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Koch Brothers' Attempted Takeover Of Cato Could Be Part Of Bold Plan

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Dan Froomkin

WASHINGTON -- Anyone wondering why the ultra-conservative billionaire industrialist Koch brothers are trying to seize control of the libertarian Cato Institute might want to look toward Wisconsin.

The [Cato Institute](#) is a Washington think tank with a long history of rigorous scholarship in the name of championing individual liberty. It's known for taking positions outside the conservative mainstream on issues like [civil liberties, the war on drugs and U.S. militarism](#), regardless of the political consequences.

Charles and David Koch, by contrast, are all about winning. Their massive underwriting of bellicose Tea Party groups and super PACs appears to have three main goals: ousting President Barack Obama, busting unions, and reducing the tax and regulatory burden on companies like their own.

In Wisconsin, the two brothers have a 501(c)(3) educational organization that, just like Cato, is allowed to accept tax-deductible contributions. And just like Cato, it's only allowed to do so on condition that it not intervene in political campaigns.

Rather than nurture libertarian eggheads, however, the Kochs' group -- the [Americans for Prosperity Foundation](#) -- just [spent \\$700,000 in March alone](#) on ads quite clearly intended to help union-busting Republican Wisconsin Gov. Scott Walker survive a recall.

This political weaponizing of a charity is yet one more way that the owners of Koch Industries, one of the largest privately held companies in the world, are rewriting the rules of right-wing philanthropy in the post-Citizens United universe.

So far, the biggest political story of the 2012 campaign has been how moneyed interests are using super PACs and nonprofits to spend unlimited amounts of money in favor of individual candidates -- something that, prior to the Supreme Court's 2010 Citizens United decision, was considered corrupting and illegal. Those super PACs and nonprofits engaged in political activity are exempt from paying taxes themselves, but their donors are not allowed to write off their contributions as charitable gifts.

Now the Kochs are taking things a step further. By operating such a group under section 501(c)(3) of the Internal Revenue Code, they have actually arranged for the government to subsidize the funneling of unlimited political contributions into barrages of campaign advertising.

There's not supposed to be a tax deduction for political ads. But for every \$1 million the Kochs or their friends chip in to a 501(c)(3), the federal government pays them back as much as \$350,000 in tax deductions (were any of them actually paying taxes at the highest marginal rate).

"The thing that I think is different is that in the (c)(3) context, they're really taking money out of our pockets," said [Donald Tobin](#), a law professor at Ohio State University and former tax lawyer at the Justice Department.

"It's making all the taxpayers who don't want to support a particular candidate, in fact, support them," said University of Miami law professor [Frances Hill](#).

In theory, the Internal Revenue Service has "almost a zero tolerance" for political intervention by 501(c)(3)s -- for just those reasons, Tobin said. But part of what may have prompted the Kochs' latest moves is that the IRS, at least so far, shows only the [faintest signs](#) of willingness to confront other politically sensitive issues that critics consider equally egregious. Top of that list is the [abuse of 501\(c\)\(4\) status](#) -- intended for "social welfare" organizations -- by overtly political groups in order to keep their donors' identities secret from the public.

"I think that what's different here is a willingness to be very aggressive in terms of what's acceptable for your particular activity and a determination that you can get away with it because no one's going to enforce," Tobin said.

"I suspect they think that by the time the IRS gets around to taking action, the election will be over," said Lisa Graves, executive director of the [Center for Media and Democracy](#). "I think they're playing the odds in this dysfunctional regulatory environment."

TURNING CATO

Meanwhile, the Kochs' attempted hostile takeover of the Cato Institute, another 501(c)(3), has become a hot issue in Washington, particularly among conservatives.

Spokesmen for the billionaire brothers didn't respond to repeated requests for comment.

The Kochs funded Cato at its inception in the 1970s and -- in a highly unusual structure for a nonprofit corporation -- held half its shares. But their involvement for years was at arm's length.

Then, Barack Obama's inauguration and agenda apparently incited them to [step up their political activism](#), turning them into the archetypal anti-Obama plutocrats, arming themselves for what they have called "[the mother of all wars](#)" in 2012.

Last fall, after the death of William Niskanen, one of Cato's original shareholders, the brothers began to seek complete control of the institute. On March 1, they filed a lawsuit demanding that Niskanen's widow relinquish his quarter-interest, giving them a super-majority.

In a statement, [Charles Koch](#) insisted that he and his brother just wanted "to ensure that Cato stays true to its fundamental principles of individual liberty, free markets, and peace into the future."

