

THE FEDERAL JUDICIAL CENTER
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The Honorable Ted Cruz
Chairman
Subcommittee on Federal Courts,
Oversight Agency Action and Federal
Rights
Senate Committee

The Honorable Eric Schmitt
Chairman
Subcommittee on the Constitution
Senate Committee on the Judiciary

The Honorable Mike Lee
Chairman
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
Senate Committee on the Judiciary

The Honorable Marsha Blackburn
Chairman
Subcommittee on Privacy, Technology
and the Law
Senate Committee on the Judiciary

Dear Senators Cruz, Schmitt, Lee, and Blackburn,

I write to respond to your letter of April 13. I, along with the Federal Judicial Center's (the Center) Board, take seriously the concerns you have raised.

The Center's mission is to "further the improved judicial administration of the courts of the United States" through objective and non-partisan research and education. The Center plays an indispensable role in ensuring that federal judges and court staff are well prepared to carry out their responsibilities. This includes providing comprehensive orientation programs for newly appointed judges and delivering hundreds of specialized educational resources for judges and court staff annually. Additionally, the Center conducts about 50 research studies each year at the request of the Judicial Conference, specific courts, and Congress. These programs are critical to the operations of the branch and yet executed by our small staff of around 120 employees with an annual budget of \$35 million. Relative to similar organizations like the Congressional Research Service, which employs over

600 staff and a budget of \$140 million, the Center accomplishes a lot with very little, and constitutes a responsible, efficient, and well justified expenditure of taxpayer funds.

The Center first produced the Reference Manual on Scientific Evidence (RMSE) in 1994 to assist judges in managing cases involving complex scientific and technical evidence, and updated it in 2000, 2011, and 2025. The Center's expertise is empirical social science research, education, and court processes and administration. The Center does not employ scientists who have expertise in most of the fields covered by the manual and thus it must rely on outside expertise to ensure the scientific accuracy in certain fields. For the two most recent versions of the manual, the Center has partnered with the National Academies of Sciences, Engineering, and Medicine (NASEM) to that end. The committee overseeing the most recent edition was convened by NASEM with the Center recommending federal judge participants.

NASEM was created by Congress 163 years ago to report on any subject of science when requested by a government agency or Congress. According to its financial report released last year, NASEM supported every one of the 15 cabinet-level agencies, as well as numerous other federal entities, and received over 70 percent of its revenues from federal sources. For over 15 years, the Center has similarly relied on NASEM as a widely-accepted, congressionally-chartered organization of experts to ensure that the RMSE "meets institutional standards for quality, objectivity, [and] evidence." NASEM's work on this particular project was funded in large part by a grant to NASEM from the National Science Foundation, a federal agency.

Earlier this year, shortly after the fourth edition was released, the Center received a letter from 27 state attorneys general expressing concern about the climate science chapter, one of the twenty chapters in the RMSE. For reasons attached, the Center's board voted unanimously to remove the chapter from the version of the RMSE distributed to judges and requested NASEM do the same in its public-facing version. NASEM, which owns the copyright to the RMSE, opted to publish its own version with the chapter included. We are reviewing the Center's practices regarding copyright and control over shared work products and in the future will ensure that the Center retains copyright in material produced in partnership with other entities.

I only recently joined the Center as its Director in August but know its work well from more than a decade of service as a federal judge. It is an invaluable source of unbiased research, education, and analysis that benefits all the Judiciary's judges, staff, litigants, and other stakeholders. The climate science chapter is only one portion of one discrete project, undertaken four times in the last thirty plus years, within a much broader portfolio of responsibilities. Nonetheless, the Center listened and responded quickly when potential litigants expressed concern about this portion of our work.

Listed below, we provide answers to the specific questions you posed. I look forward to any further discussions you would like to have about the Center's work.

Sincerely,

Robin L. Rosenberg

Judge Robin L. Rosenberg
Director, Federal Judicial Center

1. How does the FJC define the boundary between neutral judicial education and normative policy influence?

The Center provides objective, balanced, and non-partisan resources, research, and education. Center procedures and a strong agency culture committed to objectivity and neutrality ensure that the Center's work is free from partisan influence.

The Center's work is overseen and guided by a Board, which is chaired by the Chief Justice of the United States and comprised of the Director of the Administrative Office of the U.S. Courts and seven federal judges elected by the Judicial Conference. Judge members are appointed to staggered four-year terms, providing a constant influx of differing ideas and views, and conduct their oversight with the goal of maintaining the Center's longstanding commitment to impartiality and institutional neutrality. The newest appointment to the Center's Board, Judge Kevin Newsom (11th Circuit), was made this April.

Educational programs and research are selected, developed and designed to reflect the Center's mission. The Center's Board, its advisory committees of judges and court staff, and project-specific advisory committees provide oversight and guidance to the Center's day-to-day education and research activities.

The Center's Board adopted a policy in 2002, and reviewed and affirmed the policy in 2012 and 2019, to "protect the independence of the Center and the quality of its education and resources and...ensure that the Center's programs, projects, and activities with other organizations are, and are perceived to be, free of improper bias or influence."

Further, as the Center's new director one of my first initiatives has been to enhance and systematize procedures that maintain neutrality, objectivity, and non-partisanship. This will remain an area of focus for me, Center leadership, and the Board.

