

MICHAEL E. MANN, PH.D.,
Plaintiff,

v.

NATIONAL REVIEW, INC., *et al.*,
Defendants.

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Pursuant to Rules 12 and 56 of the Rules of the D.C. Superior Court, plaintiff Michael E. Mann, Ph.D. respectfully files this motion seeking partial summary judgment on the issue of truth, and the entry of an order finding that the defamatory statements of defendants Competitive Enterprise Institute (CEI) and Rand Simberg are false. Dr. Mann further seeks an order striking their affirmative defense that claims that their statements are “not substantially false.” This relief is appropriate because the facts on these issues are not genuinely disputed by admissible evidence.

I. INTRODUCTION

In their article published July 15, 2012, CEI and Mr. Simberg accused Dr. Mann of engaging in “hockey stick deceptions.” *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1264 (D.C. 2016), as amended December 13, 2018. They stated that he had engaged in “data manipulation to keep the blade on his famous hockey stick graph.” *Id.* at 1224. They stated that he was “the posterboy of the corrupt and disgraced climate science echo chamber.” *Id.* at 1263. They alleged that his employer, Pennsylvania State University, had hidden his “academic and scientific misconduct.” *Id.* at 1264. And they compared him to the convicted pedophile Jerry Sandusky, claiming that instead of molesting children, he “molested and tortured data in the service of politicized science.” *Id.*

The Court of Appeals has reviewed these “noxious” allegations. *Id.* at 1243. It held that these statements accused Dr. Mann “of engaging in specific acts of academic and scientific misconduct in the manipulation of data.” *Id.* It held that these accusations “implied that Dr. Mann’s manipulation of data was seriously deviant for a scientist.” *Id.* It held that these accusations conveyed the defamatory message that Dr. Mann “had engaged in ‘data manipulation’ that was fraudulent...,” *id.* at 1249, n. 46, and that he engaged in wrongdoing by

“molesting” and “torturing” data. *Id.* at 1248. And it held that their use of the term “corrupt” in conjunction with their accusations of deception, misconduct, and data manipulation, along with their demand for a further investigation, implied that there were “sinister hidden misdeeds” he had committed. *Id.* at 1244.

The court found further that these allegations of deception and misconduct “have been proved false by four separate investigations,” *id.* at 1245, noting that the defendants had not even argued that their allegations were true, *id.* at 1244, and further noting that defendants “do not counter any of these reports with other investigations...that reach a contrary conclusion about Dr. Mann’s integrity.” *Id.* at 1253. On the issue of the defendants’ actual malice, the court held that Dr. Mann had made a sufficient showing that these statements were made with actual malice: knowing falsity or with reckless disregard of the truth. *Id.* at 1262.

Discovery is now closed. It is clear that there is no genuine dispute on the issue of falsity. The falsity of defendants’ statements is confirmed not only by the investigations noted by the Court of Appeals, but by the numerous scientific studies and reviews addressing Dr. Mann’s research, as well as the testimony of Dr. Mann’s expert witnesses.¹ And notably, Dr. Mann’s proof of falsity is further confirmed by the opinions of *defendants’ own witnesses*, who have stated: (1) that the hockey stick is **not deceptive** (*See* Statement of Undisputed Material Facts

¹ These expert witnesses, John P. Holdren, Raymond S. Bradley, John R. Mashey, Gerald North, Naomi Oreskes, Peter C. Frumhoff, and John P. Abraham, have submitted expert reports in connection with this case. Dr. John Holdren of Harvard University was formerly President Obama’s top Science Advisor. Dr. Raymond Bradley is a co-author of MBH98 and MBH99. Dr. John Mashey is a leading expert on disinformation in the climate change field who has written extensively about climate change issues. Dr. Gerald North of Texas A&M University chaired the NRC panel which reviewed MBH98 and MBH99. Dr. Naomi Oreskes of Harvard University published an analysis of the climate change controversy in *Merchants of Doubt*. Dr. Peter Frumhoff is the Director of Science and Policy and Chief Climate Scientist at the Union of Concerned Scientists. Dr. John Abraham, of the University of St. Thomas, is an expert on thermodynamics and a leading climate change researcher who reviewed each of the eight academic and governmental investigations into the climategate emails.

(“SOMF”) ¶ 75); (2) that Dr. Mann did *not* engage in fraud or misconduct, “**not even close**” (SOMF ¶ 77); and (3) that Dr. Mann “*published diligently*” (SOMF ¶ 82).

In sharp contrast to Dr. Mann’s proof of falsity, defendants have failed to produce any admissible evidence that their allegations are true. Not one defense witness has testified that the defendants’ allegations are true. They also fail to counter any of the investigative reports with an investigation of their own as the Court of Appeals indicated would be necessary on their part. *CEI*, 150 A.3d at 1253. In their affirmative defenses, CEI and Mr. Simberg do not even assert that their statements were true. All they say on this issue is that their statements were not “substantially false.” SOMF ¶ 151.

Pursuant to Rule 56, a party may move for summary judgment on a “part of each claim or defense.” Summary judgment should be granted “if there is no genuine dispute as to any material fact.” Pursuant to Rule 12, the court may strike any “insufficient defense” from a pleading. Given that there is no genuine dispute that the CEI and Simberg statements about Dr. Mann are false, he is entitled to partial summary judgment on the issue of falsity, and their “no substantial falsity” defense should be stricken.

II. STATEMENT OF FACTS

A. DR. MANN AND THE HOCKEY STICK RESEARCH

Michael E. Mann is a climatologist and geophysicist. He is a Distinguished Professor of Meteorology at the Pennsylvania State University and the director of its Earth System Science Center. He holds a B.A. in applied mathematics and physics from the University of California and a Ph.D. in physics from Yale University. He has published over 200 peer-reviewed articles in his technical field. He has received numerous awards and honors. In 2007, the Intergovernmental Panel on Climate Change (IPCC) presented him, along with all other

scientists who had contributed substantially to the preparation of IPCC reports, with a certificate noting their contributions to the award of the Nobel Peace Prize to IPCC and Al Gore. Dr. Mann is a Fellow of the American Meteorological Society and a member of the National Academy of Sciences.

In 1998 and 1999 Dr. Mann, along with Raymond S. Bradley and Malcolm K. Hughes, published two papers demonstrating that global warming was occurring at an alarming rate. Their papers disclosed substantial data and analysis that disproved the arguments of climate change skeptics and deniers that the 20th century temperature rises were due to the cyclical nature of the earth's temperatures. In particular, they disproved that temperatures during the Medieval era were higher than today. Thus, they established that the rise in temperatures over the latter half of the 20th Century were outside the range of natural variability and evidenced anthropogenic global warming.

These papers are known as MBH98 and MBH99. MBH98 was published in *Nature*; MBH99 was published in *Geophysical Research Letters*. As the Court of Appeals observed, the “1998 study used a technique to reconstruct temperatures from time periods before the widespread use of thermometers...by using ‘proxy indicators’” such as tree rings, lake and ocean sediment, ice cores, and corals. *CEI*, 150 A.3d at 1221. The court further observed that these proxy data “showed that global mean annual temperatures have been rising since the early twentieth century, with a marked increase in the last fifty years. The papers concluded that this rise in temperature was ‘likely unprecedented in at least the past millennium’ and correlated with higher concentrations of carbon dioxide in the atmosphere emitted by the combustion of fossil fuels.” *Id.* at 1221-22.

“The 1999 paper included a graph depicting global temperatures in the Northern Hemisphere for a millennium, from approximately 1050 through 2000. The graphical pattern is roughly horizontal for ninety percent of the temperature axis — reflecting a slight, long-term cooling period between 1050 and 1900 — followed by a sharp increase in temperature in the twentieth century. Because of its shape resembling the long shaft and shorter diagonal blade of a hockey stick, this graph became known as the ‘hockey stick.’” *Id.* at 1222.

Given the potential for error from using very old proxy data, the authors were careful to note the uncertainties in their conclusions, as reflected in the title of MBH99: “*Northern Hemisphere Temperatures During the Past Millennium: Inferences, Uncertainties, and Limitations.*” SOMF ¶ 5 at Exhibit C. Despite these cautionary words, as the Court of Appeals stated, the hockey stick graph “became a rallying point, and a target, in the subsequent debate over the existence and cause of global warming and what, if anything, should be done about it.”² *CEI*, 150 A.3d at 1221-22. As a result, MBH98 and 99 have been subjected to rigorous scrutiny by scientists, statisticians, physicists, and mathematicians. Since these studies were released, their data, analysis, and conclusions have been reviewed—and validated and replicated—in numerous peer-reviewed publications. These follow-on studies used different proxy data and different statistical methods, and all reached the same conclusion that global warming was occurring. And notably, all of the temperature graphs displayed in these studies resembled a hockey stick. SOMF ¶ 65 at ¶¶ 9 ¶¶ 51-60.

² See also, National Research Council. 2006. *Surface Temperature Reconstructions for the Last 2,000 Years*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/11676> (NRC2006) (noting the “research received wide attention, in part because it was illustrated with a simple graphic, the so-called hockey stick curve, that many interpreted as definitive evidence of anthropogenic causes of recent climate change.”)

B. THE DEFENDANTS

There are two defamatory articles at issue in this case, and four responsible defendants. Rand Simberg and the Competitive Enterprise Institute (“CEI”) published their article entitled *The Other Scandal in Unhappy Valley* on July 13, 2012. *CEI*, 150 A.3d at 1262-64. Two days later, Mark Steyn and the National Review published their article entitled *Football and Hockey*, on July 15, 2012. *Id.* at 1264.

The Competitive Enterprise Institute describes itself as a “think-tank,” and has championed the cause of denying the scientific consensus that climate change research is valid, and that environmental regulations are therefore appropriate. CEI prides itself on its influence in this area and notes on its website that Al Gore has “lamented” that it has “tremendous effect.”^{3 4} Myron Ebell, CEI’s Director of its Center for Energy and Environment, led former President Trump’s Environmental Transition Team in 2016. He claims on his resume that he is “enemy #1 to the current climate change community” (SOMF ¶ 19), and CEI has repeated this claim on its website.⁵

Rand Simberg is a writer for CEI’s “Open Market” website. He is a fervent climate change skeptic with a particular distaste for Dr. Mann, calling him “corrupt” (*CEI*, 150 A.3d at 1263), “on the take” (SOMF ¶ 25), and a “liar” and a “charlatan[]” (SOMF ¶ 25). He has advocated that Dr. Mann should lose his job (SOMF ¶ 25) as well as his funding (SOMF ¶ 25).

³ <http://web.archive.org/web/20120729144615/http://cei.org/about-cei>

⁴ At the time of CEI’s defamatory article, it had just lost a challenge to the EPA’s greenhouse gas “endangerment finding.” EPA had investigated and rejected CEI’s claims of scientific misconduct and had concluded that, “a considerable body of scientific evidence [supports]. . . that motor-vehicle emissions contribute to the total greenhouse gas air pollution, and thus to the climate change problem, which is reasonably anticipated to endanger public health and welfare.” *See Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 115 (D.C. Cir. 2012) citing EPA, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496, 66,499 (Dec. 15, 2009).

⁵ <http://web.archive.org/web/20120729144615/http://cei.org/about-cei>

Mr. Simberg also publishes his own website, Transterrestrial Musings, where he advocates against pandemic public safety restrictions, endorsing articles that “people should not wear masks” (SOMF ¶ 26), and that “lockdowns kill people” (SOMF ¶ 26). He also promotes conspiracy theories, including “birtherism,” the allegation that former President Obama was born in Kenya (SOMF ¶ 26). In this regard, as respected journalist James Fallows wrote in the *Atlantic* in the wake of all of the investigations into Dr. Mann’s conduct: “If you hear people talking in environmental debates about “climategate” and “Mann’s misconduct,” recognize that what you’re hearing is just like ‘Obama was born in Kenya.’ These people are either passively uninformed or knowingly beyond the reach of fact.” SOMF ¶ 29. And in Mr. Simberg’s case, he believes that he can knowingly engage in false attacks against public figures such as Dr. Mann because, in his view, “all’s fair in love war and political campaigns,” and that “people are entitled to say what they want about public figures.” SOMF ¶ 27.

Until a falling out related to this litigation, Mark Steyn wrote for the National Review Online, a widely read conservative news and opinion website. Mr. Steyn was National Review’s most prized writer, its “All Star” (SOMF ¶ 30) and its “Happy Warrior” (SOMF ¶ 30). He was widely admired for his controversial and acerbic views, and paid more than anyone else at the publication, including the editor and the publisher. (SOMF ¶ 31). Mr. Steyn is currently a guest host for the Rush Limbaugh Show, and has been criticized for his homophobic and anti-Muslim views.⁶ He also writes frequent articles excoriating and insulting Dr. Mann: “Doctor Fraudpants” (SOMF ¶ 33), “a worthless piece of garbage” (SOMF ¶ 33), “an insecure litigious dweeb” (SOMF ¶ 33), “a serial liar” (SOMF ¶ 33), “a super-villain” (SOMF ¶ 33), “a sleazy

⁶ <https://www.mediamatters.org/national-review/hour-1-fill-steyn-compares-torture-memo-controversy-miss-californiagay-marriage> and <https://www.mediamatters.org/fox-friends/right-wing-media-respond-fort-hood-shooting-attacking-american-muslims>

charlatan” (SOMF ¶ 33), and “the Oscar Wilde of climate science with his fellow scientists as his rent boys.” (SOMF ¶ 33).

C. THE DEFAMATIONS

The defamations in this case arise from the defendants’ long-held views that global warming is a hoax and that Dr. Mann is the “poster boy” of “corrupt and disgraced” climate change scientists. *CEI*, 150 A.3d at 1263-64. Defendants’ attacks were fueled by the 2009 hacking of emails from the Climate Research Unit at the University of East Anglia. This episode, referred to as “climategate,” included emails written by the director of the Climate Research Unit, Phil Jones. One referred to “Mike’s Nature trick,” another used the term “hide the decline.” Defendants also disbelieved the extensive academic and governmental investigations that addressed and explained the context of these allegedly incriminating emails and that cleared the researchers, including Dr. Mann, of any suggestion of fraud or misconduct. According to the defendants, these investigations were “whitewashes” and “cover-ups.”

Defendants’ invective smoldered after the release of the “Closeout Memorandum” issued by the Inspector General (IG) of the National Science Foundation.⁷ (SOMF ¶¶ 135-139). But their fuse was lit with the July 12, 2012, Report by former FBI Director, Louis Freeh, alleging that Dr. Mann’s employer, Penn State, had been negligent in investigating misconduct by Jerry Sandusky. *See CEI*, 150 A.3d at 1221-25.

A day later, on July 13, 2012, Mr. Simberg wrote his article entitled *The Other Scandal in Unhappy Valley* and sent it for review to Marc Scribner, his editor at CEI. Mr. Scribner made a number of edits to the article and published it on CEI’s Open Market website. The article

⁷ The IG Report thoroughly investigated Dr. Mann’s conduct and found no evidence of fraud or deception—based in part on an interview with defense expert witness Judith Curry, who stated (five times) that Dr. Mann did not engage in misconduct). SOMF ¶¶ 74, 135-139.

invoked swift condemnation from a variety of organizations, including the Columbia Review of Journalism.⁸ It was also condemned by CEI readers,⁹ as well as by a number of Mr. Simberg's blogging companions, who warned him that he could be found liable for defamation—to which Mr. Simberg promptly responded, as noted above, that “all's fair in love war and political campaigns.” SOMF ¶ 27.

In prior court proceedings, the defendants attempted to justify the Simberg article on the ground that it merely expressed their “opinions” and constituted appropriate commentary on the climate change debate. These arguments were decisively rejected by Judge Combs Greene, Judge Weisberg, and, later, by a unanimous D.C. Court of Appeals, sitting en banc. In its decision, the Court of Appeals held that these statements were not protected opinion or commentary. It also rejected defendants' claims that Dr. Mann had not made a sufficient showing of actual malice in view of all of the governmental and academic investigations clearing the researchers and Dr. Mann, as well as their deep opposition to their side of the global warming debate and their animus towards Dr. Mann. In evaluating the evidence submitted, the Court of Appeals pointed to the multiple academic and governmental investigation reports,¹⁰ which concluded that the scientists' correspondence in the 1,075 CRU emails did not reveal research or scientific misconduct and noted that “appellants do not counter any of these reports with other investigations into the CRU emails that reach a contrary conclusion about Dr. Mann's integrity.” *CEI*, 150 A.3d at 1253.

⁸ http://web.archive.org/web/20120727005557/http://www.cir.org/the_observatory/michael_mann_national_review_m.php

⁹ <http://web.archive.org/web/20130208121139/http://www.openmarket.org/2012/07/13/the-other-scandal-in-unhappy-valley/#comments>

¹⁰ The Court of Appeals specifically reviewed and summarized in detail the findings of the University of East Anglia Independent Climate Change E-mails Review, Penn State University, the United Kingdom House of Commons, and the Office of the Inspector General of the U.S. National Science Foundation. *CEI*, 150 A.3d. at 1253 .

Discovery is now complete. Over 30 witnesses have been deposed and more than a million documents have been produced by Dr. Mann and his witnesses. Yet the defendants are still is unable to counter any of these reports with contrary evidence or investigations that reach a contrary conclusion about Dr. Mann's integrity. Nor do they have any expert testimony that their allegations against Dr. Mann are true.

D. DEFENDANTS' ALLEGATIONS AGAINST DR. MANN ARE FALSE: THEY HAVE HAD FULL AND OPEN DISCOVERY AND HAVE NO ADMISSIBLE EVIDENCE THAT THEIR STATEMENTS ARE TRUE

For years the defendants have vowed that, given the appropriate opportunity, they would prove “to the world” that the hockey stick was fraudulent, and that global warming was a hoax. CEI’s Myron Ebell testified in this case that because he and his organization disbelieved the honesty of many of the climate researchers, they wanted to “get [them] into court,” where the researchers would be “required to tell the truth.” SOMF ¶ 46. In 2006, Mr. Ebell met up with one of the MBH co-authors, Raymond Bradley, and told him that he looked forward to “see[ing] [him] in court.”¹¹ SOMF ¶ 47. In 2012, after the publication of the defamatory articles, Dr. Mann’s attorney sent a letter to CEI requesting an apology and a retraction. SOMF ¶ 48. Upon receiving this letter, another CEI staffer described Mr. Ebell as “happy as a cat.” SOMF ¶ 49.

National Review was also pleased when it received a similar letter from Dr. Mann’s counsel. In an article entitled “*Get Lost*,” it described the letter as “laughably threatening,” and stated that any lawsuit by Dr. Mann would provide it with “a journalistic project of great interest.” *CEI*, 150 A.3d at 1264-65. It would hire a “dedicated reporter” to “comb through the [discovery] materials and regularly post stories on Mann,” which it promised would “expose [Dr. Mann’s] methods and maneuverings to the world.” *Id.* The article concluded with its own

¹¹ Raymond S. Bradley, *Global Warming and Political Intimidation: How Politicians Cracked Down on Scientists as the Earth Heated Up* (Amherst: University of Massachusetts Press, 2011), p. 28.

threat: that should Dr. Mann proceed with a lawsuit, he risked “making an ass of himself.” *Id.* Mark Steyn chimed in as well, promising to call upon “an array of witnesses [to] testify to the fraud necessary to create the hockey stick.”¹²

In discovery, CEI has had its opportunity to examine the scientists under oath. National Review has had its opportunity to “comb through” the million pages they demanded both from Dr. Mann and from every one of Dr. Mann’s witnesses. And, Mr. Steyn has had his opportunity to bring his array of witnesses into court.

But defendants have identified no proof their accusations are true. Defendants spent virtually no time questioning Dr. Mann on his “methods and maneuverings.” They asked no questions about the allegedly suspicious “Nature trick” and “hide the decline” emails that launched many of the spurious fraud allegations. (These terms do not appear once in the transcript.) Rather, the deposition days were consumed with questions about statements that Dr. Mann made about other scientists—entirely irrelevant in this case.

1. DEFENDANTS’ EXPERT WITNESSES

As for Mr. Steyn’s “array of witnesses,”¹³ defendants identified only two: Judith Curry and Abraham Wyner. Not surprisingly, both assiduously *avoided* addressing the allegations of fraud or misconduct. Dr. Curry told defense counsel “upfront” that she would “not...get involved in adjudicating scientific misconduct” in this case. SOMF ¶ 58. Dr. Wyner testified that he was “absolutely specifically” told by defense counsel not to opine on defendants’ fraud allegations. SOMF ¶ 59.

