

FIRE Article

Encouraging Ruling in Whistleblowing Scientist's Suit Against UCLA

March 26, 2013

by [William Creeley](#)

After 35 years of employment, and many years of disagreement over research on air pollution and its implications for environmental regulations, Dr. James E. Enstrom, assisted by the [American Center for Law and Justice](#), [filed a federal lawsuit](#) against various University of California and UCLA administrators in June 2012. Enstrom's [complaint](#) alleged that UCLA had refused to reappoint him after he engaged in successful whistleblowing against a member of the Department of Environmental Health Sciences.

Last week, a federal district court issued an encouraging ruling in Enstrom's case. On March 18, United States District Judge Jesus G. Bernal signed an [order](#) denying some defendants' motions to dismiss Enstrom's First Amendment retaliation claims.



Specifically, Judge Bernal's ruling denies motions to dismiss Enstrom's First Amendment claims against former Vice Chancellor for Academic Personnel Thomas Rice and Vice Chancellor for Academic Personnel Carole Goldberg. The ruling further grants Enstrom leave to amend his complaint's First Amendment claims against UC President Mark Yudof, UCLA Chancellor Gene D. Block, Dean of the UCLA School of Public Health Linda Rosenstock, and UCLA administrator Barbara Housel. (Department Chair Richard Jackson and former School of Public Health Associate Dean of Academic Affairs Hilary Godwin did not challenge Enstrom's complaint, at least on the grounds that others did, which was that Enstrom had supposedly failed to plead specific facts to support his claims.) To sum this up, some of Enstrom's First Amendment claims are going forward, and none of them are permanently off the table.

Judge Bernal also found that Enstrom may have a due process right to an accounting of how UCLA spent the research and grant funds he brought into the university. Accordingly, the judge denied the motions by Jackson, Godwin, and Housel to dismiss Enstrom's due process claim and granted him leave to amend his complaint with respect to this claim against other defendants.

In other words, Enstrom's case will proceed, having cleared an important early hurdle. As former FIRE President and current ACLJ senior counsel David French [observed](#), this is an important step toward vindicating Enstrom's rights.

Torch readers will be familiar with Enstrom's case, which we've been covering since 2010, when Enstrom came to FIRE for help. FIRE [wrote](#) UCLA Chancellor Gene D. Block on August 26, 2010, pointing out that it is unconstitutional to refuse to rehire a faculty member because of his protected expression. FIRE also assisted Enstrom with internal grievances at UCLA and ultimately helped him [win](#) two additional years at UCLA.

Here's the full story of Enstrom's ordeal, as explained in the [press release](#) we issued after Enstrom filed suit last year:

Enstrom has worked at UCLA as a [researcher and professor](#) since 1976, being rehired consistently each year until his ordeal began. Beginning in 2004, he worked in UCLA's Department of Environmental Health Sciences (EHS). Over the years, he and a few of his colleagues have sometimes disagreed strongly about research on environmental health issues—for example, on the extent of the threat to public health posed by certain air pollutants, a topic of Enstrom's research which has been the subject of [intense debate](#) in California because of its implications for state environmental regulations.

Enstrom also was a successful whistleblower whose activism led to fellow EHS faculty member John Froines being replaced on a panel for the California Air Resources Board (CARB). Several members of the panel, including Froines, had been serving beyond the three-year legal limit on their terms of office, and Enstrom's whistleblowing provided part of the grounds for a June 2009 [lawsuit](#) on the issue. Enstrom also blew the whistle on a [fake Ph.D. degree](#) claimed by a CARB researcher.

UCLA's retaliation against Enstrom first became apparent in December 2009, when Enstrom discovered that UCLA had cut off his salary fund and charged his salary against his research funds without his knowledge. In February 2010, Environmental Health Sciences Chair Richard J. Jackson told Enstrom that UCLA was [laying him off](#). Enstrom fought back and kept his job.

After UCLA's first attempt failed, Enstrom learned of further retaliation in June 2010 when the EHS faculty (including Froines) voted not to rehire him because his "research is not aligned with the academic mission of the Department." UCLA also invoked vague and previously unmentioned "minimum requirements," even though his research output was similar to or greater than that of other professors in his department. Enstrom learned he was going to be ["indefinitely laid off"](#) effective June 30, 2010.

Enstrom has demonstrated that his research on environmental health is fully aligned with EHS' research [mission](#) of furthering "extremely interdisciplinary" research "at the interface between human health and the environment."

And here's a video produced by ReasonTV last year focusing on Enstrom's case: [The Green Regulation Machine: Saving the Planet or Killing Jobs?](#)

Of course, we'll be following further legal developments closely.