

POLITICAL SCIENCE:

A REPORT ON SCIENCE & CENSORSHIP

FROM THE KNOWLEDGE PROJECT
AT THE NATIONAL COALITION AGAINST CENSORSHIP

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*As scientists... we are learning how human activities and technologies are affecting climate systems in ways that may forever change life on Earth As citizens of the world, we have a duty to alert the public to the unnecessary risks that we live with every day, and to the perils we foresee if governments and societies do not take action now ... to prevent further climate change. As we stand at the brink of ... a period of unprecedented climate change, scientists have a special responsibility.*¹

— Stephen Hawking

INTRODUCTION

In early 2006, one of the nation's leading climatologists, James Hansen of the National Aeronautics and Space Administration's Goddard Institute, announced that his efforts to speak publicly about global warming were being thwarted by administrators at NASA. As the details emerged in front-page stories, the public learned that a junior-level political appointee in NASA's media affairs office had instructed Hansen that he had to get clearance before he could speak publicly about global warming. The Hansen incident turned out to be only the most publicized of many incidents of government censorship of science and scientists.²

Many observers responded with disbelief to Hansen's announcement that he was being censored. Censorship of government scientists violates the values embodied in the First Amendment and the spirit of scientific inquiry. By disrupting the free flow of information in the scientific arena, the government endangers the "marketplace of ideas" — threatening our constitutional rights to freedom of speech, thought, and inquiry — and undermines the scientific data and expertise that are the basis of wise policy-making.

¹ Stephen Hawking quoted in Roger Highfield, "Hawking: Doomsday Clock closer to midnight," *Telegraph.co.uk* (updated 18 January 2007; cited 1 February 2007).

² Union of Concerned Scientists (hereinafter "UCS"), "The A to Z Guide to Political Interference in Science," online: http://www.ucsusa.org/scientific_integrity/interference/a-to-z-guide-to-political.html, (cited 9 February 2007).

The defenders of scientific censorship claim that the government has a right to expect its employees to faithfully discharge their duties however they are defined, as well as the right to set policy and to deliver its own message in its own words.³ It is entirely reasonable for the government to require its scientists to clarify that their statements and opinions do not represent official positions of the government. The critical question, however, is whether the government, when it elects to hire people to engage in scientific inquiry, is constitutionally permitted to suppress information they produce that does not conform to its policy goals. In our view, the First Amendment prohibits the government from suppressing information with which it disagrees – even if produced with its own dollars. Government need not embrace the available science, but it may not silence it.⁴

Governmental abuse of science to advance a political agenda has a notorious history. For example, the Soviet Union’s embrace of “Lysenkoism,” a theory positing that acquired characteristics could be inherited, required rejecting widely-accepted evidence developed by Mendel and others about the role of genes in inherited characteristics. Nonetheless, Lysenko’s Marxist ideology and support for Stalinism gave him credibility and power in government circles. Dissenting scientists were fired, imprisoned and purged. Adherence to Lysenkoism is now viewed as having contributed to widespread agricultural failures and mass starvation, and to the absence of sound genetic research in the Soviet Union for decades.⁵

The United States has its own experiences with government efforts to sup-

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³ See, e.g., Andrew C. Revkin, “Bush vs. The Laureates: How Science Became a Partisan Issue,” *The New York Times*, 19 October 2004.

⁴ Scientific research implicating national security concerns present a different set of considerations, which we do not address here. This paper is confined to research that is not confidential or privileged, and that by and large is created because of its relevance to public policy questions.

⁵ For a discussion of Lysenkoism, see Suzanna Sherry, “Democracy and the Death of Knowledge,” Vanderbilt University Law School Public Law and Legal Theory, Working Paper Number 06-21, pp. 15-16 and materials cited therein at footnote 35; and Richard Levins and Richard Lewontin, *The Dialectical Biologist*, (Cambridge, MA: Harvard University Press, 1985), pp. 163-196;

press widely accepted scientific opinion and information. For example, in 1925, science teacher John Scopes was convicted of violating a Tennessee law banning the teaching of evolution in public schools. The Scopes case was a turning point in the battle for academic freedom, and Americans rallied behind the view that the government had no role in suppressing scientific opinion. “Freedom of learning is the vital breath of democracy and progress,” Charles Evans Hughes, future chief justice of the U.S. Supreme Court, told the American Bar Association shortly after the conviction of Scopes. “Government and statesmen have too often stood in the way.”⁶

If history serves as guide, suppression of scientific inquiry poses grave risk of harm to the public. When the government censors science, it violates its fundamental obligation to serve the public interest. Under our Constitution, it breaches the compact between the government and the governed.

