VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE and THE HONORABLE DELEGATE ROBERT MARSHALL, Petitioners, v. RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, Respondent.	Civil Docket No. CL 11-3236

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR-RESPONDENT MICHAEL MANN'S MOTION FOR LEAVE TO INTERVENE

Intervener-Respondent Michael Mann, by and through his undersigned counsel, files this Memorandum of Law in support of his Motion for Leave to Intervene.

I. INTRODUCTION

Dr. Michael Mann, a climate scientist, seeks to intervene in this Virginia Freedom of Information Act ("**VFOIA**") lawsuit to prevent the upcoming and improper disclosure of thousands of his personal e-mail exchanges with professional colleagues throughout the world regarding various scientific issues – the disclosure of which is scheduled to be made to the very activist petitioners that are on a mission to scapegoat him.

Dr. Mann is a former University of Virginia assistant professor. The activist petitioners sued the University pursuant to VFOIA, seeking to compel the disclosure of, among other things, all of Dr. Mann's private e-mail correspondence from his six-year period at the University. The petitioners and the University subsequently executed a protective order requiring the University

to produce all of Dr. Mann's e-mails. His e-mails regarding his thoughts, ideas, and statements on various scientific issues, however, contain information that is "proprietary" in nature, and these e-mails are thus specifically exempt from disclosure under the VFOIA. Although the production of these exempt e-mails is subject to some restrictions under the Protective Order, the Protective Order permits the petitioners' attorneys, who themselves are activists, to review all of Dr. Mann's exempt e-mails. The University is currently required to, and upon information and belief intends to, provide these exempt e-mails to the petitioners on September 21, 2011.

Dr. Mann has a clear interest in the subject matter of this litigation, and his interest is not currently being adequately protected. Thousands of his personal e-mails containing his thoughts, ideas, and statements regarding numerous scientific issues are at risk of being disseminated to the public. The Protective Order, as it currently stands, simply does not protect Dr. Mann's privacy and personal interests. Dr. Mann seeks leave to join this action so that he may seek to prohibit the improper production of his private e-mail correspondence.

II. FACTUAL BACKGROUND

On May 16, 2011, petitioners The American Tradition Institute ("**ATI**") and The Honorable Delegate Robert Marshall (collectively, "**Petitioners**") filed a Verified Petition for Mandamus and Injunctive Relief (the "**Petition**") seeking to compel respondent Rector and Visitors of the University of Virginia (the "**University**") to produce documents pursuant to VFOIA. ATI is a vocal opponent of climate change science and has attacked Dr. Mann and others in the scientific community as part of its fundraising efforts. The central focus of Petitioners' inquiry is – undeniably – Dr. Mann. Indeed, Petitioners admit that they "are seeking emails and documents associated with former UVa academic Michael Mann and others involved in the science of climate change," and then repeatedly refer to Dr. Mann throughout the Petition. (See Petition, ¶¶ 58-63, 67.)

On May 24, 2011, the Court entered an Order requiring the University to produce all requested documents within 90 days, or by August 22, 2011 (the "**Order**"). (A copy of the Order is attached to the Motion as Exhibit B.) The Order, however, does not exclude – and therefore requires – the production of documents that are specifically exempted from production under VFOIA, including Dr. Mann's personal e-mails regarding climate change and other scientific issues. The University has correctly acknowledged that these e-mails are exempted from disclosure. (See The University's Memorandum in Opposition to Verified Petition for Mandamus and Injunctive Relief, pp. 4-5 (stating that "in Va. Code. § 2.2-3705.4(4), the General Assembly has exempted form disclosure the very type of unpublished faculty debate and discussion, that has not been made public and not published, that Petitioners here seek")).

