IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
TENTH JUDICIAL DISTRICT
CIVIL DEPARTMENT

CHARLES G. KOCH and DAVID H. KOCH,	)	
Plaintiffs,	)	
	)	'12 CV 02830
v.	)	Case No. _____
	)	K.S.A. Chapter 60 7
CATO INSTITUTE, JOHN C. MALONE, LEWIS E. RANDALL, DONALD G. SMITH, and WILLIAM A. DUNN	)	
Defendants.	)	

AFFIDAVIT OF CHARLES G. KOCH

State of Kansas)

) ss:

County of Sedgwick)

Charles G. Koch, being duly sworn, deposes and says:

1. My name is Charles G. Koch. In 1974, I founded the Charles Koch Foundation, which was converted two years later to Cato Institute ("Cato" or "the Institute"), a non-profit shareholder corporation incorporated under the laws of Kansas. I provided the seed money for the Institute, and I have been a Cato donor through 2010.

2. I am a shareholder of the Institute under the Shareholders Agreement. (Ex. 1 (Shareholders Agreement).) As a shareholder, I have certain rights authorizing me to vote for director candidates for the Institute. *See* Ex. 2 (Cato Institute By-Laws).

3. I am also a member of the Board of Directors of the Institute ("Board").

4. The Institute had four (4) shareholders up until late last year—myself, David Koch, Cato President Edward Crane, and William Niskanen. In October 2011, Mr. Niskanen died. Prior to Mr. Niskanen's death, each of the four shareholders held a 25% voting interest in the Institute under the Shareholders Agreement.

5. At the time of Mr. Niskanen's death, and up until Thursday, March 22, 2012, the Board had sixteen (16) directors.

6. The Board is "staggered." Each director's term is two years, with half the members elected at each year's annual shareholders' meeting.

7. After Mr. Niskanen's death, a disagreement arose among Cato's remaining shareholders as to the disposition of Mr. Niskanen's shares. Under the Shareholders Agreement, Mr. Niskanen's shares are obligated to be offered to the Institute for repurchase or, if the Institute declines, to the remaining three shareholders on a proportional basis. Mr. Crane and Mr. Niskanen's widow Kathryn Washburn (who is also Personal Representative of Mr. Niskanen's estate under his will), along with Cato Chairman, director, and officer Robert Levy ("Mr. Levy" or "the Chairman"), have taken the view that Mr. Niskanen's shares can be transferred to Ms. Washburn without first being offered to the Institute and then to the other shareholders. The Cato Institute Board of Directors Handbook names Ms. Washburn as one of the four shareholders. *See* Ex. 3 (Mar. 9, 2012 Screen Capture of "SaveCato.org Website"); Ex. 4 (Cato Institute Board of Directors Handbook, at p. 1).

8. Notwithstanding this position, the Chairman has acknowledged publicly that, under the terms of the Shareholders Agreement, upon the death of a shareholder "the shares have to be sent back to the corporation for repurchase." *See* Ex. 5 (Transcript of Mar. 9, 2012 Robert Levy Interview on the Bob Harden Show, 7:19–21).

9. David Koch and I, through our representatives, attempted to negotiate with Mr. Crane and Mr. Levy to resolve our disagreement over the meaning of the Shareholders Agreement. Initially, Crane and Levy agreed to negotiate and agreed to a "standstill" agreement under which the December 2011 meeting of Cato's shareholders was delayed. *See* Ex. 6 (Standstill Agreement and Emails Agreeing to It).

10. Our efforts to engage Mr. Crane and Mr. Levy in negotiations have not been successful. Indeed, Mr. Levy recently announced his intention to frustrate the clear terms of the Shareholders Agreement, saying that "[i]t's time to . . . adopt a governance structure for Cato that eliminates the prospect of Koch control." (Ex. 7 (Mar. 12, 2012 Robert Levy Statement).) And Mr. Crane has confirmed his personal objective to "eliminate" the Shareholders Agreement. *See* Ex. 8 (March 13, 2012 Email from Ed Crane to Cato Donors).

11. In order to resolve this disagreement, David Koch and I brought a declaratory judgment action (the "Declaratory Judgment Action") in the District Court of Johnson County Kansas on February 29, 2012, seeking to confirm our rights as to Mr. Niskanen's shares under the Shareholders Agreement. (Ex. 9 (Declaratory Judgment Petition).)

12. On March 1, 2012, the Institute's annual shareholders' meeting was held for the purpose of electing eight directors to the Board. Mr. Levy, in his role as Chairman, and the corporate secretary were to count the ballots. On multiple occasions prior to that

meeting, we asked for it to be delayed, but Mr. Levy refused.

13. At the shareholders' meeting, Mr. Crane and Mr. Levy asserted that Ms. Washburn had the right to vote Mr. Niskanen's shares in the election of directors. Had Ms. Washburn not been allowed to vote them, that is, had Mr. Niskanen's shares been either offered to (and repurchased by) the Institute or offered to (and purchased by) the remaining three shareholders as set forth in the Shareholders Agreement, David Koch and I would have had a 2/3 voting interest in the selection of directors. As a result, we would have selected a majority of the eight directors up for election.

14. David Koch and I, by proxy, objected to Ms. Washburn's participation in the meeting. The Chairman, over our objection, recognized Ms. Washburn's votes for directors.

15. The effect of the Chairman's recognition of Ms. Washburn's vote was this: of the newly elected directors, four were chosen by the votes cast by David Koch and me, and four were chosen by votes cast by the Crane/Washburn/Levy group. The result was a Board divided into nine persons aligned with Crane/Washburn/Levy ("the Crane/Levy Faction") and seven persons elected by David and me.

16. David Koch and I participated in the election under protest and cast two sets of ballots. One set reflected the choices we would have made had there been three voting shareholders; the other set reflected the choices we were forced to make given the Chairman's claim that Ms. Washburn had voting rights.

17. On March 2, 2012, one day after the shareholders' meeting, Mr. Levy announced his intention to call a special meeting of the Institute's Board of Directors. (Ex. 10 (March 2, 2012 Email from Robert Levy).) His email stated the purpose of that meeting was "to update the board regarding recent board changes, a pending lawsuit, and their implications for Cato's ongoing operations." *Id.* A few days later, Mr. Levy decided that the Special Board Meeting would be held on March 22, 2012, although he did not confirm that other directors would be available at that time. Even after he was made aware that certain directors had scheduling conflicts, Levy did not change the meeting date.

18. On March 19, 2012, approximately 72 hours before the scheduled meeting, at my request Mr. Levy circulated a meeting agenda ("the First Agenda"). That agenda proposed that the Board "consider" creating a special litigation committee for the Declaratory Judgment Action, that it "consider" modifying certain by-laws provisions, and that it "consider alternatives to involve important donors and supporters . . . including . . . having them become members of the board of directors." *See* Ex. 11 (March 19, 2012 Email from Robert Levy and First Agenda).

19. The Agenda failed to clarify whether there would be votes on any of the topics to be considered, and, if so, which ones.

20. In response, I wrote to Mr. Levy on March 20 and, with reference to the concept of a special litigation committee, pointed out that Mr. Levy's status as an interested person in the litigation, given his very public support for the Crane/Washburn position, made it inappropriate for Mr. Levy to serve on it. (Ex. 12 (March 20, 2012 Email from Charles G. Koch).)

21. I also requested greater specificity as to whether agenda items being "consider[ed]" would actually be brought to a vote. *Id.*

22. Additionally, I asked whether it was "contemplated that the board would seek to increase the size of the board and appoint new, additional members to the board[.]" *Id.*

23. Finally, I identified a need for sufficient time to consider any changes to Cato's structure and noted that Mr. Levy and other directors had a fiduciary duty to Cato and all of its shareholders. *Id.*

24. The Chairman replied by email on March 21, approximately 24 hours before the scheduled meeting. That reply contained a revised meeting agenda ("the Revised Agenda"), which added an additional topic (relating to an additional by-laws provision to be discussed). The Revised Agenda otherwise preserved the First Agenda's language to the effect that the enumerated issues would be "consider[ed]." (Ex. 13 (March 21, 2012 Email from Robert Levy and Revised Agenda).)

25. With respect to the question of who should serve on a special litigation committee, Mr. Levy answered that "[t]he focus should be on the qualifications of the committee members, not how the members are elected." *Id.*

26. Later, that night, at approximately 9:10 p.m. CDT, Mr. Levy sent an email attaching two proposed Board resolution documents. The first document ("the SLC Resolution") contained a series of resolutions relating to the creation and terms of a special litigation committee. It was complex and included provisions relating to the powers of the committee and the relationship of those powers to the powers of the Board itself. *See* Ex. 14 (March 21, 2012 Email from Robert Levy and Resolutions).

27. The second document ("the By-Laws Resolution") proposed several changes to existing language in the Institute's by-laws *Id.*

28. These proposed resolutions were sent and received less than 18 hours before the start of the March 22 Board meeting. Notably, there was no proposed resolution relating to the addition of new director positions, and no indication that the directorships would be filled the next day. And there was no resolution or invitation affording David Koch or me (notwithstanding our director-selection voting rights under the Shareholders Agreement) any opportunity to propose such candidates chosen for additional Board seats.

29. I responded to the Chairman's email the next morning, March 22, 2012, the day of the Board meeting. In light of the fact that there were only several business hours available

before the start (2:30 p.m. EDT) of the Board meeting, I pointed out that it was not possible to do what my (and other directors') fiduciary duties required in such circumstances—to evaluate the terms of the proposed resolutions and assess their implications for both the Institute and the individual directors. I asked Mr. Levy to defer consideration of the SLC Resolution and By-Laws Resolution until sufficient time to study the resolutions and obtain advice about them could occur. (Ex. 15 (March 22, 2012 Email from Charles G. Koch).)

30. I also noted that the Chairman had failed to respond to my direct question, set forth in my March 20, 2012 email to him, concerning his intention (or not) to bring a resolution relating to expanding the Institute's Board by adding newly created director positions. I stated that I had not received notice that such an issue would be set for a vote and noted that to conduct such a vote and to name additional Board members at this time, while the legal question of shareholder rights to choose directors was pending before a court, would interfere with director-selection rights under the Shareholders Agreement. *Id.*

31. Mr. Levy did not respond to my comments.

32. I participated in the Board meeting by telephone, noting that my participation was under protest. Votes were taken on the SLC Resolution and the By-Laws Resolution. At the meeting Board member Kevin Gentry objected to the proposed composition of the special litigation committee, pointing out (i) that of the three members, only Levy had legal training and others on the board with legal training should be considered; (ii) that Levy had served as Ms. Washburn's proxy at the March 1 shareholders' meeting; and (iii) that Mr. Levy's public comments indicated that he had prejudged the dispute.

33. For these resolutions, as with others, Mr. Levy first presented the resolution, and then, before the vote was actually taken, Mr. Levy communicated to the other Board members his intention to vote either for or against the particular resolution. None of the seven directors who voted in support of Crane and Levy at the meeting contributed to the discussion in any meaningful way; nor did any of these members ask questions about the proposals on which we were asked to vote.

34. As to the SLC Resolution and the By-Laws Resolution voted on at the March 22, 2012 Board meeting, I do not believe that I received the notice or opportunity to review them necessary to enable me to exercise my fiduciary duties fully, fairly, and properly and to cast my votes on the resolutions in the best interests of the Institute.

35. Although I had twice requested notice of the Chairman's intention to vote on any resolution on newly created directorships, and although the Chairman had twice ignored my requests for notice, at the Board meeting he proposed a resolution to create four new directorships. By a 9-7 vote, with all members of the Crane/Levy Faction voting in favor, the Board created these positions.

36. The four persons voted in as holders of the newly created director positions were: William A. Dunn, John C. Malone, Lewis E. Randall, and Donald G. Smith.

37. I understand that directors of a non-profit corporation have certain fiduciary duties of loyalty and care that must be exercised after due consideration in the best interests of the entity and its shareholders.

38. As to the resolutions creating new directorships and filling those positions, I do not believe that I received the notice or opportunity to review them necessary to enable me to exercise my fiduciary duties fully, fairly, and properly and to cast my votes on those resolutions in the best interests of the Institute.

39. I understand that with regard to the new directorships, two are for a term ending in December 2012. The other two are for a term ending in December 2013.

40. The effect of this process is to create a board in which 13 directors are aligned with the Crane/Levy Faction and seven are not.

41. I believe these newly created directorships were established for the purpose of maintaining the Crane/Levy Faction's majority control over the Board in the future so as to frustrate our one-half or (if we succeed in the Declaratory Judgment Action) two-thirds interest to select the Institute's directors under the Shareholders Agreement.

42. The annual shareholders' election of new directors is scheduled for December 2012. The eight directors who were not elected on March 1, 2012, will be up for election at that meeting.

43. Assuming the Declaratory Judgment Action is not resolved in full by that time, the Chairman can be expected to recognize David Koch and me as having a 50% voting interest in director selection and to recognize that Crane and Washburn together have a 50% voting interest.

44. Had the Crane/Levy Faction not added newly created directorship positions, the December 2012 election would choose eight board members. Of the eight then up for reelection, five are presently aligned with the Crane/Levy Faction and three are not. For those eight positions, four would be chosen by the Crane/Levy Faction; four would be chosen by David Koch and me. The expected effect would be to shift the 9-7 Crane/Levy Faction majority to a balance of 8-8.

45. Had the Crane/Levy Faction not added newly created directorship positions, and if the Declaratory Judgment Action were resolved in our favor by December 2012, David Koch and I would have votes sufficient to elect two-thirds of the Board members at the December 2012 meeting. This would reduce the strength of the Crane/Levy Faction from nine to six directors.

46. By adding four new directors aligned with Crane/Levy Faction, they have created a situation in which ten directors will be completing their terms in December 2012 (eight will be completing two-year terms; two will be completing the newly created through-December-2012 terms). With each side able to choose five of the ten open directorships, then—unless by that time there has been a judicial resolution of the Declaratory Judgment Action favorable to David Koch and me—the present 13-7 majority can be expected to shift, at most, to an 11-9 Crane/Levy Faction majority after the December 2012 election.

47. The foreseeable and, it appears, intended effect of the changes engineered through the votes to create and fill new directorships will be to deprive David Koch and me of the benefit of the voting interest in director selection created by the Shareholders Agreement until at least December 2013, and possibly indefinitely—notwithstanding our entitlement under the Shareholders Agreement to vote either 2/3 of the shares (assuming success in the Declaratory Judgment Action) or, at a minimum, one-half of the shares (indisputably our present right).

48. On March 23, 2012, the day after the Board meeting, I received an email from the Chairman. In that email he stated that he would "continue to take" similar measures in the future. (Ex. 16 (March 23, 2012 Email from Robert Levy).)

49. I understand Mr. Levy's communication to mean that he will continue to take measures to perpetuate his and Mr. Crane's control of the Institute and will continue to take measures to disenfranchise shareholders and deny them rights conferred by the Shareholders Agreement.

50. On March 26, 2012, I responded to Mr. Levy's email communication of March 23. (Ex. 17 (March 23, 2012 Email from Charles Koch).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Charles G. Koch

Subscribed and sworn to (or affirmed) before me on this 5th day of April, 2012 by Charles G. Koch, personally known to me or proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public

My Commission Expires: 10/11/2015

KAY L. SPENCE
NOTARY PUBLIC
STATE OF KANSAS
My Appt Exp.: 10/11/2015

SCAN DATE 2012/04/09 13:50

EXHIBIT 1

SHAREHOLDERS AGREEMENT

The undersigned, being all of the stockholders of Cato Institute (hereinafter the "Corporation"), a nonprofit corporation organized under the laws of the State of Kansas, do hereby agree with each other as follows:

1. That each of the undersigned shall vote his stock in the Corporation so long as he is a stockholder in such a way as to assure that each of the undersigned is elected to the position of a Director on the Board of Directors of the Corporation.

2. That each of the undersigned, as a Director of the Corporation and before authorizing the issuance of any of the capital stock of the Corporation to a party who is not a signatory hereto, will require, as a condition to any such issuance of such stock, that the prospective new shareholder execute a counterpart copy of this Agreement and thereby become bound to the terms and provisions hereof in the exact same manner as the undersigned are bound.