HOW SCIENCE IS CENSORED

*In my thirty-some years of experience in government, I’ve never seen control to the degree that it’s occurring now.... I think that it’s very harmful to the way that a democracy works. We need to inform the public if they are to make the right decisions and influence policy makers.*⁷

— James Hansen

Censorship of government scientists affects policies on the environment, agriculture, climate change, sexual health, stem cell research, energy sources, evolution, and many more critical areas. The following are representative examples.

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⁶ Quoted in Christopher M. Finan, *From the Palmer Raids to the Patriot Act: A History of the Fight for Free Speech in America* (Boston: Beacon Press, 2007), p. 68.

⁷ Andrew C. Revkin, “Climate Expert Says NASA Tried to Silence Him,” *The New York Times*, 29 January 2006, late edition, A1. For a detailed account of the administration’s suppression of climate change science, read *Atmosphere of Pressure: Political Interference in Federal Climate Science*, a report by the Union of Concerned Scientists and the Government Accountability Project.

SUPPRESSING SPEECH

- Dr. James Hansen, one of the nation's foremost climate scientists, disclosed that officials at NASA reviewed his upcoming lectures and papers and screened media requests for interviews with him. He was warned that there would be "dire consequences" if he continued to make statements that global warming is escalating.⁸
- The Department of Health and Human Services recently adopted a new policy requiring scientists to obtain approval before participating on scientific panels convened by United Nations organizations, including the World Health Organization. One scientist, Dr. D.A. Henderson,⁹ opined that "I do not feel this is an appropriate or constructive thing to do... In the scientific world, we have a generally open process. We deal with science. I am unaware of such clearance ever having been required before."¹⁰ Government scientists were also told that they would have to agree to advocate U.S. policy if they wanted to attend WHO meetings.¹¹
- After the administration's abstinence-only policy was protested by some participants at the International AIDS Conference in 2002, the number of scientists allowed to participate in 2004 and 2006 was dramatically cut, going from 236 in 2002 to only 50 scientists allowed to attend in 2004 and 2006.¹² Many of those permitted to attend were "bureaucrats ... rather than the leading scientists."¹³

⁸ Ibid.

⁹ Dr. Henderson is highly regarded in scientific circles for his efforts to eradicate smallpox.

¹⁰ Tom Hamburger, "White House Tries to Rein in Scientists: Health and Human Services Department Orders Vetting of Experts on Panels Convened by the UN's Health Agency," *The Los Angeles Times*, 26 June 2004, A1.

¹¹ Michael Specter, "Political Science: The Bush Administration's war on the laboratory," *The New Yorker*, 13 March 2006, 58-69.

¹² David Brown, "U.S. Cuts Number of Delegates to World AIDS Meeting," *The Washington Post*, 9 July 2004, A17.

¹³ Peter Calamai, "Politics Joins Scientists at AIDS Meeting," *Toronto Star*, 22 July 2006, A19.

- The National Oceanic and Atmospheric Administration suppressed a fact sheet suggesting that global warming was contributing to the frequency and strength of hurricanes. The journal *Nature* quoted NOAA Administrator Conrad Lautenbacher as saying that the document "could not be released because the agency cannot take an official position on a field of science that is changing so rapidly."¹⁴
- Information about comprehensive sex education programs for teenagers that were scientifically proven to be effective were removed from the Centers for Disease Control's website, "Programs that Work," because they conflict with official positions in favor of teaching "abstinence-only-until-marriage."¹⁵

DISTORTING INFORMATION

- In September 2002, a White House official altered the section on climate change in the Environmental Protection Agency's annual air pollution report in an effort to cast doubt on the scientific basis for claims about global warming. In EPA's 2003 *Report on the Environment*, the entire section on climate change was deleted after the White House insisted on changes in the text that EPA scientists refused to accept because, according to an internal memo, the changes misrepresented the scientific consensus.¹⁶

¹⁴ "Why the administration buried a NOAA scientist's statement on hurricanes and climate," online: <http://www.climatewatch.org/index.php/csw/details/noaa-scientists-statement/>, (updated 27 September 2006; cited 30 January 2007).

