



**Statement by David H. Koch
Executive Vice President, Koch Industries, Inc.
Response to Bob Levy's March 12th Statement Regarding the Cato Institute
March 22, 2012**

I am honored to be affiliated with Cato and, along with my brother Charles, to have been instrumental in helping build an organization we believe can help advance a free society. I have served on the board of Cato since 1987, have been a shareholder since 1991, and currently serve on the board's executive committee. I have been a major contributor since 1982.

On March 8, 2012, Charles issued a statement about why we felt compelled to file a declaratory relief action asking the court to resolve a dispute regarding Cato's underlying shareholders' agreement. At the time, I saw no reason to add to Charles' statement because he had clearly articulated what we were doing and why – fighting to preserve Cato's mission, integrity and long-term effectiveness.

I had hoped that the furor surrounding all this would die down; however, it appears that Bob Levy and Ed Crane will not let that happen. Bob's recent response to Charles' statement is so inaccurate and distorted I cannot let it go unanswered. I am disappointed that Bob would resort to tactics such as making unfounded personal attacks on fellow board members, unjustly challenging our intentions, and helping organize a public smear campaign.

Given my decades of support for Cato and deep interest in ensuring its future success, I want to correct the misinformation Ed's supporters have disseminated. I am confident that when all the facts are known, those who are objective and open-minded will understand the reasons for our action.

Cato's Corporate Structure

For most of its existence, Cato has been controlled (as Bob's talking points describe it) in whole or large part, by the Kochs. In fact, between 1991 and 2008, Cato had five shareholders – Charles; Ed; Bill Niskanen; a long-time Koch Industries employee (then still employed by Koch); and me. During those 17 years, Koch-affiliated individuals had the ability to elect the majority of the board and the ability to acquire the stock of Ed and Bill, but we did not, and there was never any outcry over a “negative impact” during that time.

It is not accurate for Bob to now assert that the “survival” of Cato hinges on whether we have the ability to elect at least 50 percent of the board. Cato has operated under the model of a stock corporation for 34 years, without any controversy and consistent with Kansas law. Under this model it has become a respected libertarian think tank – regardless of who controlled a majority of its shares.

Cato Management's PR Strategy – Rule or Ruin

If Bob's and Ed's primary objective is to protect Cato's reputation and independence rather than dominate the organization, why are they pursuing such a perverse strategy? This destructive path – which they chose long before we filed our lawsuit – can only harm Cato.

Before we filed our lawsuit, Ed explained to a donor that they believed if Cato's management forced this issue at this time, given the many attacks Charles and I already are facing from opponents of a free society, we would back down. Subsequently, others were told that if we did not back down, Ed would form a new organization, which presumably would leave Cato in ruins. When our efforts to maintain the status quo were rejected and Ed forced a shareholders' meeting to vote on new directors, he knew the damage this dispute would cause. Ed appears to be willing to inflict that damage, given his scorched-earth public relations campaign.

Our suggestion for third-party mediation was immediately rejected as a delaying tactic. This is completely false, but even if it were true, wouldn't a delay of a few weeks or a month have been worthwhile to avoid such a destructive public dispute?

It's difficult to reconcile Bob's and Ed's actions with the facts, or the current and future viability of Cato and its mission to advance a free society. Instead, Bob's irresponsible and inaccurate comments seem designed to elicit support from entities that have been attacking Koch Industries, Charles, and me. This has led to third parties such as Common Cause, a partisan activist group that has launched dishonest and violent attacks against us, to call for investigations into the tax-exempt status of Cato. It also has caused members of the far left, such as Center for American Progress, to side with Bob and Ed as yet another way to attack Charles and me. These attacks are by people and organizations that oppose the principles of a free society and only want to harm Cato and those who support it.

Sadly, we have seen this tactic by Cato's management before. During the past decade, Charles and I gave more money to the Cato Institute – more than \$13 million – than we had given in any previous decade. Notwithstanding all the wonderful things said about us when soliciting that support, in 2010, Ed became a source for Jane Mayer of *The New Yorker*, providing negative background on an article that was highly critical of Charles and me. This one-sided and politically motivated piece was driven by Obama supporters at the Center for American Progress as an attempt to prevent us from effectively opposing the Administration's anti-libertarian agenda.

Bob also argues that because Charles and I are active in the political arena, our visible involvement with Cato jeopardizes its credibility. However, that visibility was exacerbated by Ed himself when he contributed to *The New Yorker* article. (He is the individual quoted as the "top Cato official.") When confronted about this, Ed initially claimed he only spoke briefly and favorably about us. He later acknowledged that he had made the statement as quoted, but it was only for background.

