

# NATIONAL REVIEW

## The Supreme Court Should Take Up *NR v. Mann*, and Vindicate Free Speech

The Editors

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In 2012, Barack Obama was still president, indeed had four years left in his presidency. “Gangnam Style” was a world-beating music video. *Game of Thrones* had just gotten started. And, oh yeah, the climate scientist Michael Mann sued National Review over a blog post.

Seven years later, this case has gone pretty much nowhere, thanks to a dilatory D.C. Court of Appeals.

Now, National Review has asked the Supreme Court of the United States to intervene in the case of *Mann v. National Review, Inc.*, to at long last reach a resolution that vindicates free speech.

At stake in this fight is nothing less than the integrity of the First Amendment — and, by extension, the right of all Americans to engage in robust political debate without being dragged into court by the frivolous and the hypersensitive to be bled dry of their time, effort, and money. That, after seven years, National Review has not yet been freed from this frivolous claim is bad enough. But that inconvenience, real as it is, pales in comparison to the damage that would be done to America’s broader debate were the indifference of the D.C. Court of Appeals to become a chilling national precedent.

A quick refresher is in order: Michael Mann sued National Review for libel over a 270-word blog post that was critical of his now-infamous “hockey stick” graph and its role within the global-warming debate. Naturally, National Review resolved to fight the suit, which represents one of the worst attempts to bully a press organization in recent memory. As our petition for certiorari notes, Mann’s lawsuit presumes that a “subjective, value-laden critique on a matter of public concern can be construed as a provably false fact.” Worse still, it presumes that such critiques can — and should — be litigated in the courts, rather than in the public square. Should Mann prevail, our petition concludes, “the result would be to insert courts and juries into every hot-button political and scientific dispute, to allow politicians to sue their critics at will, and ultimately to chill and deter the robust debate that is the lifeblood of our republic.”

We do not intend to let this happen. And neither, it should be noted, do any of the many organizations from across the political spectrum that have, at various stages in the process, filed briefs in our behalf. There is not much that brings together National Review, the *Washington Post*, Time Inc., the ACLU, the Cato Institute, and the Electronic Frontier Foundation, but a strong belief in the importance of the freedom of speech does. Michael Mann’s shamefully

crimped view of how debate should be conducted in this country is not one that any jurisdiction would want to be written into law. As our petition says, Mann is seeking to create a world in which “libel lawyers will be in hot demand, but public debate will dry up.” He must not be permitted to do so.

If ever there were a case ripe for oversight from the highest court in the land, this is it. It relates to one of our most important constitutional provisions. It has been deferred for years, to the point of having been evaded. It involves a conflict of authority among the lower courts. It affects the nation’s capital, where hotly contested issues often end up.

Everyone knows what they say about justice delayed. In this case, the Supreme Court can bring a long-overdue end to this travesty, and more importantly, make an important statement about the free-speech rights of journalistic organizations on the right, the left, and in between.