



September 19, 2016

Dear Chancellor Belcher,

We, the members of the ad hoc committee created in pursuance with Western Carolina University's Policy 104 (Governing External Gifts with Academic Implications), have reviewed and worked with WCU's legal counsel, Shea Browning, to revise the Charles Koch Foundation Gift Agreement. We find the agreement statement does not have direct implications on the curriculum, yet we vehemently believe that processes and procedures already in place on the University's part must continue in order to assure that the partnership between the University and the Charles Koch Foundation does not limit academic freedom or adversely impact curricular depth and balance. The ad hoc committee recognizes that curricular impact extends beyond the walls of classroom including exposure to invited speakers, seminars, student organizations, conferences, and faculty research. The University must be diligent in ensuring the quality and integrity of curricular experience in the broader University mission.

In particular, we find the following actions necessary to assure the academic integrity of this agreement:

- Completion and approval of the by-laws of the Center for the Study of Free Enterprise (CSFE) and its Advisory Board.

It was clear to the ad hoc committee that significant changes have been made in plans for CSFE since the approval of the Charter for the Center by the WCU Board of Trustees in December 2015 (see Appendices). The ad hoc committee recognizes generalities in this agreement allow for varying curricular impact over time, and the Advisory Board must have the ability to assure there is no adverse curricular impact in the future.

- Assessment of CSFE should be completed on an annual basis, including a review of curricular impact.

The ad hoc committee recommends that this assessment seeks feedback from those working with the Center, its clients, students, and faculty, etc. This should be part of the duties of the Advisory Board and thus should be included in the by-laws. As with all programs at the University, assessment should be part of the annual reporting cycle of the Center with the goal of improving its work and services.

- Review of any formal communication, not just the annual report, from the CSFE to the Koch Foundation should be reviewed by the Advisory Committee.

The ad hoc committee was very concerned by previous formal annual reports to the Charles Koch Foundation from Western Carolina University that provided names, personal email addresses, values, and beliefs of students attending these seminars.

The ad hoc committee appreciates legal counsel and administration's willingness to work with our concerns regarding potential curricular impact through the generality needed for such an agreement, and their dedication

to assuring that the University has processes and procedures in place to continue to ensure the academic freedom and integrity of the University.

Sincerely,

Policy 104 Ad Hoc Gift Review Committee:

Jon Marvel, College of Business

David McCord, College of Education and Allied Professions

Erin McNelis, College of Arts and Sciences

Michael Schallock, College of Fine and Performing Arts

Bill Yang, College of Engineering and Technology, Committee Chair

Attachments:

Appendices of Approved Ad Hoc Committee Meeting Minutes:

A. August 1, 2016

B. August 10, 2016

C. August 17, 2016

D. September 15, 2016

Appendix A: Approved Ad Hoc Committee Meeting Minutes from August 1, 2016

Policy 104 Ad Hoc Gift Review Committee

Meeting Minutes (Approved August 10, 2016)

August 1, 2016

10:35am – 12:10pm

Committee Members:

Jon Marvel, College of Business (present)

David McCord, College of Education and Allied Professions (present)

Erin McNelis, College of Arts and Sciences (present)

Michael Schallock, College of Fine and Performing Arts (present)

Bill Yang, College of Engineering and Technology, (Chair, present)

The Chair started meeting around 10:35am. The Charles Koch Foundation Gift Agreement (Draft) is to be reviewed by the ad hoc committee. A few logistic issues were first discussed, including taking meeting notes and keeping meeting minutes. Questions were asked regarding the outcome out this Committee. It was clarified that, per WCU University Policy 104, the charge to the ad hoc committee is “to review the curricular implications of the gift and to make specific recommendations regarding the acceptability of such implications.” The committee “will act with consideration of the need for confidentiality and speed in the negotiation process” and “make recommendations to the Chancellor concerning the implications of the gift on the curriculum as well as the need for any further review or modification of any proposed agreement.” It was also agreed that we don’t have to be a unanimous in our decision either and possibly suggested changes would go to Shea. Additional points include:

- We should see the final version before it’s sent to Kansas. If Koch brothers send it back, we should see it again. It makes sense we see it in each stage of the agreement.
- Is there a timeline? Shea wants it off his desk as soon as possible, but there’s no timeline from the donor. We need to do our due diligence. We’re not aware of deadline from the Koch brothers.

