

also maintains an active blog, Climate Etc., which provides a forum for climate researchers, academics, technical experts from other fields, citizen scientists, and the interested public to engage in a discussion on topics related to climate science and the science-policy interface. Dr. Curry has received numerous federal grants and contracts over the past ten years to study climate science. Her full curriculum vitae is available online.³

As it relates to this case, Dr. Curry has been critical of Appellee Michael Mann's methodological approach to climate science and the conclusions he has reached. Dr. Curry has experienced personal and professional attacks from Dr. Mann for her criticisms of his work. Dr. Mann has a pattern of attacking those who disagree with him and this case is another in a long line of tactics to silence debate over the science of global warming. Dr. Curry is a stalwart supporter of free speech and believes it plays a crucial role in the advancement of scientific debate and the advancement of knowledge, particularly in the controversial and politically charged field of climate science. As such, she has an acute interest in the outcome of this case because should Dr. Mann prevail, he would be emboldened to continue his pattern of attacks against Dr. Curry and others like her who seek to maintain vigorous debate over climate science.

II. Movant's *Amicus Curiae* Brief will assist this Court in assessing Appellants' Petitions for Rehearing *En Banc*.

Scientific progress and democratic governance depend upon vigorous and open debate. The use of libel law in the Courts to intimidate into silence conflicting scientific views injures both a free society and scientific advancement. Especially in a jurisdiction like the District of Columbia — where so many of the Nation's public policy debates occur — speakers and writers

Sciences (2003); Judith A. Curry and P.J. Webster, *Thermodynamics of Atmospheres and Oceans* (1999).

³ See Judith A. Curry, Curriculum Vitae, <http://b.gatech.edu/2k4d6Pf> (last visited Jan. 24, 2017).

should be confident in their ability to exercise their free speech rights over politically contentious issues, such as climate science.

Dr. Mann has transgressed scientific norms and offended First Amendment principles by bringing a defamation claim against Appellants for their pointed criticism of his scientific methodology. Dr. Mann's suit is ill-founded because of his behavior toward his critics, particularly *amicus curiae* Dr. Curry, which demonstrates both that the debate over climate science is often contentious and that Dr. Mann ought not to be indulged if scientific debate is not to be curtailed.

Additionally, in its recent transition from the *Dyas/Frye* test to the *Daubert* test for the admissibility of scientific evidence, this Court has embraced the view that generally accepted scientific viewpoints are not always more reliable than the minority opinion. In order for minority views to flourish and develop into arguments that will aid finders of fact, they must be protected from efforts that seek to silence and force them out of the marketplace of ideas.

The District of Columbia has adopted an Anti-SLAPP statute specifically to protect these interests. The panel's decision refusing to dismiss Dr. Mann's suit endangers scientific norms, First Amendment principles, and minority viewpoints. Dr. Judith A. Curry respectfully requests this Court grant her leave to file the accompanying *amicus curiae* brief in support of Appellants' petitions for rehearing *en banc*.

//

//

January 25, 2017

Respectfully Submitted,

/s/ John J. Vecchione

John J. Vecchione (D.C. Bar. #431764)

Counsel of Record

R. James Valvo, III

CAUSE OF ACTION INSTITUTE

1875 Eye Street, N.W., Ste. 800

Washington, D.C. 20006

Telephone: (202) 499-4232

Facsimile: (202) 330-5824

john.vecchione@causeofaction.org

Counsel for Movant Dr. Judith A. Curry

CERTIFICATE OF SERVICE

I hereby certify that, on January 25, 2017, I caused a copy of the foregoing motion to be served by the United States Postal Service, postage prepaid, upon:

John B. Williams
Williams Lopatto PLLC
1776 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 296-1665
jbwiliams@williamslopatto.com

Catherine Rosato Reilly
Cozen O'Connor
1627 I Street, N.W., Suite 1100
Washington, D.C. 20006
(202) 912-4800
creilly@cozen.com

Peter J. Fontaine
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103
(856) 910-5043
pfontaine@cozen.com
*Counsel for Appellee
Michael E. Mann*

Todd S. Kim
Solicitor General for DC
441 4th Street, NW
Suite 600 South
Washington, DC 20001
todd.kim@dc.gov
*Counsel for amicus
District of Columbia*

Arthur B. Spitzer
American Civil Liberties Union
of the National Capital Area
1400 20th St., NW #119
*Counsel for amicus
American Civil Liberties Union
of the National Capital Area*

Michael A. Carvin
Anthony J. Dick
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
macarvin@jonesday.com
ajdick@jonesday.com
*Counsel for Appellant
National Review, Inc.*

David B. Rivkin, Jr.
Mark I. Bailen
Andrew M. Grossman
BakerHostetler
Washington Square,
Suite 1100
1050 Connecticut Ave, NW
Washington, D.C. 20036
(202) 861-1770
drivkin@bakerlaw.com
mbailen@bakerlaw.com
agrossman@bakerlaw.com
*Counsel for Appellants
Competitive Enterprise
Institute and Rand Simberg*

Gregg P. Leslie
Reporters Committee for
Freedom of the Press
1156 15th Street NW
Suite 1250
Washington DC 20005
*Counsel for amici Reporters
Comm. for Freedom of the
Press and Committee for
Freedom of the Press*

Phillip C. Chang
McGuire Woods LLP
2001 K Street, NW Suite 400
Washington DC 20006
pchang@mcguirewoods.com
*Counsel for amici Free
Beacon, LLC, Newsmax
Media, Inc., The Daily Caller
LLC, PJ, The Electronic
Frontier Foundation, and
The Foundation for
Cultural Review*

Ilya Shapiro
Cato Institute
1000 Massachusetts Ave NW
Washington, DC 20001
ishapiro@cato.org
*Counsel for amici Cato
Institute, Reason Foundation,
Individual Rights
Foundation, and Goldwater
Institute*

Seth D. Berlin
Mara J. Grassman
Shaina Jones Ward
Levine Sullivan Koch &
Schulz, LLP
1899 L Street, NW, Ste. 200
Washington, DC 20036
*Counsel for amicus Reporters
Comm. for Freedom of Press*

David A. Cortman
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
*Counsel for amicus-App.
Alliance Defending Freedom*

/s/ John J. Vecchione
John J. Vecchione