



THE BUCKEYE INSTITUTE

September 23, 2026

SENT VIA ELECTRONIC MAIL AND REGULAR MAIL

The Honorable Robin L. Rosenberg
Director of the Federal Judicial Center
Thurgood Marshall Judiciary Building
One Columbus Circle NE
Washington, DC 20002



Re: Removal of the How Science Works chapter from the Reference Guide on Climate Science

Dear Judge Rosenberg:

The Federal Judicial Center recently removed the Reference Guide on Climate Science from the Fourth Edition of the Reference Manual on Scientific Evidence.¹ For similar and additional reasons, the undersigned respectfully request that the Federal Judicial Center (“FJC”) also remove the “How Science Works” (“HSW”) chapter from the Fourth Edition of the Reference Manual on Scientific Evidence (“Manual”). The HSW chapter departs from the Manual’s proper educational role by endorsing contested scientific conclusions, elevating “consensus” over Rule 702 reliability analysis, and contradicting core principles articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*²

Background: Congress established the FJC “to further the development and adoption of improved judicial administration in the courts of the United States.”³ After the U.S. Supreme Court’s *Daubert* decision, the Manual expanded the FJC’s role to provide “a resource to assist judges in understanding relevant scientific methods and principles that may arise in their cases.”⁴ Importantly, however, the First Edition of the Manual cautioned that “[t]he reference guides do not instruct judges concerning the admissibility of specific types of expert evidence or conclusions of specific scientific studies, and they are not intended to establish minimum standards for acceptable scientific testimony.”⁵ The Fourth Edition omits that caution and suggests the “consensus” model of science is definitive.

¹ See Letter of 27 Attorneys General dated January 29, 2026 (requesting removal of Climate Science Chapter, Exhibit A. The chapter is still in the NAS book).

² *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

³ 28 U.S.C. § 620(a).

⁴ Manual at (i).

⁵ *Reference Manual on Scientific Evidence* 3 (Fed. Jud. Ctr. 1st ed. 1994).

I. The HSW chapter incorporates material from the removed Climate Science chapter.

Although the FJC removed the “Climate Science” chapter from the Manual, the HSW chapter includes many of the same substantive propositions. For example, the HSW chapter favorably refers to questionable climate modeling,⁶ cites polls purporting to establish scientific consensus regarding climate change without acknowledging problems with those polls,⁷ and relies upon assessments issued by the Intergovernmental Panel on Climate Change (“IPCC”) without recognizing structural concerns⁸ about the IPCC.⁹ The HSW chapter also presumes a consensus by ignoring views of dissenting scientists¹⁰ and the changing “consensus” on various science topics.¹¹

Retaining these propositions in the HSW chapter is difficult to reconcile with the FJC’s decision to remove the Climate Science chapter. Having concluded that the Manual should not contain a chapter advancing contested climate-science propositions, the FJC should likewise avoid embedding similar propositions in a chapter that explains scientific methodology generally. A judicial reference manual should explain how courts evaluate scientific reliability—not endorse one side of contested scientific and policy debates.

II. The HSW Chapter would not meet the standard of Rule 702 because it grossly overstates the status of the science.

Federal Rules of Evidence Rule 702 “was amended [in part] to emphasize that each expert opinion must ‘stay within the bounds of what can be concluded from a reliable application of the expert’s basis and methodology.’”¹² The Advisory Committee note to the amendment explains that although the problem of expert overstatement can occur in any context, it is “especially pertinent

⁶ See, e.g., David R. Henderson & Charles L. Hooper, *Flawed Climate Models*, Hoover Inst. (Apr. 4, 2017), <https://www.hoover.org/research/flawed-climate-models> (explaining the inadequacy of measurement instruments and the failed predictions of the climate models).

⁷ For example, the Stenhouse poll of meteorologists (and others) admits that the best predictor of the views of the surveyed individuals on climate change was not scientific analysis, but rather “perceived consensus.” Neil Stenhouse et al., *Meteorologists’ Views About Global Warming*, Bull. Am. Meteorological Soc’y, July 1, 2014, at 1029, 1036, <https://journals.ametsoc.org/view/journals/bams/95/7/bams-d-13-00091.1.pdf>.

⁸ The IPCC has been accused of bias, unreliability, and corruption. Jason S. Johnston, *The Hand of Government in the Intergovernmental Panel on Climate Change* 6-7 (Fraser Inst. 2022), <https://www.fraserinstitute.org/sites/default/files/hand-of-government-in-the-ipcc.pdf>.

⁹ Manual at 91, 96–97.

¹⁰ See, e.g., *Letter from Frederick Seitz*, Global Warming Petition Project (last accessed _____, 2026), http://www.petitionproject.org/seitz_letter.php.

