause is violated in several instances where CKF maintains explicit control over funds after they are given to FSU. All aspects of the programs set forward in the MOU are obligated to comply with the Koch Foundation's "Objectives and Purposes,"⁷ and compliance is actively enforced by CKF, which:

...reserves the right to discontinue or revoke any part of this Memorandum (including withholding any amounts to be made under any Donor Agreement to which CKF is a party regarding the Affiliated Programs and Positions) [...] if in CKF's reasonable discretion, such action is necessary to protect the Objectives and Purposes set forth in Section I(a) above. (Section 12, [2008](#) and [2013](#) MOU, pg 9)

Koch's ability to withdraw funding for noncompliance requires only 15 days notice to the university. During this period, the department/university is to have "*corrected the events of default or performed the acts described in the notice*" in order to avoid losing funding (2008 MOU [Attachment C](#), section V.H).

⁷ **1. Objectives and Purposes.** (a) The purpose of the Affiliated Programs and Positions is to advance the understanding and practice of those free voluntary processes and principles that promote social progress, human well-being, individual freedom, opportunity and prosperity based on the rule of law, constitutional government, private property and the laws, regulations, organizations, institutions and social norms upon which they rely, These goals will be pursued by supplementing the academic talent that is currently at FSU to create a strong program that will focus on building upon and expanding research and teaching efforts related to economic institutions and political economy. ([2008](#) and [2013](#) Koch MOU)

The mechanism for explicit control is a three person “SPEFE-EEE Program Advisory Board,” created to “preserve and safeguard the philanthropic and educational intent of CKF.” In both the [2008](#) and [2013](#) MOU, CKF is allowed to appoint the entire board, which operates by unanimous vote. The agreement was revised in 2013 to require two of the board members to be department faculty, but these members are still selected by Koch. Furthermore, the board’s decisions still require a unanimous vote, so that a non-university CKF representative maintains veto power in all decisions. (7(a) and 7(b) of 2008 and 2013 MOU)

Through “periodic assessments” the board is to “[e]nsure compliance with the terms of this Memorandum through appropriate administrative or legal channels” (7.a.(iv) 2008 and 2013 MOU, pg 7). This influence can not be construed as anything less than everpresent. In the event that faculty or administrators want to ignore CKF input, they are not free to do so, as is made clear in Section 7.b.(vi): “FSU agrees to take the input of the SPEFE-EEE Advisory Board into consideration when evaluating the performance of the SPEFE and EEE Programs” (pg 8).

The Advisory board’s freedom to withdraw/withhold funding is unequivocally spelled out in the MOU: “*No funding for a Professorship Position or any other Affiliated Program or Position will be released without the review and approval of the SPEFE-EEE Advisory Board*” (3.d.(iii), 2008 MOU, pg 4). Although in 2013 the provision was revised superficially, the above quote is still true of the arrangement: CKF has veto power over what hiring is done with Koch funds.

Aside from explicit and total control over hiring with “gift” funds, the advisory board retains the explicit ability to fire instructors by withholding funds for their renewal, as “*annual renewal [of teaching specialist funding is] dependent upon satisfactory evaluation of the FSU Economics Department and the SPEFE-EEE Advisory Board that the individual is advancing the Objectives and Purposes set forth in Section 1(a)*” (4.(d), 2008 and 2013 MOU, pg 6). Thus, not only does the board have veto power over instructor hiring with Koch funds, but no funding can proceed without their explicit approval.

These same rigorous compliance obligations exist for the graduate fellowships from CKF and partner donors. It is clearly stated in the [department’s description](#) of the fellowships that they most certainly are subject to conditions specified in the MOU:

The BB&T and CKF fellowships are part of a larger grant-supported set of programs: the program for the Study of Political Economy and Free Enterprise (SPEFE) and the program for Excellence in Economic Education (EEE). Their purposes and objectives are “[full text of Objectives and Purposes 1(a) 2008 and 2013 MOU (see footnote 7)].” Therefore, these fellowships are to support students who wish to pursue a course of study that combines rigorous technical economic training in the core areas of applied economic theory and applied econometrics with a focus on the political economy of contemporary economic issues, and particularly, on the roles and impacts of institutions on market processes and economic well-being. Additional sources of fellowship funding associated with these programs may be secured over time.

