



Source: <http://berkeleyearth.org/analysis/>

32. All of the data and source code used in each one of my studies is available on my webpage at <http://www.meteo.psu.edu/~mann/Mann/research/research.php>. NOAA's Paleoclimate Data webpage also lists the proxy data used in most if not all peer-reviewed paleoclimate studies to date at <http://www.ncdc.noaa.gov/paleo/data.html>. The body of science on proxy data is progressing rapidly. Since April 2010, more than 500 new proxy data sets have been added to the NOAA public access webpage.

<http://hurricane.ncdc.noaa.gov/pls/paleox/f?p=502:1:4239686374615358>

33. Since the enactment of the Shelby Amendment in 1999, pursuant to Public Law 105-277, all Federal agencies that fund research by universities and other non-government

research institutes are required to ensure that all “data” produced under their awards are made available to the public through the procedures established under the federal Freedom of Information Act. As directed by the Shelby Amendment, OMB subsequently amended Circular A-110, which includes an express carve-out from disclosure under FOIA communications by and between research colleagues:

(i) Research data is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate researching findings, *but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues.* (emphasis added).

Office of Management and Budget Circular A-110--Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, 2 CFR § 215.36(d)(2)(i); 64 Fed. Reg 43786, 43787(August 11, 1999), <http://www.gpo.gov/fdsys/pkg/FR-1999-08-11/pdf/99-20683.pdf>

34. During my six years 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 in the pursuit of collaborative research on scientific, technical and scholarly issues related to climate change. As discussed in my prior affidavit submitted in support of my Motion for Leave to Intervene, both I and the scientists with whom I corresponded intended and reasonably believed that our correspondence with one another would be our personal, confidential and scholarly work product.

35. I have reviewed Respondents’ Exemplars (hereinafter “RE”) selected by my counsel and counsel for the University as representative of the types of documents contained in my Electronic Correspondence withheld by the University. I also have reviewed Petitioners’ Exemplars (hereinafter “PE”) apparently selected by Petitioners from a cache of thousands of

emails stolen in November 2009 from a computer server at the Climate Research Unit (“CRU”) at the University of East Anglia in the United Kingdom.

36. The CRU emails, some of which were exchanged between me and researchers at the CRU and other climate change research institutions, were posted anonymously on the World Wide Web just a few weeks before the United Nation’s Global Climate Change Conference in Copenhagen, Denmark in December 2009. A few of the more than one thousand CRU emails stolen from the University of East Anglia were “cherry-picked” by climate change deniers, taken out of context, and misrepresented to falsely imply impropriety and academic fraud on the part of the scientists involved, including me. Climate change contrarians, many associated with fossil fuel industry front groups, on various internet blogs claimed that the CRU emails proved that anthropogenic climate change is a hoax perpetrated by scientists from across the globe colluding with government officials to reap financial benefits. The CRU emails came to be known derisively as “Climategate,” after the mainstream media and several politicians jumped on these discussions to further fan the flames of controversy. Petitioners have continued to perpetuate this misinformation, as described below.

37. In fact, the CRU emails reflected the commonplace, legitimate give and take of academic debate and inquiry, which included private exchanges between collaborating researchers on the merits and flaws of competing studies, and how to distill and present complex data and related uncertainties, among other scholarly topics.

38. Following the anonymous publication of the CRU emails, two universities and six governmental agencies independently investigated the allegations of scientific misconduct.