Also on May 24, 2011, Petitioners and the University executed an Order on Protection of Documents (the "**Protective Order**"), which was approved by the Court. (A copy of the Protective Order is attached to the Motion as Exhibit C.) The Protective Order provides that, among other things, the exempted documents that are to be produced, including Dr. Mann's e-mails, may be reviewed by (i) the Court, (ii) any other court of competent jurisdiction pursuant to lawful process or order, and (iii) up to two of Petitioners' counsel, who were designated as David Schnare and Christopher Horner. (See Ex. D to the Motion, p. 3 and Appx. A thereto.) While Mr. Schnare and Mr. Horner may represent Petitioners, they are also employed by ATI, one of the two Petitioners. (See Petition, ¶ 4.) Pursuant to the Order, on August 22, 2011 the University provided documents to Petitioners, including but not limited to Dr. Mann's non-exempted e-mails. The University is now scheduled to produce all exempted documents, including Dr. Mann's exempted e-mails, on September 21, 2011.

Dr. Mann was not provided with a copy of the Protective Order until after it was entered by this Court. (See Affidavit of Michael Mann ("**Mann Aff.**"), ¶ 10, attached to the Motion as

Exhibit A.) Upon learning that the Protective Order required disclosure of his confidential e-mails to Messrs. Schnare and Horner, Dr. Mann was wanted to intervene in the pending litigation but was unable personally fund the cost of legal representation to intervene. (See Ex. B to the Motion, Mann Aff., ¶ 11.) Nevertheless, Dr. Mann wrote to the University to object to the disclosure of his exempted e-mails to Mr. Horner, request that the University consider alternatives to disclosure, and consider the chilling effect of disclosure under the Protective Order:

> Releasing materials that are exempt under VFOIA to ATI and Horner threatens not only my academic freedom and privacy, but that of literally dozens of scientists in the U.S. and around the world who had every reason to believe that the confidential nature of their frank and open correspondences, discussions, challenges, inquiries, and musings, carried out through private emails, would be respected. Allowing the indiscriminate release of these materials will cause damage to reputations and harm principles of academic freedom.

(See Ex. B to the Motion, Mann Aff., ¶ 12.) (A copy of the August 5, 2011 Letter is attached to the Motion as Exhibit D. Recently, through a fundraising effort by the scientific community, Dr. Mann was able to raise sufficient funds to retain counsel to request an opportunity to intervene and assert his individual rights in this matter. (See Ex. B to the Motion, Mann Aff., ¶ 13.) The University consents to Dr. Mann's intervention in this matter. (Id., ¶ 35.)

III. ARGUMENT

A. Legal Standard for Intervention

Virginia courts recognize that "[i]ntervention allows willing claimants to come into court and join a lawsuit already in progress so that their interests may be defended." Cluverius v. James McGraw, Inc., No. HI-618-1, 1998 WL 972109, at *3 (Richmond Cir. Ct. Mar. 30, 1998). Intervention in a pending lawsuit is at the discretion of the trial court. Stephen v. Dickens, No. 02-875, 2003 Va. Cir. LEXIS 348, at *2 (Norfolk Dec. 19, 2003).

Virginia Superior Court Rule 3:14 provides that "[a] new party may by leave of court file a pleading to interfere as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding." The term "germane" has been defined as "relevant to or closely allied." Stephen, 2003 Va. Cir. LEXIS 348, at *2-3. An intervenor must thus "assert some right involved in the suit." Id. at *3; see also Hudson v. Jarrett, 606 S.E.2d 827, 831 (Va. 2005) (stating that "an intervenor must be asserting an interest that is part of the subject matter of the litigation"). Rule 3:14 requires that an intervenor intervene specifically as a plaintiff or defendant. Hudson, 606 S.E.2d at 831.

B. The Court Should Permit Dr. Mann to Intervene in this Action Because of his Strong Personal and Privacy Interest in Prohibiting the Disclosure of his Personal E-Mails that are the Subject of this Action

It is indisputable that Dr. Mann has an interest in this litigation. Petitioners seek to compel the production of Dr. Mann's personal e-mail communications with professional colleagues throughout the world regarding climate change and other scientific issues. Petitioners initiated this action against the University simply because it happens to be the one in possession of these e-mails because they remain on its computer server. Nonetheless, the Petition leaves no doubt that the thrust of Petitioners' attack is directed against Dr. Mann and his e-mail communications. Dr. Mann's First Amendment constitutional right to academic freedom is at severe risk in this case. See Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957) ("To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation . . . . Teachers and students must always remain free to inquire, to study and to evaluate . . . ."). Before the University produces Dr. Mann's emails that it admits are exempted from disclosure under VFOIA and that would result in a constitutional violation, Dr. Mann should have an opportunity to protect his interests.