A 2014 Graduate Policy Committee [report](#) reveals the process by which Koch and BB&T Graduate Fellows are screened and monitored by a “screening committee” comprised solely of SPEFE/EEE faculty (beholden to Koch Objectives and Purposes 1.a) who determine whether the student will comply with CKF objectives and purposes. The report states that “students on Koch funding are also instructed that should their interest ever change, they will be switched to a department teaching assistantship” (GPC, pg 8), a switch that results in a significant pay cut and a doubled departmental workload. Koch’s active monitoring of scholarly compliance is yet another explicit control that CKF has over the “gift” after it is given to FSU.

Further “Violations” of Section 1.1.7

Section 1.1.7.

[...] Conditional pledges are those that place requirements on the university to perform some task or take some action that it might not otherwise initiate. [...] The university discourages the acceptance of conditional pledges. (FSU Gift 2013, pg 4)

It must be incontrovertible, then, that Florida State University “discourages the acceptance of” the Charles Koch Foundation agreement. In [Attachment C](#) of the 2008 MOU, the entirety of the CKF agreement is seen to exemplify the description of a “conditional pledge.” The parties literally agreed on it, as a matter of fact:

The Parties agree and acknowledge that, if not for the Donor’s contributions to be made pursuant to this Agreement, FSU would not otherwise undertake to hire individuals to hold such Professorship Positions set forth in this Agreement and the MOU nor implement the programs mentioned in both documents. (Attachment C, Section V.H, pg 4)

This admission seems to disarm the university’s claim that CKF’s intentions are to support the mission or goal of the university:

Two programs – the Study of Political Economy and Free Enterprise (SPEFE) and Excellence in Economic Education (EEE) – support the department’s overarching goal by developing innovative ideas and original analysis that advance economic understanding among students and society as a whole. These programs have been strengthened with the support from CKF. ([FSU 2014 Q&A](#))

Another powerful instance of explicitly conditional giving from CKF is found in the admission of former Economics Chair Dr. Bruce Benson in a [2007 memo](#) to the department:

I also told Koch representatives that I did not intend to stay on as Chair after the current three year term. However, Koch has indicated that they would not be willing to commit the proposed level of funding if I do not continue to serve as chair until the proposal is implemented. They are willing to help induce me to do so...(pg 2)

Dr. Benson was indeed induced by a \$105,000 bonus. This was later [deemed](#) a “clear conflict of interest” by President Eric Barron, and Benson was forced to step down as chair, and yet in spite of this, he remains the Principal Investigator of the CKF agreement with FSU.

Violations of Section 1.1.5

Section 1.1.5 of FSU’s current gift acceptance policy reads, “*Gifts that restrict or impede the work or scholarly activity of a faculty member, fellowship holder or student will not be accepted*” (pg 4). The above section on violations of 1.1.7 detail the way in which CKF actively monitors scholarly activity to determine whether actions taken by students, instructors, or administrators warrant a withdrawal of donor support. This creates a clear circumstance in which the scholarly activity of students and faculty come with punitive constraints. In order to maintain funding, students and faculty must restrict their scholarly activities to those which the donor explicitly approves.

Specifically, if a CKF supported student or instructor is led by free inquiry into a research interest that CKF disapproves of, they are forced to either abandon that research in order to maintain funding (restricted work) or to proceed in their research but forego such support (impeded work). This language in section 1.1.5 is identical to the language in the 2005 Gift Policy ([FSU Gift 2005](#), pg 11), and was policy when both the 2008 and 2013 MOU were signed.

Violation of Section 7

Whatever the gift/grant guidelines are, we see that the CKF agreement violates several other parts of Section 7.

As explained above, the CKF graduate fellowship program grants explicit control to the donor through faculty monitored student scholarship, with continued funding explicitly dependent on compliance with Koch’s Objectives and Purposes (2008 and 2013 MOU, 1.a, see footnote 7). This compliance is actively monitored by CKF. Section 7 describes the circumstances under which gifts may be accepted in the form of fellowships. The gift policy states explicitly “[w]hile an expectation of services may exist solely to advance an educational experience, such funds are not compensation for any performance” (FSU Gift 2013, pg 33). The system of actively-monitored conditional funding seen

in the Koch/BB&T fellowships (and the entire MOU) may be unambiguously identified as a system of performance-based funding, contrary to what would be allowed under current policy.

