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## Supreme Court lets lawsuit by climate scientist continue against conservative outlets

By **Robert Barnes**

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A climate scientist may pursue his defamation lawsuit against a conservative magazine and a libertarian Washington think tank after the Supreme Court on Monday declined to intervene at this stage of the litigation.

National Review and the Competitive Enterprise Institute had asked the court to review a decision by local District of Columbia courts that said the lawsuit by Pennsylvania State University professor Michael Mann could continue.

The court turned down the request without comment, but Justice Samuel A. Alito Jr. dissented, saying the case “presents questions that go to the very heart of the guarantee of freedom of speech and freedom of the press.”

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Justice Ruth Bader Ginsburg, hospitalized over the weekend for chills and a fever, was back at work Monday as the court prepared for the holidays by dispatching with several closely watched cases:

- Without comment, it said it would not review a Maryland court's decision rejecting a new trial for Adnan Syed, whose murder conviction was questioned in an investigation by the podcast "Serial."
- The justices vacated a lower court's decision upholding Alaska's campaign contribution limit of \$500 to candidates. The court said the U.S. Court of Appeals for the 9th Circuit did not properly apply a 2006 Supreme Court precedent that invalidated Vermont limits that the court found too low. It returned the Alaska case for another look.

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- The court indicated it will look for a case to decide how much authority Congress can cede to independent or executive branch agencies. The court last term essentially deadlocked on a question about what is called the administrative state because new Justice Brett M. Kavanaugh could not vote. Kavanaugh said in a statement Monday that agencies' authority to decide major policy questions, even when authorized by Congress, is an important question "that may warrant further consideration in future cases."

In the defamation case, Mann is an internationally recognized expert on climate change and has published work that blamed human activity for global warming. The work was criticized by some scientists, but an investigation by Penn State cleared him of any wrongdoing.

That did not stop the criticism. In a CEI blog, Rand Simberg wrote that Penn State had "covered up wrongdoing" by Mann, and he characterized Mann as the "Jerry Sandusky of climate science," because he had "molested and tortured data in service of politicized science."

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Sandusky is a former Penn State football coach who was convicted of molesting children.

Mark Steyn picked up the theme in a post on the Corner, a blog hosted by National Review Online, the website of National Review.

In his post, Steyn said that while he would not have “extended the metaphor all the way into the lockerroom showers,” Mann was “behind the fraudulent climate-change” study and the investigation clearing him was a coverup.

Mann demanded retractions and apologies from CEI and National Review.

Instead, National Review published a response from its editor, Rich Lowry, titled “Get Lost.” He refused to retract and clarified that “ ‘fraudulent’ doesn’t mean honest-to-goodness criminal fraud. It means intellectually bogus and wrong.”

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Mann sued.

The publications and authors tried to have the lawsuits dismissed under the District’s anti-SLAPP Act. SLAPP stands for Strategic Lawsuit Against Public Participation, and the laws are intended to provide for early dismissal of meritless lawsuits filed against people for the exercise of First Amendment rights.

But the D.C. Court of Appeals said it could not find at this stage of the litigation that a jury could not review the evidence and rule for Mann, and said the lawsuit could go forward.

In his dissent from the Supreme Court's refusal to intervene, Alito noted the preliminary status of the case. "It may be reviewed later if the ultimate outcome below is adverse" to the authors and publications, he wrote.

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"But requiring a free speech claimant to undergo a trial after a ruling that may be constitutionally flawed is no small burden," Alito wrote. ". . . A journalist who prevails after trial in a defamation case will still have been required to shoulder all the burdens of difficult litigation and may be faced with hefty attorney's fees. Those prospects may deter the uninhibited expression of views that would contribute to healthy public debate."

Alito said the court has traditionally protected expression, especially on issues of public controversy such as climate change.

“Politicians, journalists, academics, and ordinary Americans discuss and debate various aspects of climate change daily — its causes, extent, urgency, consequences, and the appropriate policies for addressing it,” Alito wrote. “The core purpose of the constitutional protection of freedom of expression is to ensure that all opinions on such issues have a chance to be heard and considered.”

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In the Syed case, no justice commented in declining to review a 4-to-3 ruling by Maryland’s highest court that denied a new trial.

Syed was convicted in 2000 of killing his former girlfriend, 17-year-old Hae Min Lee, and burying her body in a Baltimore park.

Prompted by findings from a 2014 “Serial” podcast, two Maryland courts found Syed deserved a new trial because his lawyers did not adequately investigate a possible alibi witness.

But in 2018, the Maryland Court of Appeals said there was little chance the outcome of the trial would have been different.

Syed, now 39, is serving a life sentence.

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