¹² <http://web.archive.org/web/20201030103744/https://www.steynonline.com/6333/michael-e-mann-liar-cheat-falsifier-and-fraud>

¹³ <http://web.archive.org/web/20201030103744/https://www.steynonline.com/6333/michael-e-mann-liar-cheat-falsifier-and-fraud>

Rather than addressing the issue of truth or falsity, defendants' experts were retained instead to offer opinions addressing the defendants' "state of mind"—specifically, whether it was "reasonable" for the defendants to have made their defamatory statements. These opinions are directed to whether the defendants acted with actual malice: knowing falsity or reckless disregard of the truth. Specifically, Dr. Curry's opinion is that it would be "reasonable" for the defendants to have concluded that Dr. Mann engaged in fraud,¹⁴ and Dr. Wyner's opinion is that the defendants' statements "can reasonably be construed [by political commentators] as manipulative." SOMF ¶ 63.

But the law is clear that expert opinion regarding a defendant's state of mind is inadmissible. *See Charalambopoulos v. Grammer*, No. 3:14-cv-2424, 2017 WL 930819, at *12 (N.D.Tex. March 8, 2017); *Fisher v. Halliburton*, Nos. H-05-1731, H-06-1971, H-06-1168, 2009 WL 5216949, at *2 (S.D.Tex. Dec. 21, 2009); *Iacangelo v. Georgetown University*, 560 F.Supp.2d 53, 60 (D.D.C. 2008); *U.S. v. Libby*, 461 F.Supp.2d 3, 7 (D.D.C. 2006). Dr. Mann is moving in separate motions to exclude this evidence on the issue of malice.

In addition, as the motion to exclude Dr. Curry's testimony further asserts, her opinion is barred by other *Daubert* factors, which require that an expert's opinion be based on accurate facts and must be reliable—subject to peer review and accepted in the scientific community. *See*

¹⁴ In explaining her expert opinion, Dr. Curry testified:

A: Okay, if 20 people are calling it a fraud and then the 21st person comes along and calls it a fraud, one might infer that what they're saying is consistent with other statements that people have made. It's a simple statement.

Q: Well, isn't it important to know in terms of evaluating the credibility of information, which you have made no attempt to evaluate here, the credibility of the person making the statement?

MR. WILSON:· Objection to the form.

THE WITNESS:· There's two approaches that you can take. One is to do a personal investigation of all the evidence for and against, which is beyond the interests or capabilities of most journalists. An alternative approach is to parrot what other people are saying or listen to your preferred expert. I mean, there are many different rationales for how people come to a judgment about these things, their personal judgment.

(SOMF ¶ 61) (emphasis added).

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 593-94 (1993); *Motorola Inc. v. Murray*, 147 A.3d 751, 756 (D.C. 2016). The burden is on the proponent of the expert testimony to establish that it is based on accurate facts and that it is accepted in the scientific community. *Daubert*, 509 U.S. at 592 n. 10. But here, no such showing has or could be made. To the contrary, as Dr. Mann’s motion to exclude demonstrates, Dr. Curry’s opinions are factually incorrect and have been *rejected* in the scientific community.

In her report, Dr. Curry posits three reasons why it might have been “reasonable” for the defendants to have made their statements about Dr. Mann. According to Dr. Curry, Dr. Mann committed: (1) “image fraud” in connection with Dr. Mann’s participation in a report of the Intergovernmental Panel on Climate Change in 2001, two years after the publication MBH98 and MBH99; (2) “cherry picking” in connection with the selection of the proxy data for the MBH98 and MBH99 research; and (3) “data falsification” in connection with a different peer-reviewed article Dr. Mann and his colleagues published in 2008, nine years after MBH98 and MBH99 were published.

As the attached declarations of Raymond Bradley and Thomas Karl state, Dr. Curry’s factual allegations on each of these three points are incorrect. SOMF ¶ 65. Unlike Dr. Curry, Dr. Bradley and Dr. Karl have personal knowledge on these issues, having worked extensively with Dr. Mann on the publications at issue. SOMF ¶ 66. Moreover, Dr. Curry’s opinions on these points have been rejected in the scientific community. SOMF ¶ 67. Dr. Curry ignores this fact, but it is addressed in the Bradley and Karl declarations. The truth is that Dr. Curry is an “extreme” outlier in the scientific community, and even her former colleagues at Georgia Tech

agree. SOMF ¶ 68. Her performance reviews noted that the colleagues were “troubled by the vision [she] has on climate science—definitely not mainstream and quite extreme.”¹⁵ *Id.*

Finally, it must be noted that instead of establishing that the defendants’ allegations are true, the testimony of Dr. Curry and Dr. Wyner demonstrates that they are false. In her deposition, Dr. Curry confirmed that—prior to her retention in this case—she had specifically stated on her website that **Dr. Mann had not engaged in research misconduct—falsification or fabrication.** SOMF ¶ 73. And when interviewed by the National Science Foundation, Dr. Curry told the Inspector General (five times) that **Dr. Mann did not commit research misconduct.** SOMF ¶¶ 74 & 139. Dr. Wyner’s testimony also refutes defendants’ allegations. In his deposition he testified that, in his opinion, **the hockey stick was “not a deception.”** SOMF ¶ 75.

2. DEFENDANTS’ FACT WITNESSES

Defendant’s fact witnesses have also testified that Dr. Mann’s research was performed appropriately. Roger Pielke, Jr. is a professor at the University of Colorado, Boulder, and has followed the hockey stick issue closely. Dr. Pielke has written numerous articles about this controversy and stated that there was nothing in the climategate reviews that “presented any evidence of fraud.” SOMF ¶ 76. He also wrote that the *allegations against Dr. Mann did not rise to the level of “fraud or misconduct, not even close.”* SOMF ¶ 77. When CEI learned that Dr. Pielke, its own witness, had made these statements, CEI cancelled Dr. Pielke’s deposition

¹⁵ Nor does Dr. Curry present as an impartial expert witness. She blames Dr. Mann for her dismissal from Georgia Tech and has filed amicus briefs against him in the litigation before this Court. But the truth of the matter is that her wounds were self-inflicted and were due to her extreme views on climate science, views that were questioned by federal program funding managers and by others at “Tier 1 universities” who wanted to know how Georgia Tech could “tolerate [her] positions and her blogging.” *See* SOMF ¶ 69.

forty minutes before its scheduled start. The deposition eventually took place later, at the request of Dr. Mann’s counsel. SOMF ¶ 78.

Stephen McIntyre is a retired mining executive who has exhaustively reviewed and written on Dr. Mann’s research, according to him, more than any other person. He also claims that no one has more knowledge than he about Dr. Mann’s work. SOMF ¶ 79. Mr. McIntyre’s work has been frequently cited by the defendants in this case as authoritative on the subject of the hockey stick, and Mr. McIntyre and his co-author, Ross McKittrick, an economist, received CEI’s prestigious Julian Simon award for their hockey stick investigations. SOMF ¶ 80. Mr. McIntyre has never accused Dr. Mann of fraud or misconduct in any of his writings or in his interview with the National Science Foundation Inspector General. SOMF ¶ 81. To the contrary, Mr. McIntyre has publicly stated that Dr. Mann “**published diligently.**” SOMF ¶ 82. Edward Wegman is another of defendants’ fact witnesses. He is a statistician who was asked to analyze Dr. Mann’s work. He testified to Congress that Dr. Mann used incorrect mathematical models, but never testified—or even suggested—that this was in any way fraudulent or corrupt, or constituted academic, scientific, or research misconduct. SOMF ¶ 85.

E. PLAINTIFF’S PROOF OF FALSITY

In sharp contrast to defendants’ failure of proof, Dr. Mann has assembled overwhelming evidence that the defamatory statements were false. This includes: (1) the report of the National Research Council, of the National Academy of Sciences that conducted a review of Dr. Mann’s research in 2006 at the request of the United States House of Representatives; (2) the body of extensive peer-reviewed, scientific studies reviewing, validating, and replicating the hockey stick; (3) the reports issued by academic and governmental organizations in 2010 and 2011 which found, as the Court of Appeals affirmed, that Defendants’ allegations against Dr. Mann

were false;¹⁶ and (4) the testimony of Dr. Mann’s own array of expert witnesses in this case: Dr. Raymond Bradley, co-author of MBH98 and MBH99; Dr. John Mashey, a leading expert on disinformation in the climate change field who has written extensively about climate change issues; Dr. John Holdren of Harvard University, formerly President Obama’s top Science Advisor; Dr. Gerald North of Texas A&M University, who chaired the NRC panel which reviewed MBH98 and MBH99; Dr. Naomi Oreskes of Harvard University, who published an analysis of the climate change controversy in *Merchants of Doubt*; Dr. Peter Frumhoff, Science Director of the Union of Concerned Scientists; and Dr. John Abraham, of the University of St. Thomas, an expert on thermodynamics and a leading climate change researcher who reviewed each of the eight academic and governmental investigations into the climategate emails. SOMF ¶ 86.

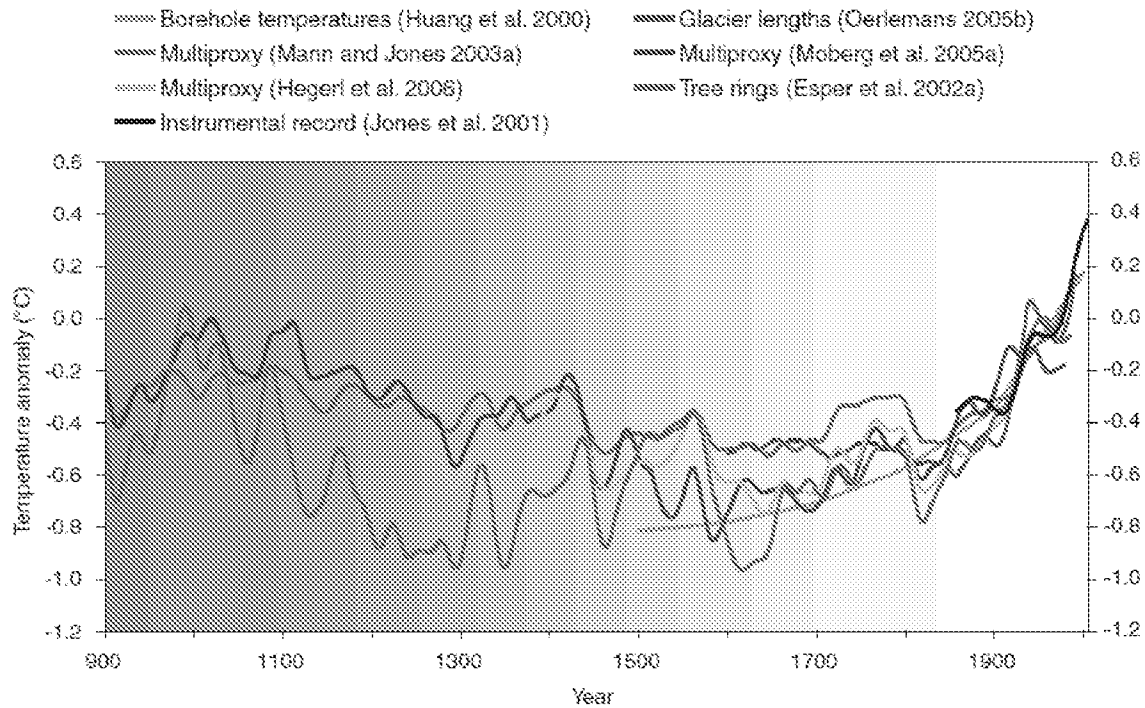
1. THE NATIONAL RESEARCH COUNCIL REPORT

In 2006, at the request of the United States House of Representatives, Committee on Science, the National Research Council of the National Academy of Science evaluated the methodology and conclusions of MBH98 and MBH99, and the overall state of knowledge

¹⁶ These reports are: (a) “Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit,” (April 12, 2010), by the University of East Anglia, Oxburgh Panel; (b) “The Independent Climate Change E-mails Review,” (July 2010), by the University of East Anglia, Russell Panel; (c) “The disclosure of climate data from the Climatic Research Unit at the University of East Anglia,” (March 24, 2010), by the UK House of Commons, Science and Technology Committee; (d) “Government Response to the House of Commons Science and Technology Committee 8th Report of Session 2009-10: The disclosure of climate data from the Climatic Research Unit at the University of East Anglia,” (September 2010), by the Secretary of State for Energy and Climate Change by Command of Her Majesty; (e) “RA-10 Inquiry Report: Concerning the Allegations of Research Misconduct Against Dr. Michael Mann, Department of Meteorology, College of Earth and Mineral Sciences,” by The Pennsylvania State University, (February 3, 2010); (f) “RA-10 Final Investigation Report Involving Dr. Michael Mann,” (June 4, 2010), by The Pennsylvania State University; (g) “Letter and Detailed Results of Inquiry Responding to May 26, 2010, Request from Senator Inhofe,” (February 18, 2011), by the Office of Inspector General, United States Department of Commerce; (h) “Closeout Memorandum, Case No. A09120086,” by The Office of Inspector General, Office of Investigations, National Science Foundation; (i) “EPA’s Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, Final Rule, Fed. Reg. 75:156,” (August 13, 2010), by the United States Environmental Protection Agency; (j) “EPA’s Response to the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, Volumes 1-3,” by the United States Environmental Protection Agency.

concerning proxy data reconstruction of global and hemispheric temperature. SOMF ¶ 87. *See* National Research Council. 2006. *Surface Temperature Reconstructions for the Last 2,000 Years*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/11676> (NRC2006). The Chair of the Council was Dr. Jerry North, one of Dr. Mann's expert witnesses in this case. The NRC's review was prompted in part by "critic[isms] of the original papers [which] argued that the statistical methods were flawed, that the choice of data was biased, and that the data and procedures used were not shared so others could verify the work." NRC2006, Preface p. ix. SOMF ¶ 88. These criticisms included those of Stephen McIntyre, one of the defendants' witnesses in this case. SOMF ¶ 89.

The NRC specifically evaluated these criticisms, investigated the hockey stick in depth, and considered a number of subsequent large-scale surface temperature reconstruction studies conducted by different research groups, each of which validated and replicated Dr. Mann and his colleagues' work. SOMF ¶ 90. Each used different methodologies and data, which the NRC depicted in a composite graph, reproduced below, which establishes regardless of the specific proxy and method used, 20th Century warming over the prior millennium is undeniable:



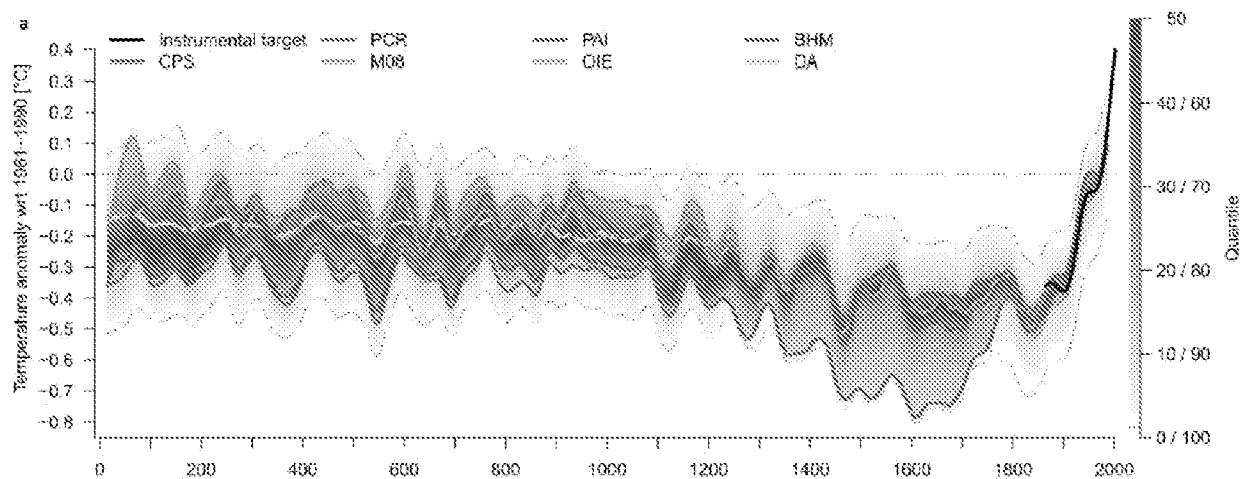
SOMF ¶ 90; *see* NRC2006, Figure S-1, p. 2.

The NRC found the “basic conclusion of Mann et al. (1998, 1999)...[had] subsequently been supported by an array of evidence that includes the additional large-scale surface temperature reconstructions and documentation,” noting the studies of Cook et al. 2004, Moberg et al. 2005b, Rutherford et al. 2005, D’Arrigo et al. 2006, Osborn and Briffa 2006, Wahl and Ammann (in press at the time of the NRC report) (SOMF ¶ 93), and concluded as follows: “*the MBH authors accurately and honestly reported their underlying research and did not make claims that were stronger than the data could support.*” SOMF ¶ 94. Dr. North has addressed this report in this case and has also reviewed “the great deal of research in the area of global warming which has further confirmed the conclusions of the committee.” SOMF ¶ 95. As Dr. North further states, “the MBH work has stood the test of time and should be considered a significant and pioneering contribution in the area of climate science.” SOMF ¶ 96.

2. THE PEER REVIEWED STUDIES

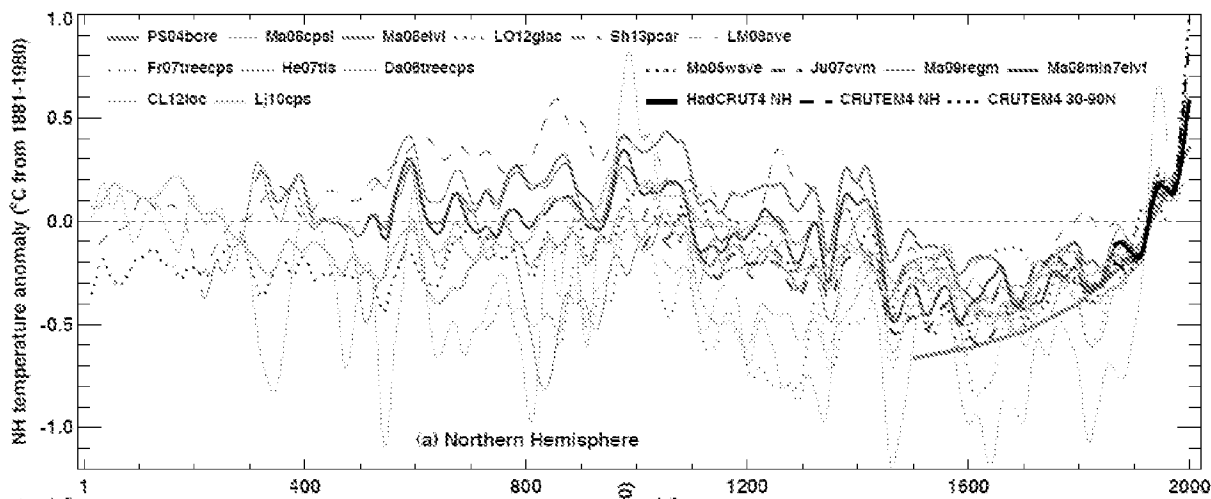
At the time NRC issued its report, six different peer-reviewed studies had confirmed the validity of the MBH research (cited above). Each used different methodologies and data from the MBH papers. Each reached the same conclusions as the MBH authors. Since that time, as Dr. North observed, dozens of subsequent paleoclimate reconstructions using a wide variety of proxy data and analytical methods have cited to, validated, and extended the work on the hockey stick. SOMF ¶ 111.

One of the most recent examples is a paleoclimate temperature reconstructions study performed by the European PAGES consortium, which used seven different statistical methods drawing from a global collection of temperature-sensitive paleoclimate records to reconstruct global temperature over the past 2,000 years. SOMF ¶ 118; *see* PAGES 2k Consortium, Neukom R, Barboza LA, et al. *Consistent multi-decadal variability in global temperature reconstructions and simulations over the Common Era*. *Nat Geosci*. 2019;12(8):643-649. doi:10.1038/s41561-019-0400-0. This study demonstrated remarkably synchronous temperature reconstructions and strongly reinforced the findings in a follow study, Mann et al. 2008, depicted below as the M08 data:



SOMF ¶ 120.

The most recent IPCC report, the Fifth Assessment Report published in 2013, featured the subsequent work Drs. Mann, Hughes, and Bradley, *Proxy-based reconstructions of hemispheric and global surface temperature variations over the past two millennia*, Michael E. Mann, Zhihua Zhang, Malcolm K. Hughes, Raymond S. Bradley, Sonya K. Miller, Scott Rutherford, Fenbiao Ni, Proceedings of the National Academy of Sciences Sep 2008, 105 (36) 13252-13257; DOI: 10.1073/pnas.0805721105 (Mann, et al. 2008). SOMF ¶ 116. Numerous other paleoclimate reconstructions which again show remarkable consistency in demonstrating the anomalous nature of 20th Century temperatures, as depicted in this composite hockey stick graph:



IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 1535 pp., Figure 5.7(a).

