



Cato and the Future of Libertarianism

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An earthquake rocked the libertarian world last week when news broke that a lawsuit had been filed over the ownership of shares in the [Cato Institute](#), the libertarian think tank founded some 30 year ago in the wake of Ed Clark's run as the 1980 Libertarian Party Presidential nominee. It started, apparently, last year with the death of William Niskanen, who along with Ed Crane, David Boaz, and countless others, had spent three decades shaping Cato into not just the leading libertarian public policy think tank, but also an organization that has become well-respected on both sides of the political aisle.

It's difficult to list everything that Cato has done in the past thirty years, because they've done so much. They publish numerous public policy analysis reports on every subject that the nation's leaders deal with. For many years they have published a guide book for each new Congress. Since the late 1980s they have run Cato University, an opportunity for young libertarians to learn from and interact with some truly great minds. Indeed, yours truly participated in one of those seminars at Dartmouth College in 1989 and I still remember it as one of the most intellectually engaging weeks of my life. That's just a short list, I'm sure I'm missing something.

In any case, the dispute that is rocking Cato now is, as I said rooted in the death of William Niskanen last year, and a [shareholder agreement with Charles and David Koch](#):

The billionaire brothers Charles and David Koch filed a lawsuit Wednesday for control of the [Cato Institute](#), a libertarian think tank in Washington.

The lawsuit exposes a power struggle for one of Washington's premiere policy centers, which has been funded by millions in contributions from the Koch brothers' foundations since its founding in 1974.

Cato was divided between four shareholders: the two Koch brothers, Cato president Ed Crane, and former Cato chairman William Niskanen, according to the lawsuit filed Thursday in a court in Johnson County, Kansas.

At the heart of the dispute is the fate of the shares owned by Niskanen, who died in October at age 78 of [complications from a stroke](#). The Koch brothers believe that they have the option to buy Niskanen's shares, while Cato officials believe that the shares belong to Niskanen's widow, Kathryn Washburn, according to [the complaint](#).

When I first heard about this dispute, it struck me as the kind of standard, albeit unfortunate, dispute that arises when one of the members of a closely held corporation dies. Ordinarily, the issue of who is entitled to the deceased shareholder's shares is something that ought to be decided by either the terms of the Shareholder Agreement, or applicable state law. I thought it unfortunate that the entire dispute had apparently become so difficult that a lawsuit had to be filed, but didn't think much more of it. As more information came out, however, it became clear that what's really going on here is a battle for control of the future of the leading libertarian public policy think tank in the country.

[David Weigel](#) writes about the background of the dispute this morning, and relates this interesting exchange that appears to explain what's really going on here:

In early November, David Koch met with Bob Levy, chairman of Cato's board of directors, at Dulles International Airport. They were joined by Richard Fink, Koch's chief adviser, and Kevin Gentry, a vice president of Charles Koch's charitable foundation who'd been put on Cato's board of directors. (Former Americans for Prosperity President Nancy Pfotenauer had joined the board after the same meeting.)

"They said that a principle goal was to defeat Barack Obama," remembered Levy. "The way David [Koch] put it was, 'We would like you to provide intellectual ammunition that we can then use at Americans for Prosperity and our allied organizations.' AFP and others would apply Cato's work to advance their electoral goals."

Levy asked them: "What gives you the impression that [Cato isn't] providing intellectual ammunition?" He says now: "I never got a satisfactory answer. The only answer that makes sense was that Cato needed to be more responsive to their needs. We would take closer marching orders. That's totally contrary to what we perceive the function of Cato be."

That, it seems, was the first indication that the Koch Brothers had Cato in their sights, and had plans for it that were far different from what we've all known Cato to be. Not surprisingly, this has caused many libertarians to express concern over what's happening behind the scenes.

[Jerry Taylor](#), a Senior Fellow at Cato sees trouble ahead if the Koch Brothers gain control and turn the think tank into something resembling Americans For Prosperity by pointing to some of the people that the Koch's have attempted to install on Cato's board of late:

Let's take a look at a few of these new board members of ours. Kevin Gentry is a social conservative activist who's also vice-chair of the Virginia GOP. Nancy Pfotenauer is a former spokesperson for the McCain campaign who has argued on television in favor of the Iraq war and the "don't ask, don't tell" policy pertaining to gays in the military. Ted Olson is a Republican super-lawyer who's never identified himself as a libertarian.