The floor was then open for discussions on the draft gift agreement.

- The concerns of the Charles Koch Foundation’s ideological push and practices influencing college curricular and selected students through Koch supported University centers and programs, and sometime questionable practices, in disguise or not, infringing upon the university academic freedom and even FERPA laws were shared. It was also acknowledged that the current draft gift agreement under consideration, in contrast, is vastly better than others made with the Koch or like organization agreements (including ours in 2007 with BB&T that Bardo signed). Probably the least intrusive donor agreement with Koch. The draft gift agreement not only has largely avoided the explicit provisions that may restrict or infringe upon the academic freedom, but also prominently puts “Promoting Academic Freedom” as the agreed guiding principle and vows

against “any action that has the effect of infringing on the independence or integrity of the University or on the academic freedom of its personnel.” Nonetheless, one still can find coded Koch languages that may raise flags and there is a lot implicit here that may pose a danger to academic freedom as well as hidden or open-ended curricular implications.

- Feel it’s buying advocacy of a particular donor’s point of view, but it’s been crafted to say it fits with WCU’s goals. In contrast, it was pointed out that some other recent big (~\$1 million) gifts to WCU, although focused to one area, are based on WCU priorities rather than donor’s priorities.
- Approach to curricular impact, there is certainly value and this point of view needs to be represented, among others. It’s clear that the donor has advocacy interests in a very narrow field while the university has a broader point of view to present. Need to make sure this is balanced.
- Background on chairing the Implementation Advisory Board for the proposed Center for Study of Free Enterprise. One of the key issues is academic freedom.
- Concern about the unsaid and possible open-ended curricular implications could be related to things that aren’t fleshed out in this agreement. For instance what qualifies students to be “affiliated”? Are they hand picked? Do they have to take certain classes or prescribe to one school of thought? Nothing is said. It seems as if a “scholarship” as described in the attachment isn’t really a scholarship, it’s pay for work (such as a research assistant pay or assistantship). This is not a scholarship in some’s opinion, but not necessarily some others who thought of Grad assistantships of scholarship. There needs to be a statement about which students are eligible, criteria used for weighing scholarships, who makes decisions etc. Ideally all students must be eligible and applications are open to all. It was suggested that the selection of the affiliated students receiving such support needs to be transparent and subject to review by proper faculty committee to ensure the academic freedom and inclusiveness of the students and faculty members involved.
- Also, the first “Program” of the Center in the table is salary and benefits for administrative and support personnel – this is NOT a program, it is a budget category. Administrative and support personnel support programs but they are not a program. The understanding was that no faculty were to be paid by Koch, but the Center director is administrative and a faculty member. This appears to be a contradiction. Not clear if people will get paid for the research based on what little is said, no specifics on how money will be used to support the program. This leaves totally open the potential curricular influences and implications.
- In the “attachment”, they talk about students get funding to go to professional conferences, are these academic conferences? Are they Koch sponsored conferences? Will it end up mattering? If the donor is not happy with having money go to send people to a particular conference, that could influence the center to only support certain approved venues, which goes against academic freedom.
- Discuss the Gift Purpose and Prohibited Gift Purposes on p. 3 of the agreement.