A common measure of the contribution a scientific paper makes toward developing a scientific consensus is the number of citations it receives in the scholarly literature. MBH98 and MBH99 have been widely cited in the peer reviewed literature, according to Google Scholar. SOMF ¶ 112. At the present time, MBH98 has been cited by 2,470 scholarly works and publications;¹⁷ and MBH99 has been cited by 2,410 scholarly works and publications.¹⁸

3. THE CLIMATEGATE INVESTIGATIONS

In the wake of the theft of the “climategate” emails, eight different academic and governmental panels conducted investigations into the conduct of the climate scientists, including Dr. Mann. The Court of Appeals confirmed: “[f]ollowing disclosure of the emails and the questions raised, Penn State, the University of East Anglia, and five governmental agencies — the U.K. House of Commons Science and Technology Committee, the U.K. Secretary of State for Energy and Climate Change, the Inspector General of the U.S. Department of Commerce, the U.S. Environmental Protection Agency, and the U.S. National Science Foundation — issued reports after conducting inquiries into the validity of the methodology and research underlying the hockey stick graph and investigating the allegations impugning the integrity of Dr. Mann’s and other climate scientists’ conduct.” *CEI*, 150 A.3d at 1223.

After reviewing all these reports, the Court of Appeals observed that none of these investigations found any evidence of fraud, falsification, manipulation or misconduct. *Id.* at

¹⁷https://www.google.com/search?rlz=1C1GCEJ_enUS891US891&sxsrf=ALeKk01MoJK0TLQvngbDrxgxBpNQNLolA%3A1610764145281&ei=cU8CYPGAE0005wLzxgeoDQ&q=Global-scale+temperature+patterns+and+climate+forcing+over+the+past+six+centuries&og=Global-scale+temperature+patterns+and+climate+forcing+over+the+past+six+centuries&gs_lcp=CgZwc3kiYWI0DEAAWABg6x1oAHABeACAAOCIAQCSEAQCYAQCQAQdnd3Mid2IG&schent=psy-ab&ved=0ahUKEwi-_ceFLLpAhVjx1kKHXPiCdUQ4dUDCA0.

¹⁸https://scholar.google.com/scholar?rlz=1C1GCEJ_enUS891US891&sxsrf=ALeKk03rgc8bwOqUE54XvKtfrRHwTvI2oQ:1610763800601&gs_lcp=CgZwc3kiYWI0DDIECAAORzIECAAORzIECAAORzIECAAORICzllizImDbQimgAcAR4AIAABA1gBAJIBAJgBAaABAqABAaoBB2d3cv13aXrlAQTAAOE&umr=1&ie=UTF-8&lr&cites=11253045204762962594.

1223. Further, allegations that Dr. Mann had engaged in deception and academic and scientific misconduct “[have] been proved to be false by four separate investigations.” *Id.* at 1245.

Regarding the defendants’ assertions that the negative findings do not support a conclusion that their statements were, in fact, false, the Court of Appeals held: “a determination that there is ‘no evidence’ of fraud is an ultimate conclusion that investigation has not turned up any evidence of misconduct.” *Id.* at 1256.

The Court of Appeals also addressed CEI’s criticisms of the Penn State inquiry and its assertion that there had not yet been an independent investigation of Dr. Mann’s research. It concluded: “In this, Mr. Simberg’s article was inaccurate.” *Id.* at 1246. It continued: “As the NSF Report clearly lays out, in addition to ‘fully review[ing] all the reports and documentation the University provided,’ NSF reviewed ‘a substantial amount of publicly available documentation concerning both [Dr. Mann’s] research and parallel research conducted by his collaborators and other scientists in that particular field of research.’ The NSF also independently interviewed Dr. Mann, his ‘critics, and disciplinary experts.’” *Id.* at 1246-47.

Dr. Mann’s expert witness also address the climategate investigations. Dr. Holdren notes that the allegations against the climate scientists that led to these investigations were “bankrupt” and highlight the harassment that climate denialists inflict on climate change researchers. SOMF ¶ 127. As Dr. Frumhoff and Dr. Oreskes state, the reports of the investigations “vindicated the integrity” of the scientists in question, SOMF ¶ 128, and, in particular, “exonerated” Dr. Mann. SOMF ¶ 128. Dr. Abraham testifies that the investigations confirm the accuracy and validity of the hockey stick and concludes with the following observation: “In fact, the irony is that the unfounded complaints have given such intense scrutiny to Dr. Mann’s work, that we now know, with great certainty, he was correct all along.” SOMF ¶ 129.

Finally, Defendants have identified no evidence that the investigations into Dr. Mann's conduct were somehow unreliable, and they have failed to conduct their own investigation into the climategate emails as the Court of Appeals stated they should have in order to legitimately attack Dr. Mann's integrity. *CEI*, 150 A.3d at 1253. Their theory that these investigations—every one of them—was a “whitewash” and “cover-up” is just that: a theory grounded in nothing but their own confirmation bias –and without a shred of supporting evidence. They have spent a huge amount of time in this case trying to impeach the Penn State investigation. They have subpoenaed documents from the University and deposed all three of the members of the panel that conducted the inquiry, as well as former Penn State President, Graham Spanier. SOMF ¶ 130. Yet, discovery only confirmed that the Penn State investigation was thorough and complete. Henry Foley, the former Vice President for Research and Dean of Graduate Studies at Penn State, testified that in view of the public scrutiny of the issue, the committee was “keenly concerned that we try to do everything as carefully and as well as we possibly could.” SOMF ¶ 131. He also testified that the committee came into the investigations with no preconceived notions and stated that he and Dr. Scaroni (a committee member) were initially skeptical of the validity of the hockey stick research until convinced otherwise. SOMF ¶ 132.

As Candice Yekel, Penn State's Research Integrity Officer testified:

Q: What would you say to the people that say that Penn State's inquiry and investigation of Dr. Mann was a whitewash?

A: I would say that is not true, and we took great care and effort to make sure we looked at these allegations.... The committee members...were some of our best. And so I would absolutely stand behind the report that it was thorough and complete.

Q: What would you say to someone that alleges that Penn State's inquiry and investigation was a cover-up of wrongdoing?

A: I would say that is not accurate. And to suggest such a thing, I would expect to have some evidence to even suggest such a thing.

See SOMF ¶ 134.

There is no such evidence. Nor is there evidence that any of the other investigations was a “whitewash” or a “cover-up.” Defendants have made no attempt to impeach the NOAA investigation, or the EPA investigation (which, ironically, CEI requested), or any of the investigations carried out in the United Kingdom. Defendants did send a Freedom of Information Act request to the National Science Foundation, only to learn that both Judith Curry and Stephen McIntyre had been interviewed by NSF investigators, with neither accusing Dr. Mann of misconduct—and Dr. Curry explicitly stating that Dr. Mann did not engage in misconduct. SOMF ¶¶ 135-139.

4. DR. MANN'S WITNESSES

Dr. Mann's witnesses directly address the falsity of Defendants' allegations. Dr. Bradley, noting the extensive body of peer-reviewed articles validating Dr. Mann's research, states:

This body of scientific reports is significant for multiple reasons. Each was conducted by qualified and independent, accredited scientists. In addition, each reaches essentially the same conclusion, reinforcing and supporting the conclusions reached by the others. Specifically, they each found that there is no basis to conclude that: a. the MBH authors had molested or tortured the data used in our studies; b. the MBH authors had engaged in data manipulation; c. the MBH authors had engaged in corrupt or disgraced science or that any of these investigations were a whitewash; d. anyone covered up or allowed to continue heinous crimes or that the MBH authors had engaged in academic and scientific misconduct; and e. the “hockey stick” graph was fraudulent.

SOMF ¶ 142.

Dr. Naomi Oreskes also rejects Defendants’ allegations against Dr. Mann as “false and unjustified.” SOMF ¶ 143. Dr. Peter Frumhoff similarly opines that the “statements made by National Review and the Competitive Enterprise Institute at issue in this case are false.” SOMF ¶ 144. John Mashey states in his report that there is no research demonstrating that Dr. Mann’s research is falsified or that his methods or conclusions were fraudulent or involved misconduct. SOMF ¶ 145. He also states that no researcher who has investigated Dr. Mann’s work has suggested that his research was fraudulent or improper or constituted misconduct, including the defendants’ own witnesses: Mr. McIntyre, Dr. Wyner, and Dr. Wegman. SOMF ¶ 146.

Dr. Mashey was the last expert witness to testify in this case and thus had an opportunity to review all of the defendants’ expert reports, all of their deposition testimony, and all of their fact witness testimony (except for Dr. Wegman who was deposed two days later). SOMF ¶ 147. In reviewing this testimony, Dr. Mashey observed correctly that not one of defendants’ witnesses made any allegation of fraud, or corruption, or scientific misconduct, or scientific misconduct, or research misconduct. SOMF ¶ 148. (Nor did Dr. Wegman in his subsequent deposition.) SOMF ¶ 148.

In sum, as Dr. Mashey states, the allegations of fraud and improper conduct are false. SOMF ¶ 149. And as Dr. Bradley states: “there is no factual basis for any of the statements” at issue in this litigation. SOMF ¶ 150.

III. PARTIAL SUMMARY JUDGMENT SHOULD BE GRANTED: THERE IS NO GENUINE DISPUTE THAT THE DEFENDANTS’ ALLEGATIONS AGAINST DR. MANN ARE FALSE

D.C. Superior Court Rule 56 provides that “[a] party may move for summary judgment, identifying each claim or defense—or *the part of each claim* or defense—on which summary

judgment is sought.”¹⁹ (emphasis added). The Advisory Committee’s Note to the 2010 amendments to Federal Rule of Civil Procedure 56 explains that this sentence was “added to make clear at the beginning that summary judgment may be requested not only as to an entire case but also as to a claim, defense, *or part of a claim* or defense.” Fed. R. Civ. P. 56 advisory committee’s note to 2010 amendment (emphasis added).

Since 2010, courts have repeatedly recognized that it is proper to move for summary judgment on a single element, or part of a claim.²⁰ See, e.g., *United States ex rel. Morsell v. Symantec Corporation*, No. 12-cv-800, 2020 WL 5651277, at *27 (D.D.C. March 30, 2020) (finding that the “[g]overnment is . . . only entitled to partial summary judgment on [the duty] element of its negligent misrepresentation claim, to the same extent it was entitled to summary judgment on the duty element of its breach claim.”); *LUXEAP, LLC v. Bruner*, No. 17-cv-1359, 2018 WL 6016973, at *13 (C.D.Cal. July 31, 2018) (granting partial summary judgment as to the publication element of the counterclaim for defamation); *Hudak v. Clark*, No. 3:16-cv-288, 2018 WL 1785865, at *2 (M.D.Pa. April 13, 2018) (granting plaintiff’s motion for partial summary judgment as to a single element, the absence of probable cause, of his claim for unlawful seizure/arrest); *Operation Technology, Inc. v. Cyme International T & D Inc.*, 14-cv-00999, 2016 WL 6246806, at *8 (C.D.Cal. March 31, 2016) (“grant[ing] summary judgment on the element of a Lanham Act false advertising claim that several communications were literally false statements of fact.”).

¹⁹ “This rule is identical to *Federal Rule of Civil Procedure 56*, as amended in 2010, except that 1) a reference to local district court rules is omitted from the language in subsection (b)(1) and 2) subsection (b)(2), which is unique to the Superior Court rule. . .” DC R RCP Rule 56, cmt. to 2017 Amendments.

²⁰ Plaintiff notes that despite being decided after 2010, the D.C. District Court in *Davis v. District of Columbia*, 2020 WL 6134670, at *6 n.8 (D.D.C. 2020) evidently did not consider the amendment.

“Regardless of whether a party seeks summary judgment on part of a claim or the entire claim, the same standard applies: The movant must establish through its pleadings that no genuine issue exists as to a material fact.” *United States ex rel. Landis v. Tailwind Sports Corp.*, 234 F.Supp.3d 180, 191 (D.D.C. 2017); *Johnson v. Washington Gas Light Co.*, 109 A.3d 1118, 1120 (D.C. 2015) (“to prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law.”).

Once the movant has made a sufficient evidentiary showing to support the motion, the opposing party’s response must set forth specific facts showing that there is a genuine issue for trial. The movant is entitled to summary judgment if the opposing party fails to make a sufficient showing on an essential element of her claim with respect to which she has the burden of proof. However, in assessing whether there exists a genuine issue of material fact, the pleadings and probative evidentiary materials submitted on the motion must be viewed in the light most favorable to the non-moving party[.]

Johnson, 109 A.3d at 1120.

One element of Dr Mann’s defamation claim is the necessity to show that the statements at issue are false.²¹ The defamatory statements made in this case by Mr. Simberg and CEI include the allegation regarding “hockey stick deceptions,” the allegation that Dr. Mann, “molested and tortured data” comparable to the conduct of Jerry Sandusky, the allegation that Dr. Mann engaged in data manipulation to keep the blade on the hockey stick, the allegation that Dr. Mann was corrupt, and the allegation that Dr. Mann committed “academic and scientific misconduct.” As the Court of Appeals has held, these allegations convey the defamatory

²¹ To succeed on a defamation claim, a plaintiff must prove: “(1) that the defendant made a *false* and defamatory statement concerning the plaintiff; (2) that the defendant published the statement without privilege to a third party; (3) that the defendant’s fault in publishing the statement [met the requisite standard]; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.” See *CEI*, 150 A.3d at 1240 (emphasis added).

messages that: (1) Dr. Mann “engaged in data manipulation that was fraudulent...,” *id.* at 1249, n. 46; (2) Dr. Mann engaged in “deception and misconduct,” *id.* at 1245, 1260; and (3) Dr. Mann committed “wrongdoing” by “molesting and torturing data.” *Id.* at 1248.

There is no genuine issue that these statements are false. Dr. Mann’s evidence of falsity, cited above, is overwhelming. In contrast, CEI and Mr. Simberg have identified no evidence that any of these allegations are true. They have no evidence that the Dr. Mann is corrupt, or engaged in deception, or misconduct, or manipulated data to obtain a pre-determined result. They have no evidence that Dr. Mann engaged in wrongdoing by molesting and torturing data. And even were the opinions of Dr. Curry and Dr. Wyner considered admissible on the issue of truth—and by their own admissions, they are not—neither will testify that the defamatory statements are true. To avoid summary judgment defendants must present admissible evidence establishing a genuine issue of material fact—here there is none.

IV. THE AFFIRMATIVE DEFENSES OF TRUTH AND SUBSTANTIAL TRUTH SHOULD BE STRICKEN

A court may strike an affirmative defense where, as here, it is clear that the defense is “irrelevant and frivolous and its removal from the case would avoid wasting unnecessary time and money litigating the invalid defense.” *Malibu Media, LLC v. Parsons*, No. 12-1331, 2013 WL 12324463, at *2 (D.D.C. May 31, 2013); *Intex Recreation Corp. v. Team Worldwide Corp.*, 390 F.Supp.2d 21, 24 (D.D.C. 2005). Courts are often inclined to strike an affirmative defense where discovery has been completed and the sufficiency of the allegations can be determined on the merits. *See, e.g., Mme. Pirie’s v Keto Ventures, LLC*, 57 N.Y.S.3d 555, 557 (3d Dep’t June 15, 2017) (holding that the court “properly granted plaintiffs’ motion for summary judgment dismissing defendants’ affirmative defense and counterclaim for fraud” after discovery was completed.); *S.E.C. v. Sands*, 902 F.Supp. 1149, 1166 (C.D.Cal. 1995) (granting the SEC’s

motion to strike the affirmative defense of unclean hands after discovery was completed and defendants had produced no evidence of unconstitutional actions by the SEC); *Fijal v. American Export Isbrandtsen Lines*, 514 N.Y.S.2d 6, 7 (1st Dep’t 1987) (finding that the affirmative defense of contributory negligence was unsubstantiated and properly stricken after discovery and deposition proceedings had been completed.); *Schiavone Const. Co. v. Time, Inc.*, 619 F.Supp. 684, 700-01 (D.N.J. 1985) (holding that no disputed issue of fact existed as to plaintiffs’ truth defense, striking the defense, and granting plaintiffs’ motion for summary judgment on that element of their defamation claim).

As noted above, neither CEI nor Mr. Simberg asserts that their statements were true. They do assert, however, that their statements were not “substantially false,” which we assume is the defense generally referred to as the “substantial truth” defense. *See* SOMF ¶ 151.

Substantial truth is a defense that permits the court to overlook minor inaccuracies and mistakes. But only minor inaccuracies and mistakes. As an affirmative defense, the burden is on the defendant, who is required to prove that the statements made were substantially true, and that any minor misstatements of fact or inaccuracies of expression were immaterial.” *Lohrenz v. Donnelly*, 223 F.Supp.2d 25, 59 (D.D.C. 2002); *see also Restatement (Second) of Torts* § 581A, comment f (1977).

Accordingly, any error in the publication must be minor, and must be immaterial. But further, in considering whether the doctrine even applies, the court must focus on whether the conduct that the defendants assert is “substantially true” is the same—or different—than the conduct addressed in the publication. “It is . . . the truth or falsity of the particular charge that is to be determined.” *Restatement (Second) of Torts* § 581A, comment f. In other words, “truth is no defense where the plaintiff ‘is found to have engaged in some other substantially different

kind of misconduct even though it is equally or more reprehensible.” *Schiavone*, 619 F.Supp. at 701 (citing *Restatement* § 581A, comment f.); *see also Kilian v. Doubleday & Co.*, 79 A.2d 657, 660 (Pa. 1951) (“if the accusation is one of particular misconduct, . . . it is not enough to show a different offense, even though it be a more serious one. . . . [A] charge of misconduct *of any specific kind* is not justified by proving plaintiff guilty of misconduct of a similar character.”). For example, the fact of a conviction for a charge of petty larceny does not render the allegation that the defendant had a “mania for stealing” substantially true. *See Register Newspaper Co. v. Stone*, 102 S.W. 800 (Ky.App. 1907). Similarly, a conviction for “neglect of duty” does not justify a charge of “knowing indifference to inhumane treatment.” *Kilian*, 79 A.2d at 559-60. And a statement that an individual was guilty of robbery is not substantially true where that person was only guilty of misdemeanor theft. *See Weber v. Fernandez*, No. 02-18-00275-CV, 2019 WL 1395796, at *12-13 (Tex.App.Fort Worth, March 28, 2019). The *Kilian* court provided another example: “If, for instance, one were to assert that A had embezzled \$50 from the X Bank he would not support the truth of such allegation by testimony that A embezzled \$100 from the Y Bank.” 79 A.2d at 660.

In *Crane v. New York World Telegram Corp.*, 308 N.Y. 470, 475-76 (1955), the truth defense failed where a newspaper item stated that Plaintiff was “under indictment,” when he had only been *accused* of indictable crimes. As the court noted, the defense was based entirely on the improper assumption that a jury could accept the broader meaning urged by defendants. *Id.* at 475. “It is one thing to say that a person has been accused by his colleagues and . . . has testified before a grand jury to criminal activities, and quite another thing to say that an indictment has been brought against him by a grand jury. The former charge may be a serious blot upon reputation, but the latter says, in a practical and amoral sense, much more, for it

announces that an actual criminal prosecution has been brought against him, that he must stand trial and may be found guilty and sentenced to a prison term.” *Id.* at 475-76.

CEI has asserted two different “substantial truth” defenses: the first attempts to justify the “hockey stick deceptions” allegation. The second attempts to justify the allegation of “academic and scientific misconduct.” Each is discussed below.

A. “Hockey Stick Deceptions”

In their article, the CEI defendants alleged that Dr. Mann had engaged in “hockey stick deceptions” by molesting and torturing data, and by engaging in data manipulation to keep the blade on the hockey stick. SOMF ¶ 152. As the Court of Appeals stated, these were statements that accused Dr. Mann of “*specific acts of academic and scientific misconduct in the manipulation of data,*” of deception “*in producing the graph,*” and of deception “*in the presentation of data.*” *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1243, 1259, 1260 (D.C. 2016) (emphasis added). As such, the court held clearly that the actionable allegations of “misconduct” and “deception” involved Dr. Mann’s data practices that led to the production and presentation of the hockey stick graph.