In yet another violated provision of section 7, the gift policy describes “criteria that will cause a grant to be excluded for gift reporting purposes.” Among those specifically excluded are “[g]rants that are in excess of 5 years” (pg 33). The CKF agreement has a length of 10 years.

Violations of Section 1.0

Section 1.0 of the gift policy states that “[a]ll gift agreements in support of academic, research, and co-curricular initiatives require all of the following signatures” (FSU Gift 2013, pg 3). In addition to listing all the officials who were signatories of the CKF agreement, the Vice President for Research is included “for gifts supporting research.”

The agreement with the Charles Koch Foundation clearly establishes academic programming, research stipulations, curricular and extracurricular content. Section 2 of the [2013 MOU](#) stipulates that the SPEFE Program and the EEE Programs will

build upon and advance research, publication, dissemination, and public knowledge of the role and importance of economic institutions and the study of political economy. CKF is supportive of these efforts, and the Parties agree that the activities of the SPEFE Program and the EEE Program will include but not be limited to: (a) yearly production and publication of high-quality academic research focusing on economic institutions and political economy, (b) economic education efforts aimed at the broad dissemination of research related to economic institutions and political economy, (c) support of faculty and students advancing research into and the dissemination of economic institutions and political economy, and (d) collaboration and cooperation with other centers and organizations

working to advance complementary research and activities related to economic institutions and political economy. (2008 MOU, pg 2)

Despite the clear requirement of in 1.0, the Vice President for Research is not a signatory of either of the CKF gift agreements. If the FSU Research Foundation had been required to sign, it would have affirmed the necessity for the “gift” to be counted as a grant and processed through the Research Foundation instead of the FSU Foundation.

Violations of Section 7.0

Several of the above violations further the suggestion that the Koch Foundation MOU are incorrectly denominated as gifts through the Foundation, and are instead grants. In section 7, the FSU Foundation is designated a solicitor of “gifts and charitable grants from private sources for all approved University programs **for which no services and/or products are required**” (pg 33, emphasis added). In the case of the CKF MOU, it is clear that service *is* required, and thus they should not be counted as charitable donations through the FSU Foundation.

Clearly, these donors are not providing irrevocable charitable donations. The contracts are completely revocable, and as such can not be construed as a gift or a donation. CKF maintains control of its funds entirely. Furthermore, this funding is not charitable. The MOU’s are contracts that establish a heavily monitored system of performance pay. This is admitted explicitly in the section V.H of Attachment C of the 2008 MOU (quoted in the context of “conditional funding” above), describing how “if not for the Donor’s contributions [...], FSU would not otherwise undertake to hire individuals to hold such Professorship Positions set forth in this Agreement and the MOU nor implement the programs mentioned in both documents.”

Even more clearly, in the Koch MOU, section 3(e) entitled “Performance Obligations of Professorship Positions”, the Koch hires have to “agree to support the Objectives and Purposes as set forth in Section I (a) above and to complete the following activities in accordance with these Objectives and Purposes,” with explicit objectives of “research, teaching, publishing, print and electronic media” (pg 5). Further, professors are to report on how their “activities have

advanced the Objectives and Purposes set forth in Section 1(a). ” This is monitored scholarly performance.

These revocable contracts require services of the students, faculty, and administrators in the form of monitored compliance with explicit academic and research objectives. This constitutes a service that is perhaps best described by the Principal Investigator of the Koch grant, Dr. Bruce Benson, in his [2007 memo](#):

These organizations have an explicit agenda. They want to expose students to what they believe are vital concepts about the benefits of the market and the dangers of government failure, and they want to support and mentor students who share their views. Therefore, they are trying to convince us to hire faculty who will provide that exposure and mentoring. If we are not willing to hire such faculty, they are not willing to fund us. (pg 3)

Clearly, the CKF “gift” is wrongly denominated as such. This raises questions about the tax deductions that CKF and their partner donors have taken on this multimillion dollar activity.