- Last sentence in (a). Rather than “The Center Programs support the University’s mission, initiative, etc.” it should say “The Center Programs SHALL support the University’s mission, etc.”
- In part (b), don’t know if it’s just dealing with IRS prohibited uses, but it must be clear that these are just some of the prohibited uses. Suggest changing the first sentence to start as “In addition to the academic freedom and curricular impact issues discussed elsewhere in this agreement, the Gift will not be used to influence legislation, etc. ...” If this is where you’re listing prohibited activities, it must be clear that violating academic freedom or curricular implications that are agreed upon here is not allowed.
- There are inconsistencies with who makes/provides the annual report – pg. 2 part lii (c) says the Foundation submits the report (nothing on who develops it), pg. 3 VI says the University, with the help of the Foundation, prepares the report. There also seem to be disagreement on what exactly is in the report and no specification of the level of detail. The group believes that it needs to be specified that the UNIVERSITY determine what the format of the report should be, not the donor. Reference was made to WCU’s Free Enterprise Educational Activities to the Koch Foundation which provided WCU student names, details about their potential with free enterprise studies, and non-WCU contact information ... which does not seem appropriate or in-line with FERPA requirements. Hence, as the primary deliverables to the donor, the format and content of the annual report to the donor need to be negotiated and agreed upon upfront, so that its potential curricular implications can be determined and evaluated by this Committee. The center is also required to prepare annual reports per the relevant UNC Policy and it was not clear if these two annual reports are the same or should they be different. It was understood that, to the donor’s purpose, they need to know what was spent and on what. It’s not okay if you spend money on something not allowed. However, the donor’s expectation needs to be specified so that its curricular implications can be determined. Similar issues also exist for the yearly fund request letters required by the donor. What’s donor’s expectation and what are their criteria for approval of the annual reports/fund request letters? What’s donor’s expectation what should be included in the yearly fund request letter and how they decide to approve it or not. Again, the donor’s expectation needs to be explicit so that not only both parties are clear on what are the deliverables and requirements, but also its potential curricular implications can be determined. Otherwise, the potential curricular implications are totally open-ended and uncertain, which is unacceptable.
- The concerns about one of the general provisions (VII.I, page 4, section L) that the terms of the gift agreement may be amended, modified, or deleted without faculty reviews were raised as it may compromise the accepted curricular implications. It needs to come back to faculty review for potential curricular implications if additional changes/amendments are made to the document.
- The question about the how the center operation is monitored was raised. Also, how student involvement is managed to ensure their academic freedom. In addition, the donor wants to gift on yearly basis to a yearly maximum amount. Should we negotiate a bit more commitment from the donor so that we do not run the risk of spending so much upfront effort only to see the funding dries up in 12 or 18 months? Also, if it’s an annual gift and requiring a different fund

request letter each year, their curricular implications then need to be reviewed as well in order to prevent the potential creeping scope on the curricular implications unless no curricular implication is allowed at all in these future terms and agreements.

- We're budgeting for an annual gift of \$360,000, so can't imagine we're not going to ask for that, but the donor may opt not to give that amount. That could impact choices (e.g. if the donor's don't like a conference students went to, that would mean we don't send students to that conference)
- On last page of Attachment (or is it Exhibit???) A, the first bullet refers to CSFE's mission "as a forum for exchanging ideas related to free enterprise" but that's not listed in the mission statement on the front page. But it may be in the mission statement listed in the Charter. The statement of mission must be clear and consistent throughout the document.
- We need to make sure which Charter has been approved by BOT – what we got has a November date on it – we need to know what is definitely the version approved by the BOT. What we were given still has faculty salaries included and the budget values don't match with this agreement in how money will be spent (for instance, funding for "scholarships" is much higher in the agreement than in the charter ... more needs to be spelled out in the agreement).
- This document needs to make some reference (we guess) to the Charter for the Center
- Generally impressed with the wording, but recognize that there are gaps or potential loop-holes for open-ended curricular implications. It's our responsibility to monitor that the curricular implication accepted does not creep.
- Need to assure academic freedom is not just for faculty but for students and university as a whole.
- Question about student involvement and scholarship, and whatever particular activities are involved in this. Believe students will have the opportunity, but not the requirement to participate.
- Big discrepancy in Charter amount for scholarships \$16,000 (4 at \$4,000 in Charter) versus \$60,000 (from \$300,000 / 5) in the agreement.
- What about scholarships? This needs to be a transparent systemized process overseen by an advisory committee. This needs to be fleshed out.
- Need to flesh out the "Center Programs" (they're more like budget categories now) details and information. There's overlap, there are things that are NOT programs listed here. More needs to be specified for us to determine if there's an impact to curriculum and what that impact could be. The Committee needs more details about the Center Programs in order to determine their potential curricular implications, otherwise explicit language prohibiting center programs to have any curricular implications need to be added.
- How students interact with the center and how to protect their influence.