Every one of these investigations concluded that there is no basis to the allegations of scientific misconduct, manipulation of data or the like. To wit:

- (a) In February 2010, the Pennsylvania State University released an Inquiry Report which found that "there exists no credible evidence that Dr. Mann had or has ever engaged in, or participated in, directly or indirectly, any actions with an intent to suppress or to falsify data". The report is available at <http://www.research.psu.edu/news/2010/michael-mann-decision/view>
- (b) In March 2010, the UK government's House of Commons Science and Technology Committee published a report finding that the criticisms of the CRU were misplaced and its actions "were in line with common practice in the climate science community". The report is available at <http://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/inquiries/100831-new-inquiry---reviews-into-crus-e-mails/>
- (c) In April 2010, the University of East Anglia convened an international Scientific Assessment Panel, in consultation with the Royal Society and chaired by Professor Ron Oxburgh. The Report of the International Panel assessed the integrity of the research published by the CRU and found "no evidence of any deliberate scientific malpractice in any of the work of the Climatic Research Unit". The report is available at <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/independentreviews> and <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/SAP>
- (d) In June 2010, the Pennsylvania State University published their Final Investigation Report, determining "there is no substance to the allegation against Dr. Michael E. Mann". The report is available at <http://www.research.psu.edu/news/2010/michael-mann-decision/view>
- (e) In July 2010, the University of East Anglia published the Independent Climate Change Email Review report, prepared under the oversight of Sir Muir Russell. The report examined whether manipulation or suppression of data occurred and concluded that "the scientists' rigor and honesty are not in doubt". The report is available at <http://www.cce-review.org/pdf/FINAL%20REPORT.pdf>
- (f) In July 2010, in response to a *Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act*, filed by Mr. Horner's organization, The Competitive Enterprise Institute, along with the Commonwealth of Virginia, the State of Texas, Peabody Energy, the Coalition for

Responsible Regulation, the Ohio Coal Association, and the Southeastern Legal Foundation, the United States Environmental Protection Agency concluded that

“petitioners have routinely misunderstood or mischaracterized the scientific issues, drawn faulty scientific conclusions, resorted to hyperbole, impugned the ethics of climate scientists in general, characterized actions as “falsification” and “manipulation” with no basis or support, and placed an inordinate reliance on blogs, news stories, and literature that is often neither peer reviewed nor accurately summarized in their petitions. Petitioners often “cherry-pick” language that creates the suggestion or appearance of impropriety, without looking deeper into the issues or providing corroborating evidence that improper action actually occurred.”

U.S. Environmental Protection Agency, “Decision Document, Denial of Petitions for Reconsideration of Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act” (July 29, 2010), available at <http://epa.gov/climatechange/endangerment/petitions/decision.html>

- (g) In September 2010, the UK Government responded to the House of Commons Science and Technology Committee report. On the allegation of attempting to corrupt the peer-review process, they found “The evidence that we have seen does not suggest that Professor Jones was trying to subvert the peer review process. Academics should not be criticised for making informal comments on academic papers”. The UK Government further found that

“In addition, insofar as we have been able to consider accusations of dishonesty—for example, Professor Jones’s alleged attempt to “hide the decline”—we consider that there is no case to answer. Within our limited inquiry and the evidence we took, the scientific reputation of Professor Jones and CRU remains intact. We have found no reason in this unfortunate episode to challenge the scientific consensus as expressed by Professor Beddington, that “global warming is happening [and] that it is induced by human activity”.

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 Presented to Parliament by the Secretary of State for Energy and Climate Change by Command of Her Majesty (September 2010), available at <http://www.decc.gov.uk/assets/decc/consultations/570-gov-response-commons-science-tech-8th.pdf>

- (h) In February 2011, the Inspector General of the Department of Commerce conducted an independent review of the emails and found "no evidence in the CRU emails that NOAA inappropriately manipulated data...[p. 11]... failed to adhere to its peer review procedures prior to its dissemination of information....[p. 12] [or] violated its obligations under the Shelby Amendment." Report available at http://www.noaanews.noaa.gov/stories2011/20110224_climate.html and <http://www.oig.doc.gov/Pages/Response-to-Sen.-James-Inhofe's-Request-to-OIG-to-Examine-Issues-Related-to-Internet-Posting-of-Email-Exchanges-Taken-from-.aspx>
- (i) In August 2011, the Inspector General of the National Science Foundation documented the outcome of its independent review of charges of misconduct against me. The investigation found that