3. No stockholder of the Corporation shall have the right or power to pledge, hypothecate, sell or otherwise dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to the Corporation for a price equivalent to the price paid by such shareholder for such shares by written instrument addressed and delivered to the Board of Directors of the Corporation. Following receipt of said written offer, said Board of Directors shall have a

period of thirty (30) days in which to notify said offering shareholder of the Corporation's election to purchase such stock for such price. Upon payment or tender of such price by the Corporation within thirty (30) days of such election, the holder of such stock shall sell and transfer the same to the Corporation forthwith. Should the rights granted hereunder to the Corporation be deemed inconsistent with its corporate purposes, then the rights granted hereby shall be deemed to be granted to the shareholders of the Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of the Corporation exclusive of those shares held by the shareholder desiring to dispose of stock.

4. That at any time a majority, by number, of the undersigned (hereafter the "Purchasers") desire to purchase all the stock in the Corporation owned by one or more of the undersigned (hereafter the "Seller"), the Seller, within ten (10) days after receiving written notice of the Purchasers' desire from the Secretary of the Corporation, shall deliver or cause to be delivered to the Purchasers share certificates representing all the stock in the Corporation owned by the Seller, duly endorsed for transfer, against payment by the Purchasers to the Seller of the amount paid for all such stock by the Seller. The Purchasers shall acquire the stock of the Seller in the proportions that their respective stock holdings in the Corporation bear to the aggregate stock holdings of the Purchasers in the Corporation, and the price

paid by them to the Seller shall, as between the Purchasers, be paid by them in the same proportions.

5. That at any time any of the undersigned ceases to be a shareholder in the Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in the Corporation, shall submit his written resignation as a Director of the Corporation.

8. This Agreement shall be binding upon, and inure to the benefit of the undersigned parties and their respective heirs, legatees, and personal representatives of whatsoever nature.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _____ day of _____, 1985, intending to be bound hereby only at such time as all parties named hereunder have executed this instrument or an exact counterpart thereof.

Charles Koch

George Pearson

Edward H. Crane, III

William A. Niskanen

ALL OF THE SHAREHOLDERS OF
CATO INSTITUTE

EXHIBIT 2

CATO INSTITUTE

RESTATED BYLAWS: MARCH 9, 2007
AMENDED: APRIL 1, 2011

ARTICLE I

NAME, REGISTERED OFFICE, AND REGISTERED AGENT

Section 1. Name

The name of this corporation is the CATO INSTITUTE.

Section 2. Registered Office and Registered Agent

The address of the registered office of this Corporation is 6901 College Boulevard; Suite 500; Overland Park, Kansas 66211. The name of the registered agent of this Corporation at that address is PW & S Agent Services of Kansas, Inc.

ARTICLE II

SEAL AND FISCAL YEAR

Section 1. Seal

The Seal of this Corporation shall have inscribed on it the name of the Corporation and the words "corporate seal, Kansas." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

Section 2. Fiscal Year

The fiscal year of this Corporation shall begin on April 1 and end on March 31. [Amended 3/9/07]

ARTICLE III

SHAREHOLDERS' MEETINGS

Section 1. Place of Meetings

Meetings of the shareholders shall be at the registered office of the Corporation or any other place (within or without the state of Kansas) as the board of directors or shareholders may from time to time select.

Section 2. Annual Meeting

An annual meeting of the shareholders shall be held on the first business day of the month of December; the shareholders shall elect a board of directors and transact other business. If an annual meeting has not been called and held within six months after the time designated for it, any shareholder may call it. [Amended 1/14/06]

Section 3. Special Meetings

Special meetings of the shareholders may be called by the president, by a majority of the board of directors, or by the holders of one-tenth or more of the shares outstanding and entitled to vote.

Section 4. Notice of Meetings

A written, printed, or electronic notice of each shareholders' meeting, stating the place, day, hour, and means of remote communication, if any, of the meeting, and in the case of a special meeting, the purpose or purposes of the meeting shall be given by the secretary of the Corporation or by the person authorized to call the meeting to each shareholder of record entitled to vote at the meeting. This notice shall be given at least twenty days before the date named for the meeting (unless a greater period of notice is required by law in a particular case) to each shareholder by United States mail, electronic mail, facsimile, or telegram, charges prepaid, to the postal address, electronic mail address, or facsimile number appearing on the books of the Corporation. Such notice: (i) if mailed, shall be deemed given when deposited in the United States mail, postage prepaid, directed to the shareholder at such shareholder's address as it appears on the records of the Corporation; (ii) if given by facsimile telecommunication, shall be deemed given when directed to a number at which the shareholder has consented to receive notice; and (iii) if given by electronic mail, shall be deemed given when directed to an electronic mail address at which the shareholder has consented to receive notice.
[Amended 4/1/11]

Section 5. Waiver of Notice

A shareholder, either before or after a shareholder's meeting, may waive notice of the meeting; and his waiver shall be deemed the equivalent of giving notice. Attendance at a shareholder's meeting, either in person or by proxy, of a person entitled to notice shall constitute a waiver of notice of the meeting unless he attends for the express purpose of objecting to the transaction of business on the ground that the meeting was not lawfully or convened.

Section 6. Voting Rights

At every shareholders' meeting the holders of shares of common stock shall be solely vested with the right to vote as provided by the statutes of the State of Kansas, and the Articles of Incorporation of the Corporation, as amended, including the right of cumulative voting for directors.

Section 7. Proxies

A shareholder entitled to vote may vote in person or by proxy executed in writing by the shareholder or by attorney-in-fact. A proxy shall not be valid after eleven months from the date of its execution unless a longer period is expressly stated in it.

Section 8. Quorum

The presence, in person or by proxy, of the holders of one-half or more of the shares outstanding and entitled to vote shall constitute a quorum at meetings of shareholders. At a duly organized meeting stockholders present can continue to do business until adjournment even though enough stockholders withdraw to leave less than a quorum.

Section 9. Adjournments

Any meeting of shareholders may be adjourned . Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present or represented, any business may be transacted which could have been transacted at the meeting originally called.

Section 10. Informal Action by Shareholders

Any action that may be taken at a meeting of shareholders may be taken without a meeting if a consent in writing setting forth the action shall be signed by all of the shareholders entitled to vote on the action and shall be filed with the secretary of the Corporation. This consent shall have the same effect as a unanimous vote at a shareholders' meeting.

ARTICLE IV

THE BOARD OF DIRECTORS

Section 1. Number, Qualifications, and Term of Office

The business and affairs of the Corporation shall be managed by a board of directors, not to exceed twenty (20) in number. None of the directors need be residents of the State of Kansas or hold shares in this Corporation. The number of directors may be altered from time to time by resolution adopted by vote of a majority of the entire board or by the shareholders. Each director shall be elected to serve a two-year term with no more than half plus one of the board of directors' terms scheduled to expire in any given year. [Amended 9/21/84, 1/14/06, 3/9/07]

Section 2. Vacancies

Vacancies on the board of directors shall be filled by a majority of the remaining members of the board even though less than a quorum. Each director so selected shall serve until his successor is elected by the shareholders at the next annual meeting or at a special meeting earlier called for that purpose. The other member or members of the board of directors may declare vacant the office of a director who is convicted of a felony or who is declared of unsound mind by an order of a court.

Section 3. Removal

At a meeting of the shareholders called for that purpose the entire board of directors or any individual director may be removed from office without assignment of cause by the vote of a majority of the shares entitled to vote at an election of directors.

Section 4. Notice of Board Nominees

A written, printed, or electronic notice containing the name of each nominee to the Corporation's board of directors shall be given to each shareholder of record entitled to elect directors. This notice shall be given by the secretary of the Corporation or by any shareholder at least fifteen days before the date named for the meeting (unless a greater period of notice is required by law in a particular case) by United States mail, electronic mail, facsimile, or telegram, charges prepaid, to the postal address, electronic mail address, or facsimile number appearing on the books of the Corporation. Such notice: (i) if mailed, shall be deemed given when deposited in the United States mail, postage prepaid, directed to the shareholder at such shareholder's address as it appears on the records of the Corporation; (ii) if given by facsimile telecommunication, shall be deemed given when directed to a number at which the shareholder has consented to receive notice; and (iii) if given by electronic mail, shall be deemed given when directed to an electronic mail address at which the shareholder has consented to receive notice.
[Added 4/1/11]

ARTICLE V

MEETINGS OF THE BOARD

Section 1. Place of Meetings

The meetings of the board of directors may be held at the registered office of the Corporation or (subject to Section 2 of Article V. of these bylaws) at any place within or without the State of Kansas that a majority of the board of directors may from time to time by resolution appoint.

Section 2. Meetings

A minimum of two regular meetings of the directors shall be held annually. The number of meetings, time and place of the meetings shall be determined by agreement of a majority of the directors. [Amended 3/9/07]

Section 3. Special Meetings

Special meetings of the board of directors may be called at any time by the president or by any one member of the board.

Section 4. Notice of Meetings

Written notice of each regular meeting, setting forth the time and place of the meeting, shall be given to each director at least two weeks before the meeting. Written notice of each special meeting, setting forth the time and place of the meeting, shall be given to each director at least twenty-four hours before the meeting. These notices may be given personally or by sending a copy of the notice to each director by United States mail, email, fax, or telegram, charges prepaid, to the postal address, email address, or fax number appearing on the books of the Corporation. [Amended 3/28/09]

Section 5. Waiver of Notice

A director may waive in writing notice of a special meeting of the board either before or after the meeting; and his waiver shall be deemed the equivalent of giving notice. Attendance of a director at a meeting shall constitute waiver of notice of that meeting unless he attends for the express purpose of objecting to the transaction of business because the meeting has not been lawfully called or convened.

Section 6. Quorum

At meetings of the board of directors a number less than the majority of the directors in office shall constitute a quorum for the transaction of business but in no case shall such number be less than one-third of the total number of directors in office. If a quorum is present, the acts of a majority of the directors in attendance shall be the acts of the board.

Section 7. Adjournment

A meeting of the board of directors may be adjourned. Notice of the adjourned meeting or of the business to be transacted there, other than by announcement at the meeting at which the adjournment is taken, shall not be necessary. At an adjourned meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting originally called.

Section 8. Informal Action

If all of the directors severally or collectively consent in writing to any action taken or to be taken by the Corporation and the writing or writings evidencing their consent are filed with the corporation, the action shall be as valid as though it had been authorized at a meeting of the board.

ARTICLE VI

OFFICERS, AGENTS, AND EMPLOYEES

Section 1. Officers

The executive officers of the corporation shall be chosen by the board of directors and shall have such powers as the board of directors determine from time to time. Officers shall hold office until their successors are chosen and have qualified, unless they are sooner removed from office as provided in these bylaws.

Section 2. Vacancies

When a vacancy occurs in one of the executive offices by death, resignation, or otherwise, it shall be filled by the board of directors. The office so selected shall hold office until his successor is chosen and qualified.

Section 3. Salaries

The board of directors shall fix the salaries of the officers of the corporation. The salaries of other agents and employees of the corporation may be fixed by the board of directors of by an officer to whom that function has been delegated by the board.

Section 4. Removal of Officers and Agents

An officer or agent of the corporation may be removed by a majority vote of the board of directors whenever in their judgment the best interests of the corporation will be served by the removal. The removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 5. Delegation of Duties

Whenever an officer is absent or whenever for any reason the board of directors may deem it desirable, the board may delegate the powers and duties of an officer to any other officer or officers or to any director or directors.

ARTICLE VII

SHARE CERTIFICATE AND THE TRANSFER OF SHARES

Section 1. Share Certificates

The share certificates shall be in a form as may be approved by the board of directors and comformable to law. Each certificate shall be signed by the president or the vice-president and the secretary or assistant secretary and shall be stamped with the corporate seal.

Section 2. Registered Shareholders

The Corporation shall be entitled to treat the holder of record of shares as the holder in fact and, except as otherwise provided by the laws of Kansas, shall not be bound to recognize any equitable or other claim to or interest in the shares.

Section 3. Transfer of Shares

Shares of the Corporation shall only be transferred on its books upon the surrender to the Corporation of the share certificates duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer. In that event, the surrendered certificates shall be canceled, new certificates issued to the person entitled to them, and the transaction recorded on the books of the Corporation; provided, however, that no shares of the Corporation shall be transferred on the books of the Corporation except upon showing of strict compliance with the restrictions on transfer imposed by the provisions set out in that certain Shareholders Agreement dated January 26, 1977, executed by all the then member of the Corporation.

Section 4. Lost Certificates

The board of directors may direct a new certificate to be issued in place of a certificate alleged to have been destroyed or lost if the owner makes an affidavit that it is destroyed or lost. The board, in its discretion, may as a condition precedent to issuing the new certificate require the owner to give the Corporation a bond as indemnity against any claim that may be made against the Corporation on the certificate allegedly destroyed or lost.

ARTICLE VIII

SPECIAL CORPORATE ACTS

Section 1. Execution of Instruments

Contracts, deeds, documents, checks, notes, and instruments shall be executed by such person or persons as the board of directors may designate.

Section 2. Voting Shares Held in Other Corporations

In the absence of other arrangement by the board of directors, shares of stock issued by any other corporation and owned or controlled by this Corporation may be voted at any shareholders' meeting of the other corporation by such person as the board of directors may designate.

ARTICLE IX

AMENDMENTS

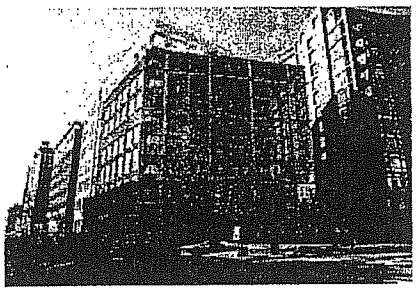
The board of directors shall have power to make, alter, and repeal bylaws at any regular or special meeting of the board.

ARTICLE X

GRANT PROCEDURE
[Deleted 3/9/07]

EXHIBIT 3

SAVE Cato



On March 1 Charles G. Koch and David H. Koch filed suit in a Kansas court, with the goal of taking control of the Cato Institute board of directors under Cato's long-dormant shareholder agreement.

The Cato community believes that if this suit succeeds, it would swiftly and irrevocably damage the Cato Institute's credibility as a non-partisan, independent advocate for free markets, individual liberty, and peace.

We are heartened by the public support that immediately emerged, and continues to come forward, for the Cato Institute, and have, in addition to statements from principals, legal filings, fact sheets, and more, posted some of these expressions below.

We will continue to update this site as the events go forward and as often as the litigation proceedings permit. We are grateful to those who share our commitment to libertarian principles, and to the integrity, independence, and nonpartisanship of the Cato Institute.

Cato's Legal Position

The Cato Institute is organized as a nonprofit stock corporation under Kansas law. On March 1, 2012, Charles and David Koch, two of the Institute's four stockholders, filed a lawsuit against the Institute and its other two stockholders, Edward Crane and the Estate of Bill Niskanen. Kathryn Washburn, Niskanen's widow, was also named as a defendant, both individually and in her capacity as personal representative of the Estate.

The Petition includes a number of allegations related to an Agreement purportedly binding all Cato stockholders. Essentially, the Petition alleges that under the Agreement, the Estate is obligated to offer its Cato stock for purchase by the Institute. The Petition further alleges that, in the event the Institute elects not to purchase the stock, the right to purchase shall be deemed granted pro rata to the remaining stockholders. In either event, the result would be the reduction of the number of stockholders from four to three, with David Koch and Charles Koch owning two-thirds of the outstanding stock.

The Kochs portray this dispute as a breach of contract that denies them their property rights. They ask, how could libertarians not honor contractual commitments and property rights? That would be a compelling argument if the underlying premise — breach of contract — were correct. It is not.

First, the stock owned by the Estate need not be offered for purchase by Cato until the Estate is closed, which is likely to be early next year. The death of a stockholder does not constitute a transfer of stock subject to the Agreement. Instead, the Estate takes the place of the decedent as a matter of law, without transfer. When the Estate is closed and the stock is ready for distribution, that's when the obligation to offer the stock to Cato is triggered. Meanwhile, the law of Kansas, where the lawsuit was filed, provides that "persons holding stock in a fiduciary capacity are entitled to vote the shares so held." And Kansas courts have held that a personal representative of an estate acts in a fiduciary capacity.

Cato acknowledges that, at some point, Niskanen's stock must be tendered to the Institute. But the Agreement specifies that Cato need not purchase the offered stock. If the board elects not to purchase, the stock is then offered to the remaining stockholders, but only if the board deems that a purchase by Cato would have been "inconsistent with its corporate purposes." In other words, if the board declines to purchase the stock for some other reason — e.g., to honor Niskanen's wishes as expressed in his will — the stock does not have to be offered to the remaining stockholders and may be transferred pursuant to Niskanen's last will and testament.