This is especially true given that Dr. Mann's interests are not currently being adequately protected in this action. The Protective Order permits Mr. Schnare and Mr. Horner – both directors of ATI – to review all of his exempted e-mails. While Mr. Schnare and Mr. Horner may represent Petitioners, as directors of ATI, they are also, essentially, parties. To allow them access to the e-mails is to allow ATI access to the e-mails. Moreover, the mere fact that Mr. Schnare and Mr. Horner can review the exempted e-mails is a violation of Dr. Mann's privacy interests. Had Dr. Mann taken part in the negotiations of the Protective Order, he would have adamantly objected to this term of the agreement. Should the Court permit Dr. Mann to intervene in this action, his counsel intends to work with the other attorneys in this case to renegotiate the Protective Order so that Dr. Mann's interests are protected, or, in the alternative, to seek relief from the Court in this regard.

Moreover, Petitioners' attempt to obtain Dr. Mann's personal e-mails through a VFOIA request threatens to override another Virginia state court's recent ruling. On or around April 23, 2010, the Virginia Attorney General issued civil investigative demands to the University under the Virginia Fraud Against Taxpayers Act, seeking to obtain, among other things, the very same Dr. Mann personal e-mails that are the subject of this action. The University filed a Petition to Set Aside Civil Investigative Demands, which was granted, such that the Attorney General was denied access to Mr. Mann's e-mails. (See Letter Opinion dated August 30, 2010, in The Rectors and Visitors of the University of Virginia v. Kenneth T. Cuccinelli, Attorney General of Virginia, CL10-398 (Albemarle Cir. Ct.), attached to the Motion as Exhibit E.) The Attorney General appealed the ruling, which appeal is currently pending.

Now, Petitioners seek the very same e-mails that the Circuit Court of Albemarle County already determined did not have to be produced, which ruling may be affirmed on appeal, confirming that Dr. Mann's emails are not subject to production. Because the Virginia-Fraud-

Against-Taxpayers-Act avenue failed, the VFOIA avenue is now being pursued despite the clear constitutionally-protected status of the products of scholarly debate and exchange.

IV. CONCLUSION

For the foregoing reasons, Intervenor-Respondent Michael Mann respectfully requests this Court's leave to intervene in this matter and granting such further and other relief as the Court deems necessary and proper.

Respectfully Submitted,

MICHAEL MANN
By Counsel

STEPHENS, BOATWRIGHT, COOPER, COLEMAN & NEWTON, PC

Scott J. Newton, VA Bar #44397
Robert M. Cooper, Jr. VA Bar #25753
9255 Lee Avenue
Manassas, VA 20110
(703) 361-8246
(703) 361-4171 Facsimile
newton@manassaslaw.com

Dated: September 2, 2011

CERTIFICATE OF SERVICE

I hereby certify that I today caused true and correct copies of Intervenor-Respondent's Motion to Intervene, and the accompanying Memorandum of Law and Affidavit of Michael E. Mann, to be served by email and U.S. First Class Mail on:

David W. Schnare, Esquire
903 Brook Ford Road
Burke, VA 22015
David.S.@ATInstitute.org
Attorney for Petitioner

Richard C. Kast, Esquire
Madison Hall
P.O. Box 400225
1827 University Avenue
Charlottesville, VA 22904
rck4p@eservices.virginia.edu
Attorney for Respondent

By: _____
Scott J. Newton

Dated: September 2, 2011

Exhibit A

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

THE AMERICAN TRADITION INSTITUTE, and THE HONORABLE DELEGATE ROBERT MARSHALL Petitioners, v. RECTOR AND VISITORS OF THE UNIVERSITY OF VIRGINIA, Respondent.	Civil Docket No. CL 11-3236 Affidavit to accompany the Motion for Leave to Intervene

AFFIDAVIT OF MICHAEL E. MANN IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CENTRE, SS:

Personally appearing before the undersigned and with authority in and for said county and state, MICHAEL E. MANN, being first duly sworn by the undersigned, deposes and says:

1. My name is Michael E. Mann. I am the Director of the Earth Systems Science Center and faculty member in the Departments of Meteorology and Geosciences, within the College of Earth and Mineral Sciences at the Pennsylvania State University.