4. Violations of Academic Policy

In a 2011 [letter](#) to President Barron, Interim Dean of the Faculties and Deputy Provost Dr. Jennifer Buchanan wrote:

[t]here are several curricular issues mentioned in the Faculty Senate Ad Hoc Committee report related to the specific circumstances of the Koch gift, and many more could occur at any time under our current procedures for faculty review of courses, certificates, majors, and degrees. This results from the fact that once a gift agreement is settled by the donor, the Foundation, and the academic unit, that agreement becomes invisible in the faculty governance processes designed to make decisions regarding the shape of the curriculum.

The Charles Koch Foundation's gift agreements with the FSU Foundation have created an avenue of undue influence for the Charles Koch Foundation and any "partner donor" willing to agree to their Objectives and Purposes. The agreements have egregiously violated, and continue to violate, FSU academic policy including governance and academic freedom policy. At its root, this is a result of the lack of effectiveness and enforcement of FSU gift acceptance policy. As revealed through recent records requests, it turns out that there were additional factors, previously unpublished, that enabled these contracts to be put in place.

In 2011, President Eric Barron called for a Faculty Senate Steering Ad Hoc Committee to review the CKF agreement. The co-chairs of that committee were Dr. Eric Walker and Dr. Jayne Standley. Recently recovered emails have revealed an [early draft](#) of the report written by Dr. Standley. It is clear from the [correspondence](#) that Dr. Standley believed her draft was not substantially changed through the final edits. However, much significant information in the earlier draft, including key findings and recommendations, was drastically altered in, or entirely missing from, [the final report](#).

The earlier findings in Dr. Standley's report do not support the main conclusions in the final faculty report. In the final report, what is described as "the donor agreement express[ing] an inappropriate interest in department chair selection", or "conditions for the Economics Department undergraduate program that are of concern", or "phrases that could open the possibility of undue outside influence" are explicitly referred to as violations of faculty governance and academic freedom policy. No such violations are acknowledged in the final report. Dr. Standley's draft also fails to support the [conclusions](#) drawn by President Barron that "FSU acted in a manner consistent with academic principles." Furthermore, the early draft provides information about administrative intimidation as context that is completely missing from the final report. This context easily motivates the primary recommendation in Dr. Standley's report, namely to terminate the CKF agreement. This is in stark contrast to the final report's primary recommendation, to partially suspend certain provisions until the agreement may be revised.

Dr. Standley's early draft is the most complete and intellectually honest account of the circumstances surrounding the CKF agreement, and the various violations of academic policy. We will include the text of the original 2011 report in full immediately below:

Koch Foundation Memorandum of Understanding
Ad Hoc Committee Review Report

Process

In the interest of conducting this review as quickly as possible, we received input in a variety of configurations: individual meetings with the full ad hoc committee, partial committee, or with one of the co-chairs only; meetings via Skype; and email or telephone communications. We reviewed copies of the Koch Memorandum of Understanding and emails from the Department Chair, Dean and faculty members during discussion, adoption, and implementation of the agreement.

The 5 person ad hoc committee communicated with current members of the Economics faculty, prior Economics faculty at FSU when the agreement was negotiated who have since left the department, the department chair, the Dean, the Acting Provost, the Foundation Director, the University Counsel, and the two individuals who wrote the first op-ed newspaper article about this issue. Approximately one-half of the faculty in the department approached us for input. Our findings follow.

Summary of Findings

- 1. The committee feels that this issue is not about the study of free-market economics. It is about outside control and undue influence over the academic endeavors of the FSU Economics department and about abatement of faculty control over the curriculum of the Economics department.**
- 2. The committee found that there was extreme dissent among faculty on this issue at its inception which continues to this time some 3 years later. Dissenting faculty reported an atmosphere of intimidation and administrative dictate by the Dean for a “done deal” that prevented faculty input on academic integrity or curricular issues.** During the discussions on development of the Koch proposal, no formal process for considering these opinions was allowed. Faculty specifically requested a vote on accepting the Koch agreement and this was rejected by the Dean who told us he did this because he did not intend to take their input. The Faculty Senate

Constitution and generally accepted discourse on academic freedom place curricular issues under the province of faculty. The Dean erred in not allowing established faculty governance process to function.