Finally, with respect to the Institute's governance structure: A stockholder arrangement for a nonprofit corporation is unusual, but not impermissible. That type of structure is clearly allowed under Kansas and federal law. Moreover, the Institute has disclosed its structure on its Form 990, filed annually with the Internal Revenue Service. Stockholders of a nonprofit can elect the board of directors, but stockholders do not have a property right in corporate assets or a financial interest in donations. An alternate and more typical nonprofit structure — control by "members" — involves designating individuals as members whose function is to elect the board. In many nonprofits, the members are the directors themselves. Thus the board, in effect, is self-perpetuating. But nothing would preclude the members from being other persons, including

the same persons who are currently the Institute's stockholders. In other words, the designation as a "member" or "stockholder" of a nonprofit is not material. There are no "owners" — just persons who elect the board.

The key question for Cato is whether our board will consist of the type of individuals who for 35 years operated the Institute as a non-partisan, non-aligned, independent source of libertarian views on key policy questions, or individuals who might be perceived as controlled by, affiliated with, or responsive to, Charles and David Koch as they pursue their many political and corporate interests.

Behind the Facts

- In addition to filing suit, Charles and David Koch have used their existing power under Cato's long-dormant shareholder agreement to place several major shareholders, employees, and consultants of Koch Industries and the Koch Foundation on Cato's Board of Directors, removing several directors who have been among the organization's largest and most steadfast financial contributors. Some of the new directors are Republican operatives and social conservatives, a poor fit for the board of an independent libertarian think tank.
- The officers and all the non-Koch directors of the Cato Institute are determined to resist this takeover attempt and preserve the independence of the Institute.
- The Kochs have not been open and transparent about their intentions. They cite no criticism of the Cato Institute or its management, and yet they have told Cato chairman Robert A. Levy that they insist on removing Cato's co-founder and president, Edward H. Crane.
- The Kochs' goal is not to improve the stature nor effectiveness of the organization, but rather, to turn a venerable, independent and effective nonpartisan institution into yet another political arm of their vast empire. They told Levy that they wanted Cato to work more closely with their organization Americans for Prosperity. As the *New York Times* reported on October 30, 2011, AFP works closely with Karl Rove's American Crossroads and American Action Network and with official Republican organizations "to make further gains in the Congressional elections next year and defeat President Obama ...they collaborate and divide up duties where possible."
- The non-Koch-related directors of the Cato Institute feel strongly that an independent, nonpartisan think tank should steer clear of such associations and activities.
- The takeover attempt also comes just as Cato concludes a $50 million capital campaign and the doubling of its headquarters building, making Cato a more valuable asset than at any point in history.
- The Kochs want to acquire Cato's reputation for independence and thoughtful policy analysis. But they cannot acquire this. A personal, partisan, corporate takeover of Cato will destroy the reputation the Institute has built up over 35 years.

Relevant Documents

- **Petition filed by Charles G. Koch and David H. Koch in the Tenth Judicial District of Kansas**
- **2010 Form 990 of Cato Institute**
- **2011 Kansas Not-for-Profit Corporation Annual Report for Cato Institute**
- **March 8 Statement from Charles G. Koch**

The Response

- "Cato has managed the difficult feat of becoming both a fount of true-blue libertarian ideas and a reputable source of information even for those who don't share its views. It may be the most successful think tank in Washington."
  - **Steve Chapman, *Chicago Tribune***
- "Over the years, Cato has successfully injected libertarian views into Washington policy and political debates, and given them mainstream respectability."
  - ***New York Times***
- "When I read Cato's take on a policy question, I can trust that it is informed by more than partisan convenience. The same can't be said for other think tanks in town."
  - **Ezra Klein, *Bloomberg***
- "[Y]ou should wish for an independent Cato Institute even if — maybe especially if — you're a socialist statist tool (like me). Cato is mostly antiwar, decidedly anti-drug war, and sponsors a lot of good work on civil liberties. That ... is basically what the Kochs don't like about them, because white papers on decriminalization don't help Republicans get elected."

- **Alex Pareene, *Salon***

- "Cato and its brethren may have ideological agendas, but don't routinely twist the facts to suit their funders. Whatever the legal merits of Charles Koch's suit, Cato is better off under Crane, simply because he doesn't have a $98-billion-per-year industrial empire to oversee. Washington think tanks fall short of universities in assuring the independence of their research, but they aren't corporate shills, either. That fragile membrane of public protection must be preserved."
  - *Boston Globe* editorial

The Ongoing Conversation

- **Kevin Dowd, *Huffington Post***
- **Brink Lindsey, *Bleeding Heart Libertarians***
- **Ezra Klein, *Bloomberg***
- **Ilya Somin, *The Volokh Conspiracy***
- ***New York Times***
- **Julian Sanchez**
- **David Weigel, *Slate***
- **Jane Mayer, *New Yorker***
- **Jerry Taylor, *The Volokh Conspiracy***
- **Steve Chapman, *Chicago Tribune***
- **Andrew Sullivan, *The Daily Beast***
- **David Isenberg, *Huffington Post***
- **Robert A. Levy, *The Bob Harden Show***
- **Ian Millhiser, *Think Progress***
- **Alex Pareene, *Salon***
- **Gene Healy**
- ***Boston Globe* editorial**
- **Don Boudreaux, *Cafe Hayek***
- **Jonathan H. Adler, *The Volokh Conspiracy***
- **Alison Frankel, *Thomson Reuters News & Insight***

Social Media

- **Follow #savecato on Twitter**
- **Save the Cato Institute Facebook page** (*Unaffiliated*)
- **Save the Cato Institute on Twitter** (*Unaffiliated*)

EXHIBIT 4

CATO INSTITUTE

BOARD OF DIRECTORS

HANDBOOK

CATO INSTITUTE

1000 Massachusetts Ave., N.W.
Washington D.C. 20001
202-842-0200

BOARD OF DIRECTORS HANDBOOK

April 2011

MISSION STATEMENT: The mission of the Cato Institute is to increase the understanding of public policies based on the principles of limited government, free markets, individual liberty, and peace. The Institute will use the most effective means to originate, advocate, promote, and disseminate applicable policy proposals that create free, open, and civil societies in the United States and throughout the world.

CONTENTS

Cato Institute
Officers, Directors, Committees & Shareholders

Board-Elected Officers	Title	Phone	Email
Edward H. Crane	President	202-789-5291	ecrane@cato.org
David Boaz	Executive Vice President	202-789-5290	dboaz@cato.org
William Erickson	V.P. - Finance & Admin.	202-789-5255	erickson@cato.org
Anthony Pryor	Secretary	202-218-4618	apryor@cato.org

Directors	Home	Work	Cell	Email
K. Tucker Andersen	860-868-2116 212-787-8666	646-556-6661		Tucker@abovealladvisors.com
Frank Bond (emeritus)	410-472-2770	410-560-0222		frankbond.fgi@verizon.net
Edward H. Crane	703-531-1452	202-789-5291	202-821-8988	ecrane@cato.org
Richard J. Dennis		312-834-0696		c/o mspencer@cdcommodities.com
William Dunn	561-833-9150	772-781-3293	772-486-0800	Bill@dunncapital.com BillsHome@dunncapital.com
Kevin Gentry	703-503-8895	202-737-8377	202-669-7385	kevin.gentry@kochps.com
Ethelmae C. Humphreys		417-624-6644		Ethelmae_Humphreys@tamko.com
David H. Koch		212-319-1100		koch1d@kochind.com david.koch@kochchemtech.com
Robert A. Levy (chair)	239-566-7139 828-670-1611		240-604-5000	rlevy@cato.org
John C. Malone		720-875-5201		mlf@libertymedia.com
Nancy Pfotenhauer	703-242-0197		703-585-0998	nancy@mediaspeakstrategies.com
Lewis E. Randall	360-331-5998	360-331-5941	206-715-4609	randall@whidbey.com
Howard S. Rich	267-687-7002	215-546-0501	917-923-6654	HowRch@cs.com
Donald G. Smith		212-284-0993		dsmith@donaldsmithandco.com
Kathryn Washburn	410-651-0944		202-997-3912	kathwash1@gmail.com
Jeffrey S. Yass		610-617-2966		yass@susq.com
Fred Young	262-639-9302	262-632-3310	262-758-7787	fyoung@tds.net

Board Committees	
Executive	Andersen, Humphreys, Koch, Levy (chair), Rich
Audit	Dennis, Randall (chair), Rich
Investment	Andersen, D. Smith (chair), Yass
Governance/Nominating	Humphreys, Randall, Young (chair)
Unassigned	Crane, Dunn, Gentry, Malone, Pfotenhauer, Washburn

Shareholders	Shares	Phone	Email
Edward H. Crane	16	202-789-5291	ecrane@cato.org
Charles Koch	16		kochc@kochind.com
David Koch	16	212-319-1100	koch1d@kochind.com david.koch@kochchemtech.com
Kathryn Washburn	16	202-997-3912	kathwash1@gmail.com

CATO INSTITUTE

GOVERNANCE AND NOMINATING COMMITTEE CHARTER

ADOPTED SEPTEMBER 18, 2008

Statement of Purpose. The Governance and Nominating Committee (the "Committee") is a standing committee of the Cato Institute (the "Institute"). The purpose of the Committee is to manage and make decisions regarding the governance of the Institute and to make recommendations for new directors and committee assignments.

Membership of the Committee.

- The Members of the Committee shall be appointed by the Institute's Board of Directors who shall also appoint the Chair of the Committee.
- There shall be at least three members of the Committee.
- All members of the Committee must be directors of the Institute.

Duties and Responsibilities. The Committee shall have the following duties and responsibilities:

- The Committee shall develop governance policies and procedures, which will be recommended to the Board of Directors for adoption.
- The Committee shall annually review the composition of the Board of Directors to ensure the Board of Directors is composed of individuals possessing the appropriate expertise, skills, attributes, and personal and professional backgrounds that best serve the Institute, both individually and in combination with the other directors, and identify any additional skills or attributes that would benefit the Institute.
- The Committee shall make nominations for directors to the Board of Directors, based on an assessment of specific qualities and skills the Committee believes would benefit the Institute. The Committee shall establish a process for identifying and evaluating potential director candidates [see below].
- The Committee shall make recommendations for membership to the various committees of the board of directors.
- The Committee shall review actions of the Institute to monitor its conformance with its articles of incorporation, bylaws, and governing policies

- The Committee shall monitor the activities of new and existing board members to promote conformance with the Institute's policies and assess the need for any development and training in this regard.

- The Committee shall undertake any other duties reasonably requested by the Board of Directors.

Meetings of the Committee.

- The Committee shall cause to be documented its formal meetings and actions taken by the committee.

- A majority of Committee members present at a meeting shall constitute a quorum.

- Committee members may participate in Committee meetings by telephone, or other forms of telecommunication, such as videoconferencing, pursuant to which all members of the committee can hear each other, and participation in a meeting in this manner shall constitute presence in person at the meeting.

Reports.

- The Committee Chair shall report to the Board of Directors about its activities at the next Board of Directors meeting succeeding a Committee meeting.

NOMINATING PROCESS FOR DIRECTORS OF THE CATO INSTITUTE
March 11, 2009

The Governance and Nominating Committee is responsible for reviewing the composition of the Board of Directors and nominating potential candidates for the Board to consider when (a) filling temporary vacancies, pending election by the shareholders, and (b) submitting a slate of candidates to the shareholders prior to the annual meeting at which the shareholders will elect Directors.

Following is the process for the Committee to nominate Directors:

1. Whenever a vacancy arises or will arise by expiration of a Director's term, identify the number and timing of directorships to be filled.

2. Review current Directors eligible for reelection in the current year.

3. Solicit from current Board members the names of potential new nominees with resumes.

4. Review the qualifications of potential new nominees in consultation with the President and Chairman to select those for further consideration.

5. Solicit comments from current Directors on selected nominee(s) and finalize the list in consultation with the President and Chairman as required to fill existing and anticipated vacancies.

6. Appoint a Director to contact each finalist to determine his or her desire to serve on the Cato Board.

7. Supplement the finalist list and repeat 6. as necessary if a finalist does not desire to serve on the Cato Board.

8. Submit the name(s) of the proposed nominee(s) along with the beginning and ending dates of their proposed terms to the Directors prior to their next meeting.

This Nominating Process shall become effective when approved by the Committee in consultation with the Chairman. It shall be appended to the Governance and Nominating Committee Charter and distributed as part of the Directors' handbook.

EXHIBIT 5

THE BOB HARDEN SHOW

March 7, 2012

Robert A. Levy

[END Robert_A._Levy_discusses_Koch_lawsuit_on_Bob_Harden_Show-Media_Highlights-Radio.mp3

MALE VOICE: You're listening to Bob Harden streaming live online at BobHarden.com.

MR. BOB HARDEN: Thanks so much for tuning in this morning. The show is brought to you in part by Florida Weekly, your complimentary copy available at hundreds of locations throughout the paradise coast, and the Greater Naples Chamber of Congress. Coming up on the program, we're going to visit with Marc Schulman, the founder and publisher of HistoryCentral.com. We'll be talking about world events. Right now we have with us Bob Levy. Bob is the chairman of the Cato Institute. Bob, thanks so much for joining us.

MR. BOB LEVY: Always good to be with you, Bob.

MR. HARDEN: Thank you, Bob. And again, for our listeners who may not be familiar with the Cato Institute, maybe you could tell us about it.

MR. LEVY: We are technically a nonprofit educational research foundation, but more

generally known as the Think Tank, located in Washington, D.C., and our perspective is libertarian, not an affiliation with the political party, but libertarianism in the sense of a political philosophy that focuses on private property, limited government, individual rights, and free markets.

MR. HARDEN: Now, on March 6th the New York Times published an article or column by Eric Lichtblau. It says "Cato Institute is Caught in a Rift Over Its Direction," and that, of course is with the Koch brothers. Maybe you could tell us about this.

MR. LEVY: Cato was founded some 35 years ago by Ed Crane, who's its current president, and by Charles Koch. Charles Koch is one-half of the Koch brothers, the other being David Koch, and they run Koch Industries which is, I think, the second largest private company in the world, and they have funded lots of libertarian and conservative causes, and they are very much involved with groups that are active politically. Cato had a unique structure; it was stockholder controlled. That's unusual for a non-profit. And until recently, the stocks

were divided half and half between a faction that Charles Koch ran and a faction that Ed Crane ran. But there was a death of one party just recently and so Charles believes that he now controls the stock, and he wishes to stack the board of directors at the Cato Institute with folks that he chooses. And that creates for us quite a dilemma, because Cato has been always, and wants to remain, independent, non-partisan, not aligned, a source of libertarian perspectives on key public policy disputes. We do not want to be run by a board of directors that could be perceived, even if it's not actually, but even could be perceived as controlled by or even affiliated with or even responsive to the Koch corporate interests, their political interests, and their economic interests. The key to our credibility and reputation is our independence and non-alignment, and that's what's at jeopardy here, and that's why we're having this big battle, which is destructive for both of us, but nonetheless, we think it's a battle that has to be fought.

MR. HARDEN: Now even though, of course,

there is probably a huge overlap in your points of view, it's really this whole notion of independence and being able to have a private and public voice that's not influenced by an outside party.

MR. LEVY: That's it for sure. I don't think you'd be able to identify very many issues on which the viewpoint of the Kochs is different from the viewpoint of the board of the Cato Institute or the management of the Cato Institute. But what's important to a think tank is that we be and we perceive to be totally independent. We have to select our issues; we have to select when we focus on certain issues, how we focus on certain issues, and where we focus on certain issues. We cannot be at the beck and call of folks whose primary goal is to get people elected or to get people unelected. That's a political operation, and we are not into politics, we are into policy. We focus on issues and not candidates, and that's critical to our existence, critical to our reputation and credibility.

MR. HARDEN: Well, I'm thinking right now that some of the good thing that may come out of

this is a clarity of this type of an issue that could only, in the last analysis, perhaps, support the pristine nature and objective admission of the Cato Institute, of course, if you end up winning this case.