The group also summarized questions/comments for Shea:

- Specify/clarify which Charter was passed by B.O.T.
- We thought there were no faculty lines associated with the center -> this seems to contradict salary and benefits for administrative (such as director) personnel
- Faculty lines hired (job ads explicitly referring to the center), what is the relationship, do they have to be affiliated with center?
- Annual reporting process - restricting what information is provided, what should and should not be Included. It's relation to the Annual report required by the UNC Policy.
- Clarify request letter details, since gift are given on yearly basis, gift review (Policy 104) needs to be invoke for each fund request and gift to ensure no creeping in curricular implications
- Flesh out Center Programs (not all are even programs). More needs to be specified for us to determine if there's an impact to curriculum and what that impact could be.
- What are "affiliated students" (need details)? Scholarship details are needed.
- Is the "attachment A" the same as "Exhibit A"? – If so, there's a reference that this is to containing the initial request amounts?? If not, shouldn't that be part of this contract we're to review.
- We have suggested wording changes to IV (a)
- Page 4 section L, no reference to faculty review if amendments occur. Any change or addenda of the gift agreement with potential curricular impact need to be reviewed by faculty per Policy 104.
- Mission includes "educational activities" – but this is so vague and could have a curricular impact; needs to be reworded so that it's clear that there is not to be curricular.
- Advisory Board: how it will be set up? Can it ensure academic freedom and no creep on curricular implications? Also, IAB recommended Ongoing Advisory Board structure and process for the center, should it be referenced and disclosed to the donor?

Appendix B: Approved Ad Hoc Committee Meeting Minutes from August 10, 2016

Policy 104 Ad Hoc Gift Review Committee

August 10, 2016

1:35pm – 3:15pm

Meeting Minutes (Approved August 17, 2016)

Committee Members:

Jon Marvel, College of Business (present via GotoMeeting)

David McCord, College of Education and Allied Professions (absent)

Erin McNelis, College of Arts and Sciences (present)

Michael Schallock, College of Fine and Performing Arts (present)

Bill Yang, College of Engineering and Technology, (Chair, present)

Guest: Shea Browning (Legal Office, present)

The Chair started meeting around 1:35pm. Shea had provided a brief written reply to the questions the committee had from the previous meeting and joined the meeting for further clarifications and questions.

Questions were asked about the funding for faculty members. It was reassured that the personnel budget line is only for administrative and support personnel for the Center, which will not be used to compensate faculty members for doing their university faculty job function. As for the comment that “salary and benefits” are not “Center Programs”, Shea agreed to change the table title in Section III.a to “Center Funds” or similar.

There is a big discrepancy of budget between the draft gift agreement under this review and the Charter approved by the Board of Trustees. Shea explained that the budget numbers have been changing as Dr. Lopez is negotiating with the donor.

Question regarding details of the student involvement as “affiliated students”: Shea explained that it is expected that the center leadership will determine the details in the future. It was pointed out that, together with a few other items including Center programs, annual reporting, requests and approval of future funds, the lack of details on these many fronts of the drafted agreement hinders the committee’s ability to determine the potential curricular implications. The committee would have not done its job right if the agreement were recommended with loopholes that could allow unforeseen curricular implications creep in later. Shea explained that the gift agreement was drafted to confine the use of the gift to Center activities only. It is impractical to restrict all possible creeps of curricular implications in the gift agreement and it is up to the center leadership and the overseeing board to make sure no creep of curricular implications will happen. Questions were raised about what would be the communications process if there is a potential creep in curricular implications, for example, in the process of donor

approval of the future fund requests. Shea explained that if that happens he hopes that the center leadership would stand strong and communicate with the donor that it could breach the gift agreement and can not be allowed. The center leadership would also communicate with their supervisors and either the center leadership or their supervisor would contact the legal office and the legal office would communicate with the donor. Shea explained that with his background of practicing contract laws, no contract can prevent such creeps from happening and it always relies on the people to hold their grounds. It was commented that normally one would think that a well-termed contract would prevent that from happening and help the center leadership for example in such cases to stand their ground and refuse the unallowable influence from the donor no matter it is an academic freedom or curricular implication issue. The committee's concerns are about the open-ended donor influence as the gift agreement draft currently allows. Shea further clarified that Section I. (Promoting Academic Freedom) clearly states that "The Parties affirm that matters of curriculum, University personnel, and Center activities are the sole purview of the University's faculty and administration." And this statement, to any lawyer's reading, clearly disallows the donor's influence on curricular matters. Shea also agreed to incorporate the proposed changes to Section IV.a (Gift Purpose) and Section IV.b (Prohibited Gift Purpose(s)) as presented in the previous meeting minutes, which would strength the restriction on curricular influence as well as influence on academic freedom. Shea also agreed to make sure that the gift agreement specifies that WCU and WCU foundation will alone at their own discretion generate the annual report and decide what information can and can not be included.