It should be noted that each department within the university establishes its own by-laws for faculty governance. Traditionally, the Economics department has elected an Executive Committee and left all issues of curricular development, faculty hiring, and departmental development to this group. This trusting, governance at a distance process functioned well when issues were within established, traditional bounds, but was inadequate to handle the intense controversy of the Koch issue. Attempts to move into a more active governance mode by the faculty on the Koch issue were stifled by the Dean and by the Department Chair who regularly emailed interpretations of the Dean's wishes. It was repeatedly stated by faculty that an atmosphere of intimidation was thus generated. It was reported that the Dean made threats about future teaching assignments if Koch money was not available, that dissent with the Koch agreement was viewed as faculty disloyalty by the department chair, and that memos from the department chair were argumentative and angry. Many faculty were loathe to speak to the Koch issue in this atmosphere, particularly the untenured ones.

3. **The committee determined that the Koch Memorandum of Understanding as currently written allows undue, outside influence over FSU's academic content and processes, a codified "danger that the doctrine of academic freedom is designed to avoid"** (S. Fish, New York Times Blog). Specific examples of undue outside influence on FSU academic issues:

a. There was Koch control over selection of FSU tenure-track faculty for funded positions via veto power, Koch prior approval of the advertisement used for filling positions, and Koch establishment of parallel interview activities at the professional conference where the FSU search committee was interviewing applicants.

b. The agreement states that the promotion and tenure process for Koch funded faculty must include an evaluation of their contribution to Koch objectives. This may be a violation of the UFF contract.

c. The agreement mandated a particular individual to serve as chair of the department. The departmental by-laws state that the Dean appoints the chair with input from the faculty. The re-appointment of Bruce Benson with the implementation of the Koch agreement did not include faculty input. Again, the Dean erred on a faculty governance issue.

d. Administrative raises for the department chair constituted a conflict of interest.

e. A further egregious conflict of interest was apparent in the development and implementation of the Koch agreement. An FSU PhD student for whom the department chair was major professor worked for Koch, wrote the initial proposal, received a Koch fellowship funded via the agreement, helped negotiate the agreement proposing that Benson remain chair and be given administrative pay raises, and reported to Benson on Koch interests in faculty selection and hiring, etc.

f. The Koch fellowships for graduate students may have targeted a specific type of graduate student that is not representative of the diversity of the Economics department and determination of awards have not been implemented with input from the Graduate Admissions Committee.

g. The “Economics Club” conceived by the Koch agreement is not representative of the diversity of departmental curricular offerings. There were repeated reports that it promotes dogma rather than academic inquiry. Scholarships of

\$200/semester are given for reading books on a list developed by the Koch funded program, not the Economics faculty as a whole. The club website now shows legislative initiatives, an activity specifically prohibited by the Koch Memorandum of Understanding.

h. Specific course content is dictated by the funding agreement implemented through the Devoe Moore Center, specifically that an academic course requiring “Atlas Shrugged” as a text be taught. This book is given free with enrollment. FSU course content and assignments should not be for sale.

i. Koch funded non-tenure track faculty have been assigned to teach the service courses in Economics. Criticism of this administrative move asserts that faculty oversight of these positions and content no longer rests with the Economics department at large, but with the SPEFE Program. These courses teach approximately 7000 FSU students/yr. Further criticism concerns implementation of issues related to the Koch agreement and that a free market firewall was established in the department with issues like content of service courses behind this firewall that did not allow for usual faculty input or governance process.

j. A Certificate program in free market economics was established, again without faculty input.

National media discussion has had tremendous negative impact on the entire Economics department. FSU’s academic integrity has been damaged. It was reported that professional websites are questioning the quality of FSU Economics scholarship and asserting that bias is evident and assertions that faculty publications are being analyzed for such bias with suggestion that FSU research should be viewed skeptically by refereed journals in the field. Some Economics faculty discounted the importance of this particular website.

