Libertarian Ed Crane Decides to Act Like a Liberal. Will It Destroy the Cato Institute?

Posted by **Erick Erickson** (Diary)
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A friend of mine asked me last week why I hadn't written about the Cato Institute lawsuit business with the Koch Brothers. I told him I hadn't seen it pulsing up anywhere, so why should I give it any attention. Ed Crane, the President of Cato, has no viable legal argument and it seemed to me he was just taking advantage of the current left-wing hate against the Koch's to try to garner some sympathy for an organization nobody has really cared about in more than a decade.

Then suddenly there was a flurry of stories and I think they prove me right. The Politico had one of the few stories written before the weekend. The Washington Post ran a big story. TheBoston Herald referenced it. The Los Angeles Times was ahead of them all.
When the news broke last week, Dave Weigel gave a pretty good overview.
All of the stories show a pretty terrible sense of history and make rather clear that had the Koch Brothers not been involved, there wouldn't be much interest. This is a vendetta with journalists too happy to play along.
As to the history, many of the articles note Cato has an unusual set up. It is a not for profit with shareholders. It is not that uncommon. When I was a transactional attorney I set these up. When rich people give lots of money, they want to make sure their investment does not go off the reservation. But more so, this structure was entered into in the 1970′s when big think tanks were rather uncommon and the tax code so nebulous that strange structures like this took shape out of necessity.

Couple that with the vendetta and you have a story the media loves. According the press reports, the Kochs are trying to take over Cato and change it into something else. That is a distraction from what is actually happening and designed to put the Kochs in the worst possible light while ignoring Ed Crane's egregious, frankly rather spoiled, behavior.

My libertarian friends should really be appalled at Ed Crane's antics. In short, Ed Crane and Charles Koch formed the Cato Institute with an unusual structure establishing shareholders with shareholder rights outlined in a legal agreement. Crane has no legal argument to throw out the shareholder agreement and he and the Chairman of Cato, Robert Levy, largely concede the point to the Washington Post. Levy tells the Post,
"We think it's a really bad structure," said Robert Levy, Cato's board chairman. "We've repeatedly asked that it be changed."

From Levy's quote, we can easily extrapolate a few things. First, Levy admits it is and has been Cato's structure. Second, Levy and Ed Crane clearly do not like it. Third, Levy admits they have tried existing legal channels to change the structure to no avail. So fourth, Levy and Crane have taken a "damn the law and arms length agreements, we're just going to burn the place down" approach. They have no legal argument and are forced to try to shame the Kochs in the press. Well shame on them. Compounding the shame is Levy and Crane's ridiculous hiding behind the Internal Revenue Service with arguments that Cato's own tax lawyer does not really agree with. Yes, this is an example of libertarians hiding behind the federal government to try to break up an agreement entered into in an arms length transaction.

Contrast Levy's lament with Wes Edwards, who is deputy general counsel of Koch Companies Public Sector, LLC, who says, "The purpose of this litigation is to preserve the shareholders' intent. The original shareholders reached an agreement and agreed to be bound by it. A key principle of libertarianism is recognizing and respecting the rule of law. The founders of the Cato Institute reached an agreement and agreed to be bound by it. That is all we are seeking here – that the parties stand by what they agreed to when they founded Cato."

In other words, as both Bob Levy and Wes Edwards make clear, Levy and Ed Crane did not get their way so they are going to ignore the shareholder agreement. That's not how libertarians operate. That is how liberals operate — litigating in the press because they haven't gotten and, more importantly, cannot legally get their way.

Back when conservative Democrats were dying off and otherwise becoming Republicans, the conservative movement underwent a profound shift wherein much of the conservative movement folded into the Republican Party. Instead of being a buttress on the outside, conservatives became Republicans and vice versa. The Cato Institute became one of the groups on the center right willing to hold the GOP accountable for deviating from what it promised.

And then? Pfffft. . . . It just kind of failed to seize the momentum and failed to stay relevant. Short of its gubernatorial score card, I rarely ever hear Cato mentioned these days and sure can't think of anything it has, as an institute, been a leader on except social security reform back in 2005, though some of its individual analysts are quite sharp and still individually impactful.

The last time I heard anyone talk about Cato in serious terms was when they booted a couple of analysts who had taken to peddling the thinking that libertarians and Democrats could form a natural coalition where big spending wasn't a problem as long as the sex and drugs were widely available. That's pretty much it. This is a real tragedy because of some of the great analysts who are there and even more so because within the center-right coalition, conservative groups need a libertarian think tank competing on free market issues to keep free market ideas fresh, engaging, and relevant.

So if the Koch Brothers want to fix Cato we should be cheering them, not attacking them. To be clear, anything they did would be better than the status quo.

Ed Crane, the President of Cato who has presided over its decline (but like all archaic Washington institutions it has an awesome building), is now a minority shareholder. The legal structure he agreed to is no longer serving him in the way it did when he tossedMurray Rothbard back in the eighties.

What Crane has decided to do is burn down the remains of Cato's reputation to try to save his own power. The shareholder document is straight forward. Under Penalty of Catapult has everything you need to know about the legal arguments involved. Suffice it to say, Ed Crane has no legal argument. Instead, he is doing what the left does — resort to trial by media and whine. What is particularly disturbing about Crane's actions is that he, ostensibly of the center-right coalition, is trying to take advantage of the left's on going war with two of America's top capitalists to garner media sympathy for his lost legal cause.

Wes Edwards makes note of Crane deciding to seize the opportunity afforded Crane by the left's ongoing character assassination of the Kochs.

> For months we engaged in multiple efforts to resolve questions about the shareholders agreement. We proposed a standstill agreement that would postpone matters until 2013 and delay an upcoming shareholders meeting to vote on board nominees. We also offered alternative structure proposals, and we suggested third-party mediation. These efforts were all rejected by Cato's officers and they moved forward with the shareholders meeting on March 1. We filed our action as a last resort.

In other words, they were willing to have the fight, but wanted to put it off until after the political season is over. But Ed Crane wants this happening in the political season so he can take advantage of a liberal media predisposed to be against two of Barack Obama's political opponents.

People on the right should frown upon those sorts of actions. If Cato is to die, it will be because of Ed Crane's leadership, not because of the Koch Brothers.