



# Court: Climate scientist can sue conservative writers over alleged defamation

BY TIMOTHY CAMA - 12/22/16 10:56 AM EST

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An appeals court ruled on Thursday that climate change scientist Michael Mann can sue two conservative writers over allegations that they defamed him.

The case centers on posts written by Rand Simberg in a Competitive Enterprise Institute blog and Mark Steyn on National Review. Among other comments, Simberg called Mann the “Jerry Sandusky of climate science.”

The District of Columbia Court of Appeals ruled that a “reasonable jury” could find that the pieces by Simberg and Steyn meet the standard necessary to prove that they illegally defamed Mann.

“Tarnishing the personal integrity and reputation of a scientist important to one side may be a tactic to gain advantage in a no-holds-barred debate over global warming,” Judge Vanessa Ruiz wrote for a three-judge panel.

“That the challenged statements were made as part of such debate provides important context and requires careful parsing in light of constitutional standards. But if the statements assert or imply false facts that defame the individual, they do not find shelter under the First Amendment simply because they are embedded in a larger policy debate.”

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Both writers in 2012 compared Mann, a professor at Penn State who published research on the changes to the climate going back centuries, to Sandusky, a former Penn State football coach who sexually abused numerous minors.

Simberg focused on emails leaked years earlier that climate skeptics said showed fraud on Mann's part in his studies that produced a "hockey stick" graph that showed sharp recent temperature increases.

Multiple investigations after the email leaks said Mann did not commit fraud or misconduct, and his research was backed up by peer reviews.

"Mann could be said to be the Jerry Sandusky of climate science, except for instead of molesting children, he has molested and tortured data in service of politicized science that could have dire consequences for the nation and planet," Simberg wrote. The Competitive Enterprise Institute eventually removed that part, calling it "inappropriate."

Steyn later wrote that Simberg may have gone too far with the comparison. But Steyn said Simberg "has a point," calling Mann's hockey stick graph "fraudulent," and labeling him "the very ringmaster of the tree-ring circus," referring to the tree-ring observations Mann used.

Simberg and Steyn argued that their comments were protected as free speech under the First Amendment, and unsuccessfully asked the court to dismiss Mann's claims.

The appeals court said Mann could not proceed with a claim against Rich Lowry, a National Review editor who defended the pieces by Simberg and Steyn.

Mann said in a statement that he is "particularly pleased that the court, after performing an independent review of the evidence, found that the allegations against me have been 'definitively discredited.' "

Steyn wrote Thursday that he disagreed with the court and would continue to fight the case, including an effort to compel Mann to produce various documents through discovery.

"You won't be surprised to hear that I disagree with their ladyships. The 'sufficient evidence' Dr. Mann has supplied are a series of mendacious claims to have been 'investigated' and 'exonerated' by multiple Anglo-American bodies that did, in fact, do neither," Steyn wrote on his blog.

Sam Kazman, general counsel for the Competitive Enterprise Institute, downplayed the decision, saying that the case still needs to go to trial.

"The Competitive Enterprise Institute is a staunch defender of free speech and open, public debate, and we are confident we'll prevail on the merits as this case goes back to Court," he said.

"As a public figure with his own history of harshly attacking those who disagree with him, Michael Mann must now show that CEI's commentary met some very stringent standards of malice," Kazman continued, arguing that Mann will not succeed in reaching that standard.

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