

The Volokh Conspiracy

Koch v. Cato – Skip Oliva’s Observations

Jonathan H. Adler • March 9, 2012 3:58 pm

Skip Oliva, who has been [collecting links galore](#) on his blog “[Under Penalty of Catapult](#),” has several must-read posts for those following the Koch-Cato controversy. First, [as noted below](#), he has an [interview with Cato Chairman Bob Levy](#) responding to [Charles Koch’s public statement](#). This interview provides lots of detail about the steps each side took before the Koch brothers filed their lawsuit. If Charles Koch’s statement contained equivalent detail it would be easier to evaluate his claims.

Second, Oliva [comments](#) on the [Cato Institute’s legal position](#), which has now been detailed by Cato. As he notes, some aspects of Cato’s position are straightforward. Others involve a contestable reading of the underlying legal documents. One thing is clear, the shareholders agreement was not a model of legal draftsmanship.

Third, Oliva has two insightful comments on the dispute, “[The Balance of Power](#)” and “[And Now We Play the Leverage Game](#).” The latter of these two posts, in particular, is worth a read. He notes that there are really multiple issues here, including the “long-simmering feud” between Cato President Ed Crane and the Koch brothers. Their personal differences have certainly contributed to the conflict, and any final resolution will likely turn on Crane’s future as Cato President and the selection of his successor. Oliva writes:

Any resolution to this dispute must include a clear timeline for Crane’s retirement and selecting a new Cato president. The Kochs will definitely play a role in this. Levy himself conceded that Crane offered the Kochs veto power over the choice of successor in exchange for dissolving the shareholder agreement. The Kochs also offered to delay this entire matter until after the 2012 elections. That suggests there’s room for compromise, say, if Crane were to publicly announce his retirement effective March 1, 2013.

Of course, there's still the issue of board composition. Levy was adamant the Kochs not be allowed to control half the board. Crane's only real leverage here is to cling to power—he still controls a majority of the board, pending the outcome of the lawsuit—until the Kochs concede that point. The Kochs' leverage, in turn, was time-consuming litigation that, as Levy acknowledged, cripples Crane's ability to raise money. So now we're left to see who blinks first while everyone else—Cato's staff and donors—is held hostage.