MR. LEVY: Yes, it's going to be a real battle. It's in the Courts now in Kansas on a technical contract issue. But the bigger battle is being fought in the court of public opinion. The Kochs' view is they put up a lot of money and they deserve to have their donor intent preserved. The fact is that they did put up seed money way back in the 1970s, and over the course of the 35 years of Cato's existence, they've put up about 8 or 9% of our overall budget. But they donate zero now, and they haven't donated since 2010, and even then it was 4% of our budget. So we have donors whose intent does have to be acknowledged, but those donors are providing 100% of our capital, and they are not the Koch brothers. So donor intent is important. That intent, however, is the type of intent that is sort of philosophic in nature. It's not issue by issue. Our donors do not tell us what positions we're going to take or what

issues we're going to focus on. Our donors put up money because they perceive of Cato as a libertarian organization that takes a philosophic position consistently across the board on public policy issues that donors find that position to be congenial and that's why they contribute their money, and that's the mission that we want to sustain, not something that's responsive to political pressures.

MR. HARDEN: Visiting with Bob Levy, the chairman of the Cato Institute. Is it helpful at all for our listeners to understand the nature of the suit that's been filed, the case that's been filed against Cato? What's at stake here?

MR. LEVY: It's a pretty arcane case, but basically there was a shareholders' agreement among the four shareholders that formed the Cato Institute, and the shareholders' agreement says that if anybody dies, the shares have to be sent back to the corporation for repurchase. The Kochs claim that once the corporation repurchases the stock, that they will then own two-thirds, because one-fourth of the stock will have been retired. But the shareholders'

agreement also said the corporation is not required to repurchase the stock, and if the board elects not to repurchase the stock, as indeed we would, then there's some dispute as to whether the stock has to be transferred to the existing shareholders, or whether it can be transferred in accordance with the decedent's will. So this is pretty deep down in the legal weeds, but what it does is it underlies this more, I think, important question about the direction of the institute and the degree to which the institute will continue as an independent organization.

MR. HARDEN: Do you have an idea, Bob, or any feel for how long this case could endure or last?

MR. LEVY: Well, we have to respond to the lawsuit by roughly March 21st, I think it is, and then, of course, it goes through a long slog in the Courts. There's no telling how long that could be. It depends on how busy the Judge is and whether or not there's an appeal and how long it takes to go through the Appellate Courts. But this is in the state of Kansas; it's in State Court. Kansas is where Koch

Industries resides and it's where the Cato Institute is incorporated and where our transfer agent is. So the Court part of this could slog on. Our hope is that the Court of public opinion has been so active with articles in all the major newspapers that the pressures will begin to mount and the parties will find some way to resolve this dispute. That's something that I'm actively interested in. I want to resolve the dispute. This is not good for the Kochs, it is not good for the Cato Institute, it is not good for libertarianism generally, and it poisons the entire process of think tank operations. It leads to the suspicion that think tanks are beholden to special interests, and that is a poisonous doctrine that we want to purge from the debate.

MR. HARDEN: Yeah.

MR. LEVY: So that's what we're devoted to.

MR. HARDEN: Well, I tell you, the New York Times, in fact, extremely liberal journal in my view, has taken a very supportive stance in this article towards Cato Institute, so perhaps if that's any indication, if that's a litmus test, perhaps you'll find that the support of the

press as well as the public will support Cato.

MR. LEVY: Yeah, I must say the New York Times has generally been no friend of the Cato Institute, but when it's a battle between Cato and the Kochs, I think the New York Times wants to demonize the Kochs more than it wants to demonize Cato, so we come out as the good guys in this. That's really not the issue, although we're happy to have the New York Times' support, but the issue is much more philosophic than that.

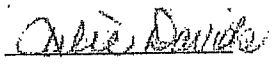
MR. HARDEN: Absolutely. Well, all the best, because we do want your voice to be pure and we want it to be heard, Bob, so the Cato Institute is a great institution. By the way, go the website, Cato.org, C-A-T-O dot org is the place to find out more. Bob, always great to have you on the show. Thanks so much for joining us.

MR. LEVY: Thank you, Bob.

[END Robert_A._Levy_discusses_Koch_lawsuit_on_Bob_Harden_Show-Media_Highlights-Radio.mp3]

C E R T I F I C A T E

I, Julie Davids, certify that the foregoing transcript of Bob Levy discussing the Koch lawsuit on the Bob Harden Show was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Signature: 

Date: March 12, 2012

EXHIBIT 6

FOR DISCUSSION PURPOSES ONLY

Cooperative Framework to Help Resolve Governance Issues

The current dispute concerning governance issues, including stock ownership, in the Cato Institute obviously poses risks to Cato beyond detracting attention from Cato's mission, which unites all of us. In order to help minimize those risks going forward and to provide a reasonable time frame for trying to cooperatively resolve these issues, we propose the following action items:

1. The scheduled December 1, 2011 shareholders' meeting will be postponed until a future date requested by any shareholder, subject to the notification requirements specified in Article III, section 4 and Article IV, section 4 of Cato's bylaws.

2. Existing Board members, whose terms expires December 31, 2011, will remain Board members until such date as may be specified at the next shareholder meeting (as described above), where they (and any additional persons nominated by the shareholders) will be candidates for election by the shareholders at that meeting.

3. The Board (including any committees thereof) agrees that without the written consent of a majority of the shareholders, it shall not: (a) amend or otherwise modify its bylaws; (b) transfer more than an immaterial portion of its assets to any person or organization outside the ordinary course of business consistent with Cato's past practices; (c) merge, combine or consolidate with or into any other organization (or any similar arrangement); (d) dissolve; (e) increase or decrease the size of its board; (f) incur any indebtedness in aggregate of more than $1,000,000 during any 12 month period, or (g) hire a chief executive officer.

This cooperative framework is offered solely in the spirit of resolving a dispute. Charles and David Koch reserve all of their respective rights with regard to the share-ownership dispute, including (but not limited to) the right to maintain that due to Bill Niskanen's death there are only three existing Cato shareholders, and that nobody has the right to possess or vote the shares that Bill held at the time of his death. Ed Crane and Kathryn Washburn reserve all of their respective rights with regard to the share-ownership dispute, including (but not limited to) the right to maintain that until Bill Niskanen's estate disposes of his shares, the personal representative of his estate, Kathryn Washburn, is entitled to exercise any and all rights that the decedent could exercise if he were still alive.

From: Ed Crane
Sent: Tuesday, November 15, 2011 9:53 AM
To: Bob Levy
Cc: Howard Rich; Ethelmae Humphreys; Niskanen Kathy; K Tucker Andersen
Subject: Cooperative Framework to Help Resolve Governance Issues

Bob,

I agree to the terms and conditions in the revised Cooperative Framework to Help Resolve Governance Issues (Word file StandPat.doc), which you emailed to me Monday night, November 14. Provided, however, that I withdraw my agreement as of 6:00 p.m. Eastern on Wednesday, November 16, unless a majority of the shareholders and a majority of the executive committee has also agreed by that time.

Ed

From: Howrch <howrch@cs.com>
Subject: Cooperative Framework to Help Resolve Governance Issues
Date: November 15, 2011 10:32:29 AM EST
To: Bob Levy <rlevy@cato.org>

Bob,

I agree to the terms and conditions in the revised Cooperative Framework to Help Resolve Governance Issues (Word file StandPat.doc), which you emailed to me Monday night, November 14. Provided, however, that I withdraw my agreement as of 6:00 p.m. eastern on Wednesday, November 16, unless a majority of the shareholders and a majority of the executive committee has also agreed by that time.

Howie

From: Ethelmae Humphreys <Ethelmae_Humphreys@tamko.com>
Subject: Cooperative Framework to Help Resolve Governance Issues
Date: November 15, 2011 9:53:19 AM EST
To: Bob Levy <rlevy@cato.org>
Cc: Howard Rich <howrch@cs.com>, Ed Crane <ECrane@cato.org>, Ethelmae Humphreys <Ethelmae_Humphreys@tamko.com>, Niskanen Kathy <kathwash1@gmail.com>, "K Tucker. Anderson" <tucker@abovealladvisors.com>

Bob,

I agree to the terms and conditions in the revised Cooperative Framework to Help Resolve Governance Issues (Word file StandPat.doc), which you emailed to me Monday night, November 14. Provided, however, that I withdraw my agreement as of 6:00 p.m. eastern on Wednesday, November 16, unless a majority of the shareholders and a majority of the executive committee has also agreed by that time.

Ethelmae

From: Robert Levy [rlevy@cato.org]
Sent: Tuesday, November 15, 2011 4:56 AM
To: Menkes, Brian
Subject: Cooperative Framework to Help Resolve Governance Issues

Brian, I agree to the terms and conditions in the revised Cooperative Framework to Help Resolve Governance Issues (Word file StandPat.doc), which I emailed to you Monday night, November 14. Provided, however, that I withdraw my agreement as of 6:00 p.m. eastern on Wednesday, November 16, unless a majority of the shareholders and a majority of the executive committee has also agreed by that time.

I expect to have similar agreements today from Kathryn Washburn, Ed Crane and a majority of the executive committee. Please forward agreements from Charles and David when convenient.

Many thanks
Bob

—

Robert A. Levy
Chairman
Cato Institute
c/o 8787 Bay Colony Dr.
Naples, FL 34108
Phone: 239-566-7139

From: kathryn Washburn <kathwash1@gmail.com>
Subject: Cooperative Framework to Help Resolve Governance Issues
Date: November 15, 2011 8:29:32 AM EST
To: Bob Levy <rlevy@cato.org>

Bob, I agree to the terms and conditions in the revised Cooperative Framework to Help Resolve Governance Issues (Word file StandPat.doc), which you emailed to me Monday night, November 14. Provided, however, that I withdraw my agreement as of 6:00 p.m. eastern on Wednesday, November 16, unless a majority of the shareholders and a majority of the executive committee has also agreed by that time.

Kathy
--

Kathryn Washburn
638 A Street SE
Washington DC 20008
email: kathwash1@gmail.com
phone 202 546 1097
cell: 202 997 3912

EXHIBIT 7

A Response to Charles Koch from Robert A. Levy, Chairman, Cato Institute
March 12, 2012

On March 1, after filing suit in Kansas court to gain control over the Cato Institute, Charles Koch issued a statement to the press: "We are not acting in a partisan manner, we seek no 'takeover' and this is not a hostile action." The purpose of the suit, he insisted, was simply "to ensure that Cato stays true to its fundamental principles."

Last week, Mr. Koch circulated a longer "Statement Regarding the Cato Institute," again professing his "steadfast intent" that Cato remain "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."

But actions speak louder than words. The Kochs' takeover attempt has included packing Cato's board of directors with individuals, almost all of whom are financially entangled with the Kochs and have no history of libertarian advocacy.

Moreover, their latest statement does nothing to address the genuine concerns expressed by their friends and ours that the action the Kochs have taken will pointlessly and grievously injure the movement for individual liberty that they have previously done so much to advance.

It should have been obvious to Charles Koch that filing this suit would necessarily result in a public battle that would threaten the Cato Institute's credibility – wounding allied organizations and scholars in the process. You be the judge. Imagine that Charles Koch prevails in his lawsuit against Cato, and that he and his brother then "own" two-thirds of Cato's stock. Would an Institute whose board of directors is appointed by the Kochs be viewed as a credible source of non-partisan, non-aligned, independent commentary on vital public policy questions? Or would the think tank now known as Cato cease to exist because its 35-year unimpeachable reputation is critically damaged by the (unfortunately accurate) perception that Cato is literally "owned by the Kochs"?

In his latest message, Mr. Koch relates "the facts behind what we have done and why." I regret to report that his facts are, at best incomplete and accompanied by a host of misleading assertions. What follows are the Cato Institute's responses to the central points Charles Koch raises.

Koch: "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."

Recent actions by the Kochs elicit doubts about that proclamation. If the Kochs seek to ensure that Cato stays true to its fundamental libertarian principles, why would nearly all of their nominees to Cato's board be Koch employees, consultants, and outside counsel who have never supported the Institute, never attended its events, never been interested in its governance, and never distinguished themselves as advocates for libertarianism?

Indeed, why did the Kochs appoint Koch Foundation vice president Kevin Gentry, a prominent official with the Virginia Republican Party, or Koch Industries spokesperson Nancy Pfotenhauer,

who served with the McCain campaign and has defended, among other things, the military's "don't-ask-don't tell" policy and the war in Iraq? Why did the Kochs nominate Tony Woodlief, who has described libertarianism as "a flawed and failed religion posing as a philosophy of governance"? Woodlief seems to like libertarians (and vice versa), but he's nonetheless written that "libertarians sound like absolute fools when they talk about foreign policy." Why did the Kochs nominate John Hinderaker, who sometimes describes himself as a neocon and believes "the original Patriot Act was entirely reasonable"?

Is that how the Kochs would ensure that Cato "continues its work on the full spectrum of libertarian issues"? What is it that Cato has done to convince Charles Koch that Cato's work on libertarian issues needs help from directors who are demonstrably not libertarians and would never have been nominated by Cato's then-current board?

Koch: "We proposed a standstill agreement to delay for one year or longer any discussion on the shareholders agreement."

Yes, the Kochs proposed a standstill agreement that Cato rejected because the status quo could not be maintained. Too many key people had learned of the looming problem. Several of Cato's largest donors had announced they would discontinue their donations until it became clear that the Kochs would not control Cato. A number of Cato benefactors said they would change their wills to eliminate Cato as a beneficiary if Koch dominance was an ongoing threat. Essential employees had expressed their intent to leave Cato unless the governance issue could be resolved in a timely manner. Cato's search for professional talent, including most particularly a successor to president Ed Crane, was frustrated by the obligation to disclose the impending shareholder conflict.

The purpose of the Kochs' disingenuous standstill proposal – confirmed in a meeting with me – was to "get past the election," after which the Kochs would be less anxious about alienating the army of Cato's libertarian loyalists. Put bluntly, a standstill would have jeopardized Cato's day-to-day operations while resolving nothing.

Koch: "We asked to delay any shareholders meeting, which would have left the pre-March 1 board of directors in place during this period."

The Institute's bylaws require an annual meeting of shareholders on the first business day of December. The shareholders unanimously agreed to postpone the meeting for a "reasonable period" to try to resolve the dispute over Cato's governance. After 90 days, during which the Kochs rejected a Cato proposal that addressed all their professed concerns (see more below), the meeting was rescheduled for March 1. Further delay would have been equivalent to the Kochs' standstill proposal, which they knew Cato could not accept.

To set the record straight, the shareholders meeting did not precipitate anything. It simply satisfied a legal requirement and, in the end, allowed the Kochs to add four directors to Cato's board. Cato and the Kochs could have continued their attempt to negotiate a settlement, reserving the right to take legal action should the negotiations prove fruitless. But one day before the meeting, the Kochs filed a lawsuit in Kansas (accompanied by a *"Politico Exclusive"*)

that exposed this dispute to intense scrutiny. It should have been obvious to the Kochs that filing the lawsuit would generate a public battle that would – no matter which party prevailed – harm the entire libertarian movement.

Koch: "We proposed third-party mediation ... and alternative corporate structures."

More specifically, the Kochs proposed *non-binding* mediation – merely a timing tactic that would have meant protracted and unproductive talks between Cato and Koch representatives instructed to "get past the election" and otherwise make no concessions.

As for alternative structures, the Kochs proposed two eight-person boards, one selected by them and one selected by Cato's current board. After their initial selection, the two boards would function as one, but each of the two components would elect their own successors. In other words, the Kochs wanted to control not the three board seats they held at the time, but eight seats – an outcome even less acceptable to Cato than the standstill that had already been rejected. For more than a decade, Ed Crane had tried to persuade the Kochs to restructure the Institute's governance, thereby removing the threat to Cato's autonomy that 50 percent Koch control entailed. The Kochs' "alternative" was another version of the same unsustainable 50/50 scheme.

The only real alternative was proposed by Cato: Abandon the shareholder structure and implement a member-elected board with the directors themselves serving as members – a governance arrangement favored by the Internal Revenue Service and practiced by most non-profits (including Cato for more than 30 years). In return, the Kochs would be assured that their key stated objective – preserving original donor intent – would be satisfied. Charles and David Koch would have veto power over any material change in the Institute's mission, sale of the Institute's assets, merger, or other combination. Moreover, Ed Crane agreed to an immediate search for his successor; and the Kochs would have veto power over the person selected.