¹¹ The consensus has moved from global cooling, to global warming, to global climate change. See Cris Bennett, *Doomsday Addiction: Celebrating 50 years of Failed Climate Predictions*, AG Web Farm Journal (May 5, 2023 at 07:58 AM), <https://www.agweb.com/opinion/doomsday-addiction-celebrating-50-years-failed-climate-predictions>; see also Myron Ebell and Steven J. Milloy, *Wrong Again: 50 years of Failed Eco-pocalyptic Predictions*, Competitive Enter. Inst., (Sept. 18, 2019), <https://cei.org/blog/wrong-again-50-years-of-failed-eco-pocalyptic-predictions/>.

¹² Manual at 23 (citing Fed. R. Evid. 702 advisory committee’s note to 2023 amendment).

to the testimony of forensic experts in both criminal and civil cases.”¹³ The HSW chapter approvingly cites an academic article that makes controversial predictions of global warming, which the authors claim vary from “likely” to “very likely” to “virtually certain” as far ahead as 2300.¹⁴ Such an approving citation violates the intent of the 2023 amendment.

III. The HSW chapter contradicts *Daubert*.

The HSW Chapter contradicts the Supreme Court’s explanation of how courts should use the scientific method without addressing this contradiction. *Daubert* recognizes that (1) there is a specific scientific methodology and (2) that methodology is testing a hypothesis. The Court explained: “Scientific methodology today is based on generating hypotheses and testing them to see if they can be falsified; indeed, this methodology is what distinguishes science from other fields of human inquiry.”¹⁵ The Manual reasserts the *Daubert* explanation of “scientific method,”¹⁶ but the HSW chapter contradicts *Daubert* and the Manual itself, twice. First, the HSW chapter asserts that the idea that “[t]here is a single scientific method that all scientists follow” is a myth.¹⁷ Second, it asserts that “[w]ithout an experiment, a scientific investigation cannot be rigorous or reliable” is a myth.¹⁸ A litigant may argue in the context of a specific case that the Court should modify *Daubert*’s definition of “scientific methodology,” but it is wholly inappropriate for the FJC to call the Supreme Court’s pronouncement on the scientific method “a myth.”

IV. The HSW chapter’s assertion that “widespread acceptance” is “the highest level of certainty science has to offer” undermines Rule 702 and resurrects *Frye*.

Consensus is not, and never has been, science—it is a social construct, subject to change based on many factors.¹⁹ The HSW chapter resurrects the “widespread acceptance” evidentiary formulation adopted in *Frye v. United States* but subsequently rejected by *Daubert*.²⁰ The *Frye* decision asserted that “while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained *general acceptance* in the particular field in which it belongs.”²¹ That rule had courts make evidentiary decisions unscientifically based on third parties’ views of a methodology rather than the methodology’s actual reliability, which later conflicted

¹³ *Id.*

¹⁴ Manual at 91, FN 106.

¹⁵ *Daubert*, 509 U.S. at 593 (quoting E. Green & C. Nesson, *Problems, Cases, and Materials on Evidence* 645 (1983)) (citing C. Hempel, *Philosophy of Natural Science* 49 (1966) (“[T]he statements constituting a scientific explanation must be capable of empirical test”); K. Popper, *Conjectures and Refutations: The Growth of Scientific Knowledge* 37 (5th ed. 1989) (“[T]he criterion of the scientific status of a theory is its falsifiability, or refutability, or testability”)).

¹⁶ Manual at 7.

¹⁷ Manual at 102.

¹⁸ *Id.*

¹⁹ As Galileo Galilei reportedly said: “In questions of science, the authority of a thousand is not worth the humble reasoning of a single individual.” François Arago, *Biographies of Distinguished Scientific Men* 365 (Baden Powell et al. trans., Ticknor & Fields 1859) (purporting to quote Galileo Galilei).

²⁰ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

²¹ *Id.* at 1014 (emphasis added).

with Rule 702.²² *Daubert* abandoned *Frye*, recognizing that “scientists do not assert that they know what is immutably ‘true’—they are committed to searching for new, temporary, theories to explain, as best they can, phenomena.”²³ Thus, in science and law, truth is best found not through a search for consensus,²⁴ but through an adversarial marshaling of facts presented to an objective factfinder. Indeed, Rule 702 and *Daubert* require that inquiry.