"As a part of our investigation, we again fully reviewed all the reports and documentation the University provided to us, as well as a substantial amount of publically available documentation concerning both the Subject's research and parallel research conducted by his collaborators and other scientists in that particular field of research. As noted above, no specific allegation or evidence of data fabrication or falsification was made to the University; rather, the University developed its allegation of data falsification 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. As part of our investigation, we attempted to determine if data fabrication or falsification may have occurred and interviewed the subject, critics, and disciplinary experts in coming to our conclusions.

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. Lacking any direct evidence of research misconduct, as defined under the NSF Research Misconduct Regulation, we are closing this investigation with no further action." (emphasis added). Report available at <http://www.nsf.gov/oig/search/A09120086.pdf>

39. On June 2012, the United States Circuit Court of Appeals for the District of Columbia Circuit upheld the United States Environmental Protection Agency's regulations on greenhouse gases, affirming EPA's "Endangerment Finding" and denial of ten petitions for reconsideration of that finding filed among others, by the Competitive Enterprise Institute, the employer of one of the Petitioners in the present case, Christopher Horner, and Virginia Attorney General, Kenneth Cuccinelli. I quote from the DC Circuit's decision because it is instructive:

We begin with a brief primer on greenhouse gases. As their name suggests, when released into the atmosphere, these gases act "like the ceiling of a greenhouse, trapping solar energy and retarding the escape of reflected heat." *Massachusetts v. EPA*, 549 U.S. at 505. A wide variety of modern human activities result in greenhouse gas emissions; cars, power plants, and industrial sites all release significant amounts of these heat-trapping gases. In recent decades "[a] well-documented rise in global temperatures has coincided with a significant increase in the concentration of [greenhouse gases] in the atmosphere." *Id.* at 504-05. Many scientists believe that mankind's greenhouse gas emissions are driving this climate change. These scientists predict that global climate change will cause a host of deleterious consequences, including drought, increasingly severe weather events, and rising sea levels.

State Petitioners maintain that EPA erred by denying all ten petitions for reconsideration of the Endangerment Finding. Those petitions asserted that internal e-mails and documents released from the University of East Anglia's Climate Research Unit (CRU)—a contributor to one of the global temperature records and to the IPCC's assessment report—undermined the scientific evidence supporting the Endangerment Finding by calling into question whether the IPCC scientists adhered to "best science practices." *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* ("Reconsideration Denial"), 75 Fed. Reg. 49,556, 49,556–57 (Aug. 13, 2010).

On August 13, 2010, EPA issued a denial of the petitions for reconsideration accompanied by a 360-page response to petitions (RTP). *Id.* at 49,556. It determined that the petitions did not provide substantial support for the argument that the Endangerment Finding should be revised. According to EPA, the petitioners' claims based on the CRU documents were exaggerated, contradicted by other evidence, and not a material or reliable basis for questioning the credibility of the body of science at issue; two of the factual inaccuracies alleged in the petitions were in fact mistakes, but both were "tangential and minor" and did not change the key IPCC conclusions; and the new scientific studies raised by some petitions were either already considered by EPA,

misinterpreted or misrepresented by petitioners, or put forth without acknowledging other new studies. *Id.* at 49,557–58.

State Petitioners have not provided substantial support for their argument that the Endangerment Finding should be revised.

Coalition for Responsible Regulation, et al. v. EPA, slip op., D.C. Cir., No. 09-1322 (June 26, 2012).

40. Upon receiving notice from the University that more than ten thousand pieces of my electronic correspondence during the period 1999 to 2003—representing some or perhaps even all of my electronic letters and correspondence during this period (hereinafter referred to as my “Electronic Correspondence”)—was to be conditionally disclosed to the Petitioners in the instant matter, I sought and was granted leave by this court to intervene as a Respondent aligned with the University so that I could seek to protect my interest in my Electronic Correspondence.