2. From 1999 to 2005 I was an Assistant Professor at the University of Virginia ("University"), where I taught students in the Department of Environmental Sciences, including courses in *Climate Change: Past and Future*, *Atmosphere and Weather*, *Capstone Seminar: The Arctic, Data Analysis & Climate Change*, *Climate In the History of Human Culture*, *Ocean-Atmosphere Dynamics*, *Statistical Climatology*, and *Modeling of Climate Variability*.

3. During my six years of employment at the University, I routinely used the University's computer system to correspond electronically with professional colleagues throughout the world to exchange thoughts and ideas, scientific technical and scholarly research, and innumerable other raw materials of scholarship that I intended and reasonably believed were my private, proprietary and confidential communications.

4. I have been advised by the University that my email correspondence over the six-year period of my employment was saved on a University computer and comprises more than ten thousand separate emails and documents, representing some or perhaps even all my electronic correspondence and body of work during my employment at the University.

5. I have been advised further by the University that more than ten thousand of my email correspondence over this six-year period of my employment is to be produced on September 21, 2011, to Mr. David Schnare and Mr. Christopher Horner, counsel for the Petitioners in the above-captioned action, pursuant to the Protective Order entered by the Court.

6. I have read the Petition for Mandamus and Injunctive Relief, the University's Memorandum in Opposition to Verified Petition for Mandamus and Injunctive Relief, and the Protective Order, and I believe that the University has concluded that a large portion of the documents at issue are exempt under several provisions of the Virginia Freedom of Information Act ("VFOIA"), to wit:

> Petitioners are seeking the raw materials of scholarship, the undistilled, unedited, back and forth between scientists that leads to published, peer-reviewed scholarship. *It is the University's position that the General Assembly has recognized—and the First Amendment to the United States Constitution compels—that this type of information not be made public.* Specifically, in Va. Code § 2.2-3705.4(4), the General Assembly has exempted from disclosure the very type of unpublished faculty debate and discussion, that has not been made public and not published, that

> Petitioners here seek. *The University firmly believes that mandatory disclosure of this type of information would stifle and irrevocably damage intellectual inquiry.* (See Position Statement on FOIA Request for Dr. Michael Mann's Research Records of the University Faculty Senate, attached hereto as Exhibit B.) *Thus, painstaking review of the documents sought is required to assure that documents recording this type of scholarly debate not be disclosed.*

University's Memorandum in Opposition to Verified Petition for Mandamus and Injunctive Relief, at 4-5 (emphasis added).

7. Notwithstanding the University's position I do not believe my interest or the interests of the other scientists encompassed within the scope of the VFOIA request are being protected adequately in this case because the Protective Order requires the production of exempt documents to two of the very same persons that requested the documents and, notwithstanding the restrictions under the Protective Order, such disclosure will destroy the confidential and private nature of these communications, chill the free exchange of ideas between me and the other scientists, and cause me and the other scientists annoyance, embarrassment, oppression, and undue burden and expense. In effect, the Protective Order entered by the Court

8. My employment by the University was subject to the University's *Policy on Disclosure of University Records,* which is attached hereto as Exhibit 1. The Policy states that "public access" under the VFOIA law will not be provided for "data, records, or information of a proprietary nature (non-financial, non-administrative) gathered for or from medical, scientific, technical, or scholarly study or research regardless of sponsorship *if not publicly released, published, copyrighted, or patented.*" (See Policy on Disclosure of University Records Section 2.3 Exceptions, emphasis added.)