¹⁵ UCS Author interview with current CDC staff member, name withheld on request, November 2003, cited in "Scientific Knowledge on Abstinence-Only Education Distorted," excerpted from the 2004 Union of Concerned Scientists report, *Scientific Integrity in Policymaking*, online: http://www.ucsusa.org/scientific_integrity/interference/abstinenceonly-education.html, (cited 30 January 2007).

¹⁶ Andrew C. Revkin and Katherine Q. Seelye, "Report by E.P.A. Leaves Out Data on Climate Change," *The New York Times*, 19 June 2003, late edition, A1. Further information and the draft report are available online at the E.P.A. website, <http://www.epa.gov/indicators/roe/index.htm>, (cited 30 January 2007).

- ❧ In February 2005, the EPA inspector general reported that agency scientists had been pressured to change their scientific findings about risks from mercury. The former director of EPA's Air Enforcement Division complained that "The new mercury rules were hatched at the White House; the Environmental Protection Agency's experts were simply not consulted at all."
- ❧ In response to political pressure, the CDC "disinvited" several speakers scheduled to present information about "abstinence-only until marriage" programs at the 2006 National STD Prevention Conference. One panel, originally entitled "Are Abstinence-Only-Until-Marriage Programs a Threat to Public Health?" was changed to "Public Health Strategies of Abstinence Programs for Youth." The changes were made in response to a complaint by Representative Mark Souder (R-IN), a proponent of abstinence-only education.¹⁸
- ❧ Complaints by staff scientists that a senior political appointee in the Interior Department consistently overruled their recommendations regarding enforcement of the Endangered Species Act has triggered an as-yet unfinished investigation by the agency's inspector general.¹⁹ The *New York Times* concluded from the edited reports that the official deferred to industry views and failed to provide a scientific basis for her criticisms of scientific conclusions.²⁰

17 UCS Author interview with Bruce Buckheit, March 2004.

18 Rob Stein, "Health Experts Criticize Changes in STD Panel," *The Washington Post*, 9 May 2006, A3.

19 Juliet Elperin, "Bush Appointee Said to Reject Advice on Endangered Species," *The Washington Post*, 30 October 2006, final edition, A3.

20 Felicity Barringer, "Interior Aide and Biologists Clashed Over Protecting Bird," *The New York Times*, 5 December 2004, late edition, p. 38.

RETALIATION AND HARASSMENT

- ❧ The Fish Passage Center, an agency that counts endangered salmon in the Columbia River to assess the impact of dams on their survival, had its funding threatened after a federal court cited its data in a ruling that angered the hydroelectric industry. Senator Larry Craig (R-Idaho), who had been named "Legislator of the Year" by the American Hydropower Association, led the effort to defund the Center, accusing it of producing "false science" and "data cloaked in advocacy."²¹
- ❧ The White House slashed the EPA library networks budget by 80%, forcing many of its ten regional libraries to close. The library closings severely undercut access to EPA reports, guidance and technical documents. The collections contained otherwise inaccessible copies of documents on federal Superfund hazardous waste sites, water-quality data, and the health of regional ecosystems.²²
- ❧ The National Institutes of Health questioned 157 researchers on sexuality and HIV/AIDS, whose research projects had already been screened by a rigorous peer review process, after the Traditional Values Coalition charged that their work was a "total abuse of taxpayer dollars." NIH claimed the inquiry was to "put the research into the context of the agency's scientific mission"; researchers perceived it as politically-motivated harassment.²³

IGNORING SCIENCE

- ❧ By law, the Food and Drug Administration is required to approve

21 Blaine Harden, "Court Rejects Senator's Bid To Eliminate Fish Agency," *The Washington Post*, 25 January 2007, A12.

22 Christopher Lee, "Budget Cut Would Shutter EPA Libraries," *The Washington Post*, 15 May 2006, A15.

23 CBS News/AP, "Sex, AIDS Research Under Scrutiny," online: <http://www.cbsnews.com/stories/2003/10/28/health/main580425.shtml>, 28 October 2003.

