

Under Penalty of Catapult

Cato's Doublespeak on the Niskanen Estate's Duties

Written by Skip Oliva

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The lawyers are already hard at work, I can tell. Here's what the Cato Institute's website said [on Friday](#) regarding its legal position against the Koch lawsuit:

Cato acknowledges that, at some point, Niskanen's stock must be tendered to the Institute. But the Agreement specifies that Cato need not purchase the offered stock. If the board elects not to purchase, the stock is then offered to the remaining stockholders, but only if the board deems that a purchase by Cato would have been "inconsistent with its corporate purposes." In other words, if the board declines to purchase the stock for some other reason — e.g., to honor Niskanen's wishes as expressed in his will — the stock does not have to be offered to the remaining stockholders and may be transferred pursuant to Niskanen's last will and testament. (italics added)

And here's what the website says [this morning](#):

The Agreement *could be construed* to require that at some point, the Estate's stock must be tendered to the Institute for possible purchase. However, the Agreement does not require that Cato purchase the offered stock. Further the Agreement does not provide that the stock must be offered to the other stockholders unless Cato deems that a purchase by Cato would be "inconsistent with its corporate purposes." (italics added) So in the course of roughly 72 hours, Cato went from "acknowledging" there would come a point when the stock must be offered for sale back to the corporation to saying that the agreement "could be construed" that way. I'm sure the Koch lawyers will have fun with that.

I'd also point out here that the Cato Institute is presuming to speak here about the legal obligations of the Estate of William Niskanen, which Cato has no legal relationship with, except as a beneficiary of Niskanen's will. Kathryn Washburn is the sole personal representative for the estate. And as far as I can tell from the Kansas court records, the estate has not entered an appearance; the only defense counsel of record are lawyers for the Cato Institute. I don't know if Washburn intends to retain separate counsel, but until she clarifies matters, we should be careful not to confuse Cato's representation of the estate's duties with the estate's representation.