Subsequently, he claimed that he was misquoted. As Ed has shown, he will partner with anyone – including those that oppose Cato and what it stands for – to further his personal agenda at the expense of others working to advance a free society.

Ed recently e-mailed Cato’s donors, telling them that he “can understand why you might not want to contribute to our capital campaign.” How can a CEO make such a statement to an organization’s donors given his underlying fiduciary duties as an officer?

Simply put, Ed wanted to fight this issue at this time. We did not. When we sought to enter into discussions to meet them more than halfway, they refused. When we asked to maintain the status quo to avoid the inevitable harm caused by a public dispute, they refused. The current situation was brought about primarily by Ed and his supporters’ decision to force the issue by engaging in tactics so typical of Washington.

We view Ed’s strategy as “Rule or Ruin” – he will either be allowed to rule Cato in the way he wants for as long as he wants, or he will try to ruin it. Such actions will neither benefit Cato nor the broader cause of a free society.

Our Vision for the Future of Cato

As Charles pointed out in his statement, our vision is for Cato to become increasingly effective at advancing liberty while being true to certain core principles. We would work to achieve this vision by creating a structure and electing board members who would act independently from any shareholder, officer, individual, or entity.

Bob states that our prior proposals would create an “unsustainable 50/50 scheme.” This is not true. His proposed alternative is to establish a new board, largely subservient to Ed, thereby concentrating

control under Cato's current leadership. It is intellectually dishonest and inconsistent to argue, on the one hand, that control should not be concentrated in two owners of Cato, while arguing, on the other hand, that it should be concentrated in the CEO.

A major problem with Cato as it now exists is that it is not nearly as effective as it could be. This is, in large part, due to the behavior and management practices of its CEO – behavior that would have resulted in his termination from most corporations, let alone one that is supposed to exemplify the values of a free society, including integrity, value creation, creative destruction, humility, intellectual honesty, and treating others with dignity and respect. The fact that the current Cato board has allowed this behavior convinces us that a change is needed if Cato is to be more effective. Some directors have even suggested that Cato “belongs” to Ed. Having a board in thrall of the CEO has been the downfall of many nonprofits.

Just as we provided Cato's management with concrete proposals in the past, we remain willing to discuss reasonable alternatives. If we could implement a plan that met our objectives of Cato being a non-partisan, independent institute whose practices, as well as advocacy, were consistent with libertarian principles, we would support different corporate structures. Under reasonable conditions, we would agree to binding mediation. Our goal in filing the lawsuit is not to seek control of Cato, or to ensure that the current shareholders' agreement remains in perpetuity. Our goal is to protect Cato from proposed structures that seek to consolidate control in current management and thereby diminish its effectiveness.

The Questioning of Our Motives is Based on False Assumptions

Bob's questioning of our motives is based on false assumptions. In two key areas, he has overstepped decorum and made statements that are not accurate.

The first is Bob's public criticism of current board members, specifically Kevin Gentry and Nancy Pfotenhauer. His complaint is that both of these individuals have been involved in political activities. Yet he fails to mention that virtually every current member of Cato's board has been involved in political activities, including some more than either Kevin or Nancy. Indeed, if lack of political involvement were the litmus test for fitness to serve on the board, Cato would have an empty board room. The current board includes individuals who have contributed hundreds of thousands of dollars to political candidates, mostly Republicans, as well as board members who have been involved in political campaigns, political organizations, and political advocacy.

It is worth noting that Kevin and Nancy were unanimously elected to the board in 2010, are uniquely qualified, and were nominated with particular purposes in mind. Kevin has been involved with several libertarian organizations, including the Mercatus Center and the Institute for Humane Studies, for more than 20 years, and his expertise in fundraising has been utilized repeatedly by Cato, its directors, and its donors. In fact, Ed offered Kevin a job at Cato in 2003 because of his fundraising skills. Kevin was a desirable potential employee in 2003 and a unanimously elected director in 2010. Kevin's generous agreement to help Cato for a time has been repaid by insults in the board meetings by Ed. That the board would tolerate this brutish behavior is yet another reason for the steps we have taken.

