



DC Court of Appeals' global warming decision threatens First Amendment

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As Americans were preparing to trade Christmas presents last week, the DC Court of Appeals was moving to take a gift away: Americans' right to free speech.

The court ruled that Penn State climatologist Michael Mann's defamation suit against National Review and the Competitive Enterprise Institute can go to trial. That should send shivers down the spines of anyone who cares about open debate and challenges to scientific findings.

Mann's suit claims bloggers Mark Steyn, on NR's site, and Rand Simberg, on CEI's, defamed him when they slammed his global warming research, particularly his famous hockey stick graph — an illustration of how temperatures have recently surged.

Simberg accuses Mann of having "molested and tortured" the data, much as disgraced Penn State coach Jerry Sandusky molested kids. Steyn quotes Simberg, calls the hockey stick "fraudulent" and likens Mann's methodology to a "circus."

Harsh? Over the top? Maybe. But at bottom, these are statements of opinion — not fact. And, under the First Amendment, Americans can express their opinions, no matter how cutting they may be.

And, after all, who's to say the authors are wrong?

In the court's opinion, Senior Judge Vanessa Ruiz writes that Mann "supplied sufficient evidence" for a jury to find the bloggers' statements "false." But that's based on the opinions of "experts," including Penn State. What makes her think they got it right — or, more important, that they can't be challenged?

As law professor Jonathan Adler noted, the court "placed tremendous weight on the fact that Penn State and other institutions investigated Mann and did not find evidence of academic

misconduct.” But, he added, “it is the alleged inadequacy of Penn State’s investigation that was the focus of the very posts at issue.”

Besides, “challenges to scientific conclusions and interpretations of scientific studies are clearly protected by the First Amendment” — even if they’re wrong.

As the editors at National Review wrote, “there’s a reason that a broad coalition of groups including the ACLU, the Washington Post, the Cato Institute, and the Reporters Committee for Freedom of the Press filed briefs in support of NR in the case.”

Those groups feared that letting the case go forward would prompt “a profound chill on expressions of opinion about important scientific and public policy issues.” Think of the harm this would do to scientific research and political debate.

The First Amendment, NR notes, is designed specifically to safeguard the right “to express caustic criticism of scientific theories that purport to resolve hot-button political controversies on matters as sweepingly consequential as the extent and cause of global warming.”

By opening the door to curbs on that right, the court does the nation a huge disservice.