

LAW OFFICES
KEKER & VAN NEST
L.L.P.

710 SANSOME STREET
SAN FRANCISCO, CA 94111-1704
TELEPHONE (415) 391-5400
FAX (415) 397-7188

WENDY J. THURM
wjt@kvn.com

December 12, 2003

VIA FACSIMILE & U.S. MAIL

Christopher C. Horner
813 Duke Street
Alexandria, VA 22314

Dear Mr. Horner:

Keker and Van Nest, L.L.P. and the First Amendment Project have been retained by Dr. Peter Gleick to respond to your letter of November 25, 2003, in which you request that Dr. Gleick "correct" certain statements he made about Dr. Patrick Michaels, which were published in *The Star Press* of Muncie, Indiana on November 18 and 22, 2003, and republished in the *Ball State Daily News* on November 21, 2003. As Dr. Gleick does not believe the statements to be false, there will be no correction.

The threat of a defamation action against Dr. Gleick is a hollow one. The statements about which Dr. Michaels complains are statements of opinion that do not imply the existence of provably false facts. To the extent any of Dr. Gleick's statements can be viewed as factual assertions, the basis for each such assertion is disclosed. As you are undoubtedly aware, no state or federal court in the United States would permit a defamation action to proceed based on statements of opinion that either do not imply the existence of a provably false fact or for which the factual basis is disclosed.

Your letter appears to take particular exception to Dr. Gleick's statements that Dr. Michaels is "not one of the nation's leading researchers on climate change." This statement is not actionable as libel. Whether one is a "leading researcher" is not a fact which can be proved empirically true or false. Indeed, the statement is no more actionable than is Dr. Michaels' recent characterization of the editors of *Science* as having "strong political views," thus implicitly questioning their scientific independence and credibility. Stephen Leahy, "Experts discount generic fix for global warming," *The Manila Times* (December 9, 2003).¹

Moreover, Dr. Gleick stated the basis for his assertion, explaining that Dr. Michaels is "one of a very small minority of nay-sayers who continue to dispute the facts and science about climate change in the face of overwhelming and growing evidence." Dr. Michaels cannot dispute that he is a minority voice among global climate change researchers. Indeed,

¹ Accessed at <http://www.themanilatimes.net/national/2003/dec/09/yehey/opinion/20031209opi7.html>.

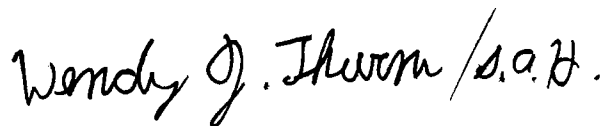
Dr. Michaels has in the past boasted of his role as a skeptic out of the “mainstream” of scientific research on climate change. A February 2, 1996, profile of Dr. Michaels in the *Cavalier Daily* described Dr. Michaels as one who loves to “fight mainstream opinion” and who finds it exciting “going against the common consensus.” Robin Pinnel, “Michaels thinks globally, locally,” *Cavalier Daily* (Feb. 2, 1996).² In the article, Dr. Michaels stated, “the action in science is not in the mainstream” and acknowledged that in relation to fellow climate change researchers, he is “not a team player.” *Id.*

Even apart from Dr. Michaels’ own characterization of his role in the field of climate change, Dr. Gleick’s statements are accurate and well supported. Having been active in climate change research for twenty years, Dr. Gleick is familiar with Dr. Michaels’ research, writing, and public statements, and with the research and writing of many other global climate change scientists. Dr. Gleick believes that Dr. Michaels’ interpretations of mainstream climate science are of questionable value. Numerous others share Dr. Gleick’s view.

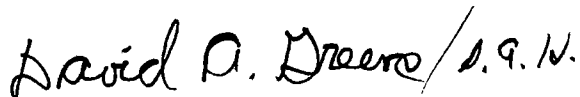
Dr. Gleick’s statement that “I consider that Michaels is to the science of climate change like the Flat Earth Society is to the science of planetary shape” is likewise not actionable as libel. The statement is eminently the type of colorful rhetoric that enlivens public debate and is deserving of unqualified First Amendment protection.

Lastly, we note your assertion that Dr. Michaels is “entitled under the law to immediate and public correction of the record.” We are aware of no state or federal law which would establish such an entitlement. In any event, Dr. Gleick has nothing to correct. He is prepared to defend his statements in the courts of law and of public opinion.

Very truly yours,



WENDY J. THURM
KEKER & VAN NEST



DAVID A. GREENE
THE FIRST AMENDMENT PROJECT

WJT/jmd

cc: Dr. Peter H. Gleick

² Accessed at <http://www.cavalierdaily.com:2001/.Archives/q996/February/2/lfpam.asp>.