However, the CEI defendants want to shift the focus away from their allegations of Dr. Mann’s deceptive data practices (which they cannot defend) and accuse him instead of a completely different type of alleged “deception.” In their Second Supplemental Response to Interrogatory 14, defendants now say that the conduct that constituted “hockey stick deceptions” refers not to Dr. Mann’s data practices, but instead to a variety of conduct that occurred *years after* his research was completed and published. *See* SOMF ¶ 155. The newly alleged hockey stick deceptions include, for example, statements that Dr. Mann made to the Penn State investigative committee in 2010—ten years after the hockey stick was published. SOMF ¶ 156.

The other allegations also allege conduct that occurred many years later, including allegations that were investigated—and rejected. SOMF ¶ 157.

CEI's counsel has tried to justify its new position that the term “hockey stick deceptions” means something other than what Mr. Simberg wrote. According to counsel, “Mr. Simberg did not, nor did he intend to, limit the basis for the deceptions concerning the ‘hockey stick’ to just the research and publication of the MBH articles in 1998 and 1999.” *See* SOMF ¶ 158.

This statement is demonstrably false. In his deposition Mr. Simberg did, in fact, “limit the basis for the deceptions.” And he did so by explicitly limiting that basis to the creation of the hockey stick.

Q: Okay. Tell me what the hockey stick deceptions were?

A: The hockey stick deceptions were—well the hockey stick itself was a graph...[and] the deception was the means by which they generated the curve by the use of, you know, selective – selection of proxy—

Q: And-

A: --among other things.

Q: Well, what else—you mentioned the selection of proxy data before, and we've been through that. Tell me what the other deceptions were other than the selection of the particular proxy data they used.

A: Well, that basically was it.

SOMF ¶ 159.

And continuing:

Q: Were there any other hockey stick deceptions?

A: No. But, again, those seem sufficient to me.

Q: I understand.

A: And I think there were other deceptions. Not hockey stick deceptions.

SOMF ¶ 160.

It cannot be clearer. The Simberg article criticized Dr. Mann for torturing and molesting data and engaging in “data manipulations” in developing the hockey stick. The Court of Appeals correctly interpreted those statements as allegations of deceptions in “the manipulation of data,” in the “presentation of data, and in “producing the graph.” Mr. Simberg himself confirmed that the term “hockey stick deceptions” meant “the means by which they generated the curve.”

SOMF ¶ 162. The Simberg article had nothing to do with Dr. Mann’s conduct before the investigative committee ten years later, or with any conduct other than his hockey stick research.

SOMF ¶¶ 163 and 164. Defendants’ new theory that the term “hockey stick deceptions” refers instead to any conduct *other* than Dr. Mann’s conduct in producing the graph, or as Mr. Simberg clearly identified, the “means” by which he “generated the curve” is baseless. *Id.* Defendants are asserting an entirely different type of conduct here, and the substantial truth defense does not apply.

B. “Academic and Scientific Misconduct”

The Simberg article accused Dr. Mann of academic and scientific misconduct. SOMF ¶ 165. Just prior to the paragraph in which this statement appears, the article addresses the NSF Research Misconduct Regulations. SOMF ¶ 165. The article criticizes the NSF investigation and its finding, repeated in the Simberg article, that “nothing in [the emails] evidenced *research misconduct within the definition of the NSF Research Misconduct Regulation.*” SOMF ¶ 165. The article then links directly to another article which identifies what acts constitute research misconduct, and they include *falsification, fabrication, and plagiarism.*²² SOMF ¶ 165.

²² <https://scholarsandrogues.com/2011/08/27/nsf-gsm-mann-exonerated/>

There is no question that Mr. Simberg understood that the phrase “research misconduct” he described in the article included falsification and fabrication.

Q: All right. Let’s talk about the academic and scientific misconduct that you’re referring to on the part of Dr. Mann. You said earlier that he had engaged in unscientific conduct, right?

A: Yes

Q: (after objections) That’s scientific misconduct, isn’t it?

A: I’m not sure if they’re exactly the same thing. . . .[T]here’s a specific definition . . . the National Science Foundation has for research misconduct.

Q: All right. And what is that?

A: It’s—specifically it’s—basically three things. I think its falsification, fabrication or plagiarism.

SOMF ¶ 166.

The CEI defendants concede in this case that Dr. Mann did not engage in research misconduct. Mr. Simberg stated in his deposition that Dr. Mann did not engage in data fabrication and further that he did not think he engaged in data falsification. SOMF ¶ 167. But they are now attempting to invoke the “substantial truth” defense to allege that misconduct means something other than misconduct. According to their Second Supplemental Responses to Interrogatories 10 and 11, defendants now say that their use of the term “academic and scientific misconduct” was intended to mean that Dr. Mann did not act with “academic integrity,” and they go on to allege that Dr. Mann’s conduct violated the Penn State Standards for Professional Ethics (referred to as AD47). *See* SOMF ¶ 168.

This is absurd. AD47 is an ethical standard, specifying that professors should strive for the highest standards in data gathering and data presentation. SOMF ¶ 169. AD47 is not a misconduct standard—misconduct,” by definition, is addressed in the Research Misconduct

Standards—which defendants concede Dr. Mann did not violate. SOMF ¶ 170. CEI’s article was not one that accused Dr. Mann of an ethical violation. SOMF ¶ 171. It accused him of serious wrongdoing, corruption, and data manipulation in order to reach a predetermined conclusion. SOMF ¶ 171. It specifically addressed the Research Misconduct Regulations and linked to an article defining Research Misconduct to include falsification and fabrication. SOMF ¶¶ 171 and 172. Those allegations entail far more than an ethical violation—they are accusations of fraud and falsification. SOMF ¶ 173. And this is precisely how the Court of Appeals interpreted the articles, noting that they made factual assertions that Dr. Mann “*had engaged in specific acts of academic and scientific misconduct in the manipulation of data.*” *CEI*, 150 A.3d at 1243. (emphasis added). SOMF ¶ 173. It was the “data manipulation” that was allegedly fraudulent and “constituted scientific and academic misconduct.” *Id.* at 1249, n. 46.

Ethical violations are substantially different than academic and scientific misconduct and the substantial truth defense does not apply for this reason alone. Moreover, the conduct that supposedly violated the Penn State ethical standards was conduct that occurred well after the hockey stick was produced and published. This supposedly unethical conduct has nothing to do with Dr. Mann’s alleged “manipulation of data” that the Court of Appeals has already held constitutes the conduct alleged to constitute misconduct.

Accordingly, the substantial truth defense does not apply for two separate and independent reasons. First, the allegation of misconduct is a substantially more significant offense than the allegation of an ethical violation. Second, these new ethical allegations involve conduct that is substantially different from the allegations of manipulative data practices that led to the presentation of the hockey stick graph.

Finally, it should be noted, once again, that defendants have no proof on this issue. They have no proof of any type of academic or scientific misconduct—even if that term could now be speciously considered an ethical violation. As an affirmative defense, it is CEI’s burden to establish that Dr. Mann engaged in a violation of AD47, which, given its rather aspirational and ambiguous guidelines, would require them to produce expert testimony regarding both the standard of care, as well as the breach of that standard. *See, e.g., Webster v. Claremont Yoga*, 236 Cal. Rptr. 3d 802, 806 (2018) (expert testimony necessary to establish standard of care and a breach thereof). But defendants have no such proof. As noted above, both Dr. Curry and Dr. Wyner testified that they were not accusing Dr. Mann of misconduct—any type of misconduct.

V. CONCLUSION

For the foregoing reasons, Dr. Mann respectfully requests that the Court grant its motion for partial summary judgment on the issue of falsity and to strike the affirmative defense of substantial truth.

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Respectfully submitted,

/s/ John B. Williams

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MICHAEL E. MANN, PH.D.,
Plaintiff,

v.

NATIONAL REVIEW, INC., *et al.*,
Defendants.

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Pursuant D.C. Superior Court Rule 56, plaintiff Michael E. Mann, Ph.D. hereby provides this Statement of Undisputed Material Facts In Support of his Motion for Partial Summary Judgment Against Rand Simberg, Competitive Enterprise Institute, National Review Inc. and Mark Steyn and Motion to Strike Affirmative Defenses Against All Defendants.

A. DR. MICHAEL MANN AND THE HOCKEY STICK RESEARCH

1. Michael E. Mann is a climatologist and geophysicist. He is a Distinguished Professor of Meteorology at the Pennsylvania State University and the director of its Earth System Science Center. He holds a B.A. in applied mathematics and physics from the University of California and a Ph.D. in physics from Yale University. He has published over 200 peer-reviewed articles on issues in his area. He has received numerous awards and honors. In 2007, the Intergovernmental Panel on Climate Change (IPCC) presented him, along with all other scientists who had contributed substantially to the preparation of IPCC reports, with a certificate noting their contributions to the award of the Nobel Peace Prize to IPCC and Al Gore. Dr. Mann is a Fellow of the American Meteorological Society and a member of the National Academy of Sciences. (Williams Decl. ¶ 52 at 19-21; ¶ 54 at 19-21).

2. In 1998 and 1999 Dr. Mann, along with Dr. Raymond S. Bradley and Dr. Malcolm K. Hughes, published two papers analyzing climate proxy data, which demonstrated that global warming was occurring at a concerning rate. (Williams Decl. ¶ 9 at ¶¶22-25).

3. Climate proxies are obtained from natural archives such as tree rings, ice cores, corals, sediments, and boreholes, the physical attributes of which contain information reflecting past ambient temperature and other climatic conditions. Climate proxies can be used to determine ambient temperatures back in time before the beginning of instrumental temperature records about 150 years ago. (Williams Decl. ¶ 9 at ¶7).

4. The first paper written by Drs. Mann, Bradley and Hughes, entitled *Global-Scale Temperature Patterns and Climate Forcing over the Past Six Centuries*, was published in 1998 in the scientific journal *Nature* (MBH98). (Williams Decl. ¶ 9 at ¶¶22-24).

5. The second paper written by Drs. Mann, Bradley and Hughes, *Northern Hemisphere Temperatures During the Past Millennium: Inferences, Uncertainties, and Limitations*, was published in 1999 in *Geophysical Research Letters* (MBH99). (Williams Decl. ¶ 9 at ¶¶22-25).

6. MBH98 and MBH99 were among the first research efforts to use a very large set of proxy data from all over the world and to apply powerful statistical techniques to this large data set to extract information about temperature patterns. Rather than examining a few records and relating them to local temperature changes, as had been done by previous research teams, MBH 98 and MBH99 sought to examine extensive networks of data and correlate local temperature changes to larger-scale patterns in the atmosphere, so that variations in one region might be linked to conditions far from that location. (Williams Decl. ¶ 9 at ¶23).

7. The MBH98 and MBH99 papers tended to disprove the arguments of climate change skeptics and deniers that the 20th century temperature rises were due to the cyclical nature of the earth's temperatures, and in particular that the temperatures during the Medieval era were higher than today, thus proving that the rise in temperatures over the latter half of the 20th Century were in the range of natural variability and not evidence of anthropogenic global warming. (Williams Decl. ¶ 9 Ex. D at 27-28; ¶ 53 at 45-48).

8. According to the District of Columbia Court of Appeals opinion in this case, the “1998 study used a technique to reconstruct temperatures from time periods before the widespread use of thermometers...by using ‘proxy indicators’” such as tree rings, lake and ocean

sediment, ice cores, and corals. *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1221-22 (D.C. 2016), as amended December 13, 2018.

9. These proxy data showed that global mean annual temperatures have been rising since the early twentieth century, with a marked increase in the last fifty years. The papers concluded that this rise in temperature was ‘likely unprecedented in at least the past millennium’ and correlated with higher concentrations of carbon dioxide in the atmosphere emitted by the combustion of fossil fuels. *CEI*, 150 A.3d at 1221-22.

10. The 1999 paper included a graph depicting global temperatures in the Northern Hemisphere for a millennium, from approximately 1050 through 2000. The graphical pattern is roughly horizontal for 90% of the temperature axis — reflecting a slight, long-term cooling period between 1050 and 1900 — followed by a sharp increase in temperature in the twentieth century. Because of its shape resembling the long shaft and shorter diagonal blade of a hockey stick, this graph became known as the ‘hockey stick.’ *CEI*, 150 A.3d at 1221-22.

11. Dr. Mann and his co-authors noted the uncertainties in their conclusions, as reflected in the title of this paper: “*Northern Hemisphere Temperatures During the Past Millennium: Inferences, Uncertainties, and Limitations.*” (Williams Decl. ¶ 9 at ¶ 25).

12. The hockey stick graph became a rallying point, and a target, in the subsequent debate over the existence and cause of global warming and what, if anything, should be done about it. *CEI*, 150 A.3d at 1221-22.

13. In 2006, the National Research Council (NRC), an arm of the National Academies of Science (NAS), noted that the “research received wide attention, in part because it was illustrated with a simple graphic, the so-called hockey stick curve, that many interpreted as definitive evidence of anthropogenic causes of recent climate change. The research was given

prominence in the 2001 report of the Intergovernmental Panel on Climate Change and then was picked up by many in the wider science community and by the popular media.” (Williams Decl. ¶ 9 Ex. D at ix).

14. The MBH98 and MBH99 papers have been subjected to rigorous scrutiny by scientists, statisticians, physicists, and mathematicians. (Williams Decl. ¶ 9 at ¶¶14-59).

15. Since MBH98 and MBH99 were released, their data, analysis, and conclusions have been reviewed—and validated and replicated—in numerous peer-reviewed publications. These follow-on studies used different proxy data and different statistical methods, but all reached the conclusion that global warming was occurring-- and all of the temperature graphs displayed in these studies resembled a hockey stick shape. (Williams Decl. ¶ 9 at ¶¶14-59).

B. THE DEFENDANTS

16. The defendants are deeply invested in one side of the global warming debate that is opposed to the view supported by Dr. Mann's research.” *CEI*, 150 A.3d at 1258-59.

1. COMPETITIVE ENTERPRISE INSTITUTE (CEI)

17. The Competitive Enterprise Institute describes itself as a “think-tank,” and has championed the cause against the acceptance of consensus climate change research and environmental regulations.

<http://web.archive.org/web/20120804041011/http://www.globalwarming.org/>.

18. On the “About CEI” web page, CEI states that it is “[u]nique among free market groups” because it “pursues a full-service approach to advancing public policy,” and highlighted Al Gore’s comment that CEI has had “a tremendous effect.”

<http://web.archive.org/web/20120729144615/http://cei.org/about-cei>.

19. Myron Ebell is CEI's Director of its Center for Energy and Environment. He led former President Trump's Environmental Transition Team in 2016 and claims on his resume that he is considered "Enemy Number One to the Current Climate Change Community." The "About CEI" page made the same point about Mr. Ebell's influence in the area of climate change. *Id.*

20. In 2009, the U.S. Environmental Protection Agency issued its Endangerment Finding, *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496, 66,499 (Dec. 15, 2009), which found that the current and projected concentrations of six key well-mixed greenhouse gases—carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—in the atmosphere threaten the public health and welfare of current and future generations and that the combined emissions of these well-mixed greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas pollution which threatens public health and welfare.

<https://www.epa.gov/ghgemissions/endangerment-and-cause-or-contribute-findings-greenhouse-gases-under-section-202a-clean>.

21. CEI has long executed a public relations campaign to prevent policy action addressing climate change. (Williams Decl. ¶ 53 at 15-17).

22. CEI has sought to overturn the Endangerment Finding, filing petitions seeking a repeal of the Endangerment Finding in 2009, 2017, and 2019. *See CEI, Science Groups Petition EPA to Reconsider Increasingly Dubious Global Warming "Endangerment" Finding* (Feb. 12, 2010)

https://cei.org/news_releases/cei-science-groups-petition-epa-to-reconsider-increasingly-dubious-global-warming-endangerment-finding/; *In Re: Endangerment and Cause or Contribute*

Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: Final Rule, 74 FR 66,495 (DEC.15, 2009), *Petition For Reconsideration of the Nongovernmental International Panel on Climate Change, the Science and Environmental Policy Project, and the Competitive Enterprise Institute*, United States Environmental Protection Agency, Docket EPA-HQ-OAR-2009-0171 (Feb. 12, 2010) https://www.epa.gov/sites/production/files/2016-08/documents/petition_for_reconsideration_competitive_enterprise_institute.pdf; *CEI Petitions EPA on Endangerment Finding* (April 4, 2017) https://cei.org/news_releases/cei-petitions-epa-on-endangerment-finding/#~:text=On%20February%2017%2C%202017%2C%20CEI,global%20warming%20and%20the%20environment (claiming a “growing body of satellite and balloon data demonstrates that the atmosphere is far less sensitive to CO₂ than predicted by the climate models that EPA relied on . . . there’s been no statistically significant increase in global temperatures from 1998 to 2016, despite newspaper headlines about allegedly record-setting yearly temperatures.”); *CEI Petitions EPA to Correct 2009 Endangerment Finding* (May 17, 2019) <https://cei.org/blog/cei-petitions-epa-to-correct-2009-endangerment-finding/>

23. In a 2010 request for reconsideration to EPA, CEI claimed that “Starting on November 19, 2009, emails from the CRU were leaked to the public. These emails reveal coordinated efforts in both Britain and the US to suppress independent studies that are contrary to IPCC conclusions of human-caused global warming. Thus, the IPCC scientific review process has a systematic bias of an unknowable magnitude in favor of human-induced warming. Consequently, the EPA Endangerment Finding is severely undermined by a systematic bias of an

unknowable magnitude in favor of human-induced warming.” <https://cei.org/wp-content/uploads/2010/07/1-Joint-Petition-for-Reconsideration-2-12-10.pdf>

24. At the time of the Simberg article, CEI had just lost its challenge to the Endangerment Finding, pursuant to which EPA had investigated and rejected CEI’s claims that the emails at issue in this litigation constituted scientific misconduct. *See Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 115 & 125 (D.C. Cir. 2012) (rejecting as exaggerated and contradicted by other evidence CEI’s claims that internal emails released from the University of East Anglia’s Climate Research Unit (CRU) undermined the scientific evidence supporting the Endangerment Finding by calling into question whether the IPCC scientists adhered to “best science practices.”)

2. RAND SIMBERG

25. Rand Simberg is a writer for CEI’s “Open Market” website and a fervent climate change skeptic with a particular distaste for Dr. Mann, calling him “corrupt” (*CEI*, 150 A.3d at 1263), “on the take” (Williams Decl. ¶¶ 11 & 12 at 78:1-80:15), and “a liar and a charlatan.” (Williams Decl. ¶ 12 at 48:18-52:5 & ¶ 13). He has advocated that Dr. Mann should lose his job (Williams Decl. ¶ 12 at 59:10-14 & ¶ 13) and lose his funding. (Williams Decl. ¶ 12 at 75:11-77:10 & ¶ 14).

26. Mr. Simberg also publishes his own website, Transterrestrial Musings, where he promotes conspiracy theories, including “birtherism,” the allegation that former President Obama was born in Kenya (Williams Decl. ¶ 12 at 256:19-257:7 & ¶ 15). More recently, Mr. Simberg has advocated against pandemic public safety restrictions, endorsing articles that “people should not wear masks” (Williams Decl. ¶ 12 at 15:4-8 & ¶ 16), and that “lockdowns kill people” (Williams Decl. ¶ 12 at 15:9-13 & ¶ 17).

27. Mr. Simberg has publicly stated that “All’s fair in love war and political campaigns. . . ,” which according to Mr. Simberg “means that people are entitled to say what they want about public figures.” (Williams Decl. ¶ 12 at 276).

28. Mr. Simberg has publicly stated that his remarks about Dr. Mann in *Another Scandal in Unhappy Valley*, are beyond reach because “If I believe it to be true, it is not a “reckless disregard for the truth” and they lose.” (Williams Decl. ¶12 at 276, ¶ 65).

29. In the wake of all of the investigations into Dr. Mann’s conduct, James Fallows wrote in the *Atlantic*: “If you hear people talking in environmental debates about “climategate” and “Mann’s misconduct,” recognize that what you’re hearing is just like ‘Obama was born in Kenya.’ These people are either passively uninformed or knowingly beyond the reach of fact.” (Williams Decl. ¶ 67).

3. MARK STEYN

30. Mark Steyn wrote for the National Review Online, a widely read conservative news and opinion website. National Review has described Mr. Steyn as its “All Star” (Williams Decl. ¶ 18 at 128:7-10) and its “Happy Warrior” (Williams Decl. ¶ 19 at 144:5-10).

31. Mr. Steyn was admired for his controversial and acerbic views. Mr. Steyn was paid more than anyone else at the publication, including the editor and the publisher. (Williams Decl. ¶ 18 at 103:20-108:13 & 154:1-23).

32. Mr. Steyn is currently a guest host for the Rush Limbaugh Show, and has been criticized for his homophobic and anti-Muslim views. *See*

<https://www.mediamatters.org/national-review/hour-1-fill-steyn-compares-torture-memo-controversy-miss-californiagay-marriage> and <https://www.mediamatters.org/fox-friends/right-wing-media-respond-fort-hood-shooting-attacking-american-muslims>.