Regarding the concerns about the Section VII.L, where there is no reference to faculty review if amendments to the gift agreement occur. Shea explained that "Parties" include both WCU and donor and faculty review like this one is considered as part of the WCU. Also, any material changes to the gift agreement that may have curricular implications would trigger Policy 104 review process so this is covered.

The concerns of the presented funding categories that were not delineated and seemed overlapping with each other. Shea will be in contact with Dr. Lopez to come up revisions to clean those issues up.

Question was asked regarding any restriction when to accept or not to accept donations for example out of concerns of association with the donor identity. Shea explained that whether accepting a gift is purview of the WCU Foundation and Policy 104 will be triggered once there is potential curricular implications.

Going forward, it was agreed that after the draft gift agreement is revised according to the discussions, the committee will review the revised draft and give its recommendations to the Chancellor. If the draft is adopted and goes to the donor and the donor returns with any material changes, the committee will review again and make its final recommendation to the Chancellor.

Shea will revise the draft and arrange the next meeting once the revision is done.

After Shea's questions and answer session, the committee hold a closed session, reviewed and approved the meeting minutes from August 1, 2016.

Appendix C: Approved Ad Hoc Committee Meeting Minutes from August 17, 2016

Policy 104 Ad Hoc Gift Review Committee

August 17, 2016

11:05am – 12:25pm

Meeting Minutes (Approved September 15, 2016)

Committee Members:

Jon Marvel, College of Business (present)

David McCord, College of Education and Allied Professions (present)

Erin McNelis, College of Arts and Sciences (present)

Michael Schallcock, College of Fine and Performing Arts (present)

Bill Yang, College of Engineering and Technology, (Chair, present)

Guest: Shea Browning (Legal Office, present)

The Chair started meeting around 11:05am. The committee went through the revisions of the gift agreement with Shea. It was suggested that places referencing to “Center Programs” need to be reviewed and revised as needed since the Table in III.a is now titled “Center Funds”. There was still a concern about the annual report to the donor in that the donor’s requirements regarding the report content is not specified. Shea explained that Section VI specifies that “The University, with the assistance of the Foundation, shall exclusively prepare an annual report (Annual Report) accounting of the expenditure of the Gift funds previously received.” Once agreed upon, this term can be interpreted as specifying the donor’s requirements regarding the report content. Shea, however, fully expects that the center will provide additional information in the report and as long as it is allowable by the pertinent policies, regulations, and laws, it should not be an issue. This would include, for example, that students sign release agreements allowing the Center to share their personal information with the donor and then that information is included in the report. The only way to prevent that from being abused, Shea explains, is the oversight from the Advisory Board. It was agreed that the annual report to the donor needs to be reviewed and approved by the Advisory Board. Questions followed that whether the gift agreement should include languages that specify that the annual report to the donor shall be reviewed and approved by the Advisory Board before submitted to the donor. Shea advised against it and explained that it is preferable not to entangle the Advisory Board in the gift agreement since the Advisory Board will be set up by the Center Bylaws after the Center is established. It was recognized that our recommendations will rely on trusting other steps to be specified in the future, such as trusting the Center leadership, trusting that the Center Bylaws will specify that the annual report to the donor shall be reviewed and approved by the Advisory Board, as well as trusting that the Advisory Board will diligently oversee the Center activities. It was pointed out that given some of the questionable past practices, everyone will need to be eternally vigilant and these trusts will need to be earned.

Regarding the process going forward, the committee agreed with Shea's new suggestion that the committee will make their recommendations to the Chancellor after he gets back from the donor regarding the revisions so that the committee can make the recommendations on the final gift agreement. However, as Shea was not expecting any obstacles, he recommended that the committee could start drafting the recommendations based on his revised gift agreement.