41. Following the filing of my Motion for Leave to Intervene in the instant matter, the University provided me and my counsel with access to my Electronic Correspondence to enable me and my counsel to review their contents in preparation for the court’s hearing on my Motion for Leave to Intervene, which the Petitioners strenuously opposed.

42. All of the documents contained in Respondents’ Exemplars either are not “public documents” because they were not prepared in the conduct of public business (i.e. they are strictly personal) or are subject to exclusions in the Virginia FOIA for education records, personnel records, or the exclusion protecting proprietary scholarly information. Because Respondents’ Exemplars are protected under the terms of the court’s Revised Order on Document Selection and Protection, dated December 19, 2012, a more specific description of Respondents’ Exemplars is attached hereto in “Attachment A” under seal.

43. All of the documents contained in Petitioners' Exemplars either are not "public documents" because they were not prepared in the conduct of public business (i.e. they are strictly personal), are subject to exclusions in the Virginia FOIA for education records, personnel records, or the exclusion protecting proprietary scholarly information. To wit:

- (a) PE #1 represent the internal deliberations between me and a group of scientists regarding the comments made by one of our colleagues regarding the state of research as summarized on a chapter of the IPCC report we had worked on together.
- (b) PE #2 represents the internal deliberations between me and two other climate scientists regarding potential diagrams to be shown in a draft version of a section of a chapter of the IPCC report we were working on as well as a separate discussion of potential topics I and a colleague might consider covering in upcoming talks to be given at a scientific meeting.
- (c) PE #3 represents the internal deliberations between me and several other climate scientists regarding material and potential diagrams to be included in a draft version of a section of a chapter of the IPCC report we were working on.
- (d) PE #4 is a frank internal deliberation between a group of climate scientists including myself regarding the state of understanding of paleoclimate reconstructions, and work that we were currently doing to help clarify the nature of uncertainties in paleoclimate reconstructions (e.g. understanding the limitations of tree ring data in resolving very low-frequency trends) such as those which we had emphasized so centrally in MBB99.
- (e) PE #5 represents the internal deliberations between myself and two other climate scientists concerning a particular dataset that they were in the process of continuing to refine, study and analyze, including an unpublished new version of their dataset, and a discussion of what the most appropriate way would be to represent their work in a draft report of a section of a chapter of the upcoming IPCC report.
- (f) PE #6 is an email that was widely discussed when it was released as part of the theft of emails from the University of East Anglia and grossly misrepresented by those looking to discredit the underlying science. As commented on in multiple investigations of the stolen emails, this email was simply a discussion by one scientist (Phil Jones) with several other colleagues, including me, of the simplest way to represent the most reliable information contained in three different climate reconstructions and to properly compare to more recent instrumental records of

temperature, for a single graph he was producing for the cover of an upcoming report of the World Meteorological Organization (WMO).

- (g) PE #7 is a very frank internal discussion between a group of climate scientists including myself openly debating and discussing a controversial recent opinion piece by one set of authors and whether or not it represented a fair assessment of the state of the science. The email alludes to as yet unpublished but potentially forthcoming criticism of that work to be submitted to the peer-reviewed literature.
- (h) PE #8 represents an email exchange that I was copied on but did not participate in. The email reflects a debate between two individuals discussing the current state of understanding regarding the use of tree rings in reconstructing past temperature trends.
- (i) PE #9 represents a confidential review I provided a colleague of an unpublished manuscript he was acting as editor for.
- (j) PE #10 is part of an ongoing series of very frank internal discussion between a group of climate scientists including myself openly debating and discussing a controversial recent article by one set of authors and the potential validity of their findings, alluding to as yet unpublished but potentially forthcoming criticism of that work to be submitted to the peer-reviewed literature.
- (k) PE #11 is part of an ongoing series of very frank internal discussions between a group of climate scientists including myself openly debating and discussing a controversial recent article by one set of authors and the potential validity of their findings, alluding to as yet unpublished but potentially forthcoming criticism of that work to be submitted to the peer-reviewed literature.
- (l) PE #12 is part of an ongoing series of very frank internal discussions between a group of climate scientists including myself openly debating and discussing a controversial recent article by one set of authors and the potential validity of their findings, alluding to as yet unpublished but potentially forthcoming criticism of that work to be submitted to the peer-reviewed literature.
- (m) PE #13 is an internal discussion between myself and a group of climate scientist co-authors regarding comments from one of the co-authors regarding a draft version of the paper on proxy climate reconstructions we were preparing for submission to the peer-reviewed scientific literature.
- (n) PE #14 is a very frank internal email discussion between a group of scientists including myself expressing concerns with the the scientific claims expressed by another very prominent climate scientist in a recent paper and at a recent meeting. The discussion alludes to as yet