V. The HSW chapter ignores bias—which can warp the supposed “consensus.”

Consensus can be created and reinforced by various forces that corrupt the process. As climate scientist Dr. Patrick Brown explains, “[t]he highest-profile research is heavily influenced by cultural forces and career incentives that are not necessarily aligned with the dispassionate pursuit of truth.”²⁵ First, the federal government has spent tens-of-billions of dollars on “climate change research,” and at least \$150 billion on “climate change and green energy subsidies. . . . This tsunami of government money distorts science. . . . [and researchers studying climate studying global warming are] probably not going to get famous by publishing research that the crisis isn’t happening.”²⁶

Second, elite journals like *Nature* and *Science* decline to publish studies that do not reinforce approved narratives, pressuring researchers to omit conflicting evidence. Consequently, editors’ confirmation bias broadly distorts science, favoring sensational, policy-aligned conclusions over balanced, practical, truth-seeking research,²⁷ and actively suppressing counter-narrative research. “Thirty-four percent of professors [in four year institutions] had been pressured by peers to avoid controversial research; 25 percent reported being ‘very’ or ‘extremely’ likely to self-censor in academic publications; and 91 percent reported being at least somewhat likely to self-censor in academic publications, meetings, presentations, or on social media.”²⁸ Recent analysis determined that scientific censorship frequently occurs through peer review, institutional pressure, retractions, and self-censorship rather than overt government suppression. Ideological conformity, confirmation bias, and subjective “harm” standards can distort scientific inquiry, suppress dissenting but legitimate findings, and erode trust in science.²⁹

²² *Daubert*, 509 U.S. at 589 (quoting Weinstein, *Rule 702 of the Federal Rules of Evidence is Sound; It Should Not Be Amended*, 138 F.R.D. 631 (1991)).

²³ *Id.* at 590.

²⁴ See, e.g., *Chiles v. Salazar*, 146 S. Ct. 1010, 1029 (2026) (“Medical consensus, too, is not static; it evolves and always has.”).

²⁵ Patrick T. Brown, *Does High-Profile Climate Science Tell the Full Story?*, Chronicle of Higher Educ. (Feb. 27, 2024), <https://www.chronicle.com/article/does-climate-science-tell-the-whole-truth>.

²⁶ Stephen Moore, *Follow the (Climate Change) Money*, Wash. Times (Dec. 16, 2018), <https://www.washingtontimes.com/news/2018/dec/16/follow-the-climate-change-money/#selection-1657.0-1657.33>.

²⁷ Patrick T. Brown, *I Left Out the Full Truth to Get My Climate Change Paper Published*, Free Press (Sept. 5, 2023), <https://www.thefp.com/p/i-overhyped-climate-change-to-get-published>.

²⁸ Musa al-Gharbi and Cory Clark, *Science Has a Censorship Problem*, Chronicle of Higher Educ. (Nov. 20, 2023), <https://www.chronicle.com/article/science-has-a-censorship-problem#selection-2447.2-2451.48>.

²⁹ Cory J. Clark et al., *Prosocial Motives Underlie Scientific Censorship by Scientists: A Perspective and Research Agenda*, Procs. of the Nat’l Acad. of Scis., Nov. 20, 2023, at e2301642120, 1 (2023), <https://www.pnas.org/doi/10.1073/pnas.2301642120>.

Finally, authors' views can be distorted by conflicts of interest, which are often not disclosed and "[a]uthor disclosure [of conflicts of interest] is an important tool for minimizing bias and promoting public trust."³⁰ The authors of the HSW chapter failed to disclose whether or what conflicts they might have.

Conclusion

The Manual serves an important educational purpose. But the "How Science Works" chapter goes beyond explaining scientific methodology and instead endorses contested scientific conclusions and a consensus-based framework inconsistent with federal rules and Supreme Court holdings. Because the chapter risks influencing courts away from the individualized reliability analysis required by federal law, the undersigned respectfully request that the Federal Judicial Center remove it from the Manual.

Respectfully,
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³⁰ Jessica Weinkle et al., *Conflicts of Interest, Funding Support, and Author Affiliation in Peer-Reviewed Research on the Relationship between Climate Change and Geophysical Characteristics of Hurricanes*, Bull. Am. Meteorological Soc'y, Mar. 9, 2026, at E356, E356, <https://journals.ametsoc.org/view/journals/bams/107/3/BAMS-D-24-0260.1.xml>.

Cc: Chief Justice John G. Roberts, Jr., Supreme Court of the United States
Judge Kathleen Cardone, U.S. District Court for the Western District of Texas
Judge R. Guy Cole, Jr., U.S. Court of Appeals for the Sixth Circuit
Judge Sara L. Ellis, U.S. District Court for the Northern District of Illinois
Judge Ralph R. Erickson, U.S. Court of Appeals for the Eighth Circuit
Judge Michelle M. Harner, U.S. Bankruptcy Court for the District of Maryland
Judge Suzanne Mitchell, U.S. District Court for the Western District of Oklahoma
Judge Lynn Winmill, U.S. District Court for the District of Idaho
Judge Robert J. Conrad, Jr., Director of the Administrative Office of the U.S. Courts