Just before the last shareholders meeting, the Koch brothers also nominated –but were unable to elect – eight additional individuals for our board. Those nominees included the executive vice president of Koch Industries, a staff lawyer for Koch Industries, a staff lawyer for the Charles Koch Foundation, a former Director of Federal Affairs for Koch Industries, a former Executive Director of the National Republican Senatorial Committee (and who was, incidentally, a McCain bundler), and a lifelong Wichita friend of Charles Koch. Aside from those functionaries, they also nominated a couple of people with public profiles that make the jaw drop:

- *John Hinderaker of the Powerline blog, whose firm counts Koch Industries as a client. Hinderaker has written, “It must be very strange to be President Bush. A man of extraordinary vision and brilliance approaching to genius, he can’t get anyone to notice. He is like a great painter or musician who is ahead of his time, and who unveils one masterpiece after another to a reception that, when not bored, is hostile.” Hinderaker supports the Patriot Act and the Iraq War and calls himself a neocon.*
- *Tony Woodlief, who has been president of two Koch-created nonprofits and vice president of the Charles Koch Foundation. Woodlief has blogged about “the rotten heart of libertarianism,” calling it “a flawed and failed religion posing as a philosophy of governance” while complaining about libertarians “taking up” at political meetings.*

Now, who’s more likely to “ensure that Cato stays true to its fundamental principles of individual liberty, free markets, and peace into the future” – these Republican operatives and bloggers or the ousted board members who are among the most independent, principled, and energetic libertarians you’ll ever find?

Moreover, is there any reason for the Kochs to worry about Cato “staying true to its fundamental principles?” What, exactly, signals to them that we are straying, or likely will stray, from those principles?

As far as Charles’ declaration that Cato “not be subject to the personal preferences of individual officers or directors,” it’s hard to square that with the obvious implications of his suit. If Ed were to have his way and the shareholder agreement was dissolved,

Ed would answer to 16 autonomous board members. If Charles were to have his way and the shareholder agreement was to govern Cato, then the board – and the president – would ultimately answer to Charles.

Taylor also makes several observations that could prove to be significant in the upcoming litigation. The shareholders, for example, haven't actually held a formal meeting for nearly 30 years even though the agreement requires one. They exercise no real control over the day-to-day operations of the organization. Cato itself is 100% funded by outside donors, not the shareholders. This, apparently, is why Ed Crane and the rest of the people at Cato are apparently taking the legal position that the Shareholder Agreement is a nullity. Since that's a matter for the Court, I won't comment on it, but it strikes me that the statements that Charles Koch has made over the past week about protecting the organization are belied by the reality of how Cato has actually operated for three decades now.

Another Cato employee, Jason Kuznicki, [is even more blunt](#):

The real work that Cato does, above all of its specific issue advocacy, is to show that the ordinary constellations of opinion, both left and right, aren't necessarily so good. Many of Cato's ideas are already out there, on the left or the right. What Cato does is fit them together in a way that we find is much more consistent and principled. We might be wrong, but at the very least we're a reasonable challenge to the status quo.

What does Cato say that no other think tank says? Militarism is not the foreign policy best suited to the free market. In fact, it's the worst foreign policy for a free market. The War on Drugs is not only unnecessary in a free market, but ending it would be a straightforward implementation of free market principles. And the freedom to buy and sell is a sick joke without robust civil liberties for all. Conversely, most people want their civil liberties partly so that they can earn a living and enjoy economic opportunities.

That is what Cato is about. That is also apparently why the Kochs are trying to destroy it.

I can't understand how people who are so smart in business can be so boneheaded when it comes to activism. It's a painfully stupid decision. Even if it were innocent – which it's not – it still looks horrible. It's as if the Kochs set out to prove every last thing that progressives have ever said about them.

To sue William Niskanen's widow is atrocious all by itself, an act worthy of a cartoon plutocrat. They appear to have been biding their time until he died, which is just

ghoulish. Everyone from left to right admired Bill's honesty, courage, and intellectual rigor, even if they disagreed with him. He was a fine scholar and a true gentleman. I worked with him very closely on his last book, I saw his good qualities and learned a lot from him, and I am appalled that the Kochs would burden his widow in their bid for control.

If the Koch's are going after control of Cato in order to turn it into something resembling Americans For Prosperity or one of their other organizations, which seems to be the case, that would be unfortunate. Not only would libertarianism lose its most prominent voice, but an organization that is respected on both the left and the right for its work would be turned into little more than another partisan mouthpiece churning out policy analyses to support Republican policy positions. For those of us who recognize that the GOP is as much a threat to liberty as the Democratic Party, that would be a tremendous loss. Ed Crane, David Boaz, and everyone else at Cato have been fighting the good fight for decades, and now Charles and David Koch appear to want to turn the product of their work into little more than the research arm of the Republican National Committee.

This is a story worth keeping your eye on, because the future of what ever is left of the libertarian-conservative "alliance" hangs in the balance. Here's hoping the good guys win.