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Why Are the Kochs after Cato?

Don't ask us.

By Gene Healy & Jerry Taylor
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Five weeks ago, Charles and David Koch filed suit against the Cato Institute, seeking to gain majority control of the institute under a shareholders' agreement that had lain dormant for nearly three decades. Immediately all hell broke loose. Did the Kochs have a moral right to commandeer the Cato Institute? Could an institute literally owned by Charles and David Koch have any credibility with the general public? Did the Kochs intend to plug Cato into a vertically integrated, right-wing political machine?

Those questions persist because the Kochs have offered shifting and contradictory rationales for their lawsuit, rationales that have increased the heat without adding much light. The Kochs' public case for the hostile action they've taken has proceeded in three distinct stages — and at each new stage, the arguments they've offered have been even less convincing than those that came before.

STAGE 1: MARCH 1–7

“We support Cato and its work. We are not acting in a partisan manner, we seek no ‘takeover,’ and this is not a hostile action.” — Charles Koch, March 1, 2012.

Move along, nothing to see here, just a little legal squabble between friends. That's the story Charles Koch offered to the press the day after he and David Koch sued Cato. As Catoites were quick to point out, though, the people they'd nominated and appointed to our board sure seemed partisan, and the action the Kochs were pursuing — which would give them the power to wipe out Cato's board of directors virtually at will — was a “hostile takeover” in the ordinary sense of the term.

Yet an unsigned memo from the Charles G. Koch Foundation to Koch-program alumni on March 6 doubled down on the nonpartisan, non-hostile, no-takeover narrative, reiterating that Charles and David Koch “merely want the integrity of the shares, the original structure that all parties agreed to, upheld and for Cato's officers and directors to act in a manner consistent with the principles the organization was founded on.” “If Cato's leaders are willing to abandon a key libertarian principle — adhering to voluntary agreements,” the memo's author suggested, “. . . the organization has lost its way as an advocate of these principles.”

It seems more than a little presumptuous to insist that Cato is disrespecting the principle of the sanctity of contracts when it refuses to immediately comply with Koch lawyers' *interpretation of one* contract. Cato will have its day in court. But when neutral parties with considerable expertise, including a professor of corporate law at the University of Kansas Law School, doubt the merits of the Kochs' case, perhaps the rule of law is safe from the Cato Institute. Was that really all there was to the dispute?

STAGE 2: MARCH 8–22

“The actions of Cato's leadership since the filing have provided evidence of their strategy.” Cato management's reaction to the Koch lawsuit shows that it has “turned its back” on “core principles . . . such as integrity, humility, and treating others with dignity and respect.” — Charles Koch, March 8, 2012

Evidently not. Just two days after the unsigned Koch Foundation e-mail went out, the story had changed. It turned out there was something to see here after all.

On March 8, Charles Koch himself entered the fray with a public statement excoriating Cato's public opposition to the takeover attempt. Apparently, Cato's willingness to tell its side of the story in public was itself evidence that Cato's leaders had "abandon[ed] the principles they were supposed to uphold."

As Charles Koch explained testily, Cato's leadership "thought we would back down rather than risk additional criticism from them and others on top of the many attacks we already face from opponents of a free society. They thought wrong." Cato could remain libertarian, he insisted, "only if Cato fosters a culture that adheres to core principles such as integrity, humility, and treating others with dignity and respect. We view recent events as evidence that Cato's leadership has turned its back on these core principles."

Apparently, it's very poor form to object — however politely — when the institution you know and love is under siege.

But let's imagine that Cato had embraced the Kochs' expansive notion of what "humility" requires: maintaining a decorous silence in the face of media inquiries, imposing a gag order on Cato employees, and greeting reporters with a terse "no comment, we'll provide our answer in court." (Does that ever happen in high-profile lawsuits? If so, it's news to us.)

How was that supposed to work? Would adopting the libertarian *omertà* that the Kochs seem to believe was Cato's moral duty have squelched media curiosity at the outset — or would it have fanned the flames? "Wow — the Kochs are so powerful, people won't talk back even while they're getting sued!"

We at Cato found it a bizarre accusation at the time: Could the Kochs' main complaint really be that Cato had refused to go along quietly?

STAGE 3: MARCH 22–PRESENT

In fact, Cato's management chose a "destructive path . . . long before we filed our lawsuit." Cato's board of directors is "in thrall of the CEO," and, as a result, "Cato as it now exists is . . . not nearly as effective as it could be." — David Koch, March 22, 2012

But wait — there was more. David Koch’s March 22 statement, an exercise in tightly controlled fury, argued that the situation at Cato was even worse than Charles and David had previously suggested. The gist of this new argument is:

1. Cato management’s refusal to treat others “with dignity and respect” was evident years before the Kochs’ lawsuit;
2. Management’s alleged corruption had infected Cato’s board of directors, who are “subservient to Ed [Crane]”;
3. As a result, the institution is far less effective than it could be; and
4. Crane’s “Rule or Ruin” response to the Koch lawsuit — and the board’s willingness to go along with it — clearly demonstrates the low regard Cato’s management has for the libertarian cause.

Let’s look at these new allegations in turn.