drugs that are found to be safe and effective. Even after FDA's scientific staff and two independent FDA scientific advisory committees concluded that Plan B, the emergency contraceptive, is safe and effective, Steven Galson, acting director of FDA's Center for Drug Evaluation and Research at the FDA, refused to approve it.²⁴ The Government Accountability Office reported that the rejection was highly unusual and that top political appointees at the agency were involved in the decision.²⁵

POLITICAL CONTROL

➤ A recent executive order will give the White House Office of Management and Budget control of all federal policies, guidelines, and regulations that deal with public health, safety, and the environment. Each agency is required to create a policy office to screen scientific recommendations and to assess the combined costs and benefits of all its regulations. The goal is to limit regulatory action unless the agency has identified a “specific market failure,” a move widely endorsed by industry groups.²⁶

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²⁴ “Scientific Integrity at Risk: The Food and Drug Administration,” online: http://www.ucsus.org/assets/documents/scientific_integrity/Scientific-Integrity-at-Risk-FDA.pdf, (cited 30 January 2007); Marc Kaufman, “Decision on Plan B Called Very Unusual,” *The Washington Post*, 13 October 2005, final edition, A9.

²⁵ U.S. Government Accountability Office, “Abstract: Food and Drug Administration: Decision Process to Deny Initial Application for Over-the-Counter Marketing of the Emergency Contraceptive Drug Plan B Was Unusual, GAO-06-109,” online: <http://www.gao.gov/docsearch/abstract.php?rptno=GAO-06-109> (14 November 2005, cited 2 March, 2007).

²⁶ Union of Concerned Scientists, “OMB Proposed Changes to ‘Peer Review,’” excerpted from the 2004 Union of Concerned Scientists report, *Scientific Integrity in Policymaking*, online: http://www.ucsus.org/scientific_integrity/interference/office-of-management-and-budget-omb-peer-review.html, (updated 23 August 2006; cited 9 February 2007); quotations from author interview with Anthony Robbins, October 2003, quoted in Union of Concerned Scientists, “OMB Proposed Changes to ‘Peer Review.’”

CENSORSHIP OF SCIENCE OFFENDS OUR TRADITIONS AND THREATENS OUR FUTURE

The Founders extolled the power of scientific knowledge, seeing the development of learning as a basic underpinning to democracy. Thomas Jefferson upheld science as the paradigm of truth-seeking processes, and he described liberty as the “great parent of science.” Benjamin Franklin is well-known for his belief in scientific inquiry, rational decision-making, and the necessity of an educated electorate. Further, in his farewell address in 1796, George Washington enjoined the country to “Promote then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it is essential that public opinion should be enlightened.”²⁷

Censorship of science is deeply troubling on many levels. At the most basic, it affronts the fundamental premises of the scientific method. Science is not static. It constantly questions, borrows from, builds on, and adds to existing knowledge. Its basic tools include formulating and testing hypotheses, documentation and replication of results, peer review, and publication. For science to advance, knowledge must be shared. Without the free exchange of ideas, science as we understand it cannot progress.

Censorship of science also violates two core constitutional and historical traditions: the respect for knowledge as the basis of democracy, and the commitment to the free exchange of ideas. These values have long been recognized by the Supreme Court:

The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.... Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all

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²⁷ George Washington, “Farewell Address 1796,” The Avalon Project at Yale Law School, online: <http://www.yale.edu/lawweb/avalon/washing.htm> (accessed 6 March, 2007).

issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.²⁸

Chilling the free speech of scientists on critical policy questions, particularly those concerning public health and well-being, denies the public its right to receive accurate, reliable, and valid information. Scientists who work for the government have a right to conduct their work according to the highest professional standards, including the ability to speak freely about their research and to collaborate with other scientists. Government scientists, like other government employees, should have the same rights as other members of the community to speak on matters of general concern.

THE PUBLIC HAS A RIGHT TO UNCENSORED SCIENCE

The rights of the general public are deeply implicated by censorship of scientific speech. The right to freedom of speech would mean little if there were no right to hear what others have to say. “The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”²⁹

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²⁸ *Thornhill v. Alabama*, 310 US 88, 101-2 (1940).