Recommendations

To protect and restore the academic integrity of The Florida State University, we recommend the following actions:

1. Consider terminating the Koch amendment. It is very tainted by having crossed the line on giving undue influence in return for money and the receipt of negative national publicity on this issue. It may not be “fixable” since FSU’s academic integrity has been jeopardized. If fixing is attempted via amendment and re-negotiation with the Koch Foundation, then it would be imperative to remove outside “control” elements:

a. the Advisory Committee should be made advisory only by removing approval and oversight functions

b. Faculty lines should be filled by a search committee comprised only of Economics faculty members who would select faculty with no direct Koch involvement;

There are no recommendations with respect to changing any of the employment conditions of the 2 current faculty on the Koch tenure-track line. The Economics faculty unanimously agreed that these individuals were outstanding scholars making excellent progress toward tenure, that they had no limitations on research or teaching content, and there was no fear of undue outside influences creating bias in their scholarship. Some Economics faculty expressed fear that they might be stigmatized by the negative national publicity and, to protect them, that they should be removed from Koch funded lines to non-Koch lines.

2. The Economics Club as constituted is in danger of promoting dogma vs. stimulating economic inquiry. There are 3 alternatives: terminate the

“Economics” Club, retain the club in its present format but label it appropriately, i.e. “Free Market Economics Interest Group,” or keep the Economics club but ensure that it is representative of all types of Economic principles. If it continues to exist in any format, faculty should be charged to:

- a. ensure that Economics students are taught academic discourse (formal rules of debate or deliberate, nonjudgmental voicing of pro and con opinions of issues under discussion)
- b. ensure that all reading lists for scholarship money are determined by the entire departmental faculty without undue, outside influence

3. The BB&T agreement to teach a course using *Atlas Shrugged* must be discontinued. This agreement is selling academic credit to outside influence. We must stop the distribution of free books in an academic course which implies greater importance for this text.

4. Re-establish faculty governance of the department that is balanced and inclusive of all areas.

- a. Consider forming a departmental committee to determine if bylaws changes are necessary. Many Economics faculty questioned the definition of faculty in the department and confusion over who got to vote on what.
- b. Re-elect an Executive Committee for the coming academic year that is representative of the entire department with the objective of strengthening its involvement in governance.
- c. Re-establish the role of the Graduate Admissions Committee guidelines and recommendations for selection of graduate students for all fellowships, including the Koch ones.

d. Return control of introductory courses to the departmental curriculum committee for content, department tests, etc.

e. Solicit faculty input on selection of a chair. Some faculty feel that the atmosphere is so volatile that an interim chair should be appointed for the coming year while a search committee is formed for the selection of a new chair.

f. When the new Provost arrives, re-orient all deans to the role of faculty in governance and control of curricular content, particularly the Dean of Social Sciences.

5. Comment on FSU Foundation Proposed Policy Revisions

On May 12th 2015, the FSU Foundation posted its proposed [revisions](#) to its Gift Acceptance and Counting Policy ([FSU Policy 8-1](#)). This revision, in accordance with FSU Policy 2-1, is to be posted for a 21 day comment period, concluding June 3rd. We take considerable issue with revisions proposed by the FSU Foundation, and call for them to be withdrawn.

The proposal by the Foundation changes section 1.0, allowing the Vice President for Advancement to relax guidelines on what constitutes an acceptable gift agreement document. Gifts over \$25,000 would no longer require a “formal gift agreement”, as they could be made using less formal “written forms of communication”, including a “signed letter, pledge form, memorandum of understanding, or email from the donor”. The exact changes to the section are below.

Section 1.0

The terms of all gifts of \$25,000 or more to the DSOs that support Florida State University will be specified in an acceptable written document ~~a written gift agreement~~, signed by the donor and the authorized representatives of the university. Generally, and preferably, the written document is a formal gift

agreement outlining the program to be supported, and the schedule of contributions. However, the University DSOs may choose to accept other written forms of communication to document gifts of \$25,000 or more, with the written approval of the University Vice President for Advancement or designee.

Gifts of less than \$25,000 may also be committed through a gift agreement signed by the donors or an acceptable form of written communication, such as a signed letter, pledge form, memorandum of understanding or email from the donor. Emails directing gifts will also receive a written response from the appropriate direct support organization, confirming that the gift commitment has been received. (pg 3)

It is unclear what good faith circumstances would require the above revisions. It is not clear what impact this would have on disclosure or records keeping. For instance: could a signed, handwritten letter take the place a gift agreement? Would it matter if it were on a sheet of paper, or a napkin? If an email from the donor is acceptable written communication, would a text message suffice just as well? The policy change makes already ambiguous language less clear, and allows unlimited amounts of money to be accepted with less formality.