After Shea's questions and answer session, the committee hold a closed session, reviewed and approved the meeting minutes from August 10, 2016. Questions were asked if the meeting minutes can be posted on the Faculty Senate website so that it is available to all faculty members. The committee agrees that the meeting minutes should be available to all faculty members. The Chair will seek legal office's advice on this. It was suggested that all formal communications including the annual report from the Center to the donor should be reviewed and approved by the Advisory Board. Student/participant survey should also be carried out to assist the Advisory Board to make sure that the Center is on track of its stated mission and goals and there is no breach to the gift agreement or the Center Bylaws.

The committee then discussed the recommendation letter to the Chancellor. It was agreed that the recommendation letter should be more like a detailed executive summary of our discussions and considerations, with the approved meeting minutes attached as appendix. Broad statements about the source of faculty concerns should also be included, providing the background of our discussions and considerations. Provided with both the self-assessment data and the student/participant surveys, the Advisory Board should be empowered and carry out full assessments of the Center activities and performance in order to make sure that the Center is on track of its stated mission and goals.

Appendix D: Approved Ad Hoc Committee Meeting Minutes from September 15, 2016

Policy 104 Ad Hoc Gift Review Committee

September 15, 2016

10:00am – 10:55am

Meeting Minutes (Approved September 19, 2016)

Committee Members:

Jon Marvel, College of Business (present)

David McCord, College of Education and Allied Professions (present, left 10:45am for a class)

Erin McNelis, College of Arts and Sciences (present)

Michael Schallcock, College of Fine and Performing Arts (present)

Bill Yang, College of Engineering and Technology (Chair, present)

Guest: Shea Browning (Legal Office)

The Chair called meeting at 10:00am. Shea provided each committee member with a printed copy of the draft Gift Agreement with Attachments and explained that the printed version presented should be the same as the document he sent to the Committee via email on August 30th, only that now all markups have been accepted. The draft should be very close to the final version except for possible non-substantive corrections. The Committee can treat this version as the final version and make its recommendation to the Chancellor. The executed copy of the Gift Agreement and Attachments will be forwarded to the Committee for review. After the short question and answer session for Shea, the Committee hold a closed session.

A question was raised regarding the three new hires in the College of Business for Economics. All three seem to have backgrounds with training, research, and scholarly activities centered around the Free Enterprise and Free Market theories and two of the three hires have ties to the Mercator school of economics. All three, for example, were at the most recent conference. Given their expected close involvement with the proposed Center, it is very concerning that how the gift can be used to avoid overly narrow focus of one school of economic theories and viewpoints, which would have adverse curricular implications in that the students can be limited in their exposure to a balanced view of economic theories and viewpoints. Discussion of whether the Gift Agreement will certainly impact curriculum followed. It was pointed out that faculty new hires were usually made by the faculty and the Dean of the College. In addition, due to the general nature of the Gift Agreement, it will be up to the department, the college, and the university curricular oversight processes to ensure no such adverse curricular impact will happen. Furthermore, as recognized in previous discussions, the Advisory Committee of the proposed Center will need to be vigilant in protecting and promoting academic freedom and integrity, and ensuring the student exposure to be balanced and inclusive. The Committee eventually agreed that the Gift Agreement itself did not have direct curricular impact, but the approval of the proposed Center (which was heavily influenced by the monies associated with this gift) and the hiring of the new economics faculty, does have curricular impact. This led to the inclusion of a

statement in the draft recommendation to the Chancellor regarding the curricular impact that the proposed Center and its benefactors will have through its choice of invited speakers, the conferences it will fund students to attend, the faculty hired that share a common economic perspective (given the small number of economics faculty in the school), etc.

The Committee went on to discuss further adjustments to the draft recommendation to the Chancellor, particularly with regard to the egregious actions in reporting personal student details to the Koch Foundation in prior years.

Once the Committee was satisfied with the current draft of the letter, we reviewed prior notes to make sure that all of our major concerns had been addressed in the recommendation.

The Committee then reviewed and approved the meeting minutes from August 17th, 2016.

It was agreed that the Chair will send out the draft meeting minutes for today's meeting for approval over email (rather than requiring another meeting). All approved meeting minutes will constitute the Appendices of the recommendation to the Chancellor as a single document. The full recommendation will then again be send out for approval over email.

The meeting adjourned at about 10:55am.