

Newsweek

Should Climate Change Deniers Be Prosecuted?

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In June, I took note of Senator Sheldon Whitehouse's (D-R.I.) op-ed "urg[ing] the U.S. Department of Justice to consider filing a racketeering suit against the oil and coal industries for having promoted wrongful thinking on climate change, with the activities of 'conservative policy' groups an apparent target of the investigation as well."

I pointed out that this was a significant step toward criminalizing policy differences and using litigation and government enforcement to punish opponents in public debate, and meshed with an existing fishing-expedition investigation of climate-skeptic scholarship by Whitehouse and other Democrats on Capitol Hill.

Others had already gone farther than the senator himself, calling for making "climate denial" a "crime against humanity," holding public trials of fossil fuel executives for having resisted the truth and so forth. (Gawker: "arrest climate change deniers.")

And I noted a recurring argument—"we did it to the tobacco companies, so there's no reason we can't do it here too"—that tended to confirm my fears that the federal government set a dangerous precedent back then when it "took the stance that pro-tobacco advocacy could amount to a legal offense."

Now there are further signs that a concerted campaign is under way. "Letter to President Obama: Investigate Deniers Under RICO" is the headline over a letter from 20 scientists, most at respected institutions, endorsing the Whitehouse idea and calling for the federal government to launch a probe under the racketeering (RICO) law. The letter was soon being widely promoted around the Web, even at BoingBoing, often regarded as a pro-free-speech outlet.

It is not clear that all the scientists who signed the letter have thought carefully about the tension between what they are asking and the continuing freedom to pursue lines of inquiry in public debate that the government may find unwelcome or unreasonable. "I have no idea how it affects the First Amendment," says one Vermont scientist who backs the probe, quoted by Bruce Parker of Vermont Watchdog.

In a companion piece, Parker interviewed me about the constitutional implications of this extremely bad idea. (I should note that when I discuss RICO in the interview transcript, I'm referring to the civil-litigation side of the law, so-called civil RICO, which seems to be the part of the law the advocates hope to use.)

It is remarkable how many advocates of this scheme seem to imagine that the First Amendment protects only truthful speech and thus (they think) has no application here because climate skepticism is false.

That's not the way it works. As Cato and many others (compare ACLU of Ohio) argued at various stages in the case of *Susan B. Anthony List v. Driehaus*, which reached the Supreme Court on a different issue last year, controversial speech need not be true to be protected. In practice an "only truth has rights" approach chills advocacy generally and gives the state (or sometimes private litigants and complainants) a dangerous power to stifle advocacy in debates that it considers settled.

It is certainly strange to see many supporters of the Whitehouse approach suggest that the speech they dislike is actionable because they find in it half-truths, selectively marshaled data, scientific studies that spring from agendas, arguments whose ultimate sincerity is open to question, evasion of telling points made by the other side and so forth. Those are the common currency of everyday debate in Washington (and not just in Washington).

Nothing could be more common than to find both sides in an argument using these argumentative techniques. Hawks and doves do it; so do protectionists and free traders, and labor interests and business interests. The same techniques are also accepted as standard currency within the adversary process itself, in which the law takes such pride, which makes it particularly absurd to propose defining it as unlawful racketeering to (quoting one paraphrase) "use dubious information to advance a cause."

The interview, again, is [here](#).

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