Much like “discouraging” conditional gifts in Section 1.1.7, this is yet another example of vague language that is simply poor policy. Policy is not an ambiguous stipulation of “preferences” or things “generally” required. Policy is a set of formal guidelines. In this case, the Gift Acceptance and Counting Policy happens to be the sole policy capable of protecting the university from entering into donor agreements that violate federal law or academic policy. The use of words like “generally” and “preferably” in official policy introduces unnecessary ambiguity into university policy.

This problem is compounded further given that the university “oversight” official (the VP for Advancement) is also the President of the Foundation, and that section 10 reads, “[i]n the event the [Foundation] is uncertain about the desirability/legality of accepting an institutionally anonymous gift, the ultimate decision of acceptance will be taken to the Vice President for Advancement” (pg 37). Any diminution of documentation furthers the possibility of impropriety already apparent in the current Foundation policy and governance.

6. Recommendations and Proposed Revisions to [Gift Acceptance and Counting Policy \(8-1\)](#)

We have detailed several weaknesses in both governance and policy overseeing FSU's gift acceptance practices. It remains to collect our recommendations and propose revisions we find necessary to protect the university from undue donor influence.

Recommendations

1. The gift agreement with the Charles Koch Foundation should be terminated. It has become increasingly clear that this agreement has irreversibly harmed FSU's academic integrity, and will continue to do so. The agreement is the product of actions that violated academic policies, donor policies, and ethics policies. In the event that the Foundation's 2015 revisions pass as proposed, the Koch agreement still stands in clear violation of the same provisions.
2. The positions of FSU Foundation President and Vice President for University Advancement should not be held by the same person. This impropriety should be resolved before any further policy decisions are made.
3. All provisions of university gift acceptance and counting policies should comply with IRS regulations.
4. The gift/grant status of the Charles Koch Foundation (and partner donor) agreement should be established definitively. This will determine whether the university is providing an illegal designation of Koch funds as charitable donations, or an inappropriate count of "gifts" toward Foundation fund-raising goals.
5. The circumstances under which the Koch agreement was allowed to violate FSU gift acceptance policy should be made clear. If written permission was given to authorize all the provisions that violate FSU policy, then these authorizations should be produced publicly. If no such exceptions were explicitly granted, then the circumstances surrounding the lack of gift policy compliance should be made clear.
6. All gift agreements over \$25,000 should be publicly disclosed for a 30 day period before being authorized.
7. Gift agreements should be amended to contain
 - a. any written permissions for non-compliance with gift policy
 - b. copies of any partner donor agreements utilizing the gift agreement

Several of these recommendations are encompassed in the proposed revisions below. Other issues pointed out in earlier chapters are also addressed below. ~~Strikethrough~~ denotes deletion, and underline denotes insertion.

Revisions

1.0 Gift Agreements

The terms of all gifts of \$25,000 or more to the DSOs that support Florida State University will be specified in a written gift agreement outlining the program to be supported and the schedule of contributions. ~~Prior to any gift agreement being signed by the donor and the authorized representatives of the university, the proposed agreement must be posted on the Foundation's website for 30 days in which time all interested parties may provide comments to the Vice President for Advancement, outlining the program to be supported, and the schedule of contributions. After the 30 day notice period elapses and after the Vice President for Advancement and the Office of the General Counsel has considered the submitted comments, the Vice President for Advancement may issue a final policy. Donors wishing to remain anonymous may choose to have their information redacted from such gift agreements.~~

1.1 Gift Agreement Guidelines

[...]

3. Fellowships are defined as funds that are typically given to graduate students to help defray the costs of tuition and related expenses, or to postdoctoral scholars. While an expectation of services to the university may exist solely to advance an educational experience, these services are not such funds are not compensation for any performance. Gifts from any donor for a fellowship or scholarship, made on the condition or with the understanding that the award will be made to a student of the donor's choice, will not be accepted. Money received subject to such restrictions may be credited to a depository account within the University Office of Student Financial Aid, but will not be recorded as a gift to FSU.

4. The terms of any gift should be: (1) as flexible as possible to permit the most productive use of the funds, ~~and~~ (2) as nearly consistent as possible ~~to be consistent~~ with the original intent of the donor, without FSU policies of academic freedom, faculty governance, and conflict of interest, and (3) clearly prioritizing the interest of the university over the interest of the donor.