unpublished but potentially forthcoming criticism of that work to be submitted to the peer-reviewed literature.

- (o) PE #15 represents the internal deliberations between me and several other climate scientists regarding material and potential diagrams to be included in a draft version of a section of a chapter of the IPCC report we were currently working on.
- (p) PE #16 represents the internal, frank deliberations between me and several other climate scientists regarding material and potential diagrams to be included in a draft version of a section of a chapter of the IPCC report we were currently working on.
- (q) PE #17 represents an internal discussion between a group of scientists including myself about what we considered to be the dishonest efforts by certain individuals and organizations seeking to misrepresent our science and introduce intentional disinformation into the public discourse on climate science. The discussion revolved in particular around propaganda being distributed by the Competitive Enterprise Institute (CEI). I can speak from personal experience how the disclosure of my Electronic Correspondence will harm my proprietary interest in these scholarly communications and the proprietary interest of the University.

44. Within days following the hacking and internet posting of the CRU emails, United States Senator James Inhofe on behalf of the Minority Staff of the United States Senate Committee on Environment & Public Works wrote letters both to the University and to me. The letter to the University alleged that the CRU emails “outline a disturbing trend of actions, which at the least, imply activity to create a false impression of the certainty of climate change science,” and requested that all documents and records related to the CRU be secured.” A copy of Senator Inhofe’s letters is available at <http://www.virginia.edu/foia/climatechange/pdf/2009-11-24Inhofe-request-%20Preservation%20of%20Documents.pdf> . Other pertinent documents through April 2011 are available on the University’s webpage titled “Requests to the University under the Virginia Freedom of Information Act: Climate Change Research” available at <http://www.virginia.edu/foia/climatechange/timeline.html>.

45. Senator Inhofe's letter to me carried the additional threat of "severe civil and criminal penalties, federal and state, for the destruction of certain materials, [including] criminal penalties...fines or jail time for the unlawful destruction of records or documents..."

46. In February 2010, under the official seal of the United States Senate, the Minority Staff of the Committee on Energy and Environment published and distributed "United States Senate Report 'Consensus' Exposed: The CRU Controversy," which singled-out me, Dr. Bradley, Dr. Hughes, and fourteen other highly-regarded climate scientists on the faculty of some of the world's most prestigious research institutions and universities, including Presidential Medal of Science Recipient, National Academy of Science member, and MIT faculty member Susan Solomon, Thomas Karl, Director of the NOAA Climate Service, Dr. Michael Oppenheimer, Professor of Geosciences, Department of Geosciences at Princeton University, Dr. Jonathan Overpeck, Co-Director of the Institute of the Environment and Professor, Departments of Geosciences and Atmospheric Sciences, University of Arizona, Dr. Benjamin Santer, National Academy of Science member and Research Scientist, Program for Climate Model Diagnosis and Intercomparison, Lawrence Livermore National Laboratory, and Dr. Stephen Schneider, National Academy of Science member and Professor of Interdisciplinary Environmental Studies, Professor of Biological Sciences, Woods Institute for the Environment at Stanford University. The report alleged that we had "violated fundamental ethical principles governing taxpayer-funded research and, in some cases, may have violated federal laws" and further insinuated that we might be criminally liable under the federal False Claims Act and the criminal statute governing false testimony [18 U.S.C. 1505] for "creating a tampered data base" and "providing false or misleading testimony to Congress." The report is available at

http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=7db3fbd8-f1b4-4fdf-bd15-12b7df1a0b63.