²⁹ *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Justice Brennan concurring). The Court in *Lamont* held that permitting the postal service to hold “communist political propaganda” unless the addressee affirmatively requested delivery in writing placed an unjustifiable burden on the addressee’s First Amendment right. This Court has recognized that this right is “nowhere more vital” than in our schools and universities. *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *Sweezy v. New Hampshire*, 54 U.S. 234, 250 (1957) (plurality opinion); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967). See *Epperson v. Arkansas*, 393 U.S. 97 (1968). See also, *Reno v. American Civil Liberties Union*, 521 U.S. 844, (1997), *United States v. American Library Assn., Inc.*, 539 U.S. 194, 216 (2003), *Thomas v. Collins*, 323 U.S. 516 (1945) (held that a labor organizer’s right to speak and the rights of workers “to hear what he had to say,” *id.*, at 534, were both abridged by a state law requiring organizers to register before soliciting union membership).

The public’s right to receive non-confidential, non-classified scientific information is inherent in the First Amendment guarantees of freedom of speech and of the press³⁰ and has the same underlying purpose – to insure an informed electorate, protect intellectual freedom, and preserve the free exchange of ideas. As the Supreme Court held more than 40 years ago in recognizing the right to receive information about contraception:

[T]he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read ... and freedom of inquiry, freedom of thought, and freedom to teach...³¹

The public’s right to information held or controlled by the government rests not only on the need for the knowledge to make important personal decisions, but also to insure that the public has sufficient knowledge to participate responsibly in the democratic process and to hold their elected representatives responsible on the important policy issues of the day.

FEDERAL SCIENCE AGENCIES, LIKE THE NATION’S UNIVERSITIES, EXIST TO EXPAND KNOWLEDGE

The deference and respect accorded to intellectual activities and the pursuit of knowledge is also reflected in the Supreme Court’s holdings with regard to academic freedom, which has been designated a “special concern of the First Amendment”:

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³⁰ See e.g., *Martin v. Struthers*, 319 U.S. 141, 143 (1943) (“The right of freedom of speech and press has broad scope...This freedom embraces the right to distribute literature, and necessarily the right to receive it.”) (Citations omitted). The term, the “right to know,” is widely used by journalists and other investigators seeking government-held information under the Freedom of Information Act, which is cumbersome to use and often requires that one know in advance which questions to ask.

³¹ *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965).

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.³²

The Court has held that the university is a “traditional sphere of free expression so fundamental to the functioning of our society” that First Amendment concerns apply to it with special force.³³ It has cautioned that “to impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.”³⁴

The same can be said about government scientists. A vital part of the mission of scientific agencies and the scientists who work in them is by definition to discover the truth and inform the public. The integrity of their work is dependent on their ability to function objectively and independently according to the accepted standards of scientific inquiry.³⁵

The mission statements of the various federal science agencies clearly reflect these principles.

NASA, established in 1958 by President Eisenhower, was founded to promote “the expansion of human knowledge of the earth and of phenomena in the atmosphere and space.” Throughout its history, NASA has been involved in purely scientific research combined with technological appli-

cations. NASA’s “Mission to Planet Earth” (MTPE) is dedicated “to understanding the total Earth system and the effects of natural and human-induced changes on the global environment.” MTPE strives to “expand scientific knowledge of” and “disseminate information about the Earth system.” Part of the MTPE Enterprise strategy includes that it “strengthens Earth science education and public awareness.”³⁶

The **CDC** was established in 1946. Its mission is to “ensure that our research and our services are based on sound science and meet real public needs to achieve our public health goals.” CDC also “pledges to the American people: ... To base all public health decisions on the highest quality scientific data, openly and objectively derived.”³⁷

NOAA, formed in 1970 by President Nixon, was established “for better protection of life and property from natural hazards...for a better understanding of the total environment...[and] for exploration and development leading to the intelligent use of our marine resources.”³⁸ Indeed, NOAA’s strategic vision is “an informed society that uses a compre-

³² *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).

³³ *Rust v. Sullivan*, 500 U.S. 173, 200 (1991).

