

Koch vs. Cato: Koch brothers file second lawsuit over 'Board-packing scheme'

By Allen McDuffee

Posted at 07:32 AM ET, 04/10/2012

Billionaires Charles and David Koch have filed a second lawsuit against the Cato Institute, marking the newest development in the [ongoing battle for control](#) over the libertarian think tank.

According to court documents filed Monday and obtained by The Washington Post, the Kochs are asking the court to invalidate the results of an "improper election" held recently by Cato's board--an action the Kochs refer to as a "Board-packing scheme."

On March 22 [Cato's board voted](#), by a narrow margin of 9-7, to increase the number of seats on the board and to fill those seats with four previous members whom the Kochs had removed earlier in March by exercising their shareholder rights in the organization.

According to the documents, the Kochs argue that, in accordance with Cato's by-laws, the board has neither the power to expand its size, nor the power to fill the seats.

"These Board members are solid libertarians who have been generous supporters of the Cato Institute. We very much appreciate their support and are delighted to have them actively involved in Cato's governance," said Robert A. Levy, chairman of the Board, at the time of the vote.

The suit names as defendants the Cato Institute and the four reinstated board members: William A. Dunn, John C. Malone, Lewis E. Randall and Donald G. Smith.

"The primary purpose of the Board-packing scheme" say the documents, "was to disenfranchise certain of [sic] shareholders--namely Charles and David Koch--and prevent them from being able to elect a percentage of Board members proportionate to the Kochs' voting shares in Cato. Efforts to undermine the ability of shareholders to effect change through the ballot are subject to 'enhanced judicial scrutiny' under Kansas law. Absent a 'compelling justification,' such devices are deemed to constitute breaches of the fiduciary duty of loyalty and are rendered null and void as a result."

Cato has not offered comment on the lawsuit as of this filing.

Story developing.