47. Since the illegal hacking incident and public disclosure of my confidential emails with scientists at the CUR, I have had to endure countless verbal attacks upon my professional reputation, my honesty, my integrity, even my life and liberty. I have spent hours, days, and months of my time—time I otherwise could have devoted to my professional academic research, my teaching duties, and my family—defending myself against baseless attacks. This includes responding to investigations by my employer, Pennsylvania State University, by two federal agencies from which I receive grant funding to carry out my research, the National Oceanic and Atmospheric Administration and the National Science Foundation, and most recently, Virginia Attorney General Kenneth Cuccinelli, who issued a “civil investigative demand” seeking my email correspondence under the Virginia Fraud Against Taxpayers Act (FATA).

48. While I was exonerated by each of these inquiries, and the Attorney General’s investigation was dismissed because the University was deemed not to be an entity subject to the FATA, the stress of having to defend myself has been a tremendous burden upon me, my family, my friends, and my professional colleagues. The negative publicity created by the mischaracterization of my personal and confidential email correspondence with other scientists undoubtedly has rendered me “toxic” in some scientific circles.

49. Several professional colleagues have mentioned that exchanging emails or other correspondence with me might be dangerous for them because they might be “subpoenaed” or “FOIA’d.” Unfortunately, their fears are not unfounded. Since I was granted leave to intervene in this proceeding, the Petitioners have submitted state Freedom of Information Act requests to

several other climate scientists with whom I have worked and corresponded extensively in the course of my collaborative research, which seek to obtain any correspondence between us. Most recently, on May 1, 2012, Petitioners submitted a "Public Records Request" to the Texas A&M University seeking "all emails between Professor Andrew Dessler of the A&M Department of Atmospheric Sciences and Professor Richard Lindzen, me, or mentioning the words "Hockey Stick", "Climategate", "denier" and/or "tobacco. Several scientists who have also been subject to FOIA demands by the Petitioners requested that I not identify them in this affidavit out of concern that Petitioners and their network of collaborators will harass them. See

http://fmlawclinic.org/?page_id=9.

50. Since the unauthorized web publication and mischaracterization of my proprietary email correspondence with other scientists, I also have noticed that certain of my colleagues are not quite as candid or free-flowing in their electronic correspondence with me. Some now prefer that we communicate by telephone. This is a major burden. Email is a highly-efficient collaborative tool, enabling all members of a research team to share information instantaneously, while also creating a fixed and permanent record of their interaction and their particular thoughts, ideas, or information being shared, thus allowing one the opportunity to ponder, reflect, and respond in due course. Telephonic communication is entirely different. It is far more cumbersome, requires all team members (even those in different time zones) to be available at the same time, and does not create a record which can be referred back to when it becomes important to trace the evolution of a scientific conversation. As a communication medium for the conduct of collaborative climate change research, telephone is woefully inadequate.

51. I believe my ability to compete for grant funding also has been harmed by the unwarranted publication and mischaracterization of my proprietary email correspondence with

other scientists. Funding agencies such as the National Science Foundation (“NSF”) are aware that I am a marked-man by those opposed to the science suggesting that mean global temperature is rising as a result of the combustion of fossil fuels. If given a choice between funding my research, which comes with the potential for hyper scrutiny, attacks by the conservative press, and the possibility of having to respond to repeated, disruptive FOIA requests, or other research that is perhaps less controversial, a grantor might be inclined toward the easier path.