9. According to the *Policy on Disclosure of University Records,* "public access" under the VFOIA law also will not be provided for "Personal Information," unless it is previously released *and the subject of the information has given written authorization for the release of the information.* (See Policy on Disclosure of University Records Section 2.3 Exceptions, emphasis added.) The *Policy on Disclosure of University Records* defines personal information as "all information that describes, locates, or indexes anything about an individual including any record that afford a basis for *inferring personal characteristics, such as finger and voiceprints, photographs or things done by or to such individual, . . . [and] any record of an individual's presence, registration, or membership in an organization or activity, or admission to an institution.*"

10. I do not believe my privacy interest in the confidentiality of my email correspondence is being adequately protected. I was not provided with a copy of the Protective Order until after it was entered by this court.

11. Upon learning that the Protective Order required disclosure to Messrs. Schnare and Horner of my confidential emails, I wanted to intervene in the pending litigation but was unable personally to fund the cost of legal representation to intervene.

12. Nevertheless, I wrote to the University to object to the disclosure of my exempt emails to Mr. Horner under the terms of the Protective Order, request that the University consider alternatives to disclosure to avoid the chilling effect on academic freedom of disclosure under the Protective Order:

> Releasing materials that are exempt under VFOIA to ATI and Horner threatens not only my academic freedom and privacy, but that of literally dozens of scientists in the U.S. and around the world who had every reason to believe that the confidential nature of their frank and open

> correspondences, discussions, challenges, inquiries, and musings, carried out through private emails, would be respected. Allowing the indiscriminate release of these materials will cause damage to reputations and harm principles of academic freedom.

A copy of my August 5, 2011 Letter is attached hereto as Exhibit 2.

13. Recently, through a fundraising effort by the scientific community, I have been able to raise sufficient funds to retain counsel to request an opportunity to intervene and assert my individual rights in this matter.

14. The disclosure of more than ten thousand of my scholarly email correspondence over the six-year period of my employment at the University violates my reasonable expectation of privacy, my academic freedom, and my rights under the First Amendment of the United States Constitution. The Protective Order does not protect my proprietary interests in my research and correspondence nor my privacy interest in the confidentiality of my emails because it requires the disclosure of the full contents of these emails to the very same individuals who requested them in the first instance, namely Messrs. Schnare and Horner. In addition to serving as legal counsel in this matter, Schnare and Horner are each listed on the ATI webpage as Directors and staff of ATI.

15. Through their averments in the Petition for Mandamus, statements in the press, and statements on ATI's webpage, Messrs. Schnare and Horner have made clear that they are intent on attacking my professional reputation and character and the professional reputations and character of other scientists with whom I corresponded and associated, as well as the reputation of the University.

16. Mr. Horner and ATI have repeatedly attacked my professional reputation and the reputation of the University in the handling of this FOIA matter. *See, U.Va. is all in on*

Climategate cover-up (*see* http://washingtonexaminer.com/opinion/op-eds/2011/08/uva-goes-all-climate-gate-foia-coverup), copy attached hereto as Exhibit 3.

17. In seeking to attack me, Mr. Horner and ATI repeatedly have mischaracterized the proceedings before this Court while revealing their intent to publish and mischaracterize my email correspondence in an effort to harm my reputation. *See Court Orders University of Virginia to Produce Documents of Dr. Michael Mann* (*see* http://www.atinstitute.org/court-orders-university-of-virginia-to),copy attached as Exhibit 4.

18. For example, after the Court's entry of the Protective Order, Mr. Horner wrote that

> *the court entered an order that forces UVA to ...produce the documents in easy-to-read electronic form so that ATI can make them available to all who wish to review the work of this highly controversial former Virginia employee.*
>
> *********
>
> *ATI has won the right to look at all the documents beginning no later than September 21,*

Exhibit 4 (emphasis added).

19. ATI's Petition falsely alleges that my "work has measurably increased the cost of living without any return on the quality of life..." and that I instructed another climate scientist to "erase emails in an effort to frustrate freedom of information requests, all to hide the basis for policy decisions by international and national bodies..." Petition for Mandums, ¶¶ 60-62.

20. ATI's Petition also freely admits that its request is identical to and seeks "to obtain the same records" sought by the Virginia Attorney General in the Civil Investigative Demand ("CID") matter that was set-aside by the Albemarle County Circuit Court on August 30, 2010 and which I believe is pending appeal before the Virginia Supreme Court.