But Bob Levy, Cato's chairman, told The Huffington Post that a conversation he had with Charles Koch left him convinced that Koch wants Cato to play a bigger role in the brothers' election-year political campaigns.

"I read it that they would want to have Cato be, as they put it, a source of 'intellectual ammunition' for Americans for Prosperity," Levy said.

What exactly that meant still isn't clear, Levy said. "I've asked very explicitly, 'What is it that you have in mind?' And I have not gotten an answer to that question."

As a result, the institute's staff has launched a [Save Cato website](#), warning that a takeover "would swiftly and irrevocably damage the Cato Institute's credibility as a non-partisan, independent advocate for free markets, individual liberty, and peace."

"It certainly sounds like what the Koch brothers want to do now is turn Cato away from its libertarian roots," said Norm Ornstein, the conservative American Enterprise Institute's house liberal. "And most of the scholars at Cato have reacted to this in the way you would hope they would, which is to say, 'F**k you, Koch brothers, we're maintaining our standards and integrity.'"

Graves, of the Center for Media and Democracy, said she sees what Koch is trying to do at Cato as a sign of what's to come. "I would certainly say that what's been revealed in this most recent dispute over Cato is a level of control, if not exploitation, of a philanthropic group to serve the ideological agenda of the principal donors," said Graves.

The Koch group that placed the ads in Wisconsin, the Americans for Prosperity Foundation, [insists that the spots](#) "are a part of a major multimedia educational effort that

helps citizens separate the rhetoric from the reality on the budget reforms passed in Wisconsin last year."

The foundation's ads are constructed much like the issue ads other groups sometimes use in an attempt to avoid disclosure rules and limits on direct intervention in elections. They neither mention Walker's name nor say anything about voting. But David Koch, the foundation's board chairman, [acknowledged the obvious](#) last month to a Florida reporter, telling her the ad buy was intended to bolster Walker's prospects.

"We're helping him, as we should. We've gotten pretty good at this over the years," Koch told the reporter. "We've spent a lot of money in Wisconsin. We're going to spend more."

The stakes are high, he added. "If the unions win the recall, there will be no stopping union power."

The Americans for Prosperity Foundation has a very active sister organization, called [Americans for Prosperity](#), that is allowed by law to engage in some electoral intervention. But the foundation itself is a 501(c)(3). While such charitable groups are certainly allowed to hold ideological views, Tobin said, "when (c)(3)s move from issues to advocacy for people, they move into very dangerous territory. And when they move into issues as a proxy for a person, that can be problematic."

THE TAX MAN'S TAKE

Unlike the Federal Election Commission, with its arcane and baffling rules, the IRS is supposed to make decisions based on common sense. The agency's "facts and circumstances" test "is a way of saying if it walks like a duck and it quacks like a duck, it's a duck," explained Marcus Owens, a Washington lawyer who used to head the IRS division that oversees tax-exempt organizations.

By that test, Tobin said, the Americans for Prosperity Foundation ads aren't even close. "My view is that it's way over the line here," he said.

That view is shared by the [Wisconsin Democratic Campaign](#), which last week [filed complaints with the IRS](#) against the group and two others, saying they clearly violated their tax status by sponsoring the ads and other political activities to help Walker.

The complaint also accused the groups of coordinating with Walker, noting what the governor once asked of a person he thought was David Koch. In a [prank call that went viral](#) last year, Walker told the caller there was a need for a message "reinforcing" why his policies were "a good thing to do for the economy and a good thing to do for the state."

That's exactly what the Americans for Prosperity Foundation [started doing](#) several months later.

How the IRS responding is a mystery, however. An IRS spokesman said the agency is not allowed to confirm or deny investigations of specific taxpayers. He also noted that enforcement decisions are made by career employees, not political appointees.

There are good reasons why IRS investigations are both secret and protected from political interference. But in this case, the silence is leading many observers to fear that the agency will not act.

"I think it's just such a volatile and politically explosive thing for the IRS that they're not interested in pushing it," Tobin said.

Or David Koch might have given the IRS just the opening it needed.

"It's always possible that someone gets so enamored of their cleverness that it goes too far," said Hill, the law professor. "For these things to work, everyone has to act like they're in a church choir. They have to be quiet and pious -- and mainly just quiet."

What Koch told that Florida reporter, Hill said, "that's just the sort of thing that drives you crazy when you have clients."

Dan Froomkin is senior Washington correspondent for The Huffington Post. You can send him an email, bookmark his page; subscribe to his RSS feed, follow him on Twitter or on Facebook, and/or become a fan and get email alerts when he writes.

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