52. For example, I have been advised by a NSF program manager that there is concern among his colleagues about funding my research because of “controversies surrounding my research.” Recently, a collaborative research team of which I was a member was unsuccessful in a competition for a second round of NSF funding under the Climate Science Education program. The program is designed to provide educational materials for zoos and aquaria describing the latest science on climate change, including its impacts on animals and plants. While I can not be sure, I suspect that the manufactured controversy surrounding my work through the abuse and distortion of my confidential correspondence may have had an impact on the funding decision.

53. Through their averments in the Petition for Mandamus, statements in the press, and statements on ATI’s webpage, Petitioners have made clear that they are intent on destroying my professional reputation, character, and ability to carry on my research. The following are samples of Petitioners’ character attacks:

- (a) “Mann: From Transparency Champion to ‘Bully’ Victim,” (January 7, 2011), <http://www.atinstitute.org/mann-from-transparency-champion-to-bully-victim/>

- (b) “Time to Reinvestigate Mann and Now Penn State,” (March 8, 2011), <http://www.atinstitute.org/time-to-reinvestigate-mann-and-now-penn-state/>
- (c) “Michael Mann’s Zoo Visits,” (March 18, 2011), <http://www.atinstitute.org/michael-manns-zoo-visits/>
- (d) “Bird Brains and Others Defend Michael Mann,” (April 15, 2011), <http://www.atinstitute.org/bird-brains-and-others-defend-michael-mann/>
- (e) “Horner: Michael Mann may have something to hide,” (April 27, 2011), <http://www.atinstitute.org/horner-michael-mann-may-have-something-to-hide/>
- (f) “ATI’s Horner: UVA Goes All-in on Climategate FOIA Cover-up,” (August 27, 2011), <http://www.atinstitute.org/atis-horner-uva-goes-all-in-on-climategate-foia-cover-up/>
- (g) “‘Hockey Stick’ Creator Michael Mann Seeks Court’s Help to Ensure No Inquiry, No ‘Exoneration’”, (September 6, 2011), <http://www.atinstitute.org/‘hockey-stick’-creator-michael-mann-seeks-courts-help-to-ensure-no-inquiry-no-exoneration/>
- (h) “Climategate: Scientists, Governments, Private Industry Conspire: ATI Fighting for Transparency,” (June 26, 2012), <http://www.atinstitute.org/climategate-scientists-governments-private-industry-conspire-ati-fighting-for-transparency/>

54. The Mandamus Petition also 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.

55. As discussed above, “preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues” compiled by scientists conducting federally funded research is expressly protected under FOIA. *See* Office of Management and Budget Circular A-110--Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit

Organizations, 2 CFR § 215.36(d)(2)(i) (defining “research data” as the recorded factual material commonly accepted in the scientific community as necessary to validate researching findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues.”) (emphasis added.)

56. The very danger against which this federal protection was crafted is at work in this case. In its final rule amending the Circular, OMB stated that “[a]s in many other fields of endeavor, scientists need a private setting where they are free to deliberate over, develop, and pursue alternative approaches.” 64 Fed. Reg 43786, 43787(August 11, 1999). In its comments submitted to OMB, the Association of American Universities warned that:

We are concerned that subjecting research data to FOIA *will subject scientists to harassment from interested parties that may be opposed to the research.* Repetitive FOIA requests could be filed in an effort to delay or prevent the research. Complying with these requests is likely to be costly and cumbersome. These requirements could have a chilling effect on research in areas deemed controversial, or that evokes the greatest public interest and concern.