Revealingly, Crane's offer to leave wasn't enough for the Kochs; they demanded control of the Institute's board in addition to its president. That point bears emphasizing: However much it might serve the Kochs' interests to portray this dispute as a personality clash between two men, the facts do not support that narrative. In a bid to save the Institute and its mission, Ed Crane offered to retire in an expedited fashion in exchange for undoing the shareholder arrangement. Although Cato rejected the Kochs' untenable demand that Crane's successor be installed within *eight weeks*, this fight has never been about Crane's position at Cato. It has always been about the efficacy of the Institute as an independent advocate for personal freedom and limited government.

Koch: "Every counterproposal we received required we forfeit our shareholder rights.... [A] new shareholder was to be recognized in violation of our long-standing written agreement and the Institute's bylaws and articles of incorporation."

The threshold legal question in the lawsuit filed by the Kochs against Cato and its other two shareholders is how to interpret the murky provisions of an agreement signed more than three decades ago. The Kochs portray this dispute as a denial of their property rights. They ask how

libertarians could fail to honor contractual commitments – as if the existence of the contract requires Cato to embrace Charles Koch's interpretation of its terms.

Prior to the October 2011 death of Cato's former chairman, William Niskanen, the Kochs controlled 50 percent of Cato's stock. Today, the Kochs claim they control 67 percent because Niskanen's shares must either be purchased by Cato or by its remaining shareholders. But the agreement signed by the shareholders provides that Cato may elect *not* to purchase the shares. Furthermore, the shares need not be offered to the other shareholders unless Cato's board deems that a purchase by Cato would have been "inconsistent with its corporate purposes." Otherwise, the shares can be transferred to Niskanen's widow, Kathryn Washburn, in accordance with his last will and testament. Recognition of Ms. Washburn as a "new shareholder" would be wholly consistent with Cato's bylaws and articles.

Cato's position is correct: The Kochs control 50 but not 67 percent of the stock. Ultimately, however, the courts will resolve that issue. It is *not* the crucial issue. Rather, the crucial question is whether Cato can survive if its donors, employees, and the public policy community perceive that the Kochs have elected a pivotal number of the Institute's directors – whether 50 percent or 67 percent – who would be responsive to Koch political and corporate demands.

Koch: "We want to ensure Cato remains consistent with the principles upon which it was founded."

The best way to ensure Cato's consistency with libertarian principles is to restore board, not shareholder, governance. Organizations such as the Ford and MacArthur foundations were led astray when apostate directors took control over large endowments. Significantly, Cato is not endowed and must raise all of its operating funds on an annual basis. Charles Koch provided seed money, but not an endowment that directors could expropriate.

As long as Cato's board was self-perpetuating, it stayed rigorously on its libertarian course. Only now, with directors chosen by four shareholders in or approaching their 70s, who have uncertain mortalities and differing governance perspectives, has the course of the Institute become volatile and unpredictable. That's proven by recent board elections, in which Charles and David Koch replaced committed libertarians with acknowledged non-libertarians. Those changes have not been "consistent with the principles upon which [Cato] was founded." Who knows what could transpire when the remaining shareholders pass on?

The Kochs have repeatedly cast this dispute, not as a battle for control, but an effort to guard against ideological drift and preserve "donor intent." In an email message sent by the Koch Foundation to its alumni network, recipients were told that Charles and David Koch, "as active donors contributing tens of millions to Cato ... feel the shareholder structure is important to preserve donor intent."

Original donor intent is one factor to be recognized. But over the past 35 years, the Kochs have provided roughly nine percent of the Institute's cumulative budget. More recently, it's been four percent. Currently, it's zero percent. The Cato directors replaced by Koch nominees have contributed nearly as much as Charles and David Koch and their allied foundations combined.

Yet Charles Koch insists that the *original* donor's intent is all that matters. What about the intent of the donors who now fund 100 percent of Cato's operations?

In a normal business environment, with no endowment and ongoing capital requirements, the founders' ownership position would be significantly diluted unless they continued to provide all of the funding. In this instance, not only do the Kochs not provide *all* of the funding, they do not provide *any* of the funding. The Kochs, who believe in market-oriented principles, would never finance a for-profit organization that gives total control to a few original donors who now contribute nothing and no control to current donors who now contribute everything.

Koch: "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."

Perhaps there is "a great deal of speculation," but there need not be. David Koch and chief Koch lieutenant Rich Fink expressly announced their intentions at a meeting with me in November. The Kochs want Cato's work to be more closely coordinated with Koch-allied groups such as Americans for Prosperity, a 501(c)(4) grassroots activist organization committed to free markets and limited government. Cato would become the source of "intellectual ammunition" for AFP – through position papers, a media presence, and speakers on hot-button issues. That might strike some libertarians as puzzling. After all, AFP already has a sister 501(c)(3) organization, the AFP Foundation. And Koch financial resources, which have *not* been directed toward Cato, are surely available to generate the intellectual ammunition that AFP wants – without compromising the integrity of the Cato Institute, which cannot take its marching orders from the Kochs or any of their affiliates.

Equally puzzling, Cato and AFP both declare their devotion to free markets and limited government. Why, then, would Cato's current efforts not yield the kind of intellectual ammunition that could be used by AFP and others? When I asked David Koch and Rich Fink that question explicitly, they had no direct answer. The clear implication was, they wanted to be in the driver's seat – not just with respect to Cato's philosophic base, with which the Kochs had no disagreement, but also with respect to issue choice, timing, and even geographic focus. Of course, that is precisely the sort of coordination and direction that would gravely undermine Cato's independence and decimate the Institute in its role as a source of intellectual ammunition for the public policy community at large.

Koch: "These officers and board members would act independently from me."

Again, that's an assertion we are supposed to take on faith. But Koch-backed appointees to Cato's board now include the three largest shareholders of Koch Industries, a vice president at the Charles Koch Foundation, an authorized spokesperson for Koch Industries, and a distinguished Republican lawyer who represents and publicly speaks for Koch Industries.

Moreover, it is necessary but not sufficient for officers and board members to act independently of whoever controls an organization such as Cato. Just as important, the officers and board members must be viewed by outsiders as separate, scrupulously autonomous, and self-governing. Because of the Kochs' vast corporate interests and their well-publicized engagement in electoral

politics, Cato simply cannot be viewed as free of Koch influence if the Kochs elect the board of directors.

The Kochs point to the Mercatus Center and its sister organization, the Institute for Humane Studies, as examples of 501(c)(3) entities untainted by their close connection to Charles Koch, David Koch, and Rich Fink. But Mercatus is not Cato. It's a university-based academic research center, led by a faculty director appointed by the provost of George Mason University, staffed primarily by GMU scholars, focused on domestic economic and regulatory issues, and, accordingly, much better insulated from outside control than Cato would be under the arrangement that the Kochs seek to implement. Moreover, Cato's agenda is far broader than Mercatus's, comprising not only domestic economic policy, but also foreign affairs, national defense, social issues, global freedom, constitutional questions, civil liberties, criminal justice, libertarian theory, and other areas.

Similarly, the Institute for Humane Studies, which also operates under a George Mason University umbrella, is devoted to the development of talented and productive students and scholars. While IHS shares Cato's commitment to liberty, it is not immersed in ongoing public policy debates. And neither IHS nor Mercatus has shareholders who elect the organization's board of directors.

Koch: "With its emphasis on education, Cato has contributed greatly to the marketplace of ideas and is now a respected thought leader."

We couldn't agree more. The testimonials to Cato's effectiveness from independent parties on the political Left, Right, and Center who have followed the Koch lawsuit affirm Charles Koch's public acknowledgment of our success. But why, then, have the Kochs insisted on precipitously replacing Cato president Ed Crane and ousting key members of the Institute's board of directors who have contributed to that success? What is the rationale for a new leadership team and a new direction for our institute? We have repeatedly asked the Kochs and their representatives those very questions and have never received a straightforward answer, in private or in public.

***

Here is the bottom line: Cato cannot function as an independent voice for liberty if it is thought to be under the thumb of Charles Koch or Rich Fink – indeed, literally owned by the Koch family. Nor, if the lawsuit succeeds, will Cato be considered a reputable and credible source of "intellectual ammunition" by anyone outside the small circle of already committed libertarians. Instead, the Kochs will control a shell think-tank that can be dismissed out of hand as a front for Koch Industries. That's the clear consensus of nearly everyone who has seen this lamentable and unwelcome dispute unfold.

Nothing good can come of this – not for Cato, not for the Kochs, and not for the libertarian movement. It's time to restore common sense and adopt a governance structure for Cato that eliminates the prospect of Koch control.

EXHIBIT 8

From: Ed Crane [mailto:edcrane@cato.org]
Sent: Tuesday, March 13, 2012 10:58 AM
To:
Subject: The conflict with Koch

You've probably heard by now of the unfortunate conflict between Charles Koch and the Cato Institute. Bill Niskanen's widow, Kathryn Washburn, and I, along with the Institute itself, have been sued in Kansas court by Koch over the question of who controls Bill's "shares" in Cato. The Shareholders' Agreement makes clear to me and to our attorneys that Kathy controls them. Charles thinks they now belong to the Koch brothers, who plan to use that control to pack the Cato board with conservatives. I have tried for more than two decades to eliminate the shareholder arrangement which has, in fact, lain dormant for more than three decades. Please visit www.cato.org/SaveCato for all the details. I've also attached a memo http://www.cato.org/SaveCato/kochquest.pdf from our chairman, Bob Levy, that addresses the points Charles Koch has recently made. All this is deeply disappointing to me, as I'm sure it is to you. This should be a time of celebration for Cato – the completion of our beautiful headquarters expansion, the growing libertarian mood in the nation, planning for our May 4 Milton Friedman Prize Dinner – but instead we must deal with what I view to be an unconscionable takeover attempt of the crown jewel of the libertarian movement worldwide, your Cato Institute.

Let me make one other point. At this juncture I can understand why you might not want to contribute to our capital campaign. We are at $46 million toward our $50 million goal. But Cato remains Cato and our principled libertarian mission moves forward based on the generous operating funds you provide. We need you to continue that support, or our defense of Cato's independence becomes more difficult. Thanks, as always, for your loyalty to Cato's mission.

Gratefully, Ed

EXHIBIT 9

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
TENTH JUDICIAL DISTRICT
CIVIL DEPARTMENT

CHARLES G. KOCH and
DAVID H. KOCH,

Plaintiffs,

v.

KATHRYN WASHBURN,
638 A Street S.E.
Washington DC 20003,
individually and as
personal representative of the Estate of
William A. Niskanen,

EDWARD H. CRANE, III,
3239 Jupiter Lane
Falls Church, VA 22044-1610

- and -

CATO INSTITUTE
6901 College Blvd, Suite 500
Overland Park, Kansas 66211

Defendants.

Case No. _____
K.S.A. Chapter 60

PETITION

For its claim against Defendants, Plaintiffs hereby allege as follows:

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff Charles G. Koch is an individual resident of Wichita, Kansas.

2. Plaintiff David H. Koch is an individual resident of New York City, New York.

3. Defendant Kathryn Washburn is a director of defendant Cato Institute ("Cato" or "the Corporation"), personal representative of the estate of the late Cato shareholder William Niskanen, and an individual resident of the District of Columbia.

4. Defendant Edward H. Crane III is a Cato shareholder, director, President, and an individual resident of the State of Virginia.

5. Defendant Cato Institute is a non-profit corporation organized under the laws of Kansas, with a registered office at 6901 College Boulevard, Suite 500, Overland Park, Kansas 66211.

6. This action seeks a declaratory judgment pursuant to K.S.A. 60-1701 *et seq.* Venue is proper under K.S.A. 60-604, 60-605, and 60-608. Defendant Washburn is subject to suit in Kansas pursuant to K.S.A. 60-308(b)(1)(F) because she serves as a director of a corporation organized and existing under the laws of the State of Kansas. Defendant Crane is subject to suit in Kansas pursuant to K.S.A. 60-308(b)(1)(E) as a person who entered into a contract with a resident of this state to be performed in whole or in part in this state, and is subject to suit in Kansas pursuant to K.S.A. 60-308(b)(1)(F) because he serves as an officer and director of a corporation organized and existing under the laws of the State of Kansas. All defendants are subject to suit pursuant to K.S.A. 60-308(b)(1)(L) and K.S.A. 60-308(c).

FACTS

7. The Corporation was formed on December 19, 1974 as a Kansas non-profit corporation under the name of "The Charles Koch Foundation, Inc." On July 28, 1976, the name of the Corporation was changed to "Cato Institute."

8. In 1977, the original shareholders of Cato signed a shareholders' agreement ("the 1977 Agreement") specifying rights and duties of Cato's shareholders, including rights and

duties relating to the transfer of the Corporation's shares. A true and correct copy of the 1977 Agreement is attached hereto as Exhibit A.

9. In 1985, a revised version of the 1977 Agreement was agreed to by the four persons holding the Corporation's shares at that time ("the Shareholders' Agreement"). A true and correct copy of the executed Shareholders' Agreement is attached hereto as Exhibit B.

10. In 1985, the four persons owning the shares of Cato were Plaintiff Charles Koch, Defendant Crane, William A. Niskanen, and George Pearson. Each owned 16 shares of Cato's capital stock that he had purchased for $1.00 per share.

11. Plaintiff David Koch became a shareholder of Cato in 1991 when Cato issued 16 shares of its capital stock to him. At that time, David Koch signed an agreement (a copy of which is attached hereto as Exhibit C) under which he agreed to be bound by the terms of the Shareholders' Agreement.

12. Section 3 of the Shareholders' Agreement, the text of which is identical to Section 5 of the 1977 Agreement, provides that "[n]o stockholder of the Corporation shall have the right or power to pledge, hypothecate, sell or otherwise dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to the Corporation for a price equivalent to the price paid by such shareholder for such shares . . . ." Section 3 of the Shareholders Agreement then provides that the Board of Directors of Cato has 30 days in which to elect to purchase the stock for the prescribed price, and that upon payment or tender of the prescribed price, "the holder of such stock shall sell and transfer the same to the Corporation forthwith."

13. Section 3 of the Shareholders' Agreement goes on to provide that if "the rights granted hereunder to the Corporation be deemed inconsistent with its corporate purposes, then

the rights granted hereby shall be deemed to be granted to the shareholders of the Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of the Corporation exclusive of those shares held by the shareholder desiring to dispose of stock."

14. Section 5 of the Shareholders Agreement provides that if:

> [a]t any time any of the undersigned ceases to be a shareholder in the Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in the Corporation, shall submit his written resignation as a Director of the Corporation.

15. Article VII, Section 3 of The Restated Bylaws of Cato Institute, dated March 9, 2007, as amended effective April 1, 2011 (the "Bylaws"), incorporates Section 3 of the Shareholders' Agreement, by providing that:

> Shares of the Corporation shall only be transferred on its books upon the surrender to the Corporation of the share certificates duly endorsed or accompanied by proper evidence of succession, assignment, or authority to transfer. In that event, the surrendered certificates shall be canceled, new certificates issued to the person entitled to them, and the transaction recorded on the books of the Corporation; *provided, however, that no shares of the Corporation shall be transferred on the books of the Corporation except upon showing of strict compliance with the restrictions on transfer imposed by the provisions set out in that certain Shareholders Agreement dated January 26, 1977* [the 1977 Agreement], *executed by all the then member [sic] of the Corporation.* (emphasis added).

16. K.S.A. 17-6426(a) provides, in relevant part, that:

"[a] written restriction on the transfer or registration of transfer of a security of a corporation . . . *may be enforced against the holder of the restricted security or . . . an executor . . . or other fiduciary entrusted with like responsibility for the person or estate of the holder.* (emphasis added)

17. In 2008, George Pearson ceased to be a shareholder of Cato when he tendered his 16 shares of capital stock to the Corporation and the Corporation purchased the stock for the $16.00 that Pearson had originally paid for it.

18. After Cato's purchase of Pearson's shares of stock, four shareholders of Cato remained: Plaintiffs Charles Koch and David Koch, Defendant Crane, and William Niskanen. Mr. Niskanen's shares ("the Niskanen Shares"), like the shares of Plaintiff Charles Koch, the shares of Plaintiff David Koch, and the shares of Defendant Crane, constituted a 25% voting interest in the Corporation.

19. William Niskanen died in October 2011. Defendant Kathryn Washburn is his widow, and as noted above, is also the personal representative of his estate under Mr. Niskanen's will. Under the terms of that will, there is no specific bequest of the Niskanen Shares to Defendant Washburn and she is not the named legatee of the Niskanen Shares in the Corporation. A true and correct copy of Mr. Niskanen's will, which reflects that Defendant Washburn is not the named legatee of the Niskanen Shares in the Corporation, is attached hereto as Exhibit D.