33. Mr. Steyn has written articles referring to Dr Mann as: Doctor Fraudpants (Williams Decl. ¶ 20), a worthless piece of garbage (Williams Decl. ¶ 21), an insecure litigious dweeb (Williams Decl. ¶ 22), a serial liar (Williams Decl. ¶ 23), a super-villain (Williams Decl. ¶ 22), a sleazy charlatan (Williams Decl. ¶ 21), and “the Oscar Wilde of climate science with his fellow scientists as his rent boys” (Williams Decl. ¶ 24).

34. Mr. Steyn concluded that the Hockey Stick was fraudulent in 2001, shortly after Dr. Mann’s research was featured in the 2001 Intergovernmental Panel on Climate Change (IPCC). At that time, he had not read MBH98 and MBH99. (Williams Decl. ¶ 25 at 36:10-40:11, 84:17-85:1, 103:13-17).

35. Mr. Steyn has maintained his position that MBH98 and MBH99 research is fraudulent ever since. (Williams Decl. ¶ 25 at 41:21-58:1 & 103:21-104:10, ¶ 9, ¶ 61, ¶9 at ¶51 & Ex. D, ¶ 54 at 19-20, ¶ 52 at 14-15, ¶ 53 at 18-29; Wikipedia, *The Hockey Stick Graph*, https://en.wikipedia.org/wiki/Hockey_stick_graph).

36. Prior to publication of his article, *Football and Hockey*, Mr. Steyn had not read the reports” issued by the National Science Foundation, the Environmental Protection Agency and the National Oceanic and Atmospheric Administration, and the National Research Council of the National Academy of Sciences. He also stated that this was because, they were authored by agencies with “bewildering” acronyms starting with the letter “N.” (Williams Decl. ¶ 25, 28:5-31:7, 103:21-104:13).

C. THE DEFAMATIONS

37. Defendants’ attacks were fueled by private email correspondence by and between climate scientists, which had been stolen from the Climate Research Unit at the University of East Anglia in the United Kingdom, and then disclosed in November 2009 on the world wide

web on the eve of the United Nations international climate treaty negotiations in Copenhagen, Denmark. See Norfolk Constabulary, Operation Cabin, July 2012, archived at <https://web.archive.org/web/20120719210841/http://www.norfolk.police.uk/newsevents/newsstories/2012/july/ueadatabreachinvestigation.aspx>

38. The stolen emails included several written by the director of the Climate Research Unit, Phil Jones, one referring to “Mike’s Nature trick” and the other using the term “hide the decline.” *CEI*, 150 A.3d at 1224, n. 9.

39. The defamations in this case arise from the defendants’ long-held views that global warming is a hoax and that Dr. Mann is the “poster boy” of “corrupt and disgraced” climate change scientists. *CEI*, 150 A.3d at 1263-64.

40. There are two articles at issue in this case. Rand Simberg and CEI published the article entitled *The Other Scandal in Unhappy Valley* on July 13, 2012. Mark Steyn and the National Review published their article entitled *Football and Hockey* two days later, on July 15, 2012.

41. Before he wrote *Football and Hockey*, Mr. Steyn had obtained a copy of the Sandusky indictment. (Williams Decl. ¶ 25 at 158:8-160:4, ¶ 26).

42. In July 2012, Mr. Steyn read a copy of *The Other Scandal in Unhappy Valley*, which accused Dr. Mann of “hockey stick deceptions” and scientific and academic misconduct—and compared him to the convicted child molester, Jerry Sandusky, because he “molested and tortured data” just as Mr. Sandusky did with children. *CEI*, 150 A.3d at 1262.

43. On July 15, 2012, Mr. Steyn republished a number of Mr. Simberg’s statements, including the “hockey stick deceptions” and “molesting and torturing” data allegations. *CEI*, 150 A.3d at 1264. He also repeated the Sandusky comparison. *Id.* Mr. Steyn then added a

further allegation: Michael Mann was the man behind the fraudulent climate-change “hockey-stick graph, the very ringmaster of the tree-ring circus.” *Id.*

44. In prior court proceedings, the defendants attempted to justify these comments on the ground that they were simply “opinions” and constituted appropriate commentary given the tenor of the climate change debate. These arguments were rejected by Judge Combs Greene, Judge Weisberg, and later by a unanimous Court of Appeals, sitting en banc, which held that these statements were not protected opinion or commentary, and further that they were defamatory against Dr. Mann in their accusations of: (1) fraudulent data manipulation; *CEI* at 1249, n. 46; deception and misconduct in presenting his hockey stick graph, *Id.* at 1245, 1260; and (3) “wrongdoing” by “molesting and torturing data.” *Id.* at 1248.

45. For years the defendants have vowed that, given the appropriate opportunity, they would prove “to the world” that the hockey stick was fraudulent and that global warming was a hoax.” (Williams Decl. ¶ 27 at 106:25-107:5).

46. CEI’s Myron Ebell testified that because he and his organization disbelieved the honesty of many of the climate researchers they wanted to “get [them] into court,” where they would be “required to tell the truth.” (Williams Decl. ¶ 27 at 106:25-107:5).

47. In 2006, Mr. Ebell met up with one of the MBH co-authors, Raymond Bradley, and told him that he looked forward to “see[ing] [him] in court.” (Williams Decl. ¶ 27 at 106:25-107:18).

48. In 2012, after the publication of the defamatory articles, Dr. Mann’s attorney sent a letter to CEI requesting an apology and a retraction. *CEI* at 1225.

49. After receiving that letter, Mr. Ebell was described by another CEI staffer as “happy as a cat.” (Williams Decl. ¶ 27 at 108:14-114:5, ¶ 29).

50. National Review received a similar letter from Dr. Mann’s counsel. In an article entitled “*Get Lost*,” it described the letter as “laughably threatening,” and stated that any lawsuit by Dr. Mann would provide it with “a journalistic project of great interest.” *CEI*, 150 A.3d at 1264-65.

51. National Review stated that it intended to hire a “dedicated reporter” to “comb through the [discovery] materials and regularly post stories on Mann,” which it promised would “expose [Dr. Mann’s] methods and maneuverings to the world.” *Id.* The article stated that should Dr. Mann proceed with a lawsuit, he risked “making an ass of himself.” *Id.*

52. Following the release of the unauthorized stolen emails, the Pennsylvania State University, the University of East Anglia, the United Kingdom House of Commons, the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the National Science Foundation all investigated the supposedly incriminating emails, and cleared the researchers, including Dr. Mann, of fraud or misconduct. (Williams Decl. ¶ 49).

53. The Court of Appeals stated: “The reports that are relevant to the defamation claims are those that concern appellants’ statements that Dr. Mann engaged in ‘dishonesty,’ ‘fraud,’ and ‘misconduct.’ The University of East Anglia Independent Climate Change E-mails Review, Penn State University, the United Kingdom House of Commons, and the Office of the Inspector General of the U.S. National Science Foundation, all conducted investigations and issued reports that concluded that the scientists’ correspondence in the 1,075 CRU emails that were reviewed did not reveal research or scientific misconduct.” *CEI*, 150 A.3d at 1253. Defendants do not counter any of these reports with other investigations into the CRU emails that reach a contrary conclusion about Dr. Mann’s integrity.

54. With respect to the documents that Dr. Mann and his witnesses produced, National Review and Mr. Steyn have not, in interrogatory responses, identified one document that demonstrates that Dr. Mann engaged in fraud or deception in connection with his research. Mr. Steyn has identified only one document that he claims supports his position that the hockey stick graph is fraudulent: an opinion piece he wrote in 2001 for the *Sunday Telegraph of London*. This opinion piece provides no evidence of fraud or misconduct. (Williams Decl. ¶ 24 at 37:10-40:18 & ¶ 8).

55. The Court of Appeals noted that “The [investigation] reports that are relevant to the defamation claims are those that concern appellants’ statements that Dr. Mann engaged in ‘dishonesty,’ ‘fraud,’ and ‘misconduct.’ The University of East Anglia Independent Climate Change E-mails Review, Penn State University, the United Kingdom House of Commons, and the Office of the Inspector General of the U.S. National Science Foundation, all conducted investigations and issued reports that concluded that the scientists’ correspondence in the 1,075 CRU emails that were reviewed did not reveal research or scientific misconduct. Appellants do not counter any of these reports with other investigations into the CRU emails that reach a contrary conclusion about Dr. Mann’s integrity.” *CEI*, 150 A.3d at 1253.

D. DEFENDANTS’ EXPERT WITNESSES

56. Defendants have identified two expert witnesses: Judith Curry and Abraham Wyner. (Williams Decl. ¶¶ 31 & 32).

57. Defendants’ experts were retained to offer opinions addressing the defendants’ “state of mind”— whether it was “reasonable” for the defendants to have made their defamatory

statements—but both *avoided* addressing the allegations of fraud or misconduct. (Williams Decl. ¶¶ 31 & 32).

58. Dr. Curry told defense counsel “upfront” that she would “not...get involved in adjudicating scientific misconduct” in this case. (Williams Decl. ¶ 31 at 79:23-80:5).

59. Dr. Wyner testified that he was “absolutely specifically” told by defense counsel not to opine on defendants’ fraud allegations. (Williams Decl. ¶ 2 at 207:20-24).

60. Dr. Curry’s opinion is that it would be “reasonable” for the defendants to have concluded that Dr. Mann engaged in fraud. (Williams Decl. ¶33 at 2-3 & 28).

61. In explaining her expert opinion, Dr. Curry testified that she repeated what other people had said about Dr. Mann’s research and had not conducted an investigation of the evidence for and against:

A: Okay, if 20 people are calling it a fraud and then the 21st person comes along and calls it a fraud, one might infer that what they're saying is consistent with other statements that people have made. It's a simple statement.

Q: Well, isn't it important to know in terms of evaluating the credibility of information, which you have made no attempt to evaluate here, the credibility of the person making the statement?

MR. WILSON:· Objection to the form.

THE WITNESS:· There’s two approaches that you can take.· One is to do a personal investigation of all the evidence for and against, which is beyond the interests or capabilities of most journalists. An alternative approach is to parrot what other people are saying or listen to your preferred expert. I mean, there are many different rationales for how people come to a judgment about these things, their personal judgment.

(Williams Decl. ¶31 at 175:18-176:12).

62. Dr. Curry states that she does not pass judgment on research misconduct: “I’m not making any judgments about the veracity of any scientific piece of this or that or any judgment for or against Michael Mann in terms of scientific misconduct.” (Williams Decl. ¶ 31 at 52:6-21).

63. Dr. Wyner's opinion is that the defendants' statements "can reasonably be construed [by political commentators] as manipulative." (Williams Decl. ¶ 32, ¶ 9).

64. In her report, Dr. Curry posits three reasons why it might have been "reasonable" for the defendants to have made their statements about Dr. Mann: (1) "image fraud" in connection with Dr. Mann's participation in a report of the Intergovernmental Panel on Climate Change in 2001, two years after the publication MBH98 and MBH99; (2) "cherry picking" in connection with the selection of the proxy data for the MBH98 and MBH99 research; and (3) "data falsification" in connection with a different peer-reviewed article Dr. Mann and his colleagues published in 2008, nine years after MBH98 and MBH99 were published. (Williams Decl. ¶ 33 at 2-3 & 28,).

65. Dr. Raymond Bradley and Dr. Thomas Karl have submitted declarations stating that Dr. Curry's factual allegations on each of these three points are incorrect. (Williams Decl. ¶¶ 9 & 34).

66. Dr. Bradley and Dr. Karl have personal knowledge on these issues, having worked extensively with Dr. Mann on the publications at issue. (Williams Decl. ¶ 9 at ¶ 6 & ¶ 34 at ¶9).

67. Dr. Curry's opinions on these points have been raised before and explicitly rejected by the scientific community. (Williams Decl. ¶¶ 9, 49, 50, 51, 52, 53, 54).

68. Dr. Curry's views on climate change are regarded by her former colleagues at Georgia Tech as extreme and an outlier in the scientific community. (Williams Decl. ¶ 35 at GATECH000018).

69. Dr. Curry's views on climate science were questioned by federal program funding managers and by others at "Tier 1 universities" who wanted to know how Georgia Tech could "tolerate [her] positions and her blogging." (Williams Decl. ¶ 35 at GATECH0000019).

70. Dr. Curry's has submitted two substantially similar amicus curia briefs on behalf of CEI and against Dr. Mann in this case, one to the District of Columbia Court of Appeals and one to the United States Supreme Court. *See*

https://cei.org/sites/default/files/2017.01.25%20Br.%20of%20Amicus%20Dr.%20Judith%20A.%20Curry%20Nos.%2014-cv-101%2014-cv-126%20%28D.C.%29_1.pdf and https://www.supremecourt.gov/DocketPDF/18/18-1451/104809/20190702152803297_18-1451%20and%2018-1477%20tsac%20Dr.%20Judith%20A.%20Curry.pdf.

71. Neither of Dr. Curry's amicus curia briefs allege Dr. Mann committed research misconduct or had improperly manipulated data, or that the Hockey Stick was fraudulent. *Id.*

72. Dr. Curry blames Dr. Mann for her dismissal from Georgia Tech. (Williams Decl. ¶ 31 at 204:4-207:7, 208:12-209:2).

73. In her deposition, Dr. Curry confirmed that—prior to her retention in this case—she had stated on her blog that Dr. Mann had not engaged in research misconduct-- falsification or fabrication. (Williams Decl. ¶¶ 36 & 31 at 44:1-46:12).

74. When she was interviewed by the National Science Foundation, Dr. Curry told the Inspector General that Dr. Mann did not commit research misconduct. (Williams Decl. ¶¶ 37 & 31 at 151:2-9).

75. Dr. Wyner's testified during his deposition that, in his opinion, the hockey stick was "not a deception." (Williams Decl. ¶ 2 at 232:7-10).

E. DEFENDANTS' FACT WITNESSES

76. Defendant's fact witness, Roger Pielke, Jr., a professor at the University of Colorado, Boulder, who has followed the hockey stick issue closely and has written numerous articles about this controversy, testified during his deposition that there was nothing in the climategate reviews that "presented any evidence of fraud." (Williams Decl. ¶ 3 & ¶ 4 at 67:10-68:8).

77. Dr. Pielke also wrote that the allegations against Dr. Mann did not rise to the level of "fraud or misconduct, not even close." (Williams Decl. ¶ 3 & ¶ 4 at 67:10-68:8).

78. When CEI learned that Dr. Pielke, its own witness, had made these statements, CEI cancelled Dr. Pielke's deposition forty minutes before its scheduled start. The deposition eventually took place later, at the request of Dr. Mann's counsel. (Williams Decl. ¶ 38).

79. Defendant's fact witness, Stephen McIntyre, is a retired mining executive who has reviewed and written about Dr. Mann's research for the better part of 20 years. Mr. McIntyre testified that no one has more knowledge than he about Dr. Mann's work. (Williams Decl. ¶ 5 at 257:11-258:12).

80. Mr. McIntyre's work has been frequently cited by the defendants in this case as authoritative on the subject of the hockey stick. Mr. McIntyre and his co-author, Ross McKittrick, an economist, received CEI's Julian Simon award for their hockey stick investigations. (Williams Decl. ¶ 5 at 36:6-18).

81. Mr. McIntyre has never accused Dr. Mann of fraud or misconduct in any of his writings or in his interview with the National Science Foundation Inspector General. (Williams Decl. ¶ 5 at 220:14-16, ¶ 39).

82. Mr. McIntyre has publicly stated that Dr. Mann “published diligently.” (Williams Decl. ¶ 5 at 200:16-19).

83. In his interview with the NSF Inspector General investigators, Mr. McIntyre claimed Dr. Mann’s MBH98 and MBH99 research contained mistakes but did not allege Dr. Mann had committed research misconduct or had improperly manipulated data, or that the Hockey Stick was fraudulent. (Williams Decl. ¶ 5 at 202:18-208:25; 209-218, ¶ 38 at 4-5, ¶ 39).

84. Mr. McIntyre, in his email communication to CEI transmitting a copy of the NSF Inspector General memorandum recording his interview (a copy of which Mr. McIntyre had obtained from the NSF under the Freedom of Information Act), did not allege the interview memorandum was inaccurate. (Williams Decl. ¶ 5 at 202:18-208:25; 211:8-218:2, ¶ 39).

85. Defendant’s fact witness, Edward Wegman, is a statistician who previously analyzed Dr. Mann’s work and testified to Congress that Dr. Mann used incorrect mathematical models, but did not testify that his conduct was fraudulent or constituted academic, scientific, or research misconduct. (Williams Decl. ¶ 40 at 21:12-24:10).

F. PLAINTIFF’S PROOF OF FALSITY

86. Dr. Mann has presented the following evidence: (1) the report of the National Research Council, of the National Academy of Sciences that conducted a review of Dr. Mann’s research in 2006 at the request of the United States House of Representatives (Williams Decl. ¶9, Ex. D); (2) peer-reviewed, scientific studies reviewing, validating, and replicating the hockey stick (Williams Decl. ¶9 at ¶ 51 & Ex. D, ¶ 54 at 19-20, ¶ 52 at 14-15, ¶ 53 at 18-19; Wikipedia, *The Hockey Stick Graph*, https://en.wikipedia.org/wiki/Hockey_stick_graph); (3) the reports issued by academic and governmental organizations in 2010 and 2011 (Williams Decl. ¶¶41, 42, 43, 44, 45 46, 47, 48); and (4) the testimony of Dr. Mann’s expert witnesses in this case: Dr.

Raymond Bradley, co-author of MBH98 and MBH99 (Williams Decl. ¶50); Dr. John Mashey, a leading expert on disinformation in the climate change field and who has written extensively about climate change issues (Williams Decl. ¶53); Dr. John Holdren of Harvard University, formerly President Obama's top Science Advisor (Williams Decl. ¶52); Dr. Gerald North of Texas A&M University, who chaired the NRC panel which reviewed MBH98 and MBH99 (Williams Decl. ¶54); Dr. Naomi Oreskes of Harvard University, who published an analysis of the climate change controversy in *Merchants of Doubt* (Williams Decl. ¶55); Dr. Peter Frumhoff, Science Director of the Union of Concerned Scientists (Williams Decl. ¶51); and Dr. John Abraham, of the University of St. Thomas, an expert on thermodynamics and a leading climate change researcher who reviewed each of the eight academic and governmental investigations into the climategate emails (Williams Decl. ¶49).

1. THE 2006 NATIONAL RESEARCH COUNCIL REPORT

87. In 2006, at the request of the United States House of Representatives, Committee on Science, the National Research Council of the National Academy of Science evaluated the methodology and conclusions of MBH98 and MBH99, and the overall state of knowledge concerning proxy data reconstruction of global and hemispheric temperature. (Williams Decl. ¶9 at ¶ 30, Ex. D at ix, 1, 3, 4, 15, 20-21, 95, 111-115).

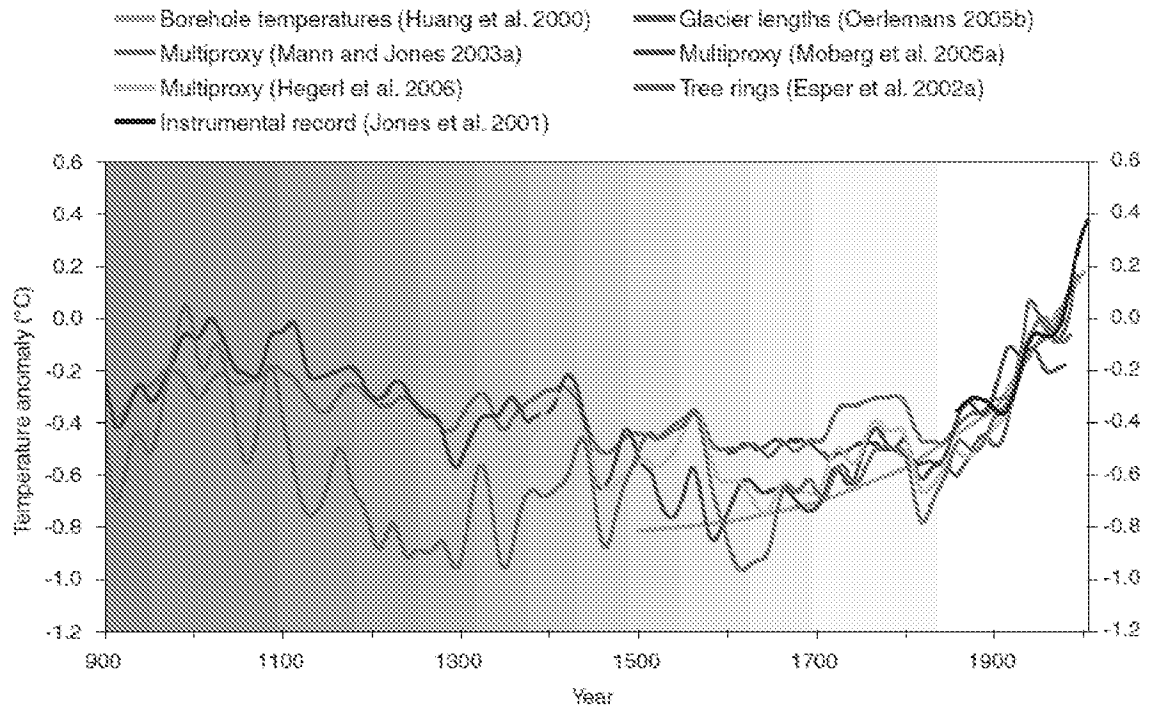
88. The Chair of the Council was Dr. Jerry North, one of Dr. Mann's expert witnesses in this case. The NRC's review was prompted in part by "critic[isms] of the original papers [which] argued that the statistical methods were flawed, that the choice of data was biased, and that the data and procedures used were not shared so others could verify the work." (Williams Decl. ¶9 at ¶ 30, Ex. D at ix).