Comments of the Association of American Universities Against proposed revision to OMB

Circular A-110, March 23, 1999, available at <http://www.thecre.com/ipd/access/agency/1999-03-23.html>. Similarly, the American Lung Association wrote:

The ALA is gravely concerned that the proposed changes in the OMB Circular A-110 will be used a tool to harass researchers engaged in research with public policy implications. American Lung Association volunteers are engaged in a wide range of research pursuits, including studies of the health effects of air pollution, tobacco use and work place safety. Recent research findings in all three of these areas have prompted state and federal governments to take active legislative and regulatory actions to protect the health of the American people in these three areas. Many of the legislative and regulatory actions, though needed and fully appropriate, were not welcomed by certain industries that wanted to maintain the status quo. Additional research into the health effects of air pollution, tobacco use and work place safety may support further government protections.

Under the proposed amendments, industries that have a financial interest in opposing additional government protections on clean air, tobacco control and

work place safety will be able to use the Freedom of Information Act (FOIA) to harass federally funded researchers who are doing work in these areas. *If research data becomes subject to FOIA requests, impacted industries can easily tie up researchers time and energy by filing endless requests for data. Additionally, once these vested interests have the data in hand, they may try to unfairly discredit the data, forcing researchers to spend additional time, energy and resources to defend the validity of their data.*

Furthermore, should the proposed changes to OMB Circular A-110 occur, *research harassment or the threat of research harassment will dramatically reduce the flow of valid scientific data that is needed to establish public health standards on issues like clean air, clean water, work place safety and other public health issues.* (Emphasis added.)

American Lung Association, Comments Against proposed revision to OMB Circular A-110, March 24, 1999, available at <http://www.thecre.com/ipd/access/agency/1999-03-24a.html>.

57. The disclosure of my emails also would violate the privacy interests of other climate scientists and researchers with whom I corresponded, many of whom have informed me that their email correspondence with me was intended to be personal, confidential and scholarly work product and that the disclosure of our collective email correspondence will have a pernicious “chilling effect” on their willingness to freely exchange ideas and other materials of scholarship with me. See Mann Affidavit, September 6, 2011, ¶¶ 29-37 and attached exhibits.

58. 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), available at http://www.aaas.org/news/releases/2011/media/0629board_statement.pdf .

59. I also believe that disclosure of my email correspondence will have a chilling effect on what areas scholars in Virginia choose to research and where they choose to conduct their research, as between public institutions which are subject to the Virginia FOIA statute, and private institutions, which are not. Imagine a young scientist with a Ph.D. in physics, who is considering her career options. She is shy but brilliant. She has a keen interest in exploring the Earth's climate back in time. This is a vitally important endeavor because global temperature records show that the Earth is warming. This is a problem of global scale for many reasons. The world's agricultural system and the health and welfare of the 7 billion people on our planet depend on stable growing seasons, relatively free from extreme drought and extreme heat. The vast majority of the planet's plants and animals—the natural systems in which life has evolved—depend on relatively stable global temperatures. The coastal communities around the world, where much of the world's population is clustered, depend on relatively stable sea-levels. It is a vitally important question she wants to help answer--what was the Earth's climate like in the past? Can we may learn from the past to help informs decisions about the climate? The field of

climate science she has chosen is inherently collaborative, involving literally thousands of different scientists from across the globe each with a different perspective, background, and discipline touching on various aspects of climate. With the rise of the internet—the World Wide Web—her ability to electronically correspond and collaborate with these colleagues, to exchange thoughts, ideas, data, critiques, and the innumerable other interactions that are the core of the scientific endeavor, is magnified 100-fold. Having been born and raised in Virginia, she wants to stay close to home. She has offers from two prestigious institutions, Georgetown University and the University of Virginia, her undergraduate *alma mater*. The question is a close call. The opportunities are roughly identical. She reads an article about seemingly coordinated efforts—one by an Attorney General with a political agenda another by a private organization with an economic agenda—to seize the emails of a former University of Virginia professor who worked on the same area of climate science she is interested in during his six years at the University. What will her choice be?

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 23rd day of July, 2012.

Victor DeDonato
Notary Public

My Commission expires:

10/19/2015.

