

Common Cause Rallies to Save the Cato Institute & More Thoughts re the Cato Dispute

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In reaction to the controversy over the Koch brothers' attempt to take control of the Cato Institute, [previously blogged about here](#), Common Cause - yes, Common Cause - is supporting a public "[Save the Cato Institute Rally](#)" in Washington, D.C. and [has urged the IRS](#) to review the Koch brothers' actions. The rally is apparently organized by [United Republic](#), which describes itself as "a new organization fighting the corrupting influence of well-financed special interests over American politics and government." As for the IRS complaint, in its letter Common Cause cites a [Chronicle of Philanthropy article](#) in which [Marcus Owens](#), former IRS Exempt Organizations director, is quoted as saying that the dispute reveals a "fatal flaw" in Cato's structure. That flaw is that Cato has private shareholders who appear to be able to sell their rights in the organization.

I agree with Marc that if the ownership of the Cato Institute's "capital stock" carries with it the ability for the owners, whether individually or acting collectively, to sell their shares to the highest bidder that is inherently inconsistent with section 501(c)(3) status. If, however, the capital stock by its very terms prohibits such a transaction or any other transaction that would permit the owners to financially reap the benefit of their ownership of the shares, and also prohibits any change to its terms that would eliminate this restriction, then I think there is a reasonably strong argument that the capital stock provision of the articles (when combined with the private inurement prohibition also found in the articles) is not automatically inconsistent with the organizational test. Cato's Forms 990s (available on Guidestar) state Cato has four shareholders with 16 shares each, that those shareholders elect the board of directors, and that the shareholders may remove directors by majority vote, but they do not provide any more details. The various shareholder agreements, which are available through a link at the bottom of [one of the Washington Post articles](#) about this dispute, appear to limit the price that can be paid for the shares to their original purchase price, which the article indicates was \$16 or \$1 per share, however.

That said, I have not seen all of the relevant documents and I do not claim any expertise when it comes to Kansas law, under which Cato is incorporated, including how that law would apply to the current litigation. I therefore think the jury is still out on whether this admittedly unusual governance structure is inherently inconsistent with section 501(c)(3) status or is only potentially so, in that control by a limited group of individuals – however provided for legally – raises a significant risk of private inurement inconsistent with 501(c)(3) status.

LHM