1. Cato’s disrespectful management. In his March 22 statement, David Koch charges that Cato is hampered by “the behavior and management practices of its CEO — behavior that would have resulted in his termination from most corporations, let alone one that is supposed to exemplify the values of a free society, including integrity, value creation, creative destruction, humility, intellectual honesty, and treating others with dignity and respect.”

As evidence for that charge, he accuses Ed Crane of starting this dispute when he “became a source for Jane Mayer of the *New Yorker*, providing negative background on an article that was highly critical of Charles and me.” The negative background at issue, mind you, pertained to Crane’s skepticism about Charles Koch’s market-based management ideas.

The only other evidence David Koch offers is Crane’s allegedly rude behavior toward two Koch employees that Charles and David forced onto Cato’s board following the *New Yorker* story. Yet in November 2011, when Cato chairman Bob Levy refused to acquiesce to the Kochs’ demands to fire Crane “within six to eight weeks” — a demand that followed quickly the death of shareholder Bill Niskanen — apparently, the die was cast.

2. *Cato's "subservient" board of directors.* "The fact that the current Cato board has allowed this behavior," David Koch declares, "convinces us that a change is needed if Cato is to be more effective." Cato, he says, needs a truly "independent" board.

One of us addressed this claim [here](#). Suffice it to say, even if you assume that every one of the highly successful entrepreneurs and investors who make up the non-Koch majority of our board is "subservient to Ed," given to wilting before the sheer force of his personality, they are still independent in one sense at least: They don't depend on Ed Crane for their livelihoods.

Yet virtually everyone Charles and David Koch have nominated to our board in the two years since they reactivated the shareholder arrangement is financially entangled with and dependent on Charles and David Koch.

Koch-backed appointees to Cato's board now include the three largest shareholders of Koch Industries, a vice president at the Charles Koch Foundation, an authorized spokesperson for Koch Industries, and a distinguished Republican lawyer who represents Koch Industries. The Kochs also nominated the executive vice president of Koch Industries, a staff lawyer for Koch Industries, a staff lawyer for the Charles Koch Foundation, the president of a Koch-created nonprofit and former vice president of the Charles Koch Foundation, and a former director of federal affairs for Koch Industries.

And yet David Koch insists that what Cato needs is "board members who would act independently from any shareholder, officer, individual, or entity." Are we really supposed to believe that our board's independence will be enhanced by replacing independent entrepreneurs with a new slate of directors employed by or financially entangled with the Kochs?

3. *Cato's subpar performance.* David Koch asserts that "Cato as it now exists . . . is not nearly as effective as it could be." It could, he said in his March 22 statement, "become much more effective in translating esoteric concepts into concrete deliverables to move the public [policydebate](#) at this critical juncture in our nation's history."

We're not quite sure what "concrete deliverables" are, and we don't find concepts like limited constitutional government, free enterprise, and peace particularly "esoteric." But we'll admit that it's sometimes hard to measure the effectiveness of various institutions fighting the war of ideas.

Even so, various surveys of think-tank performance are routinely published every few years. The most recent, published in January of this year, comes from the University of Pennsylvania, which asked 793 high-ranking journalists, scholars, donors, academics, and non-governmental and intergovernmental leaders from all regions of the world to rank the globe's think tanks on various metrics. The CatoInstitute ranked sixth overall in the United States, ahead of the much-better-funded Heritage Foundation, American Enterprise Institute, and Hoover Institution. When it comes to domestic economic policy — the main arena of the Kochs' policy interests, if their public activities are any indication — Cato ranked an impressive third among all think tanks in the world.

In the midst of this fight, many of our friends, colleagues, and even adversaries have offered powerful testimonies to our effectiveness. Cato has become synonymous with a principled libertarian stance — and we've often seen our positions adopted by others years after we'd staked our claim. We were against the individual mandate when it was a favored "concrete deliverable" on the right.

4. "*Rule or Ruin.*" David Koch declares that he and Charles "view Ed's strategy as 'Rule or Ruin' — he will either be allowed to rule Cato in the way he wants for as long as he wants, or he will try to ruin it."

Of all of the Kochs' arguments, this one is the most mystifying. As David and Charles know, Crane has repeatedly offered to step down from Cato and give the Kochs veto power over his replacement if, in return, the Kochs agree to dissolve Cato's shareholder arrangement. But that was not enough. The Kochs demanded Crane's head *and* control of the board.

If anyone is engaged in "rule or ruin," it's the Kochs, not Cato. It was the Kochs who initiated the lawsuit and put an end to negotiations with the Cato board of directors; the Kochs who got the media coverage rolling with a heads-up

to Politico the night the lawsuit was filed; and the Kochs who are insisting on total ownership and control, come what may.

So here we are, more than a month into this fight, and it's still unclear to us what is driving the Koch brothers. They've changed their story repeatedly, going from "we seek no 'takeover' and this is not a hostile action" to a nine-page philippic by David Koch about why Crane and the board need to go. They accompanied this shift with thin-skinned complaints about Crane's unkindness to Charles Koch and Koch's operatives and vague assertions about Cato's ineffectiveness, and they have labored to portray any resistance to Koch aims or arguments as betrayals of the cause of freedom itself. Is this really their case in its entirety, or can we expect even more fresh narratives in the coming months?

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