³⁴ *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

³⁵ These elements distinguish scientists from other public employees, whose positions do not implicate academic or scientific missions. Professor Alan K. Chen calls the relevant inquiry one of “germaneness,” which he defines as “the degree or closeness of connection between an individual academic’s speech or the state’s interests in restricting that speech and a specifically articulated component of the university’s academic mission. Alan K. Chen, “Bureacracy and Distrust: Germaneness and the Paradoxes of the Academic Freedom Doctrine,” 77 U.CO.L.Rev. 955, 976 (2006).

³⁶ NASA, “What Does NASA Do?” http://www.nasa.gov/about/highlights/what_does_nasa_do.html (updated 17 October 2005; cited 9 February 2007). From 2002 until this year, NASA’s mission statement read: ‘To understand and protect our home planet; to explore the universe and search for life; to inspire the next generation of explorers ... as only NASA can’; see “The New Age of Exploration: NASA’s Direction for 2005 and Beyond,” online: http://www.nasa.gov/pdf/107490main_FYo6_Direction.pdf (cited 9 February 2007). In early February 2006, the statement was quietly altered; the phrase ‘to understand and protect our home planet’ was deleted; see Andrew C. Revkin, “NASA’s Goals Delete Mention of Home Planet,” *The New York Times*, 22 July 2006. The phrase remains absent; see American Institute of Aeronautics and Astronautics, “The National Aeronautics and Space Administration’s FY 2007 Budget,” online: <http://www.aas.org/spp/rd/o7pch10.htm> (cited 9 February 2007).

³⁷ Centers for Disease Control and Prevention, “Vision, Mission, Core Values, and Pledge,” online: <http://www.cdc.gov/about/mission.htm>, (cited 9 February 2007).

³⁸ Richard Nixon, recorded in John Woolley and Gerhard Peters, *The American Presidency Project*, (Santa Barbara, CA: University of California (hosted), Gerhard Peters (database)), online: <http://www.presidency.ucsb.edu/ws/?pid=2575>, (cited 20 February 2007).

hensive understanding of the role of the oceans, coasts, and atmosphere in the global ecosystem to make the best social and economic decisions.”³⁹

The **FDA** is responsible for “protecting the public health by assuring the safety, efficacy, and security” of drugs, medical devices, food, and cosmetics. It is also specifically responsible for “helping the public get the accurate, science-based information they need to use medicines and foods to improve their health.”⁴⁰

As part of its mission, the **NIH**, founded in 1887, aims to “...exemplify and promote the highest level of scientific integrity, public accountability, and social responsibility in the conduct of science.”⁴¹

“The mission of the **EPA** is to protect human health and the environment. Since 1970, EPA has been working for a cleaner, healthier environment for the American people.” As part of this mission, the EPA “supports environmental education projects that enhance the public’s awareness, knowledge, and skills to make informed decisions that affect environmental quality.”⁴²

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³⁹ NOAA Office of Program Planning and Integration: NOAA Strategic Planning Office, “NOAA’s Vision and Mission,” online: <http://www.spo.noaa.gov/mission.htm>, (updated 24 September 2004; cited 9 February 2007).

⁴⁰ FDA, “FDA’s Mission,” online: <http://www.fda.gov/oc/oms/ofm/budget/2001/fdamission.htm>, (updated 1 March 2000; cited 9 February 2007).

⁴¹ National Institutes of Health, “About NIH,” online: <http://www.nih.gov/about/>, (updated 23 January 2007; cited 9 February 2007).

⁴² U.S. Environmental Protection Agency, “About EPA,” online: <http://www.epa.gov/epahome/aboutepa.htm>, (updated 20 December 2006; cited 9 February 2007).

GOVERNMENT SCIENTISTS DO NOT LEAVE THEIR FREE SPEECH RIGHTS AT THE LABORATORY DOOR

These mission statements and pledges echo the principles of academic freedom and the university’s commitment to knowledge, social enlightenment, and public health and welfare. Political barriers to free and open exchange of scholarly and scientific information in both the university and government settings are antithetical to the principals of the First Amendment, the mission of federal agencies charged with scientific research, and the very definition of scientific inquiry. Political oversight has no more place in government research laboratories than it does in the university setting.