21. Allowing Messrs. Schnare and Horner to read my emails, even under the use restrictions provided in the Protective Order, violates my privacy and property interest by divulging my thoughts, ideas, raw materials of scholarship and the identity of those with whom I associated during my time at the University. Restricting the use of these exempt materials under the Protective Order does not vindicate these interests, which I believe are protected under the First Amendment of the United States Constitution.

22. Disclosure of my emails under the terms of the Protective Order also poses a risk that my thoughts, ideas, raw materials of scholarship and the identity of those with whom I associated during my time at the University could be shared with others without my knowledge. In the age of the internet and electronic sharing of documents, it is virtually impossible for me or the University to police compliance with the Protective Order. Once the content of any email is divulged to a third party it simply will not be possible for me or the University to know about it, or even if there is some indicia of a breach, to prove a breach or to repair the harm to my interests.

23. To cite but one of countless possible ways in which the Protective Order does not protect my interests, I will never know if another FOIA request, Civil Investigative Demand, or subpoena issued to the University or to another academic institution or agency seeking disclosure of email correspondence from me or from another scientist identified in the subject exempt documents was prompted by one of the documents disclosed under the Protective Order.

24. I will never know if a public statement by another person or organization attacking my professional reputation or the professional reputations of other scientists with

whom I corresponded was prompted by information contained in one of the documents disclosed under the Protective Order.

25. I will never know if data that I may have compiled or analyzed, ideas that I may have expressed, opinions that I may have shared, methods of analysis that I may have developed, or computer code that I may have written, is divulged to others and used for their own personal, proprietary, economic, or political gain.

26. My inability to monitor compliance with the Protective Order, to enforce a breach, or to remedy or cure a violation, violates my Constitutionally-protected right to privacy and academic freedom, my right to free association, and my right to protect my property.

27. The disclosure of my emails under the Protective Order also violates the privacy interests of other climate scientists and researchers identified in the VFOIA request, many of whom have informed me that their email correspondence with me was intended to be confidential and private and that the disclosure of our collective email correspondence under the terms of the Protective Order will have a pernicious "chilling effect" on their willingness to freely exchange ideas and other materials of scholarship by electronic correspondence, particularly on computer systems of public universities, laboratories, and institutions that could be the subject of other FOIA requests by organizations seeking to attack the reputations of climate scientists.

28. This chilling effect is palpable and recently prompted the American Association for the Advancement of Science to publish an unprecedented statement decrying the atmosphere of intimidation in which climate scientists now find themselves:

> We are deeply concerned by the extent and nature of personal attacks on climate scientists. Reports of harassment, death threats, and legal challenges have created a hostile environment that inhibits the free exchange of scientific findings and ideas and makes it difficult for factual information and scientific analyses to reach policymakers and the public. This both impedes the progress of science and interferes with the application of science to the solution of global problems.
>
> *****
>
> *The sharing of research data is vastly different from unreasonable, excessive Freedom of Information Act requests for personal information and voluminous data that are then used to harass and intimidate scientists. The latter serve only as a distraction and make no constructive contribution to the public discourse.*
>
> *****
>
> *We are concerned that establishing a practice of aggressive inquiry into the professional histories of scientists whose findings may bear on policy in ways that some find unpalatable could well have a chilling effect on the willingness of scientists to conduct research that intersects with policy-relevant scientific questions.*

See *Statement of the Board of Directors of the American Association for the Advancement of Science Regarding Personal Attacks on Climate Scientists* , June 28, 2011 (emphasis added) (http://www.aaas.org/news/releases/2011/media/0629board_statement.pdf) A copy of the AAAS Statement is attached hereto as Exhibit 5.

29. Upon learning that the Protective Order requires the disclosure of my emails to and from various climate scientists and researchers, many of whom are specifically identified in the VFOIA request, many of these same persons have expressed alarm, and opposition, to the disclosure of their confidential email correspondence with me. A compilation of letters by various scientists objecting to the disclosure of the correspondence is attached hereto as Exhibit 6.