89. These criticisms included those of Stephen McIntyre, one of the defendants' witnesses in this case. (Williams Decl. ¶9 at ¶ 30, Ex. D at 90, 112-113).

90. The NRC specifically evaluated the McIntyre criticisms, investigated the hockey stick in depth, and considered a number of subsequent large-scale surface temperature reconstruction studies conducted by different research groups, each of which validated and replicated Dr. Mann and his colleagues' work. (Williams Decl. ¶9 at ¶ 30, Ex. D at 1-2, Fig. S-1; ¶ 54 at 17-18).

91. According to Dr. North, "the 2003 McIntyre and McKittrick paper argued that under some conditions the leading principal component could exhibit a spurious trend-like appearance, which could lead to a spurious proxy-based reconstruction. However, the committee concluded that the principal component analysis did not 'bias the shape of the reconstructions,' and that even if MBH had used a different statistical method, the results would have been approximately the same. Accordingly, while we questioned some technical choices made in the use of the principal components analysis, it did not appear to 'unduly influence reconstructions of historic mean temperatures,' particularly given the fact that the many reconstructions performed without the principal component analysis were quantitatively similar to the MBH work, including the research of Crowley and Lowery, Huybers, D'Arrigo, Hegerl, and Wahl and Ammann." (Williams Decl. ¶ 54 at 17-18).

92. According to the NRC, each of the different proxy reconstructions used different methodologies and data, which the NRC depicted in a composite graph, reproduced below, which establishes regardless of the specific proxy and method used, 20th Century warming over the prior millennium is undeniable:



(Williams Decl. ¶9 at ¶ 30, Ex. D at 1-2, Fig. S-1).

93. The NRC found the “basic conclusion of Mann et al. (1998, 1999)...[had] subsequently been supported by an array of evidence that includes the additional large-scale surface temperature reconstructions and documentation,” noting the studies of Cook et al. 2004, Moberg et al. 2005b, Rutherford et al. 2005, D’Arrigo et al. 2006, Osborn and Briffa 2006, Wahl and Ammann (in press at the time of the NRC report) (Williams Decl. ¶9 at ¶ 30, Ex. D at 115).

94. According to Dr. North, the NRC concluded “*the MBH authors accurately and honestly reported their underlying research and did not make claims that were stronger than the data could support.*” (Williams Decl. ¶54 at 12).

95. Dr. North also states in his expert report that “Since the committee issued its report, there has been a great deal of research in the area of global warming which has further confirmed the conclusions of the committee, and my own opinion, that the MBH research was valid, accurate, and fairly presented.” (Williams Decl. ¶54 at 19).

96. Dr. North further states, “the MBH work has stood the test of time and should be considered a significant and pioneering contribution in the area of climate science.” (Williams Decl. ¶54 at 20). The NRC’s 2006 review was prompted in part by political pressure from Congressman Joseph Barton (R-Texas) who promoted “*critic[isms] of the original papers [which] argued that the statistical methods were flawed, that the choice of data was biased, and that the data and procedures used were not shared so others could verify the work.*” NRC2006, Preface p. ix.

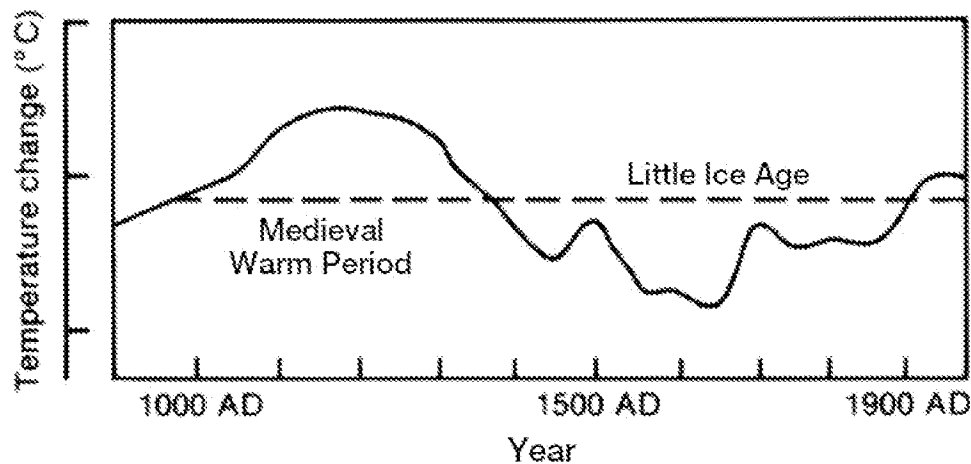
97. The NRC stated that its report was “*an opportunity to examine the strengths and limitations of surface temperature reconstructions and the role that they play in improving our understanding of climate. The reconstruction produced by Dr. Mann and his colleagues was just one step in a long process of research, and it is not (as sometimes presented) a clinching argument for anthropogenic global warming, but rather one of many independent lines of research on global climate change.*” (Williams Decl. ¶9 at ¶ 30, Ex. D at ix).

98. The NRC evaluated the reliability of proxy data, acknowledged the many different approaches to selecting and analyzing proxy data, and concluded that “*proxy records are meaningful recorders of environmental variables . . . the connections between proxy records and environmental variables are well justified in terms of physical, chemical, and biological processes . . . [t]ree rings, the dominant data source in many large-scale surface temperature reconstructions . . . are derived from regional networks with extensive replication that reflect temperature variability at the regional scale.*” (Williams Decl. ¶9 at ¶ 30, Ex. D at 20).

99. The NRC evaluated how understanding of large-scale surface temperature reconstructions had evolved over the last few decades, which it illustrated through a series of

temperature reconstruction graphs that revealed progressively more sophisticated techniques for reconstructing mean surface temperature (Williams Decl. ¶9 at ¶¶ 30-34, Ex. D pp. 111-113).

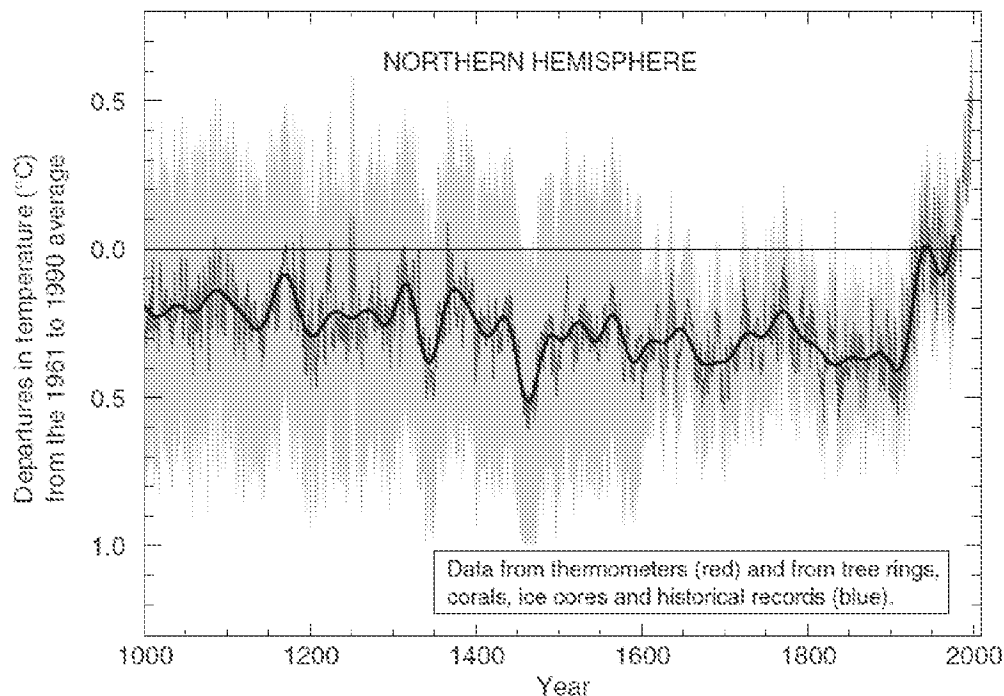
100. The NRC pointed to a crude graph from the very first report of the IPCC in 1990, which featured a crude graph showing elevated temperatures during a “Medieval Warm Period” between roughly the 11th and 13th centuries which exceeded 20th century temperatures by an unspecified margin and inexplicably omitted “[t]he pronounced warming trend that began around 1975 [which] was not indicated in the graphic.” (Williams Decl. ¶9 at ¶ 30, Ex. D pp. 14-15, Figure O-3).



101. The crude graph from IPCC’s 1990 report, which omitted “[t]he pronounced warming trend that began around 1975” is the same graph Mr. Steyn testified contributed to his conclusion formed in 2001 that the Hockey Stick graphs was fraudulent. (Williams Decl. ¶9 at ¶ 30, Ex. D pp. 14-15, Figure O-3, ¶ 25 at 41:21-58:1 & 103:21-104:10, ¶ 9, ¶ 61).

102. Next, the NRC reviewed our work in MBH99 and included a graph of our multiproxy reconstruction of Northern Hemisphere surface temperature variations over the past millennium, Figure O-4, which had been featured as Figure 2.20 in the IPCC’s 2001 Third

Assessment Report and which the NRC acknowledged is sometimes referred to as the “hockey stick.”



(Williams Decl. ¶9 at ¶ 30, Ex. D pp. 15, Figure O-4; *IPCC Third Assessment Report Climate Change 2001: The Scientific Basis*

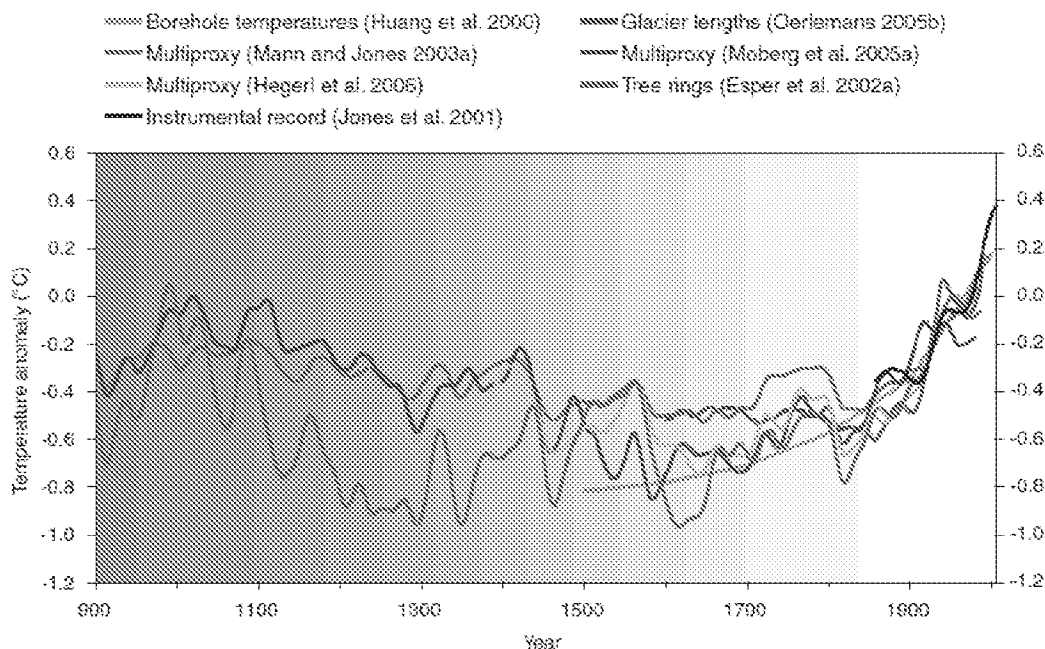
https://www.ipcc.ch/site/assets/uploads/2018/03/WGI_TAR_full_report.pdf at 3 & 134).

103. The NRC acknowledged that in comparison to the 1990 figure (Figure O-3), the reconstructed surface temperature variations prior to the 20th century were less pronounced, and the 20th century warming was shown to be more dramatic by the inclusion of data after 1975 (Figure O-4). On the basis of the results summarized in this figure, the IPCC concluded that “*the increase in temperature in the 20th century is likely to have been the largest of any century during the last 1,000 years. It is also likely that, in the Northern Hemisphere, the 1990s was the warmest decade and 1998 the warmest year.*” (Williams Decl. ¶ 9 at ¶ 30, Ex. D at 15)

104. The NRC observed that MBH99 was the first large-scale surface temperature reconstruction to include explicit statistical error bars, which were relatively small back to about A.D. 1600, but much larger for A.D. 1000–1600, which “*provided an indication of the confidence that can be placed in the results.*” (Williams Decl. ¶9 at ¶ 30, Ex. D at 115).

105. The NRC stated that “[d]espite the wide error bars, Figure O-4 was misinterpreted by some as indicating the existence of one “definitive” reconstruction with small century-to-century variability prior to the mid-19th century. ((Williams Decl. ¶9 at ¶ 30, Ex. D at 16).

106. The NRC evaluated a number of subsequent large-scale surface temperature reconstruction studies conducted by different research groups, each using different methodologies and selected proxies, as well as the instrumental record (beginning in 1856) of global mean surface temperature, which the NRC depicted in the following composite graph, which clearly showed that, regardless of the specific proxy and method used, 20th Century warming over the prior millennium was undeniable:



(Williams Decl. ¶9 at ¶ 30, Ex. D Figure S-1, p. 2).

107. The NRC also evaluated a number of additional paleoclimate reconstruction studies and their associated Hockey Stick graphs, each of which substantially agreed with MBH98 and MBH99, namely Cook et al. 2004, Moberg et al. 2005b, Rutherford et al. 2005, D'Arrigo et al. 2006, Osborn and Briffa 2006, Wahl and Ammann (in press, published in 2007) (Williams Decl. ¶9 at ¶ 30, Ex. D, at 115).

108. Based upon its review of each of these proxy reconstructions of temperature, the NRC found the “*basic conclusion of Mann et al. (1998, 1999) was that the late 20th century warmth in the Northern Hemisphere was unprecedented during at least the last 1,000 years. This conclusion has subsequently been supported by an array of evidence that includes the additional large-scale surface temperature reconstructions and documentation of the spatial coherence of recent warming described above (Cook et al. 2004, Moberg et al. 2005b, Rutherford et al. 2005, D'Arrigo et al. 2006, Osborn and Briffa 2006, Wahl and Ammann in press) and also the pronounced changes in a variety of local proxy indicators described in previous chapters (e.g., Thompson et al. in press). Based on the analyses presented in the original papers by Mann et al. and this newer supporting evidence, the committee finds it plausible that the Northern Hemisphere was warmer during the last few decades of the 20th century than during any comparable period over the preceding millennium.*” (Williams Decl. ¶9 at ¶ 30, Ex. D at 115).

109. The NRC also reinforced the suggestions made in MBH99 by recommending additional follow-on research to update and improve the methods and analyses in MBH98, MBH99, and the other referenced paleoclimate reconstructions, including (a) improving site chronologies that were collected 20–30 years ago; (b) increasing the number and geographic coverage of temperature-sensitive tree ring chronologies longer than 1,000 years; (c) quantifying

the precision and accuracy of low-frequency temperature signals; (d) performing experimental studies on biophysical relationships between temperature and tree ring parameters; and (e) refining mechanistic models of temperature effects on tree ring parameters at multiple spatial and temporal scales. (Williams Decl. ¶9 at ¶ 30, Ex. D, at 52).

2. THE PEER REVIEWED STUDIES

110. At the time NRC issued its report, six different peer-reviewed studies had confirmed the validity of the MBH research (cited above). Each used different methodologies and data from the MBH papers. Each reached the same conclusions as the MBH authors. (Williams Decl. ¶9 at ¶ 30, Ex. D at 2, Fig. S-2).

111. Since the NRC's comprehensive evaluation of MBH98 and MBH99 and other paleoclimate reconstructions, dozens of subsequent paleoclimate reconstructions using a wide variety of proxy data and analytical methods have cited to, validated, and extended the work on the hockey stick. (Williams Decl. ¶9 at ¶ 34-60, Ex. D at 52, ¶ 54 at 19-20).

112. A common measure of the contribution a scientific paper makes toward developing a scientific consensus is the number of citations it receives in the scholarly literature. The MBH98 and MBH99 papers have been widely cited in the peer reviewed literature, according to Google Scholar. MBH98 has been cited by 2,470 scholarly works and publications.

See

https://www.google.com/search?rlz=1C1GCEJ_enUS891US891&sxsrf=ALeKk01MoJK0TLOvxgbDrxgxBpNQNL_olA%3A1610764145281&ei=cU8CYP6AF0005wLzxgeoDQ&q=Global-scale+temperature+patterns+and+climate+forcing+over+the+past+six+centuries&oq=Global-scale+temperature+patterns+and+climate+forcing+over+the+past+six+centuries&gs_lcp=CgZwc3ktYWlQDFAAWABg6x1oAHABeACAAQOCIAQCSAQCYAQCAQdnd3Mtd2l6&sclient=p

[sy-ab&ved=0ahUKEwi-_ceFtJ_uAhVjx1kKHXPjCdUO4dUDCA0](#). MBH99 has been cited by 2,410, *see*

https://scholar.google.com/scholar?rlz=1C1GCEJ_enUS891US891&sxsrf=ALeKk03rgc8bwOoUE54XvKtfrRHwTvJ2oQ:1610763800601&gs_lcp=CgZwc3ktYWIQDDIECAAQRzIECAAQRzIECAAQRzIECAAQR1CzIlizImDbOmgAcAR4AIABAIgBAJIBAIgBAaABAqABAaoBB2d3cy13aXrIAQTAAQE&um=1&ie=UTF-8&lr&cites=11253045204762962594 , and Mann et al. 2008 by 1,190. *See*

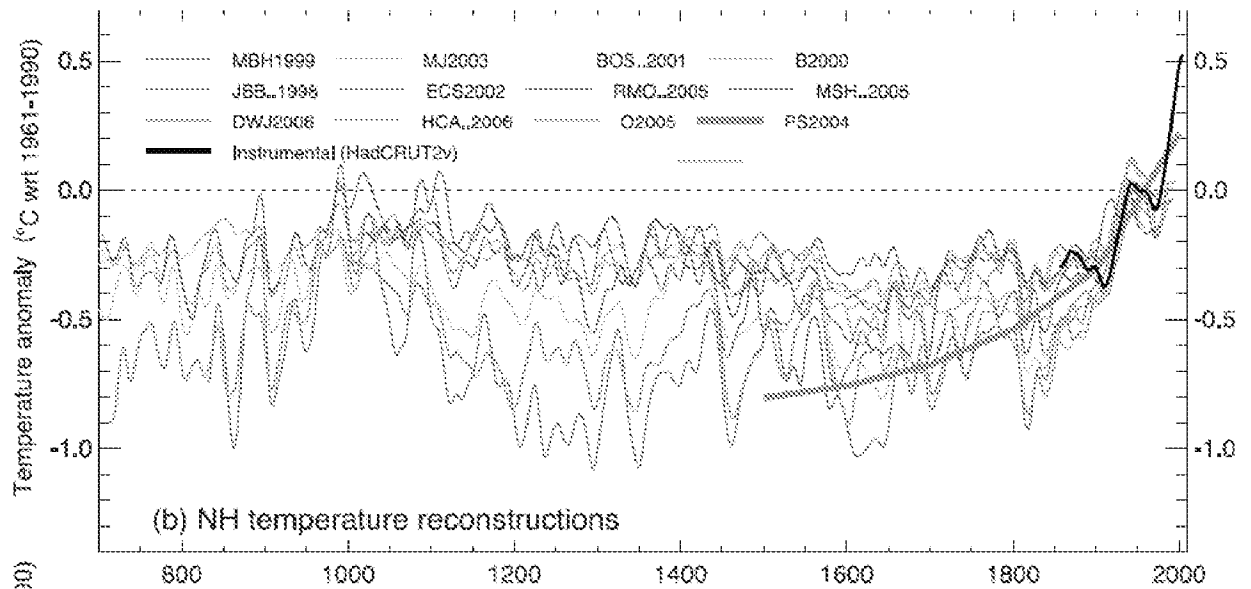
https://scholar.google.com/scholar?rlz=1C1GCEJ_enUS891US891&um=1&ie=UTF-8&lr&cites=9987187952193121).