20. Pursuant to Section 8 of the Shareholders Agreement, Defendant Washburn, in her capacity as "personal representative[] of whatever nature," is bound to comply with the restrictions on transfer set forth in the Shareholders' Agreement.

21. Pursuant to the plain language of K.S.A. 17-6426(a), and the restrictions on transfer set out in Paragraph 3 of the Shareholders' Agreement, Defendant Washburn is obligated to "offer[] to sell [the Niskanen Shares] to the Corporation." Shareholders Agreement (Exhibit B) § 3.

22. Almost four months after Niskanen's death, Defendant Washburn has not offered to sell the Niskanen Shares to the Corporation in accordance with the requirement of Section 3 of the Shareholders' Agreement.

23. Defendant Washburn has not delivered to the Corporation "share certificates evidencing the complete disposition of all shares owned by [Niskanen] in the Corporation," as provided in Section 5 of the Shareholders Agreement and made applicable to Defendant Washburn by K.S.A. 17-6426(a).

24. Section 3 of the Shareholders' Agreement provides that, in the event the Corporation does not elect to purchase the Niskanen Shares, the right to purchase the Niskanen Shares shall be deemed to be granted to the remaining shareholders in proportion to their shares in the Corporation. However, the Corporation has not advised Plaintiffs Charles and David Koch that their right to purchase proportionate shares of the Niskanen Shares has been deemed to have been granted to them in accordance with Section 3 of the Shareholders' Agreement.

25. To the contrary, Defendant Cato takes the position that it is not obligated to accept the offer of the Niskanen Shares required to be made by Defendant Washburn under Section 3 of the Shareholders' Agreement, and that, upon refusing the offer, Section 3 does not obligate Cato to treat the right to purchase the Niskanen Shares (as the Shareholders' Agreement expressly provides) as "deemed to be granted to the shareholders of the Corporation [Charles Koch, David Koch, and Edward Crane] to be exercised by them in the same proportions as they hold" their current shares exclusive of the Niskanen Shares.

REQUESTED RELIEF

WHEREFORE, pursuant to the Declaratory Judgments provisions of the Kansas Code of Civil Procedure, K.S.A. 60-1701, *et seq.*, the requirements of K.S.A. 17-6426(a), and the terms

of the Shareholders' Agreement, Plaintiffs respectfully request that the Court declare that (1) Defendant Washburn as personal representative is presently obligated to offer the Niskanen Shares to the Corporation; (2) that the Corporation has an obligation to its shareholders either to accept those shares for repurchase from Defendant Washburn as personal representative or, pursuant to the requirements of Section 3 of the Shareholders' Agreement, recognize that the right to purchase the Niskanen Shares conferred by Section 3 upon the remaining shareholders is "deemed to be granted to the [other] shareholders of the Corporation," including Plaintiffs Charles Koch and David Koch, in the event the Corporation does not repurchase the Niskanen Shares; (3) Defendant Washburn as personal representative may not transfer the Niskanen Shares directly to herself individually as legatee or otherwise, or to any other legatee, because to do so would be inconsistent with the requirements of the Shareholders Agreement; and (4) the Corporation may not issue shares to any person or recognize the transfer of shares to any person, including but not limited to Defendant Washburn individually, who has assumed ownership or the right to ownership of shares, or has purported to do so, in violation of the Shareholders' Agreement (referenced in the Corporate Bylaws).

Respectfully submitted,

STINSON MORRISON HECKER LLP

By: */s Daniel D. Crabtree*
Daniel D. Crabtree, # 10903
Heather S. Woodson, # 13513
1201 Walnut, Suite 2900
Kansas City, Missouri 64106
Telephone: (816) 842-8600
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dcrabtree@stinson.com
hwoodson@stinson.com

ATTORNEYS FOR PLAINTIFFS
CHARLES G. KOCH AND DAVID H. KOCH

EXHIBIT A

SHAREHOLDERS AGREEMENT

The undersigned, being all the members of Cato Institute (hereinafter The Corporation), a non-profit corporation organized under the law of Kansas initially as a non-stock, membership organization but presently in the process of converting to a stock organization, hereby agree, each with the other, in consideration of the mutual promises made to one another herein, as follows:

1. That the initial issue of capital stock of The Corporation shall be limited to an aggregate of sixty (60) shares.

2. That each of the undersigned hereby subscribes for, and agrees to pay for twelve (12) shares of the initial issue of the capital stock of The Corporation at an aggregate purchase price of Twelve Dollars ($12.00) within thirty (30) days after the Secretary of The Corporation issues a call on said subscription.

3. That each of the undersigned shall vote his stock in The Corporation so long as he is a stockholder in such a way as to assure that each of the undersigned is elected to the position of a Director on the Board of Directors of The Corporation.

4. That each of the undersigned, as a Director of The Corporation and before authorizing the issuance of any of the capital stock of The Corporation to a party who is not a signatory hereto, will require, as a condition to any such issuance of such stock, that the prospective new shareholder execute a counterpart copy of this Agreement and thereby become bound to the terms and provisions hereof in the exact same manner as the undersigned are bound.

5. No stockholder of The Corporation shall have the right or power to pledge, hypothecate, sell or otherwise

dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to The Corporation for a price equivalent to the price paid by such shareholder for such shares by written instrument addressed and delivered to the Board of Directors of The Corporation. Following receipt of said written offer, said Board of Directors shall have a period of thirty (30) days in which to notify said offering shareholder of The Corporation's election to purchase such stock for such price. Upon payment or tender of such price by The Corporation within thirty (30) days of such election, the holder of such stock shall sell and transfer the same to The Corporation forthwith. Should the rights granted hereunder to The Corporation be deemed inconsistent with its corporate purposes, then the rights granted hereby shall be deemed to be granted to the shareholders of The Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of The Corporation exclusive of those shares held by the shareholder desiring to dispose of stock.

6. That at any time a majority, by number, of the undersigned (hereafter The Purchasers) desire to purchase all the stock in The Corporation owned by one or more of the undersigned (hereafter The Seller), The Seller, within ten (10) days after receiving written notice of The Purchasers' desire from the Secretary of The Corporation, shall deliver or cause to be delivered to The Purchasers share certificates representing all the stock in The Corporation owned by The Seller, duly endorsed for transfer, against payment by The Purchasers to the Seller of the amount paid for all such stock by The Seller. The

Purchasers shall acquire the stock of The Seller in the proportions that their respective stock holdings in The Corporation bear to the aggregate stock holdings of The Purchasers in The Corporation, and the price paid by them to The Seller shall, as between The Purchasers, be paid by them in the same proportions.

7. That at any time any of the undersigned ceases to be a shareholder in The Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in The Corporation, shall submit his written resignation as a Director of The Corporation.

8. This Agreement shall be binding upon, and inure to the benefit of the undersigned parties and their respective heirs, legatees, and personal representatives of whatsoever nature.

In witness whereof, the undersigned have hereunto set their hands this 26th day of January, 1977, intending to be bound hereby only at such time as all parties named hereunder have executed this instrument or an exact counterpart thereof.

CHARLES KOCH

GEORGE PEARSON

ROGER L. MAC BRIDE

MURRAY N. ROTHBARD

EDWARD H. CRANE, III

ALL OF THE DIRECTORS OF
CATO INSTITUTE

EXHIBIT B

SHAREHOLDERS AGREEMENT

The undersigned, being all of the stockholders of Cato Institute (hereinafter the "Corporation"), a nonprofit corporation organized under the laws of the State of Kansas, do hereby agree with each other as follows:

1. That each of the undersigned shall vote his stock in the Corporation so long as he is a stockholder in such a way as to assure that each of the undersigned is elected to the position of a Director on the Board of Directors of the Corporation.

2. That each of the undersigned, as a Director of the Corporation and before authorizing the issuance of any of the capital stock of the Corporation to a party who is not a signatory hereto, will require, as a condition to any such issuance of such stock, that the prospective new shareholder execute a counterpart copy of this Agreement and thereby become bound to the terms and provisions hereof in the exact same manner as the undersigned are bound.

3. No stockholder of the Corporation shall have the right or power to pledge, hypothecate, sell or otherwise dispose of, directly or indirectly, all or any part of his shares of stock without first offering to sell such shares as he desires to dispose of to the Corporation for a price equivalent to the price paid by such shareholder for such shares by written instrument addressed and delivered to the Board of Directors of the Corporation. Following receipt of said written offer, said Board of Directors shall have a

period of thirty (30) days in which to notify said offering shareholder of the Corporation's election to purchase such stock for such price. Upon payment or tender of such price by the Corporation within thirty (30) days of such election, the holder of such stock shall sell and transfer the same to the Corporation forthwith. Should the rights granted hereunder to the Corporation be deemed inconsistent with its corporate purposes, then the rights granted hereby shall be deemed to be granted to the shareholders of the Corporation, to be exercised by them in the same proportions as they hold all issued and outstanding shares of the Corporation exclusive of those shares held by the shareholder desiring to dispose of stock.

4. That at any time a majority, by number, of the undersigned (hereafter the "Purchasers") desire to purchase all the stock in the Corporation owned by one or more of the undersigned (hereafter the "Seller"), the Seller, within ten (10) days after receiving written notice of the Purchasers' desire from the Secretary of the Corporation, shall deliver or cause to be delivered to the Purchasers share certificates representing all the stock in the Corporation owned by the Seller, duly endorsed for transfer, against payment by the Purchasers to the Seller of the amount paid for all such stock by the Seller. The Purchasers shall acquire the stock of the Seller in the proportions that their respective stock holdings in the Corporation bear to the aggregate stock holdings of the Purchasers in the Corporation, and the price

paid by them to the Seller shall, as between the Purchasers, be paid by them in the same proportions.

5. That at any time any of the undersigned ceases to be a shareholder in the Corporation, such party, simultaneously with the delivery of share certificates evidencing the complete disposition of all shares owned by him in the Corporation, shall submit his written resignation as a Director of the Corporation.

8. This Agreement shall be binding upon, and inure to the benefit of the undersigned parties and their respective heirs, legatees, and personal representatives of whatsoever nature.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _____ day of _____, 1985, intending to be bound hereby only at such time as all parties named hereunder have executed this instrument or an exact counterpart thereof.

Charles Koch

George Pearson

Edward H. Crane, III

William A. Niskanen

ALL OF THE SHAREHOLDERS OF CATO INSTITUTE

EXHIBIT C

AGREEMENT

WHEREAS the undersigned has requested to become a shareholder of Cato Institute (hereinafter "The Corporation"), a non-profit corporation organized under the laws of the State of Kansas; and

WHEREAS, all of the shareholders ("Shareholders") of The Corporation are signatories to a Shareholder's Agreement whereby they are required, prior to authorizing the issuance of any capital stock of The Corporation, to require the party to receive such stock to agree to become bound by the terms and provisions of said Shareholder's Agreement; and

WHEREAS, the undersigned agrees as a condition precedent to the issuance of said stock to be so bound;

NOW THEREFORE, in consideration of the authorization by the Shareholders of The Corporation for its issuance to the undersigned of sixteen (16) shares of its capital stock, the undersigned hereby agrees to be and shall, upon the issuance of such stock, be bound by the terms and provisions of the Shareholder's Agreement executed by Charles Koch, George Pearson, Edward H. Crane, III and William A. Niskanen as though and to the same effect as if he had been an original signatory thereof. A copy of said Shareholders Agreement is attached hereto and made a part hereof by reference.

IN WITNESS WHEREOF I have set my hand this 11th day of July 1991.

David H. Koch

WITNESS:

EXHIBIT D

LAST WILL AND TESTAMENT

OF

WILLIAM ARTHUR NISKANEN

I, WILLIAM ARTHUR NISKANEN, domiciled in and a resident of Washington, D.C., do make, publish, and declare this to be my Last Will and Testament, hereby revoking all former wills and codicils made by me and intending hereby to dispose of all my probate estate.

FIRST

Funeral Provisions

I direct that the expenses of my last illness and of my funeral be paid; and it is my direction that the amount of my funeral expenses shall be within the discretion of my Personal Representative, notwithstanding any present or future limitation of law, and without the necessity of obtaining a court order authorizing such expenditure.

I further authorize my Personal Representative to contract with and pay the official of the cemetery association of the cemetery in which my remains shall be interred for the keeping of the gravesite in perpetual good condition.

SECOND

Payment on Debts and Expenses

I direct my Personal Representative to pay out of my residuary estate, as soon after my death as may be practicable, all of my just and enforceable debts. However, my Personal Representative does not need to pay any debt or expense secured by a mortgage, pledge or similar encumbrance on property owned by me at my death if, in the discretion of my Personal Representative, the underlying property may properly pass subject to such mortgage, pledge or

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William Arthur Niskanen

similar encumbrance. I further direct, however, that my Personal Representative may cause any such secured debt to be carried, renewed, or refinanced from time to time upon such terms and conditions as my Personal Representative may deem advisable, taking into consideration the best interests of my estate and beneficiaries.

THIRD

Payment of Taxes

I hereby direct my Personal Representative to pay out of my residuary estate, and as a part of the expense of administering my estate, all inheritance, estate, transfer, and succession taxes (including, in the discretion of my Personal Representative, interest and penalties thereon) which may be assessed by reason of my death on any property or interest included in my gross estate for tax purposes, whether or not such property or interest is part of my administrable estate. I hereby waive on behalf of my estate any right to recover from any person any part of such inheritance or estate taxes so paid.

FOURTH

Personal Representative

I appoint my surviving spouse, **KATHRYN WASHBURN**, as Personal Representative of this my Last Will and Testament. If for any reason my spouse fails to qualify or ceases to act as Personal Representative hereunder, I appoint **PAUL NISKANEN** of Portland, Oregon, as successor Personal Representative with all the rights and powers as if originally named. The Personal Representative shall be reimbursed for all reasonable expenses incurred during the performance of his or her duties even if the Personal Representative receives a commission.

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FIFTH

Title to Property

I hereby confirm that if I have established title to any property, real or personal, tangible or intangible (including joint checking or savings accounts in any bank or savings and loan association) in the name of myself and any member of my family (excluding any tenancy in common), as joint tenants or tenants with right of survivorship or any variation thereof, such property shall pass by right of survivorship or operation of law outside the terms of this Last Will and Testament to such person, if he or she survives me. To the extent that any rule or law should hold otherwise, I give, devise, and bequeath all such jointly held property to such other family member or members who were joint owners of such property with me.

SIXTH

Specific Bequests

I give and bequeath Seven Hundred Fifty Thousand Dollars ($750,000.00) to be distributed in equal shares to my daughters, **JAIME NISKANEN, LIA A. NISKANEN** and **PAM NISKANEN**, per stirpes.

SEVENTH

Residuary Estate

My Personal Representative shall distribute the rest and remainder of my estate as follows:

I. In the event our dog, **WINSTON**, is living at the time of my death, Two Thousand Dollars ($2,000.00) shall be distributed to **DAVE** and **CARLA SMULLENS** of Westover, Maryland, for his care or to find a suitable home for him.

II. In the event **DAVE** and **CARLA SMULLENS** of Westover, Maryland, are working for me at the time of my death, Two Thousand Dollars ($2,000.00) multiplied by the years they have worked for me after 2007 shall be distributed to them, or the survivor thereof. If they are no longer employed by me or in the event they are both deceased, this distribution shall lapse.

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III. One third (1/3) of my estate shall be distributed to my spouse, KATHRYN WASHBURN, if living; if not, then to SALISBURY UNIVERSITY FOUNDATION, INC., located at 11101 Camden Avenue, Salisbury, Maryland, for scholarships for students of Washington High School in Somerset County, Maryland, or its successors,

IV. One third (1/3) of my estate shall be distributed to CATO INSTITUTE located at 1000 Massachusetts Avenue, N.W., Washington, D.C.

V. The rest and remainder shall be distributed to INSITITUTE FOR JUSTICE located at 1717 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C.

EIGHTH

General Trust For Those Under The Age Of Thirty (30)

If upon my death or upon the termination (in whole or in part) of a trust herein created, any person (except my daughters) entitled to be paid any portion of my residuary estate has not yet attained the age of thirty (30) years, such payment shall be held in further trust by GERALD K. GIMMEL, as Trustee, as provided below:

I. The Trustee shall pay over to or for the benefit of such person from the net income or from the principal thereof such amounts as in its sole and absolute discretion the Trustee shall deem to be necessary, reasonable or desirable for the health, education, maintenance and support of such person. Any net income not so applied shall be accumulated and added to principal.

