

The Volokh Conspiracy

Koch v. Cato — A Statement from Charles Koch

Jonathan H. Adler • March 8, 2012 8:17 pm

Charles G. Koch has issued the following statement about the Koch brothers [lawsuit to obtain control](#) of the Cato Institute. Here it is in its entirety:

**Statement by Charles G. Koch
Chairman and CEO, Koch Industries, Inc.
Regarding the Cato Institute
March 8, 2012**

In December 1976, when I co-founded and provided the seed money to establish the Cato Institute, which originally was the Charles Koch Foundation, my vision was to build a principled and non-partisan organization that would advance the ideas that enable all people to prosper – by promoting individual liberty, limited government, free markets and peace. This was my intent then, and remains my steadfast intent 35 years later.

With its emphasis on education, Cato has contributed greatly to the marketplace of ideas and is now a respected thought leader. My brother David and I have every intent to ensure Cato continues its work on the full spectrum of libertarian issues for which it has become known.

I am troubled by recent false allegations that our actions to preserve shareholder rights were done in disregard of Cato's interests. Here are the facts behind what we have done and why.

We did not want to address this shareholder issue at this time. Although our legal filing has accelerated media coverage of this issue, this was not our desire. For months we made every effort to resolve, avoid, or delay this issue. We proposed a standstill agreement to delay for one year or longer any discussion on the shareholders agreement. We asked to delay any shareholders meeting, which would have left the pre-March 1 board of directors in place during this period. We proposed third-party mediation. We proposed alternative corporate structures. We made every effort to avoid this dispute –

finally requesting just an additional four days to negotiate a potential resolution – but all of our proposals were rejected. Every counterproposal we received required we forfeit our shareholder rights and act contrary to the corporate governance documents.

The third Cato shareholder, Ed Crane, insisted that we have a shareholder meeting on March 1 to vote on new directors. At this meeting, a new shareholder was to be recognized in violation of our longstanding written agreement and the Institute's bylaws and articles of incorporation. We warned Cato's leaders about the negative consequences of forcing a shareholder meeting. They scheduled the meeting anyway. Faced with this intransigence, we did not seek damages or make claims of misconduct by individuals. Rather, we merely filed a declaratory relief action asking the court to confirm the meaning of the relevant corporate documents.

The actions of Cato's leadership since the filing have provided evidence of their strategy. They 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. We will not capitulate to these threats and mistruths any more than we have bowed to other threats.

We have been asked why we did not choose to simply walk away from this dispute. Principle is not a matter of convenience. We firmly believe this is a pivotal moment in Cato's history. We want to ensure Cato remains consistent with the principles upon which it was founded. The furtherance of this vision is possible 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. As we see it, we would not be acting honorably if we failed to stand up for these principles.

There is a great deal of speculation as to what direction we would take Cato if we were to be in a position to elect a majority of the board. Some have speculated that we would micro-manage the enterprise. Others have suggested we would turn Cato into a partisan Republican organization. These rumors are absolutely false.

My objective is for Cato to continually increase its effectiveness in advancing a truly free society over the long term. This was my objective when, in 1976, I came up with the idea of converting the Charles Koch Foundation to a public policy institute and recruited Ed Crane to run it. My observation was that there was an urgent need for an institute that would flesh out the policy implications of the general principles of a free society. I still believe there is a great need for this work and that Cato can fill that need.

To that end, we would seek to elect board members and officers who will ensure that Cato becomes increasingly effective in advancing liberty while remaining dedicated to its core principles. These officers and board members would act independently from me or any other individual – instead, their role, as should be with any non-profit board, would be to ensure greater accountability and effectiveness. As someone who has created and helped build many organizations in both the profit and non-profit sectors, I know from

first-hand experience that sustainable growth can be achieved only through leaders who are committed to core principles. Recognizing all that Cato has accomplished in the past, I envision a Cato that can accomplish even more in the future.

We are committed to seeing Cato flourish because we believe it has the potential to make an increasing contribution to the advancement of liberty and prosperity. But none of this will be possible if Cato's leaders abandon the principles they are supposed to uphold or otherwise violate the core values of a free society. Such a path has been the downfall of many organizations.

I think it is all to the good that Charles Koch has issued a statement, but there's not much to it. The statement does not really address the dominant concerns that have been expressed by non-Cato-affiliated libertarians and fellow travelers and there is a conspicuous lack of detail on key points. Nowhere does he disavow that the Kochs' aim to obtain majority control of Cato's shares for the first time in Cato's history, and there is no factual detail of the sort necessary to dispell (let alone disprove) some of the charges that have been leveled to date. Further, some portions of the statement — such as the claim that his intent is to seek to elect “independent” board members — are contrary to the actions he and his brother have taken to date. [This is not an aspersion on those the Kochs nominated -- most of whom I know and respect. It is just a simple observation that only one could be fairly characterized as "independent" of the Koch brothers.]

What could Charles Koch say that would assuage the concerns I and others have expressed? If I had the opportunity to sit down with either of the Koch brothers or an authorized representative, here are the questions I would ask:

- To what extent do any of your objectives not entail or require obtaining or maintaining majority control of the Cato Institute?
- If you and your brother have never had majority control of the shareholders before, why is majority control necessary now?
- Did you propose any alternative settlements or alternative corporate structures that did not entail establishing or maintaining majority-Koch control of the Cato Institute?
- You support and have helped to found many non-profit organizations with traditional corporate structures, such as self-perpetuating boards. Why is it undesirable for Cato to have such a structure?
- Do you understand why so many of your friends and allies believe that majority-Koch control would undermine the Cato Institute's credibility and effectiveness?
- In what ways could the Cato Institute be more effective?
- What does the Cato Institute or its current officers do now to hinder its effectiveness?
- What concrete steps do you think are necessary to increase the Cato Institute's effectiveness?
- Do you consider any of the board members you've successfully nominated or proposed, other than Andrew Napolitano, are “independent”?

- Can you provide examples of the sorts of people you would consider to be appropriately “independent” board members of an organization like Cato?
- Is it desirable for any independent think tank or policy organization to be under the legal control of a single bloc of funders or interests?

These are the sorts of questions that need to be answered — and the answers to these questions would go along way to assuage (or confirm) the fears that I and others have expressed. If the Koch brothers and their allies wish to quell the unrest that is surging throughout the movement, these are the concerns that need to be addressed.

A final point: While I would certainly characterize many of my posts as defenses of Cato, as an institution, I have not sought to defend any of the specific actions taken by the Institute’s current leadership or staff. To me, this is about the Institute and the principles it represents, not the tenure of any specific officers. Both sides in this struggle have acted like former spouses locked in a custody battle in which the desire to “win” has overshadowed the other interests at stake. The question is not whether one side or the other will “walk away,” but whether the principals in this feud are willing and able to put the interests of the Cato Institute ahead of their own. The shareholder agreement has been amended and the composition of the shareholders has been revised in the past. No principle demands the current agreement remain in force. Given the love of liberty all involved have shown throughout their careers, I retain some hope, however fleeting.