113. Subsequent paleoclimate reconstructions using a wide variety of proxy data and analytical methods have cited, validated, and extended Dr. Mann’s work on the hockey stick. (Williams Decl. ¶¶ 9 at ¶ 51, 54 at 19-20 ¶ 52 at 14-15; *see* Wikipedia, *The Hockey Stick Graph*, https://en.wikipedia.org/wiki/Hockey_stick_graph).

114. In 2007, the IPCC published its Fourth Assessment Report, which contained a summary of the various proxy reconstructions of temperature, specifically rejected earlier criticisms of MBH98 and MBH99. (Williams Decl. ¶ IPCC, 2007: *Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 996 pp. at 466. *See* https://www.ipcc.ch/site/assets/uploads/2018/05/ar4_wg1_full_report-1.pdf

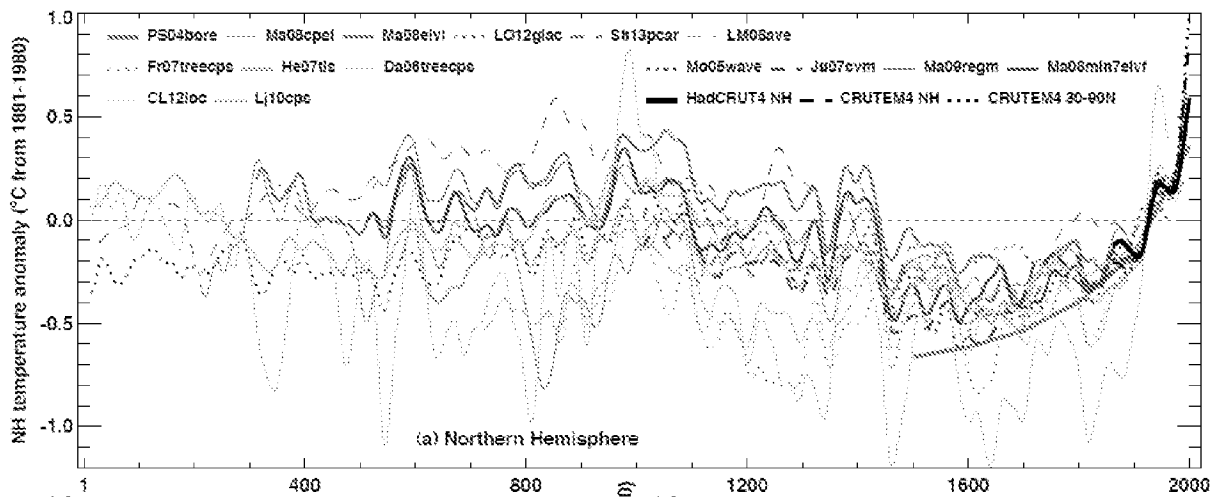
115. IPCC2007 concluded that the “*weight of current multi-proxy evidence, therefore, suggests greater 20th-century warmth, in comparison with temperature levels of the previous*

400 years, than was shown in the TAR [IPCC 2001 Third Assessment Report]. On the evidence of the previous and four new reconstructions that reach back more than 1 kyr, it is likely that the 20th century was the warmest in at least the past 1.3 kyr.” IPCC2007, p. 474). (Williams Decl. ¶ 9 at 53). Figure 6.10b is shown below.



116. The most recent IPCC report, the Fifth Assessment Report published in 2013, also featured Mann et al. 2008, and numerous other paleoclimate reconstructions which again show remarkable consistency in demonstrating the anomalous nature of 20th Century temperatures. IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA, 1535 pp. (IPCC2013). See https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_all_final.pdf (Williams Decl. ¶ 9 at 54).

117. IPCC2013 concluded “[b]ased on multiple lines of evidence (using different statistical methods or different compilations of proxy records; see Appendix 5.A.1 for a description of reconstructions and selection criteria), published reconstructions and their uncertainty estimates indicate, with high confidence, that the mean NH temperature of the last 30 or 50 years very likely exceeded any previous 30- or 50-year mean during the past 800 . . . almost all reconstructions agree that each 30-year (50-year) period from 1200 to 1899 was very likely colder in the NH than the 1983–2012 (1963–2012) instrumental temperature.” IPCC2013, pp. 409-410. Figure 5.7(a) of IPCC2013 is shown below.

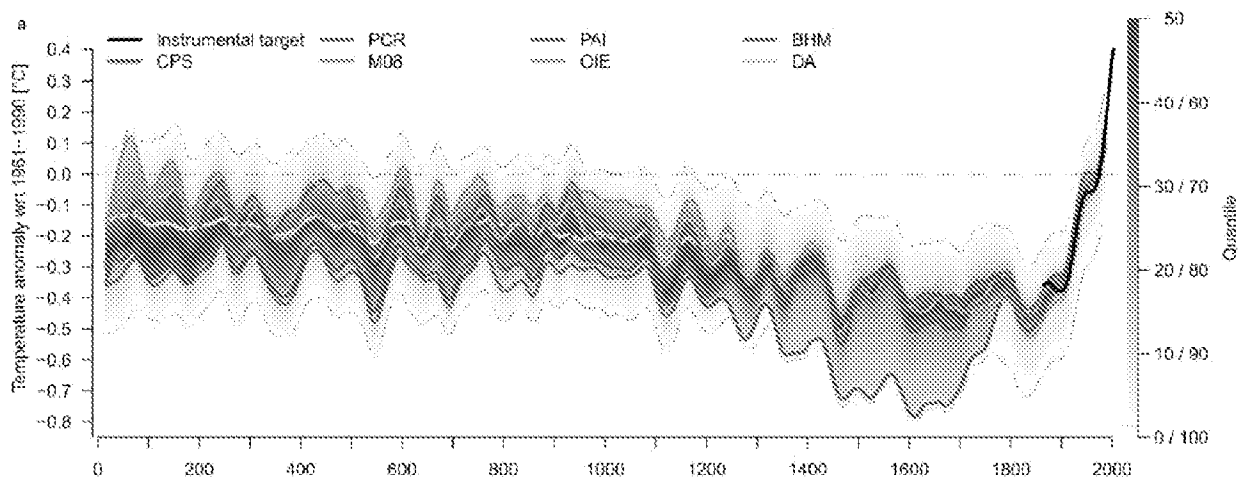


118. One of the most recent examples is a paleoclimate temperature reconstructions study performed by the International PAGES consortium, which used seven different statistical methods applied to a global collection of temperature-sensitive paleoclimate records, in order to reconstruct global temperature over the past 2,000 years. See PAGES 2k Consortium, Neukom R, Barboza LA, et al. *Consistent multi-decadal variability in global temperature reconstructions and simulations over the Common Era*. *Nature Geoscience*. 2019;12(8):643-649. doi:10.1038/s41561-019-0400-0 (PAGES2020) (Williams Decl. ¶ 9 at ¶ 57).

119. The PAGES2020 study found “[r]econstructions and simulations qualitatively agree on the amplitude of the unforced global mean multi-decadal temperature variability, thereby increasing confidence in future projections of climate change on these timescales. The largest warming trends at timescales of 20 years and longer occur during the second half of the 20th century, highlighting the unusual character of the warming in recent decades.”

PAGES2020, p. 2. (Williams Decl. ¶ 9 at ¶ 58).

120. The PAGES2020 study demonstrated remarkably synchronous temperature reconstructions and strongly reinforced our findings in Mann et al. 2008, depicted below as the M08 data.



3. THE CLIMATEGATE INVESTIGATIONS

121. In the wake of the theft of the “climategate” emails, eight different academic and governmental panels conducted investigations into the conduct of the climate scientists, including Dr. Mann. (Williams Decl. ¶ 49, ¶ 51 at 5-12, ¶ 52 at 17-19, ¶ 53 at 18-29).

122. The Court of Appeals confirmed: “[f]ollowing disclosure of the emails and the questions raised, Penn State, the University of East Anglia, and five governmental agencies —

the U.K. House of Commons Science and Technology Committee, the U.K. Secretary of State for Energy and Climate Change, the Inspector General of the U.S. Department of Commerce, the U.S. Environmental Protection Agency, and the U.S. National Science Foundation — issued reports after conducting inquiries into the validity of the methodology and research underlying the hockey stick graph and investigating the allegations impugning the integrity of Dr. Mann’s and other climate scientists’ conduct.” *CEI*, 150 A.3d at 1223.

123. None of these investigations found any evidence of fraud, falsification, manipulation or misconduct. *Id.* at 1223.

124. The allegations that Dr. Mann had engaged in deception and academic and scientific misconduct “[have] been proved to be false by four separate investigations.” *Id.* at 1245.

125. Regarding the defendants’ assertions that the negative findings do not support a conclusion that their statements were, in fact, false, the Court of Appeals held: “a determination that there is ‘no evidence’ of fraud is an ultimate conclusion that investigation has not turned up any evidence of misconduct.” *Id.* at 1256.

126. The Simberg article was inaccurate in asserting that there had not been an independent investigation of Dr. Mann’s research. *Id.* at 1246. The NSF reviewed all the reports and documentation the Penn State provided and reviewed ‘a substantial amount of publicly available documentation concerning Dr. Mann’s research and parallel research conducted by his collaborators and other scientists in that particular field of research. The NSF interviewed Dr. Mann, his critics, and disciplinary experts. *Id.* at 1246-47.

127. Dr. Holdren notes that the allegations against the climate scientists that led to these investigations were “bankrupt” and highlight the harassment that climate denialists inflict on climate change researchers. (Williams Decl. ¶ 52 at 18).

128. As Dr. Frumhoff and Dr. Oreskes state, the reports of the investigations “vindicated the integrity” of the scientists in question (Williams Decl. ¶¶ 51 at 7, 55 at 20-24), and, in particular, “exonerated” Dr. Mann. (Williams Decl. ¶¶ 51 at 9-10, 55 at 24).

129. Dr. Abraham testified that the investigations confirm the accuracy and validity of the hockey stick and concludes with the following observation: “In fact, the irony is that the unfounded complaints have given such intense scrutiny to Dr. Mann’s work, that we now know, with great certainty, he was correct all along.” (Williams Decl. ¶49 at 53).

a. THE PENN STATE INVESTIGATION

130. Defendants deposed all three of the members of the Penn State panel, that conducted the inquiry, as well as former Penn State President, Graham Spanier. (Williams Decl. ¶¶ 56, 57).

131. Dr. Henry Foley, the former Vice President for Research and Dean of Graduate Studies at Penn State, testified that in view of the public scrutiny of the issue, the committee was “keenly concerned that we try to do everything as carefully and as well as we possibly could.” (Williams Decl. ¶ 56 at 201:11-14).

132. Dr. Foley also testified that the committee came into the investigations with no preconceived notions and stated that he and Dr. Alan Scaroni (a committee member) were initially skeptical of the validity of the hockey stick research but were later convinced after reviewing all of the emails, reading the NRC report, and speaking with Dr. North. (Williams Decl. ¶ 56 at 200-01).

133. Dr. Foley testified that he reviewed every single email, reviewed the entire 2006 NRC report, interviewed the Chair of the NRC report, Dr. Jerry North, and conducted a thorough and comprehensive review of all of it, to reach the conclusion that Dr. Mann had not committed academic misconduct and that his MBH98 and MBH99 research was sound. (Williams Decl. ¶ 56 at 200:15-203:25, 204:7-205:20, 212:3-213:21, 209:6-211:9, 212:3-213:21).

134. Candace Yekel, Penn State's Research Integrity Officer testified that the inquiry and investigation committees took great care to examine the allegations and there was no cover-up of wrongdoing:

Q: What would you say to the people that say that Penn State's inquiry and investigation of Dr. Mann was a whitewash?

A: I would say that is not true, and we took great care and effort to make sure we looked at these allegations.... The committee members...were some of our best. And so I would absolutely stand behind the report that it was thorough and complete.

Q: What would you say to someone that alleges that Penn State's inquiry and investigation was a cover-up of wrongdoing?

A: I would say that is not accurate. And to suggest such a thing, I would expect to have some evidence to even suggest such a thing.

(Williams Decl. ¶ 57 at 256:17-57:19).

b. THE NSF INVESTIGATION

135. The 2011 NSF investigation evaluated whether Mann had fabricated and falsified data based on a reading of publicly released emails, many of which contained language that reasonably caused individuals, not party to the communications, to suspect some impropriety on the part of the authors. (Williams Decl. ¶ 48 at 2-3).

136. As part of its investigation, NSF attempted to determine if data fabrication or falsification may have occurred and interviewed the subject, critics, and disciplinary experts in coming to our conclusions. (Williams Decl. ¶ 48 at 3).

137. The NSF's investigation reviewed all of the emails cited by the critics of Dr. Mann, including the emails Dr. Curry now claims demonstrated that Dr. Mann "cherry picked" the data to create the Hockey Stick, and concluded that nothing contained in them evidenced research misconduct within the definition in the NSF Research Misconduct Regulation. (Williams Decl. ¶ 48 at 2).

138. The NSF closed its investigation, finding: *"To recommend a finding of research misconduct, the preponderance of the evidence must show that with culpable intent the Subject committed an act that meets the definition of research misconduct (in this case, data fabrication or data falsification). The research in question was originally completed over 10 years ago. Although the Subject's data is still available and still the focus of significant critical examination, no direct evidence has been presented that indicates the Subject fabricated the raw data he used for his research or falsified his results. Much of the current debate focuses on the viability of the statistical procedures he employed, the statistics used to confirm the accuracy of the results, and the degree to which one specific set of data impacts the statistical results. These concerns are all appropriate for scientific debate and to assist the research community in directing future research efforts to improve understanding in this field of research. Such scientific debate is ongoing but does not, in itself, constitute evidence of research misconduct."* (Williams Decl. ¶ 48 at 3).

139. In her interview with the NSF Inspector General investigators, Dr. Curry asserted that Dr. Mann's MBH98 and MBH99 research was not the product of research misconduct. Dr. Curry was asked if she believed any research misconduct occurred in Mann's work. Curry said: in 1998-1999 Mann was ambitious, but his statistics were 'goofy.' He demonstrated 'shoddy science in his data analysis, trying to get global answers from a few local data points.'

She stated that this is not good science. But she did not see it as research misconduct . . . ‘it’s terrible science, but not misconduct . . .’ She said there are ethical issues regarding the IPCC, but ‘it’s not research misconduct . . .’ ‘You have bad statistics, but not research misconduct.’” (Williams Decl. ¶ 37, ¶ 31 at 151:2-153:21, ¶ 37).

c. THE 2010 EPA INVESTIGATION

140. The EPA evaluated CEI’s claims, made in its 2010 Petition for Review challenging the Endangerment Finding, that the emails stolen from the University of East Anglia Climate Research Unit undermined the credibility of scientists and the scientific basis for the finding. See EPA, *Response to the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, Preface & Volume 1: Climate Science and Data Issues Raised by Petitioners* <https://www.epa.gov/sites/production/files/2016-08/documents/response-preface.pdf> and <https://www.epa.gov/sites/production/files/2016-08/documents/response-volume1.pdf>.

141. EPA rejected claims that the November 1999 Dr. Phil Jones email, “I’ve just completed Mike’s Nature trick of adding in the real temps to each series for the last 20 years (ie from 1981 onwards) and from 1961 for Keith’s to hide the decline,” evidenced an effort to deliberately manipulate data to yield desired results. EPA concluded “the evidence shows that the research community was fully aware of these issues and was not hiding or concealing them . . . the Third Assessment Report, published in 2001 (IPCC, 2001), had a full paragraph on “important caveats to be kept in mind” regarding paleoclimate reconstructions that use tree rings. The paragraph included a discussion of the divergence and concluded that tree rings were best used as one of multiple proxies rather than being the sole source for a climate reconstruction . . . The petitioners highlight the use of the word “trick” . . . more formal reviews did not find that

this phrase indicated an “attempt to cook the books”. The UK Science & Technology Committee (2010) reviewed this specific e-mail in its investigation of the disclosure of climate data from the CRU. This investigation concluded: “We are content that the phrases such as ‘trick’ or ‘hiding the decline’ were colloquial terms used in private e-mails, and the balance of evidence is that they were not part of a systematic attempt to mislead.” *Id.* Vol. 1, p. 22-23.

<https://www.regulations.gov/document?D=EPA-HQ-OAR-2009-0171-12067>

4. DR. MANN’S WITNESSES

142. Dr. Mann’s witnesses address the falsity of Defendants’ allegations. Dr. Bradley, noting the extensive body of peer-reviewed articles validating Dr. Mann’s research, states:

This body of scientific reports is significant for multiple reasons. Each was conducted by qualified and independent, accredited scientists. In addition, each reaches essentially the same conclusion, reinforcing and supporting the conclusions reached by the others. Specifically, they each found that there is no basis to conclude that: a. the MBH authors had molested or tortured the data used in our studies; b. the MBH authors had engaged in data manipulation; c. the MBH authors had engaged in corrupt or disgraced science or that any of these investigations were a whitewash; d. anyone covered up or allowed to continue heinous crimes or that the MBH authors had engaged in academic and scientific misconduct; and e. the “hockey stick” graph was fraudulent.

(Williams Decl. ¶ 50 at 19-20).

143. Dr. Naomi Oreskes states that the Defendants’ allegations against Dr. Mann are “false and unjustified.” (Williams Decl. ¶ 55 at 24).

144. Dr. Peter Frumhoff states that the “statements made by National Review and the Competitive Enterprise Institute at issue in this case are “false.” (Williams Decl. ¶ 51 at 3).

145. Dr. John Mashey states in his report that there is no research demonstrating that Dr. Mann’s research is falsified or that his methods or conclusions were fraudulent or involved misconduct. (Williams Decl. ¶ 53 at 18-29).

146. Dr. Mashey also states that no researcher who has investigated Dr. Mann's work has suggested that his research was fraudulent or improper or constituted misconduct, including the defendants' own witnesses: Mr. McIntyre, Dr. Wyner, and Dr. Wegman. (Williams Decl. ¶ 58 at 258:14-267:8).

147. Prior to his deposition, Dr. Mashey had an opportunity to review all of the defendants' expert reports, all of their deposition testimony, and all of their fact witness testimony (except for Dr. Wegman who was deposed two days later). (Williams Decl. ¶ 58 at 258:14-267:8).

148. In reviewing this testimony, Dr. Mashey stated that not one of defendants' witnesses made any allegation of fraud, or scientific misconduct, or scientific misconduct, or research misconduct. (Nor did Dr. Wegman in his subsequent deposition.) (Williams Decl. ¶ 58 at 262:18-266:10; ¶ 40 at 21:12-24:10).

149. Dr. Mashey states that the allegations of fraud and improper conduct are false. (Williams Decl. ¶ 58 at 256:11-22 and 260:18-23).

150. Dr. Bradley states: "there is no factual basis for any of the statements" at issue in this litigation. (Williams Decl. ¶ 50 at 17 and 20).

SUBSTANTIAL TRUTH AFFIRMATIVE DEFENSES

151. CEI and Mr. Simberg assert that their statements were not "substantially false." (Williams Decl. ¶ 62, Affirmative Defense No. 4).

152. In their article, the CEI defendants alleged that Dr. Mann had engaged in "hockey stick deceptions" by molesting and torturing data, and by engaging in data manipulation to keep the blade on the hockey stick.

153. These statements accused Dr. Mann of *specific acts* of academic and scientific misconduct *in the manipulation of data*, of deception *in producing the graph*” and of deception *in the presentation of data*. *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1243, 1259, 1260 (D.C. 2016) (emphasis added).

154. The allegations of “misconduct” and “deception” involved Dr. Mann’s data practices that led to the production and presentation of the hockey stick graph.

155. CEI asserts that the conduct that constituted “hockey stick deceptions” refers to conduct that occurred *years after* his research was completed and published. (Williams Decl. ¶ 66, Second Supplemental Response to Interrogatories 13 & 14).

