

Free speech 1, MEA 0

A panel of the Michigan Court of Appeals recently dismissed a lawsuit against the Mackinac Center by the Michigan Education Association. Good call. The suit was a frivolous assault on the conservative think-tank's freedom of speech.

MEA officials were upset that the Mac Center had quoted MEA President

Lu Battaglieri in a fund-raising letter. The quote was from a 2001 press conference at which he announced the creation of an MEA-sponsored think tank that would, among other things, counter the Mackinac Center's arguments. Mr. Battaglieri said at the time that "quite frankly, I admire what

they (the Mac Center) have done over the last couple of years entering into the field as they have and being pretty much the sole provider of research to the community, to the public, to our members, to legislators. ..."

The conservative group then cleverly used the quote in its fund-raising letter, making the point that even a frequent critic of the Center admitted to its effectiveness.

No doubt this got under MEA officials' skin. The teachers' union and Mackinac Center – whose comments appear frequently on The Evening News' Comment pages – often are at odds over such issues as charter schools and teacher certification. But this hardly justified a lawsuit.

The MEA argued that the Center had improperly used Mr. Battaglieri's name without his permission. This was not a free speech issue, the union

argued, because the Center used the quote in "commercial" speech, which enjoys less First Amendment protection than other speech.

But the quote was from a meeting covered by the press. The MEA might just as easily have argued that an account of the event in the news media would be commercial speech

because it was used to sell newspapers, or TV or radio ads. In truth, separating commercial speech from other forms is not always easy, as this case illustrates.

In tossing out the suit in a 3-0 ruling, the appeals court panel overturned a lower court decision in the MEA's favor. The panel's opinion

observed that the case did not even deserve the dignity of a trial. The court said the use of Mr. Battaglieri's remarks was "protected under the First Amendment because the letter concerned a matter of legitimate public concern."

The MEA naturally disagrees with the finding but will not appeal it to the state Supreme Court. A spokeswoman explained: "The conservative bent of Michigan's Supreme Court would make it seem unlikely we would receive any positive decision."

Actually, given the unanimous appellate ruling in a strongly worded decision, it would seem that MEA officials might have reason to worry that a high court decision might in fact turn out to be 7-0 instead of 4-3 along ideological lines. Give the appeals court credit for its resounding judgment in favor of free speech.

► To the point

The state Court of Appeals was right to toss out a lawsuit by the MEA against a conservative think-tank.