II. When such person shall attain the age of thirty (30) years, the Trustee shall pay over and distribute the principal and income thereof then in its hands, absolutely and free of trust to such person.

NINTH

Gifts Are Not Advancements

Unless otherwise specifically provided for in this Last Will and Testament, any gifts of real or personal property which I have made during my life, before or after the execution of this

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Will, to any person, shall not be deemed to be advancements, and shall not be taken into account in distributing my estate.

TENTH

No Bond Required

I direct that no bond be required of any Personal Representative named in this Will, and if, notwithstanding this direction, any bond is required by law, that no surety be required on such bond.

ELEVENTH

Miscellaneous Provisions

Adopted children shall have the same rights as natural born children under this Will. Throughout this Will, the use of any gender shall be deemed to include any other gender or lack of gender as the context may require. If any person named in this Will should die within thirty (30) days after my death, any bequest or devise for such person shall lapse and shall be treated as if such person predeceased me.

TWELFTH

Powers of Personal Representative

I give unto my Personal Representative full power and authority, without any order of court, to do all things necessary to probate my estate, including, but not limited to, the following:

I. To file joint income or gift tax returns without incurring any personal liability whatsoever for so doing, any and all such personal liability being hereby waived;

II. To borrow money and give security therefor;

III. To sell, mortgage, pledge, exchange, or otherwise deal with or dispose of the property, real or personal, comprising my estate, upon such terms as the Personal Representative shall deem best;

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William Arthur Niskanen

IV. To settle, compromise, contest, or otherwise deal with any and all claims in favor of or against my estate;

V. To settle any and all federal estate, state estate, or state inheritance taxes;

VI. To compromise the valuations of any properties in connection with the adjustment of any so-called death taxes; and,

VII. The decision of my Personal Representative respecting any such settlement or claims in favor of or against my estate or respecting the compromise of any income or gift taxes or any federal estate, state estate, or state inheritance taxes, or valuations of property in connection therewith shall be subject to question by no one.

VIII. For any of the foregoing purposes, I expressly authorize and empower my Personal Representative to make, execute, and deliver any and all deeds, contracts, mortgages, bills of sale, or other instruments necessary and desirable therefor.

In the event my Personal Representative is required to allocate step-up basis among my assets and/or my beneficiaries, my Personal Representative is directed to allocate the step-up basis among all assets which are capable of receiving a step-up basis on a pro rata basis based upon the total value of all assets subject to receiving step-up basis. My Personal Representative is specifically relieved of all liability for such decisions as to the allocation of step-up basis and should any beneficiary challenge in Court such allocation, the Personal Representative is directed to defend such challenge and to charge all costs of such defense to the inheritance left to such challenger.

If, at the time of distribution of any part of my Estate, my Personal Representative, in its sole and absolute discretion, determines that a beneficiary is or would be unable to properly manage such amounts by reason of illness, mental or physical disability, advanced age, addiction, or otherwise, then such amounts may be paid out by the Personal Representative in such of the following ways as it deems best:

I. To the natural or legally appointed guardian or conservator of such beneficiary.

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GK6

II. To some relative or friend for the care, support and education of such beneficiary.

III. By asking the Court to establish a trust for the benefit of the beneficiary to which such funds can be paid.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament, consisting of eight (8) typewritten pages, on the bottom, right-hand margin of each page of which I have affixed my signature for identification this 16 day of June, 2010.

William Arthur Niskanen (SEAL)
WILLIAM ARTHUR NISKANEN

We, the undersigned, hereby certify that the foregoing instrument was signed, sealed, published, and declared on the date stated by the said **WILLIAM ARTHUR NISKANEN**, in our presence, as his Last Will and Testament; and we have, at his request, in his presence, and in the presence of each other, hereunto subscribed our names as attesting witnesses.

Gerald K. Gimmel
GERALD K. GIMMEL
4 Professional Drive, Suite 145
Gaithersburg, Maryland 20879

Mary A. Vaught-Spencer
MARY A. VAUGHT-SPENCER
4 Professional Drive, Suite 145
Gaithersburg, Maryland 20879

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William Arthur Niskanen

AFFIDAVIT FOR SELF-PROVING WILL

STATE OF MARYLAND

COUNTY OF MONTGOMERY

Before me, the undersigned authority, on this day personally appeared **WILLIAM ARTHUR NISKANEN, GERALD K. GIMMEL,** and **MARY A. VAUGHT-SPENCER,** known to me to be the testator and the witnesses, respectively, whose names are signed to the foregoing instrument and, all of these persons being by me first duly sworn, **WILLIAM ARTHUR NISKANEN,** the testator, declared to me and to the witnesses in my presence that said instrument is his Last Will and Testament and that he willingly signed and executed it in the presence of said witnesses as his free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as his Last Will and Testament in the presence of said witnesses who in his presence and at his request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

WILLIAM ARTHUR NISKANEN

GERALD K. GIMMEL

MARY A. VAUGHT-SPENCER

Subscribed, sworn and acknowledged before me by **WILLIAM ARTHUR NISKANEN,** the testator, subscribed and sworn before me by **GERALD K. GIMMEL** and **MARY A. VAUGHT-SPENCER,** witnesses, this 10th day of June, 2010.

NOTARY PUBLIC JULIE A. LUCAS MONTGOMERY CO., MD

(Signed) Julie A. Lucas
Notary
My commission expires 6/22/13

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William Arthur Niskanen

Clerk of the District Court, Johnson County Kansas
02/29/12 05:23pm MM

EXHIBIT 10

From: Robert Levy [mailto:rlevy@cato.org]
Sent: Friday, March 02, 2012 01:47 PM
To: Crane Ed <ecrane@cato.org>; Yass Jeff <yass@susq.com>; Koch, David (New York); Rich Howie <HowRch@cs.com>; Dennis Richard <mspencer@cdcommodities.com>; Humphreys Ethelmae <Ethelmae_Humphreys@tamko.com>; Young Fred <fyoung@tds.net>; Gentry, Kevin; Andersen Tucker <Tucker@abovealladvisors.com>; Pfotenhauer Nancy <nancy@mediaspeakstrategies.com>; Koch, Charles; Napolitano Andrew <judgenap@foxnews.com>; Olson Ted <tolson@gibsondunn.com>; preston.marshall@maropco.com <preston.marshall@maropco.com>; Washburn Kathy <kathwash1@gmail.com>
Cc: Andersen Tucker <marla@abovealladvisors.com>; Koch, David (Boston); Bond Frank <frankbond.fgi@verizon.net>; Lesley Albanese <lalbanese@cato.org>
Subject: Cato Special Board Meeting

I've been reminded that daylight savings time starts Mar 11 ... So all times should be EDT, not EST. Thanks

To the Cato Institute Board of Directors ...

In accordance with Article V, section 3 of our ByLaws, I'd like to call a special meeting of the board on any weekday from Monday, March 12 through Friday, March 23. The meeting will be held at our DC headquarters, but directors may also participate by telephone. My primary purpose is to update the board regarding recent board changes, a pending lawsuit, and their implications for Cato's ongoing operations. I anticipate that the meeting will run 30-60 minutes. Meanwhile, I'll soon distribute a draft of the minutes of the shareholders' meeting held on Thursday, March 1.

Please let me know by 9:00 p.m. ~~EST~~ EDT on Tuesday, March 6, what dates and times (~~EST~~EDT) you can be available in person or by phone from Monday the 12th through Friday the 23rd. I've also asked Lesley Albanese to respond to this email so she can serve as secretary at the meeting.

Many thanks
Bob
--
Robert A. Levy
Chairman
Cato Institute
c/o 8787 Bay Colony Dr.

Naples, FL 34108
Phone: 239-566-7139

EXHIBIT 11

-----Original Message-----
From: Robert Levy [mailto:rlevy@cato.org]
Sent: Monday, March 19, 2012 2:59 PM
To: Crane Ed; Marshall Preston; Pfotenhauer Nancy; Yass Jeff; Rich Howie; Koch Charles G.; Koch David H.; Washburn Kathy; Dennis Richard; Humphreys Ethelmae; Olson Ted; Young Fred; Gentry Kevin; Andersen Tucker; Napolitano Andrew
Cc: Andersen Tucker; Koch David H.; Bond Frank

Subject: Agenda for Cato's Special Board Meeting

To the Cato Institute Board of Directors:

I've been asked for an agenda for Thursday's special board meeting. Although not required by law or the Institute's governing documents, I've attached (below) an agenda for your review. Please understand that the Institute is not acknowledging that an agenda must be provided, or that matters other than those delineated in the agenda will not be considered at the meeting.

In addition to board members, the following persons have been invited to attend the special meeting: Wes Edwards, an attorney with Koch Industries; Edward Frizell, an attorney with Polsinelli Shughart, which is representing the Cato Institute; David Boaz, Cato's executive vice president, who customarily attends the Institute's board meetings; and Lesley Albanese, Cato's vice president for development, who will serve as recording secretary. Each of those persons is invited to observe, but not participate, unless his or her views are requested on a specific issue.

Best regards
Bob
--
Robert A. Levy
Chairman
Cato Institute
c/o 8787 Bay Colony Dr.
Naples, FL 34108
Phone: 239-566-7139

AGENDA

Special Meeting of the Board of Directors of the
Cato Institute

March 22, 2012

I. Advise the board regarding litigation pending against the Institute in the District Court of Johnson County, Kansas.

II. Consider creating a special committee of the board to manage the pending litigation.

III. Consider modifying Article IV, Section 2 of Cato's bylaws to provide that board vacancies will be filled by class, to hold office until the next election of the class for which the directors shall have been chosen, in accordance with K.S.A. 17-6513(b).

IV. Consider modifying Article IV, Section 3 of Cato's bylaws relative to the removal of directors to comply with K.S.A. 17-6301(k).

V. Consider alternatives to involve important donors and supporters in Cato's affairs, including, without limitation, having them become members of the board of directors.

VI. Consider other business that may come before the meeting.

EXHIBIT 12

From: Koch, Charles
Sent: Tuesday, March 20, 2012 8:21 PM
To: rlevy@cato.org
Cc: Crane Ed; Marshall Preston; Pfotenhauer Nancy; Yass Jeff; Rich Howie; Koch, Charles; Koch, David (New York); Washburn Kathy; Dennis Richard; Humphreys Ethelmae; Olson Ted; Young Fred; Gentry, Kevin; Andersen Tucker; Napolitano Andrew; Andersen Tucker; Koch, David (Boston); Bond Frank
Subject: March 22 Board Meeting

Bob:

Thank you for the agenda for the March 22 board meeting. The following are follow-up questions that I have concerning certain proposed agenda items. I have copied the other board members in the interest of time and transparency, and I ask that each of them also review the questions and your responses so they can better understand these serious issues and the full implications of your answers.

1. Regarding the discussion of the litigation pending against the Institute (Agenda Item I), will the Institute's counsel be present? Also, will the entire board be privy to this discussion or will the board members that have a conflict of interest regarding the litigation be excluded from this portion of the meeting? If the board intends to meet in executive session regarding this litigation, please confirm that neither you nor any other interested director (including directors who are individually named in the litigation) will participate in the executive session.

2. Regarding the creation of a special committee (Agenda Item II), we generally support the creation of an independent special committee and would propose that the committee be composed of equal numbers of Board members elected by us, on the

one hand, and the Crane/Niskanen/Washburn group, on the other, but excluding all four of the named parties in the litigation and, in light of your very public support of this latter group, also excluding yourself.

3. Regarding the proposed consideration of Article IV, Section 2 of the Institute's Bylaws (Agenda Item III), are you, in fact, intending to propose an amendment to that provision at the meeting, or are you aware of anyone else who intends to do so? If so, what are the reasons for which you or such other director is proposing such modification (beyond your expressed concerns that such Section may not comply with KSA 17-6513(b))? And why are you or, to your knowledge, any other director, proposing consideration of such a change only now? Please identify your reasons and rationale as soon as possible in advance of the board meeting so that, as directors, each of us may act on an informed basis consistent with our fiduciary duties.

4. Regarding the proposed consideration of Article IV, Section 3 of the Institute's Bylaws (Agenda Item IV), are you, in fact, intending to propose an amendment to that provision at the meeting, or are you aware of anyone else who intends to do so? If so, what are the reasons for which you or such other director is proposing such modification (beyond your expressed concerns that such Section may not comply with KSA 17-6301(k))? And, again, why are you or, to your knowledge, any other director, proposing consideration of such a change only now? Please identify your reasons and rationale as soon as possible in advance of the board meeting so that, as directors, each of us may act on an informed basis consistent with our fiduciary duties.

5. Please elaborate on what is presently contemplated by Agenda Item V. Is it presently contemplated that existing board members would resign from the board and be replaced by donors/supporters of the Institute? Or is it contemplated that the board would seek to increase the size of the board and appoint new, additional members to the board? In either instance of replacing existing members or filling new slots, is it your intention or the intention of any other director to seek to fill these slots or nominate persons to fill these slots at the March 22 board meeting? If so, please identify those directors and these nominees. Again, as directors we need to have information sufficiently in advance of any proposed vote to allow us to be able to act on an informed basis consistent with our fiduciary duties.

Quite aside from each director's need for sufficient time and information to give due deliberation to any proposal to change the fundamental governance structure of the Institute, please note that any attempt to use this proposal as a vehicle for "packing" the board with directors favoring the "Crane contingent" raises grave concerns regarding breaches by each participating director of his or her personal fiduciary duties owed to the Institute and to all of its shareholders. Moreover, doing so would be totally inconsistent with the standstill agreement that is currently in place, which provides that no amendments to the bylaws and no changes to the composition of the board would be undertaken by anyone pending resolution of the pending dispute. Indeed, unless you assure me by Wednesday, March 21 at 1PM (Central Standard Time) that neither you nor, to your knowledge, any other director will seek to expand the size of the board at the March 22 meeting, we are prepared to take all necessary and appropriate steps, including possibly seeking immediate injunctive relief.

6. Regarding Agenda Item VI, is there any other business that you or, to your knowledge, any other board member intends to bring before the board at the March 22 meeting?

In light of the fact that the board meeting is less than 48 hours away, please respond to these questions/comments as soon as possible.

Thank you in advance.

Charles Koch

EXHIBIT 13

-----Original Message-----
From: Robert Levy [mailto:rlevy@cato.org]
Sent: Wednesday, March 21, 2012 1:21 PM
To: Koch, Charles
Cc: Ed Crane; Marshall Preston; Nancy M. Pfotenhauer; Jeff Yass; Howard Rich; Koch, David (New York); Washburn Kathy; Richard Dennis; Ethelmae Humphreys; Olson Ted; Fred Young; Gentry, Kevin; K Tucker. Anderson; Napolitano Andrew; Andersen Tucker; Koch, David (Boston); Frank Bond
Subject: Re: March 22 Board Meeting

Sorry, I inadvertently omitted the attachment. Here it is:

AGENDA

Special Meeting of Board of Directors of
Cato Institute

March 22, 2012

I. Advise Board of Directors of the Litigation pending in the District Court of Johnson County, Kansas

II. Consider creation of special Committee of Board of Directors to manage litigation against the Cato Institute

III. Consider modification to Article IV, Section 2 of the Bylaws of the Corporation to provide that Board vacancies will be filled by class to hold office until the next election of the class for which the Directors shall have been chosen in accordance with K.S.A. 17-6513(b)

IV. Consider modification to Article IV, Section 3 of the Bylaws of the Corporation relative to the removal of Directors to comply with K.S.A. 17-6301(k)

V. Consider modification to Article V, Section 4 of the Bylaws of the Corporation to increase the required notice for a special meeting of the Board of Directors from twenty-four hours to five days.