156. The alleged hockey stick deceptions include statements that Dr. Mann made to the Penn State investigative committee in 2010—ten years after the hockey stick was published. (Williams Decl. ¶ 66, Second Supplemental Response to Interrogatories 13 & 14).

157. They also include allegations regarding conduct that occurred after the publication of the MBH 98 and 99 research.

158. CEI’s counsel states that Mr. Simberg, in using the term “hockey stick deceptions, did not, nor did he intend to, limit the basis for the deceptions concerning the ‘hockey stick’ to just the research and publication of the MBH articles in 1998 and 1999.” (Williams Decl. ¶ 67 at 2).

159. In his deposition, Mr. Simberg stated:

Q: Okay. Tell me what the hockey stick deceptions were?

A: The hockey stick deceptions were—well the hockey stick itself was a graph...[and] the deception was the means by which they generated the curve by the use of, you know, selective – selection of proxy—

Q: And-

A: --among other things.

Q: Well, what else—you mentioned the selection of proxy data before, and we’ve been through that. Tell me what the other deceptions were other than the selection of the particular proxy data they used.

A: Well, that basically was it.

(Williams Decl. ¶ 12 at 135:9-136:8).

160. In his deposition, Mr. Simberg further stated:

Q: Were there any other hockey stick deceptions?

A: No. But, again, those seem sufficient to me.

Q: I understand.

A: And I think there were other deceptions. Not hockey stick deceptions.

(*Id.* at 137:6-12).

161. The Simberg article asserted that Dr. Mann “has molested and tortured data” and engaged in “data manipulation to keep the blade on his famous hockey stick graph,” were allegations of deceptions in “the manipulation of data,” in the “presentation of data, and in “producing the graph.” (*CEI* 150 A.3d at 1243).

162. Mr. Simberg stated that the term “hockey stick deceptions” means “the means by which they generated the curve.” (*Id.* at 135:19-20).

163. The Simberg article, *The Other Scandal In Unhappy Valley*, contains no mention of Dr. Mann’s conduct before the Penn State inquiry and investigative committees in 2010. (*CEI* , 150 A.3d at 1262-1265 Appendix).

164. The Simberg article does not mention any conduct of Dr. Mann other than his hockey stick research. *Id.*

165. The Simberg article accuses Dr. Mann of “academic and scientific misconduct.” Just prior to the paragraph in which this statement appears, the article addresses the NSF Research Misconduct Regulations and criticizes the NSF investigation and its finding, repeated in the Simberg article, that “nothing in [the emails] evidenced *research misconduct within the definition of the NSF Research Misconduct Regulation.*” The article then links to another article, <https://scholarsandrogues.com/2011/08/27/nsf-psu-mann-exonerated>, which identifies what acts constitute research misconduct, and they include *falsification, fabrication, and plagiarism. Id.*

166. Mr. Simberg understood the phrase “research misconduct” to include falsification and fabrication:

Q: All right. Let’s talk about the academic and scientific misconduct that you’re referring to on the part of Dr. Mann. You said earlier that he had engaged in unscientific conduct, right?

A: Yes

Q: (after objections) That’s scientific misconduct, isn’t it?

A: I’m not sure if they’re exactly the same thing. . . . [T]here’s a specific definition...the National Science Foundation has for research misconduct.

Q: All right. And what is that?

A: It’s—specifically it’s—basically three things. I think its falsification, fabrication or plagiarism.

(Williams Decl. ¶ 12 at 155:12-156:19).

167. Mr. Simberg stated in his deposition that Dr. Mann did not engage in data fabrication and further that he did not think he engaged in data falsification. (*Id.* at 159:1-9).

168. In their Second Supplemental Responses to Interrogatories 10 and 11, defendants state that their use of the term “academic and scientific misconduct” was intended to mean that

Dr. Mann did not act with “academic integrity,” They also allege that Dr. Mann’s conduct violated the Penn State General Standards for Professional Ethics (referred to as AD47). (Williams Decl. ¶ 66).

169. The Penn State AD47 policy is an ethical standard specifying that professors should strive for the highest standards in data gathering and data presentation. (Williams Decl. ¶ 69).

170. AD47 does not mention “research misconduct,” and notes that other Penn State policies include RA10, Penn State’s Research Misconduct Standards—the policy under which Penn State conducted its NSF-supervised research misconduct inquiry and investigation of Dr. Mann—which Mr. Simberg conceded during his deposition that Dr. Mann did not violate. (Williams Decl. ¶ 69, ¶45, ¶ 46, ¶ 12 at 159:1-9).

171. Mr. Simberg’s article did not accuse Dr. Mann of an ethical violation. The Simberg article accused Dr. Mann wrongdoing, corruption, and data manipulation in order to reach a predetermined conclusion. (*CEI*, 150 A.3d at 1262-1265 Appendix).

172. Mr. Simberg’s article contains accusations of misconduct and not ethical violations. The article made factual assertions that Dr. Mann had engaged in specific acts of academic and scientific misconduct in the manipulation of data. (*CEI*, 150 A.3d at 1243 and 1262-1265 Appendix).

173. The Simberg article made factual assertions that Dr. Mann had engaged in specific acts of academic and scientific misconduct in the manipulation of data and which constituted scientific and academic misconduct.” (*Id.* at 1243 & 1249, n. 46).

Dated: January 22, 2021

Respectfully submitted,

/s/ John B. Williams

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Counsel for Plaintiff, Michael E. Mann, Ph.D.

MICHAEL E. MANN, PH.D.,)	
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)	
Plaintiff,)	Case No 2012 CA 008263 B
)	Calendar No.: 3
)	Judge: Irving
)	
v.)	
)	
NATIONAL REVIEW, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

Pursuant to Rule 43, Superior Court Rules of Civil Procedure, I, John B. Williams, declare:

1. I am currently a member in good standing of the Bar of the District of Columbia. I am an attorney at Williams Lopatto PLLC, and counsel in this matter for Plaintiff Michael E. Mann, Ph.D. (“Plaintiff”). I submit this declaration in support of Plaintiff’s Motion for Partial Summary Judgment and Motion to Strike. I have personal knowledge of the facts stated herein and, if called as a witness, I could competently testify to them.

2. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of the deposition of Abraham Wyner, Ph.D., which took place on November 10, 2020.

3. Attached hereto as Exhibit 2 is a true and correct copy of the blog post “Fishing Expedition,” dated May 1, 2010, which was written by Roger Pielke, Jr., Ph.D., and, as MANN-PIELKE-EXHIBIT-9, used as an exhibit during the deposition of Dr. Pielke.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpted portions of the transcript of the deposition of Roger Pielke, Jr., Ph.D., which took place on September 30, 2020.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpted portions of the transcript of the deposition of Stephen McIntyre, which took place on November 16, 2020.

6. Attached hereto as Exhibit 5 is a true and correct copy of Defendant National Review Inc.'s Objections and Responses to Plaintiff's First Set of Interrogatories to National Review, dated February 3, 2020.

7. Attached hereto as Exhibit 6 is a true and correct copy of Defendant Steyn's Supplemental Response to Plaintiff's First Set of Interrogatories to all Defendants, dated June 15, 2020.

8. Attached hereto as Exhibit 7 is a true and correct copy of the article "Where rising hot air hits cold hard facts," dated April 1, 2001, which was written by Mark Steyn, and, as MANN-STEYN-02, used as an exhibit during the deposition of Mr. Steyn.

9. Attached hereto as Exhibit 8 is a true and correct copy of the declaration of Raymond S. Bradley, D.Sc., dated January 19, 2021.

10. Attached hereto as Exhibit 9 is a true and correct copy of the resume of Myron Ebell, which, as MANN-EBELL-01, was used as an exhibit during the deposition of Mr. Ebell.

11. Attached hereto as Exhibit 10 is a true and correct copy of a tweet by Rand Simberg, dated July 6, 2012, which, as MANN-RS-28, was used as an exhibit during the deposition of Mr. Simberg.

12. Attached hereto as Exhibit 11 is a true and correct copy of the transcript of the deposition of Rand Simberg, which took place on October 21, 2020.

13. Attached hereto as Exhibit 12 is a true and correct copy of a series of emails dated November 22, 2011, sent by and to Rand Simberg, which, as MANN-RS-23, was used as an exhibit during the deposition of Mr. Simberg.

14. Attached hereto as Exhibit 13 is a true and correct copy of an email dated May 14, 2012, sent by Rand Simberg, which, as MANN-RS-26, was used as an exhibit during the deposition of Mr. Simberg.

15. Attached hereto as Exhibit 14 is a true and correct copy of the blog post “Born In Kenya,” dated May 17, 2012, which was written by Rand Simberg, and, as MANN-RS-58, used as an exhibit during the deposition of Mr. Simberg.

16. Attached hereto as Exhibit 15 is a true and correct copy of the blog post “The Latest On Masks,” dated June 1, 2020, which was written by Rand Simberg.

17. Attached hereto as Exhibit 16 is a true and correct copy of the blog post “Hydroxychloriquine,” dated August 7, 2020, which was written by Rand Simberg.

18. Attached hereto as Exhibit 17 is a true and correct copy of the transcript of the deposition of Richard Lowry, which took place on September 15, 2020.

19. Attached hereto as Exhibit 18 is a true and correct copy of excerpted portions of the transcript of the deposition of John Fowler, which took place on September 18, 2020.

20. Attached hereto as Exhibit 19 is a true and correct copy of the blog post “The Lonesomest Mann in Town,” dated September 16, 2014, which was written by Mark Steyn, and, as MANN-STEYN-51, used as an exhibit during the deposition of Mr. Steyn.

21. Attached hereto as Exhibit 20 is a true and correct copy of the blog post “Big Climate’s Sleazy Charlatan,” dated September 28, 2015, which was written by Mark Steyn, and, as MANN-STEYN-47, used as an exhibit during the deposition of Mr. Steyn.

22. Attached hereto as Exhibit 21 is a true and correct copy of the blog post “Dr Mann, Super-Villain,” dated November 14, 2014, which was written by Mark Steyn, and, as MANN-STEYN-45, used as an exhibit during the deposition of Mr. Steyn.

23. Attached hereto as Exhibit 22 is a true and correct copy of the blog post “Real Nobel Laureate Takes Pity on Fake Nobel Laureate,” dated August 12, 2014, which was written by Mark Steyn, and, as MANN-STEYN-43, used as an exhibit during the deposition of Mr. Steyn.

24. Attached hereto as Exhibit 23 is a true and correct copy of the blog post “Mann, I Feel Like A-Warmin’,” dated March 16, 2014, which was written by Mark Steyn, and, as MANN-STEYN-53, used as an exhibit during the deposition of Mr. Steyn.

25. Attached hereto as Exhibit 24 is a true and correct copy of the transcript of the deposition of Mark Steyn, which took place on October 26, 2020.

26. Attached hereto as Exhibit 25 is a true and correct copy of an email from Tiffany Cole to Melissa Howes (two of Mark Steyn’s colleagues), dated November 16, 2011, together with an attachment titled “Sandusky-Grand-Jury-Presentment.pdf,” which, as MANN-STEYN-55, was used as an exhibit during the deposition of Mr. Steyn.

27. Attached hereto as Exhibit 26 is a true and correct copy of the transcript of the deposition of Myron Ebell, which took place on November 5, 2020.

28. Attached hereto as Exhibit 27 is a true and correct copy of excerpted portions of the book *Global Warming and Political Intimidation: How Politicians Cracked Down on Scientists as the Earth Heated Up*, which was written by Dr. Raymond S. Bradley and published by the University of Massachusetts Press in 2011.

29. Attached hereto as Exhibit 28 is a true and correct copy of a series of emails between Nicole Ciandella and Ryan Radia, dated August 23, 2012, which, as MANN-EBELL-15, was used as an exhibit during the deposition of Myron Ebell.

30. Attached hereto as Exhibit 29 is a true and correct copy of the blog post “Michael E Mann: Liar, Cheat, Falsifier and Fraud,” dated May 13, 2014, which was written by Mark Steyn, and, as MANN-STEYN-48, used as an exhibit during the deposition of Mr. Steyn.

31. Attached hereto as Exhibit 30 is a true and correct copy of the transcript of the deposition of Judith Curry, Ph.D., which took place on November 12, 2020.

32. Attached hereto as Exhibit 31 is a true and correct copy of the expert report that was submitted by Abraham Wyner, Ph.D. in connection with this litigation.

33. Attached hereto as Exhibit 32 is a true and correct copy of the expert report that was submitted by Judith Curry, Ph.D. in connection with this litigation.

34. Attached hereto as Exhibit 33 is a true and correct copy of the declaration of Thomas R. Karl, dated January 14, 2021.

35. Attached hereto as Exhibit 34 is a true and correct copy of the Georgia Institute of Technology’s Performance Evaluation of Dr. Curry, dated June 25, 2012, with Bates numbers GATECH0000018 to GATECH0000021.

36. Attached hereto as Exhibit 35 is a true and correct copy of the blog post “Fraudulent (?) hockey stick,” dated September 11, 2014, which was written by Dr. Curry and, as Mann-Curry Ex. 179, was used as an exhibit during the deposition of Dr. Curry.

37. Attached hereto as Exhibit 36 is a true and correct copy of a memorandum of investigation produced by the National Science Foundation in connection with case number

A09120086, which, as Mann-Curry Ex. 161, was used as an exhibit during the deposition of Dr. Curry.

38. Attached hereto as Exhibit 37 is a true and correct copy of a series of emails dated September 16, 2020, between myself and counsel for the defendants as well as counsel for Dr. Pielke, concerning the postponement of Dr. Pielke's deposition.

39. Attached hereto as Exhibit 38 is a true and correct copy of an email dated October 6, 2014, as well as a letter and a memorandum of investigation produced by the National Science Foundation in connection with case number A09120086, which, as McIntyre EXHIBIT 144, was used as an exhibit during the deposition of Mr. McIntyre.

40. Attached hereto as Exhibit 39 is a true and correct copy of excerpted portions of the transcript of the deposition of Edward Wegman, Ph.D., which took place on December 11, 2020.

41. Attached hereto as Exhibit 40 is a true and correct copy of the "Report of the International Panel set up by the University of East Anglia to examine the research of the Climatic Research Unit," which was submitted April 12, 2010 (with an April 19, 2010 addendum), by the University of East Anglia, Oxburgh Panel.

42. Attached hereto as Exhibit 41 is a true and correct copy of "The Independent Climate Change E-mails Review," which was released in July 2010, by the University of East Anglia, Russell Panel.

43. Attached hereto as Exhibit 42 is a true and correct copy of "The disclosure of climate data from the Climatic Research Unit at the University of East Anglia," which was released on March 24, 2010, by the United Kingdom House of Commons Science and Technology Committee.

44. Attached hereto as Exhibit 43 is a true and correct copy of the “Government Response to the House of Commons Science and Technology Committee 8th Report of Session 2009-10: The disclosure of climate data from the Climatic Research Unit at the University of East Anglia,” dated September 2010, which was produced by the United Kingdom Secretary of State for Energy and Climate Change.

45. Attached hereto as Exhibit 44 is a true and correct copy of the “RA-10 Inquiry Report: Concerning the Allegations of Research Misconduct Against Dr. Michael Mann, Department of Meteorology, College of Earth and Mineral Sciences,” which Pennsylvania State University released on February 3, 2010.

46. Attached hereto as Exhibit 45 is a true and correct copy of the “RA-10 Final Investigation Report Involving Dr. Michael Mann,” which Pennsylvania State University released on June 4, 2010.

47. Attached hereto as Exhibit 46 is a true and correct copy of the “Letter and Detailed Results of Inquiry Responding to May 26, 2010, Request from Senator Inhofe,” by the United States Department of Commerce Office of Inspector General, dated February 18, 2011.

48. Attached hereto as Exhibit 47 is a true and correct copy of “Closeout Memorandum, Case No. A09120086,” by the National Science Foundation Office of Inspector General.

49. Attached hereto as Exhibit 48 is a true and correct copy of the expert report that was submitted by John P. Abraham, Ph.D. in connection with this litigation.

50. Attached hereto as Exhibit 49 is a true and correct copy of the expert report that was submitted by Raymond S. Bradley, D.Sc. in connection with this litigation.

51. Attached hereto as Exhibit 50 is a true and correct copy of the expert report that was submitted by Peter C. Frumhoff, Ph.D., in connection with this litigation.

52. Attached hereto as Exhibit 51 is a true and correct copy of the expert report that was submitted by John P. Holdren, Ph.D., in connection with this litigation.

53. Attached hereto as Exhibit 52 is a true and correct copy of the expert report that was submitted by John R. Mashey, Ph.D., in connection with this litigation.

54. Attached hereto as Exhibit 53 is a true and correct copy of the expert report that was submitted by Gerald North, Ph.D., in connection with this litigation.

55. Attached hereto as Exhibit 54 is a true and correct copy of the expert report that was submitted by Naomi Oreskes, Ph.D., in connection with this litigation.

56. Attached hereto as Exhibit 55 is a true and correct copy of excerpted portions of the transcript of the deposition of Henry C. Foley, Ph.D., which took place on November 19, 2020.

57. Attached hereto as Exhibit 56 is a true and correct copy of excerpted portions of the transcript of the deposition of Candice Yekel, which took place on September 4, 2020.

58. Attached hereto as Exhibit 57 is a true and correct copy of excerpted portions of the transcript of the deposition of John R. Mashey, Ph.D., which took place on December 9, 2020.

59. Attached hereto as Exhibit 58 is a true and correct copy of Defendant National Review, Inc.'s Answer to Plaintiff's Complaint, dated July 5, 2019.

60. Attached hereto as Exhibit 59 is a true and correct copy of Defendant Steyn's Amended Answer and Counterclaims to Amended Complaint, dated March 12, 2014.

61. Attached hereto as Exhibit 60 is a true and correct copy of a graph that was used as an exhibit during the deposition of Mark Steyn, as MANN-STEYN-64.

62. Attached hereto as Exhibit 61 is a true and correct copy of Defendant Competitive Enterprise Institute's and Rand Simberg's Answer and Defenses to Plaintiff's Amended Complaint, dated July 5, 2019, which, as MANN-CEI-34, was used as an exhibit during the 30(b)(6) deposition of designees of the Competitive Enterprise Institute.

63. Attached hereto as Exhibit 62 is a true and correct copy of the article "I don't bluff," dated July 25, 2012, which was published in the *Columbia Journalism Review*.

64. Attached hereto as Exhibit 63 is a true and correct copy of the article "The Other Scandal In Unhappy Valley," which was published on Openmarket.org on July 13, 2012, showing reader comments.

65. Attached hereto as Exhibit 64 is a true and correct copy of the blog post "On The Mannsuits," which was published on August 25, 2012, written by Rand Simberg, and, as MANN-RS-64, used as an exhibit during the deposition of Mr. Simberg.

66. Attached hereto as Exhibit 65 is a true and correct copy of Competitive Enterprise Institute and Rand Simberg's Second Supplemental Objections and Answers to Plaintiff's First Set of Interrogatories, dated November 23, 2020.

67. Attached hereto as Exhibit 66 is a true and correct copy of the letter that Mark I. Bailen sent to Peter J. Fontaine, dated December 31, 2020.

68. Attached hereto as Exhibit 67 is a true and correct copy of the article "Michael Mann Cleared (Again), which was published August 24, 2011, written by James Fallows, and as MANN-RS-57, used as an exhibit during the deposition of Rand Simberg.

69. Attached hereto as Exhibit 68 is a true and correct copy of Pennsylvania State University's "Policy AD47 General Standards of Professional Ethics," which, as CEI-Y-40, was used as an exhibit during the deposition of Candice Yekel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of January, 2021, in Washington, D.C.

/s/ John B. Williams
JOHN B. WILLIAMS

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MICHAEL E. MANN, Ph.D.,)	
)	
Plaintiff,)	Case No. 2012 CA 008263 B
)	
v.)	Judge Alfred S. Irving, Jr.
)	Calendar No.: 3
)	
NATIONAL REVIEW, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

[PROPOSED] ORDER

Upon consideration of the Motion for Partial Summary Judgment Against Competitive Enterprise Institute (“CEI”) and Rand Simberg on the Issue of Falsity, and Motion to Strike their Affirmative Defense that Their Statements Were Not “Substantially False” by Plaintiff Michael E. Mann, Ph.D., and Defendants’ opposition to that Motion, it is hereby:

ORDERED, that the Motion for Partial Summary Judgment is **GRANTED**;

ORDERED, that the defamatory statements of CEI and Rand Simberg are false;

and

FURTHER ORDERED that the Affirmative Defense that Their Statements Were Not “Substantially False” is stricken.

SO ORDERED.

This ____ day of _____, 2021

Honorable Alfred S. Irving, Jr.
Associate Judge