Nancy, a student of Walter Williams, is a recognized communication expert and a frequent contributor on various cable news programs. In addition to working on political campaigns, Nancy has worked for corporations, nonprofits and think tanks. She has spent the majority of her career outside of political organizations, where she has effectively advanced policies consistent with a free society. Nancy and her communication expertise were well known and valued by the board when she was unanimously elected as a board member in 2010. Like Kevin, Nancy is now being treated in a disrespectful manner that should not be tolerated.

Other Koch-nominated board members include Charles and me, whose 50-year track record of supporting libertarian causes is well-known. Our commitment to advancing freedom also has been disparaged during the course of this dispute. How one can claim our efforts to promote a free society are inconsistent with Cato's mission is a mystery to us. In addition, we elected Preston Marshall, Ted Olson and Andrew Napolitano, three respected and independent individuals who, like us, are dedicated to a free society. Ed and Bob have criticized these board members because many of them have ties to us. Ironically, this could be said of most libertarians, given our decades-long track record of supporting individuals and institutions committed to freedom.

The second key area where Bob has been misleading is his media statements regarding prior conversations with me concerning our vision for Cato. Last November I told Bob about my frustrations regarding the current direction of Cato. I told him that Ed's treatment of current board members was inappropriate and unacceptable – that any CEO acting that way should be compelled to stop or be fired. When Bob responded that the board cannot control Ed, I stated that he should be replaced as soon as possible – preferably within six to eight weeks. I further stated that I would withhold my contributions until I was convinced that Cato would honor its commitments and begin to treat others, including board members, with dignity and respect.

I also told Bob that Cato could become much more effective in translating esoteric concepts into concrete deliverables to move the public policy debate at this critical juncture in our nation's history. I said Cato should be supportive of other organizations that are advocating public policies consistent with a free society. As an example, I mentioned a group with which I am involved – Americans for Prosperity. I believe AFP has done a good job of turning concepts into concrete deliverables, but it is just one example of such an organization. I never asserted that Cato should be directed by, or at the whim of, any other organization, or that they should aspire to advocate the way AFP does.

Neither Charles nor I ever said we wanted Cato to be partisan or affiliated with any political party. This is a complete misrepresentation. In explaining how certain organizations are more effective at actually affecting policy, I did state that the Republican Party, however flawed, represented the best chance of stopping the current rush to socialism. This in no way implied that Cato should be partisan or part of an effort to elect Republicans. My comments were taken completely out of context. Charles, too, has stressed in his conversations with Bob that he would not want Cato to align with any political party, even going so far as to offer a resolution in 1980 that Cato not be affiliated with any political party.

Describing us and certain board members as partisan Republicans is very misleading. In fact, we are continually criticized by Republicans for only supporting free-market candidates. Ironically, just within the past few weeks, Ed has asked an outstanding individual, who is a self-admitted partisan Republican, to join the board. This person, who actively partners with us on many initiatives, has often disagreed with us on projects because we would not offer blanket support to Republican candidates or the Republican Party.

As a shareholder, director, member of the executive committee and a significant donor to Cato, I feel passionately about Cato and I do not intend to be silent if I believe Cato can and should change to better accomplish its mission. Indeed, if I remained silent, I would not be fulfilling my fiduciary duties to Cato.

Whatever my criticisms, I want to stress that I have never said Cato should work exclusively with Koch-allied groups. Bob knows this is true. Indeed, when Rich Fink and Charles also spoke with Bob, they both made it very clear that we are not proposing that Cato cooperate with only one group, or only Koch-affiliated groups or groups affiliated with one political party. The point we collectively and clearly made to Bob is that Cato should be reaching out to many potential allies in order to most effectively advance a free society. We all stressed that we were committed to Cato being independent and becoming the most effective libertarian organization. Bob has chosen to take certain statements out of

context that fit his story line and ignore all the rest, something that scientific literature refers to as “confirmation bias.”

Charles and I have consistently and repeatedly stated that we are committed to Cato’s mission as a principled and non-partisan organization that can advance the ideas that enable all people to prosper by promoting individual liberty, limited government, free markets, and peace. If our word and our 37-year track record of support of this non-partisan organization are not sufficient to convince Bob of our intent, we do not know what will.

What Now?

Cato needs to not only talk about the principles of a free society, it must practice them. Cato must have sound management and a board independent of management. A key aspect of sound management is incorporating a system to ensure that all programs are effective and continuously improved. If and when such an independent and effective board is in place, we are quite willing to work to convert Cato to a board-controlled structure.

Our hope is that the commitment to advancing a free society will become Cato’s overriding agenda and that its current issues can be resolved. We will not sit idly by while management takes Cato down a path that will ultimately lead to its failure.

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