5. Gifts that ~~restrict or impede or~~ place restrictions or revocable conditions on work or scholarly activity of a faculty member, fellowship holder or student will not be accepted.

6. No fellowship or scholarship gift will be accepted if the terms of the gift in any way include a commitment for the future employment of the student recipient.

7. A donor may not retain any explicit or implicit control over the use of a gift after acceptance by the institution. ~~It is the preference of Florida State University that a~~ A donor may not serve on committees involved in the selection or evaluation of students or faculty members who would benefit from the gift, nor create a situation where, unless authorized by the Vice President for University Advancement and the Provost/Executive Vice President for Academic Affairs. If approval is given to serve on such a committee, care must be taken that the donor does not control more than 49 percent of votes and that the donor does not possess the donor possesses perceived additional control by virtue of ~~his~~ their ability to make additional gifts. Conditional pledges are those that place requirements on the university to perform some task or take some action that it might not otherwise initiate. A conditional pledge may also depend on some future event over which neither the university nor the donor may have control. The university ~~discourages the acceptance of~~ shall not accept conditional pledges.

8. A gift is defined as a voluntary donation made, without expectation of exchange for anything of significant commercial value, to a tax-exempt organization that is operated exclusively for religious, charitable, scientific, literary, or educational purposes (Internal Revenue Code §170(c)(2)(B) and (D); IRS Publication 526).

[...]

1.3: Multiple Donors

More than one donor may agree to participate in a gift agreement for a common purpose or fund, in which case all parties to the agreement must sign individual pledge forms indicating their dollar commitments. If the various individuals or entities are planning different gift payment schedules, those different schedules should be clearly indicated. Any gift agreement involving multiple donors shall be amended to include partner donor agreements. Any new donor pledge to an existing gift agreement shall require the same 30 day public notice as the original gift agreement.

[...]

SECTION 7.0: GRANTS

The DSOs of the Florida State University intend to follow the guidance provided on the acceptance and counting of charitable grants by the Council for the Advancement and Support of Education (CASE) and IRS Regulations.

In accordance with IRS regulations, a gift is defined as a irrevocable donation made, without expectation of exchange for anything of significant commercial value, to a tax-exempt

organization that is operated exclusively for religious, charitable, scientific, literary, or educational purposes. (Internal Revenue Code §170(c)(2)(B) and (D); IRS Publication 526).

Per the CASE Reporting Standards and Management Guidelines for Education Fundraising (4th Edition), a grant is defined as a contribution received by an institution for either unrestricted or restricted use in the furtherance of the institution that typically comes from a corporation, foundation, or other organization, rather than an individual. An institution may determine what a donor calls a grant is, for internal recordkeeping, a gift. Ultimately, such agreements must also adhere to the IRS definition of a charitable gift.

[...]

In section 3.1.2, the CASE Standards state that research gifts are those “that the donor restricts for scientific, technical and humanistic investigation (excluding all clinical trials). This includes private grants for individual and/or project research as well as grants for institutes and research centers. It does not include corporate grants for programs in which the grantor receives a product or service ~~commensurate with the fee paid of significant commercial value~~ (sponsored or contract research).” Sponsored research that is not contracted, and falls under the heading of "Grants", should be included in VSE and CASE reporting totals.

[...]

SECTION 10.0: ANONYMOUS GIFTS

Each DSO is authorized to accept publicly and institutionally anonymous gifts. In the event the DSO is uncertain about the desirability/legality of accepting an institutionally anonymous gift, the DSO shall seek an opinion from the Office of the General Counsel, and the decision shall ultimately be made by the Provost and the Vice President for Advancement ~~the ultimate decision of acceptance will be taken to the Vice President for Advancement.~~ Written documentation explaining and approving such a gift must be obtained and included in the gift agreement prior to being posted for public comment.

[...]

SECTION 12.0: EXCEPTIONS

Exceptions to any of the requirements summarized in the Gift Acceptance and Counting Policies above can only be granted by the Vice President for University Advancement. Written documentation explaining and approving any exception must be obtained and included in the gift agreement. No exceptions will be made allowing gift agreements to violate university academic or governance policy, or the public disclosure of gift agreements.