Of course, scientists, when clearly speaking for the government, are expected to accurately represent the government’s official positions on policy issues. This obligation is distinct from their rights as scientists to freely discuss and debate scientific research and conclusions. The missions of virtually all government agencies charged with developing and disseminating scientific information indicate the intent that government scientists are to be bound by the standards of their profession, rather than political constraints that might operate on other kinds of government employees.

In general, courts ruling on government employees’ free speech claims balance “the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of [the Government], as an employer, in promoting the efficiency of the public services it performs through its employees.”⁴³ One question in such cases is whether the “speech” at issue was made pursuant to an employee’s “official duties.”⁴⁴ If so, the government may have greater rights than if the speech was made “as a citizen.” Even in such cases, however, employees who engage in

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⁴³ *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968).

⁴⁴ In *Garcetti v. Ceballos*, 126 S. Ct. 1951 (2006), a state prosecutor acted as a whistleblower about possible police misconduct and alleged retaliation by his employer. The Court held that in order for employee speech to have First Amendment protection, the speech in question must be made outside of the ordinary course of the job in question.

“scholarship or teaching” are unique for purposes of First Amendment analysis.⁴⁵

As the agencies’ mission statements reveal, their principle purpose is to produce high quality research to serve the public health, welfare, and well-being.⁴⁶ Theoretically, then, the interests of government scientists, government agencies, and the public are fully in accord: to produce the best possible research and information about current policy questions. Under any balancing test, the government would be hard-pressed to defend speech limitations on government scientists to promote a partisan view of scientific questions about global warming, endangered species, AIDS prevention, or the hundreds of other issues in which federal research plays a critical role.

PROTECTING SCIENTIFIC SPEECH

Science should inform politics, not the reverse. As the public, members of Congress, and public officials debate the implications of restraining the free speech of its scientists, certain basic principles should be considered.

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⁴⁵ “There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.” *Garcetti*, 126 S. Ct. at 1962 (2006).

⁴⁶ This is the opposite of a situation in which a specific program was funded to deliver a specific message. For example, in *Rust v. Sullivan*, 500 U.S. 173, 193 (1991), the Court upheld a restriction on abortion-related speech in family planning clinics, on the theory that Congress had “merely chosen to fund one activity to the exclusion of the other.” In contrast, in *Legal Services Corporation v. Velazquez*, 531 U.S. 533 (2001), the Court held that a restriction prohibiting Legal Services Corporation (LSC) attorneys from challenging federal welfare law violated the First Amendment. The Court determined that the LSC program was designed to facilitate private speech, not to promote a governmental message.

Scientific speech deserves and requires the full measure of constitutional protection envisioned by the Framers, to inform the public about the scientific basis for policy choices and determinations, and to allow citizens to participate in the political process with the benefit of the most accurate and complete information available.

Government scientists are entitled to function according to the highest professional standards, and to discuss their research freely with each other, members of Congress and state legislatures, other public officials, and interested members of the press and the public, in the same manner as their peers outside government, subject only to the need to clarify if and when their scientific opinions do not represent official policy.

Membership on scientific advisory panels should be reserved for those with the most widely recognized expertise in the specific field. Requiring candidates to identify their political or ideological views or affiliations violates the principles of the First Amendment and risks reliance on the Lysenkos of the world, rather than the Mendels.

Attendance at scientific conferences, domestic or international, is a critical component of exchanging scientific information, and government scientists should be permitted to do so without unreasonable constraints. Among other things, they should not be required to adhere to policy positions that conflict with the best scientific data available. These types of prior restraints on speech violate the First Amendment and conflict with the mission of the myriad federal science agencies.

FOR MORE INFORMATION

The following organizations offer resources on censorship and science:

The Union of Concerned Scientists

National Headquarters
2 Brattle Square
Cambridge, MA 02238-9105
Phone: 617-547-5552
Fax: 617-864-9405
E-mail: ucs@ucsusa.org

The Government Accountability Project

National Office
1612 K Street, NW, Suite 1100,
Washington, DC 20006
Phone: 202-408-0034
Fax: 202-408-9855
E-mail: gapdc@whistleblower.org

Climate Science Watch

1612 K Street, NW Suite 1100
Washington, DC 20006
E-mail: Director@ClimateScienceWatch.org

Public Employees for Environmental Responsibility

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