30. For example, Dr. Rosanne D'Arrigo of the Lamont-Doherty Earth Observatory, Earth Institute, Columbia University, wrote:

I am writing due to my great concern regarding the ongoing attempts of the American Tradition Institute (ATI) to obtain access to the personal email letters between Dr. Michael E. Mann and other climate scientists including myself . . . these are personal emails that are not relevant to valid scientific concerns and will likely be taken out of context...Please reconsider your decision to allow the ATI access to these personal emails.

31. Dr. Benjamin D. Santor of the Lawrence Livermore National Laboratory, wrote:

I am extremely concerned by the ongoing efforts of the American Tradition Institute (ATI) to obtain access to personal email correspondence between Professor Mann and over 30 other climate scientists. I am one of those "other climate scientists", and so have direct personal interest in this issue. ... Since 2001, Professor Mann has encountered the same challenges I experienced after publication of the IPCC's SAR. The "playbook" is all-too familiar. It begins with attempts to attack the science. If the science is unshakable, the next step is to attack the integrity of the scientific messengers. The motives and integrity of the messengers are questioned. The final step in the "playbook" is overt intimidation. Political pressure is applied. Legal harassment begins. An entire community receives the clear and chilling message: "You could be next."

32. Kevin E. Trenberth of the National Center for Atmospheric Research, wrote:

Along with other scientists, I am very concerned by the ongoing efforts of the American Tradition Institute (ATI) to obtain access to personal email correspondence between Professor Mann and over 30 other climate scientists. As one of those "other climate scientists", I have a direct personal interest in this issue.

33. Dr. Raymond S. Bradley of the University of Massachusetts wrote:

I am writing to express my deep concerns about the request of the American Tradition Institute (ATI) to obtain personal email correspondence between Professor Michael Mann and other climate scientists. As I have worked with Mike Mann for many years, following his postdoc research here at the University of Massachusetts, no doubt many of these emails include correspondence to and from me. I do not know what the legal basis is for their request, but I certainly do not give my permission for the release of any email correspondence that involves me. I consider this a breach of confidentiality and an attack on academic freedom. I should note that this request is not unique. Similar efforts have been made by other politically-motivated organisations, to (*inter alia*) the University of Massachusetts and the University of Arizona. These requests were resisted. Given that this strategy of dredging through email for

> anything that might be taken out of context and used for political purposes could develop into a much larger problem, with enormous implications for all aspects of academic freedom, I urge you to forcefully reject the ATI request.

34. Disclosure of my emails under the terms of the Protective Order also poses a risk that my correspondence could be divulged pursuant to lawful process or order issued by another court of competent jurisdiction, such as by subpoena, which is an exception under the terms of the Protective Order entered by this court. (See Protective Order, Para. C.2.)

35. I do not believe the University is capable of fully protecting my personal and privacy interests in this matter. University counsel cannot represent me personally. The University understandably is concerned about expending additional monies addressing the overly broad document demands and acceded to the arrangement that would produce exempt documents notwithstanding the lack of a legal obligation to do so as a cost and time saving measure. However, that arrangement is neither mandated nor does it adequately protect my rights or the rights of others in the academic community whose non-public communications are implicated.

36. The disclosure of email correspondence between me and 39 other scientists, plus anyone with whom I worked, also reveals my "personal information," as defined under the University's Policy on Disclosure of University records because it divulges information that would allow the reader to infer my personal characteristics, the things that I did during my time at the University, my presence, registration, and membership in organizations and activities, all of which are defined as "personal information" under the University's policy.

37. By letter to me dated August 12, 2011, the University's General Counsel invited me to "consider intervening as you see fit to protect your privacy and reputation." I understand the University consents to my intervention in this matter.

Further, affiant sayeth naught.

Michael E. Mann

Michael E. Mann

I, Victor DeDonato a Notary Public of the County and State aforesaid, hereby certify that Michael E. Mann personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand this the 1st day of September, 2011.

Notary Public

My Commission expires:
10/19/2011.

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Victor DeDonato, Notary Public
Patton Township, Centre County
My Commission Expires October 19, 2011

Mann Affidavit Exhibit 1