VI. Consider alternatives to engage important donors in involvement with the Cato Institute including, without limitation, having them participate as members of the Board of Directors

VII. Consider other business which may come before the meeting

EXHIBIT 14

----- Original Message -----
From: Robert Levy [mailto:rlevy@cato.org]
Sent: Wednesday, March 21, 2012 09:11 PM
To: Koch, Charles; Crane Ed <ECrane@cato.org>; Marshall Preston <preston.marshall@maropco.com>; Pfotenhauer Nancy <nancy@mediaspeakstrategies.com>; Yass Jeff <yass@susq.com>; Howard Rich <howrch@cs.com>; Koch, David (New York); Washburn Kathy <kathwash1@gmail.com>; Dennis Richard <mspencer@cdcommodities.com>; Humphreys Ethelmae <Ethelmae_Humphreys@tamko.com>; Olson Ted <tolson@gibsondunn.com>; Young Fred <fyoung@tds.net>; Gentry, Kevin; K Tucker. Anderson <tucker@abovealladvisors.com>; Napolitano Andrew <judgenap@foxnews.com>
Cc: Andersen Tucker <marla@abovealladvisors.com>; Koch, David (Boston); Bond Frank <frankbond.fgi@verizon.net>
Subject: Re: March 22 Board Meeting

To the Cato Institute Board of Directors:

I've attached below proposed resolutions for consideration at the special board meeting on March 22. As noted in the agenda that I previously forwarded, other business and other resolutions may also be considered at the March 22 meeting.

Bob Levy

RESOLUTIONS OF THE BOARD OF DIRECTORS OF CATO INSTITUTE

WHEREAS, Charles G. Koch and David H. Koch, two of the stockholders of Cato Institute (the "**Institute**"), have filed a lawsuit in the District Court of Johnson County, Kansas against the Institute and the other two stockholders of the Institute (the "**Lawsuit**"); and

WHEREAS, given that certain members of the Board of Directors of the Institute (the "**Board**") may be presented with actual or potential conflicts of interest with respect to the Lawsuit, the Board deems it in the best interests of the Institute to designate and create a special committee of the Board (the "**Litigation Committee**") to undertake the evaluation, supervision, oversight and management of the Lawsuit on behalf of the Institute, as more fully described in the resolutions set forth below.

Creation of Litigation Committee

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby designates and creates the Litigation Committee, which Committee will be constituted by three (3) members of the Board, which such members will be appointed by resolution passed by a majority of the whole Board.

FURTHER RESOLVED, that the Litigation Committee is hereby authorized and directed to continue in existence until such time as the Litigation Committee shall recommend its dissolution to the Board of Directors.

FURTHER RESOLVED, that the Litigation Committee is hereby authorized and directed to supervise, oversee and manage all matters relating to the Lawsuit on behalf of the Institute, including but not limited to (i) investigating the factual and legal issues relating to the Lawsuit, (ii) controlling, supervising and managing the Lawsuit, (iii) interacting directly with legal counsel (and any other advisors engaged by the Litigation Committee) with respect to the Lawsuit and appearing through counsel on behalf of the Institute in the Lawsuit, and (iv) directing the representation of the Institute in the Lawsuit and making all decisions on behalf of the Institute with respect to the Lawsuit, including but not limited to, defending or taking such other action that the Litigation Committee deems to be necessary or appropriate, in its discretion, in connection with the Lawsuit; provided that, any settlement of the Lawsuit will be contingent upon approval of the Board. Notwithstanding the foregoing authority granted to the Litigation Committee, in no event will the Litigation Committee be authorized to make any decision regarding whether the Institute should purchase shares of stock of the Institute from any of its stockholders or their successors and assigns, which such decision shall be reserved to the Board.

FURTHER RESOLVED, that the Litigation Committee is hereby authorized to adopt a charter, bylaws or other document governing the internal matters of the Litigation Committee, and to amend, restate or replace the same from time to time.

FURTHER RESOLVED, that the engagement of Polsinelli Shughart PC to provide legal services to the Institute with respect to the Lawsuit, pursuant to the instructions and direction of the Litigation Committee, is hereby approved, confirmed, and ratified.

FURTHER RESOLVED, that the Litigation Committee is hereby authorized, in the Litigation Committee's discretion, to engage, either directly or indirectly through its Advisors (defined below), one or more third party professionals, including independent legal counsel for the Litigation Committee (collectively, the "**Advisors**") that may be required, necessary, or advisable, as determined in the Litigation Committee's sole discretion, to assist the Litigation Committee with respect to the Lawsuit.

FURTHER RESOLVED, that until the work of the Litigation Committee is completed, each member of the Litigation Committee will be reimbursed by the Institute for any reasonable expense incurred by that member in the performance of his or her duties as a member of the Litigation Committee.

FURTHER RESOLVED, that the Institute will pay all fees of the Advisors incurred in connection with the Lawsuit and the conduct of the Litigation Committee.

FURTHER RESOLVED, that given the actual or potential conflicts of interest of certain Board members with respect to the Lawsuit, unless requested by the Board, (i) the Litigation Committee shall have no obligation or duty to report to the Board with respect to the Lawsuit or any discussions, negotiations, strategies or actions of the Litigation Committee with respect thereto, and (ii) if the Litigation is requested to make a report by the Board, any director of the Institute who is a party to the Lawsuit (each an "**Interested Party**") and any director who is affiliated, directly or indirectly, with an Interested Party, will recuse themselves from any Board meeting where such report concerning the Litigation will be made by the Litigation Committee (any such meeting, a "**Committee Report Meeting**").

FURTHER RESOLVED, that before being permitted to attend a Committee Report Meeting, each Board member must execute a Confidentiality and Non-Disclosure Agreement in a form to be reasonably determined by the Litigation Committee ("**Confidentiality Agreement**"), and the Board hereby authorizes any officer of the Institute to execute such Confidentiality Agreement on the Institute's behalf.

FURTHER RESOLVED, that pursuant to Article SEVENTH of the Institute's Restated Articles of Incorporation, the Institute shall indemnify all members of the Litigation Committee to the full extent permitted by K.S.A. 17-6305 and any other relevant law in effect from time to time.

FURTHER RESOLVED, that the Institute shall indemnify all members of the Litigation Committee pursuant to the terms of an Indemnification Agreement in a form to be reasonably determined by the Litigation Committee ("**Indemnification Agreement**"), and the Board hereby authorizes any officer of the Institute to execute such Indemnification Agreement on the Institute's behalf.

FURTHER RESOLVED, that the officers of the Institute be, and they hereby are, directed to take such actions as are appropriate or advisable in order to assist the Litigation

Committee in the discharge of its duties, subject to the review and oversight of the Litigation Committee.

Appointment of Litigation Committee Members

RESOLVED, that _____ are hereby appointed and designated as the members of the Litigation Committee, to exercise such powers and perform such duties as set forth in the foregoing resolutions.

RESOLUTIONS OF THE BOARD OF DIRECTORS OF CATO INSTITUTE

WHEREAS, the Board of Directors of Cato Institute (the "**Institute**") believes it is in the best interests of the Institute to amend the Restated Bylaws of the Institute dated March 9, 2007, as amended April 1, 2011 (the "**Bylaws**"), as set forth below.

RESOLVED, that the Bylaws are hereby amended as set forth below:

1. Article IV, Section 2 of the Bylaws is deleted in its entirety and replaced with the following:

"Vacancies on the board of directors and newly created directorships resulting from any increase in the authorized number of directors shall be filled by a majority of the members of the board then in office, even though less than a quorum. Directors chosen for newly created directorship positions shall be filled such that no more than one half of such directorships shall be allocated to one class of directorships and no more than one half plus one of such directorships shall be allocated to the other class of directorships, all in accordance with Article IV, Section 1 of the Bylaws. The designation of directors to a specific class shall be made at the time of the filling of a newly created director's position. Directors chosen to fill a vacancy for an existing directorship shall serve for the remaining term of such directorship. Any directors chosen to fill vacancies or newly created directorship positions shall hold office until the next election of the class for which such directors shall have been chosen, and until their successors shall be elected and qualified."

2. Article IV, Section 3 of the Bylaws is deleted in its entirety and replaced with the following:

"At a meeting of the shareholders called for that purpose, the entire board of directors or any individual director may be removed from office for cause by the vote of a majority of the outstanding shares entitled to vote at an election of directors."

3. The term "twenty-four hours" in the second sentence of Article V, Section 4 of the Bylaws is hereby deleted and replaced with the term "five (5) days."

4. In all other respects except as amended herein, the provisions of the Bylaws shall remain in full force and effect.

EXHIBIT 15

From: Koch, Charles
Sent: Thursday, March 22, 2012 10:40 AM
To: 'rlevy@cato.org'
Cc: 'Crane Ed'; 'Marshall Preston'; 'Pfotenhauer Nancy'; 'Yass Jeff'; 'Rich Howie'; Koch, David (New York); 'Washburn Kathy'; 'Dennis Richard'; 'Humphreys Ethelmae'; 'Olson Ted'; 'Young Fred'; Gentry, Kevin; 'Andersen Tucker'; 'Napolitano Andrew'; 'Andersen Tucker'; Koch, David (Boston); 'Bond Frank'
Subject: Today's Board Meeting

Bob:

We received yesterday afternoon your response to my email and the revised Agenda for today's meeting. Last night, long after business hours, we received copies of two board resolutions relating to alterations in Cato by-laws and the appointment of a special litigation committee for Cato. I offer the following thoughts:

First, I appreciate that outside counsel's presentation on the litigation will be informative rather than strategic and that you do not intend to seek any "executive session" on this point. I understand this to mean that no one need recuse themselves from this part of the meeting, and I agree with your position on this agenda item.

Please note, however, that if anyone does propose that David and I must leave the meeting for this part of the agenda, we intend to remain – certainly we would not leave if Ed, Kathryn and you remain in the meeting, since both of them are named personally in the litigation and have personal interests that are certainly not the same as the institutional interests of Cato to have this issue resolved, and, as made eminently clear in your public statements, you have clearly adopted Ed's and Kathryn's position in the litigation.

Second, it is simply impossible to evaluate the terms and implications of these resolutions on such short notice. As a quick reaction, we do agree with your point that members of any special litigation committee should be chosen for their qualifications; that being said, however, Cato's institutional interest in a civil resolution of this litigation suggests the obvious benefits of seeking such qualified directors chosen by all shareholders. A second

quick reaction is this: the special litigation committee's scope is very, perhaps overly, broad and there appear to be no Board constraints on the committee's power to expend the Institute's resources. In any event, there is not time to evaluate all the implications of this proposal before today's Board meeting. The issue should be deferred to a time when it will have been possible for all board members to have the benefit of analysis and counsel on this question.

Third, as to Revised Agenda Items III, IV and V, your email suggests, and your transmission of last evening confirms, your intent to propose these resolutions for a vote today. I note that your original agenda spoke only of "considering" such issues. Late on the eve of the meeting, we are now given a resolution raising questions of law and governance: that resolution is far too complicated in its potential implications, and comes far too late for fair and genuine advance consideration by all Board members in the exercise of their fiduciary duties to the Institute. The affected by-law provisions have remained in place for years, and there certainly is no need to rush through any amendments without due notice and a chance for directors to consider in a thoughtful way whatever advice they receive from corporate counsel at the meeting or from their personal counsel. Directors also need time to consider both the ultimate effect of these changes on the composition of the Board over the next two years regardless of how the pending litigation is resolved and also their personal own fiduciary duties to Cato and to all of its shareholders. Therefore, I urge you not to press for a vote on any such amendments at this meeting.

Fourth, as to Point 5 of your email, I agree that Cato cannot neglect consideration of important donors. Toward that end, David and I cast votes for Cato donors John Malone and Don Smith at the last shareholders' meeting. They were not elected to the Board because they received no other votes, but in any event, it cannot be fairly said we are indifferent to Cato's donors. Let me add that if donors, or some of them, have expressed disenchantment, it appears to me that this is a consequence of your very public campaign to misrepresent our past conduct and future intentions and to mischaracterize the nature of our efforts to protect rights provided to shareholders (including us) under a Cato Institute founding document.

Finally, you continue to dodge the question of whether you – or any other director to your knowledge – will present at the meeting a specific resolution on increasing sponsor/donor participation on the Board and/or call for an immediate vote on the proposal. This reticence on your part strongly suggests that someone does, in fact, intend to force some kind of vote on this issue at the meeting. Your statement in last night's resolution-transmitting email to the effect that "other resolutions may also be considered at the March 22 meeting," may fairly be read as confirming that suggestion. What that statement does *not* do is put board members on genuine notice that a vote on that subject is part of today's meeting agenda. While we certainly would not oppose an open discussion on the question of important donor contributions to the Institute, we believe that changing the size and/or composition of the Board at this sensitive moment, in the face of the present litigation, would interfere with shareholder rights under the Shareholders Agreement. It would also be an overly aggressive act that would effectively preclude hopes for a consensual settlement of the dispute and a clear breach of fiduciary duty by its sponsors. If any such resolution were presented for an immediate vote, we certainly would oppose it and may seek judicial assistance in blocking its implementation under these circumstances. We therefore hope that no one will press this issue at this time.

Sincerely,

Charles

EXHIBIT 16

----- Original Message -----
From: Robert Levy [mailto:rlevy@cato.org]
Sent: Friday, March 23, 2012 09:52 AM
To: Koch Charles G. <kochc@kochind.com>; Koch David H. <koch1d@kochind.com>
Cc: Napolitano, Andrew; Olson Ted <tolson@gibsondunn.com>
Subject: Personal note

Charles and David:

Yesterday's board meeting was an awful experience for everyone involved. Accordingly, I feel that a personal note is in order.

I deeply regret doing battle against friends such as Judge Napolitano and Ted Olson, with whom I've worked effectively in the past to advance causes in which we believe. And I'm especially distressed at having to take defensive measures against the two of you, who have done so much to promote liberty. That said, those measures -- which I will continue to take, subject to constraints imposed by law and my own values -- were and are necessary because, in my view, you have left the Cato Institute no reasonable alternative. I do not understand your motivation. I'm appalled by the damage we're all doing to Koch interests, Cato interests, and the broader goals we share -- not to mention the destructive effect on personal relationships.

Reasonable people should be able to resolve this situation. I consider myself a reasonable person. Can you suggest a counterpart?

Bob
--
Robert A. Levy
Chairman
Cato Institute
c/o 8787 Bay Colony Dr.
Naples, FL 34108
Phone: 239-566-7139

EXHIBIT 17

-----Original Message-----
From: Koch, Charles
Sent: Monday, March 26, 2012 3:20 PM
To: 'Robert Levy'
Cc: 'Crane Ed'; 'Marshall Preston'; 'Pfotenhauer Nancy'; 'Yass Jeff'; 'Rich Howie'; Koch, David (New York); 'Washburn Kathy'; 'Dennis Richard'; 'Humphreys Ethelmae'; 'Olson Ted'; 'Young Fred'; Gentry, Kevin; 'Andersen Tucker'; 'Napolitano Andrew'; 'Andersen Tucker'; Koch, David (Boston); 'Bond Frank'
Subject: RE: Personal note

Bob,

I am in receipt of your note. David and I agree that Thursday was an awful experience. However, it was an experience that could, and should, have been avoided.

As we told you last week through Wes Edwards, we are open to discussing a possible resolution, including a good faith consideration of alternative corporate structures. We told you we would do so immediately, as we were not trying to delay and we would not waste your time if resolution was not possible in the short-term.

We had only one request -- that you not proceed with the board meeting and the hostile agenda you proposed. As we told you then, it was clear that the meeting would not go well. In response, you told us you had no desire to postpone the board meeting. You then sent detailed board resolutions at 9:30 pm the night before the board meeting, refusing to allow sufficient time for proper consideration before voting on them - how is that reasonable?

To us, this is a repeat of the position you took at the end of February, when you rejected our request for a four day delay of the shareholders meeting (which foreseeably led to the present conflict given your position on the disposition of Bill Niskanen's shares), after Howie Rich and Frank Bond requested that we propose a path to resolution.

We are struggling with the sincerity of your overtures, since each is coupled with a hostile act and our positions are continually misrepresented. We had thought of you as a reasonable person, but your actions on this issue belie that. Rather than our meeting with you and experiencing more of the same, we think it would be more productive to agree on a principled and reasonable third party to mediate, as we previously proposed. This approach would seem to offer the best chance to stop the damage.

We strongly disagree with your characterization that we have left you no reasonable alternative but to pursue this unethical rule or ruin strategy. Of

the many dozens of boards on which I have served over the last 50 years, I have never experienced one that tolerated, let alone actually encouraged, the egregious behavior and poor practices of Cato's management. If David's and my goal of putting in place principled and sound leadership, and a board that requires it, can be achieved, Cato's effectiveness in advancing a free society would increase markedly.

If, as you suggest, your primary goal is to promote liberty, rather than to simply control Cato whatever the consequences, we continue to be willing to try to reach a settlement.

Charles Koch

P.S. Bob, you will note I have CCed the entire board, since I believe they all need to understand our position on these issues.