This April, the Center's Board re-enforced this commitment by adopting a revised statement for all Center materials ("Federal Judicial Center offers education and research for informational use. Center content does not direct case decisions or court practices or represent federal judicial policy or the views of the Center's Board"),

and a requirement that the Center adopt, maintain, and periodically revise protocols for, among other considerations, maintaining neutrality, objectivity, and nonpartisanship in all Center activities. These protocols will standardize and enhance past practice and will help to increase transparency about how the Center adheres to its governing principles.

2. What formal criteria generally govern the selection of outside faculty, experts, or contributors to FJC programming? Is intellectual, methodological, or political balance considered in the process?

Outside contributors to Center programming must have relevant expertise and credentials for the area in which they are contributing. Factors considered include an established record of scholarship, speaking engagements, practical experience and evidence of ability to convey information that is accessible, objective, balanced, and neutral. They must present materials in an objective, impartial, and nonpartisan manner, and may not attempt to influence judicial policy or specific outcomes in cases. In selecting contributors, the Center routinely considers intellectual, methodological, and political balance to ensure objectivity.

3. What safeguards are in place to ensure the empirical neutrality and methodological rigor of FJC research products? Are those methodologies subject to external peer review?

The Center conducts a broad range of research related to administration and operation of the courts. Our research designs use a range of complementary research methods and, in being objective, strive to incorporate the views of different constituencies. Most research requests come from the Judicial Conference of the United States and its committees; others come from individual courts, the Administrative Office of the U.S. Courts, and Congress. All Center research reports undergo a rigorous internal peer review process; the scope and process of external review depends on the research topic, the requestor, and nature of the product.

4. To what extent are FJC educational materials, curricula, and research outputs publicly accessible, and what principles guide decisions about transparency?

The Center makes publicly available nearly all its final research reports and publications. They are available on the Center's website. A small number of reports may be kept internal to the judiciary where they are requested by a committee of the Judicial Conference of the United States or other judicial entity for internal deliberations, particularly when those deliberations are ongoing, and to assist judges and courts on local matters. Educational programs are all listed publicly in the Center's Annual Report and the Center's website includes information on its offerings for judges and court staff. Podcasts and certain video products are publicly accessible on platforms like YouTube, Spotify, and Apple Podcasts. Judicial security, promised confidentiality of research participants and data, and protection of the deliberative process of Judicial Conference committees and other judicial entities are primary considerations for keeping certain information and material internal.

5. How does the FJC evaluate whether its programming strengthens judicial independence rather than shaping judicial philosophy or encouraging specific policy-driven outcomes?

Center programming is not intended to shape judicial philosophy or to encourage specific policy-driven outcomes. The Center's Board annually reviews the Center's program plan and Center advisory committees provide guidance to all Center programs. Further, the Center conducts program evaluations including surveys of its audience which represents a wide range of perspectives.

6. Did anyone contribute to the drafting of the Chapter who was not listed as an author?

7. What precise internal review procedures were followed prior to publication (e.g., committee review, subject-matter review, external consultation)?

8. What criteria governed the selection of outside experts who contributed to the Chapter in some fashion?

9. What form of methodological or peer review was the Chapter subject to prior to dissemination?

10. What prompted the decision to remove the Chapter, and what internal process governed that decision?

11. Why does the Chapter remain in the online version of the Manual published by the National Academies?

Response to questions 6-11 concerning the Reference Manual on Scientific Evidence (RMSE).

Consistent with the creation of the third edition of the RSME, the FJC entered into a collaboration with the National Academies of Science, Engineering and Medicine (NASEM) for the preparation and publication of the manual's fourth edition. As discussed above, NASEM offers expert resources on scientific and technical questions that complement the Center's subject matter expertise in jurisprudence and court operations.

Pursuant to that collaboration, NASEM convened the *Committee on Science for Judges*¹ (Committee) under the auspices of NASEM's Committee on Science Technology and the Law (CSTL). The Committee oversaw the development of the fourth RMSE, and all chapters underwent many layers of review before publication. The Committee reviewed proposals from potential authors to determine if the authors and the science presented were appropriate for the RMSE. Factors considered included the author's expertise in the relevant scientific field and established record of scholarship that was accessible, objective, balanced, and neutral. The Committee asked authors of selected proposals to first submit a draft chapter outline. Upon approval by the Committee of the outline, authors were asked to submit a draft chapter.

The Committee carefully reviewed each chapter to ensure that it was balanced, objective, and contained no improper bias. Then, an external independent examination of the manual was carried out by individuals chosen for their different perspectives and technical expertise.² The purpose of this independent review was to provide comments that would assist NASEM and the Committee in making the publication as sound as possible and to ensure that it met NASEM's institutional standards for quality, objectivity, evidence, and responsiveness to the statement of task. In accordance with the established review process, two federal judges (one retired) not on the Committee, oversaw the review and were responsible for making certain that all review comments were carefully considered by the authors. All members of the Committee also received the independent reviews and author

¹ National Academies of Sciences, Engineering, and Medicine and Federal Judicial Center, 2025. *Reference Manual on Scientific Evidence: Fourth Edition* (FJC Version) at v-vi. Washington, DC.

² *Reference Manual on Scientific Evidence: Fourth Edition* (FJC Version) at x-xi.

responses to them. Finally, before publication of the RMSE, the Committee reviewed all chapters, and the Center and National Academies leadership approved them for publication. All individuals involved in the drafting and review process are listed in the manual; we are not aware of anyone beyond those listed contributing to the chapters.

On January 29, we received a letter from 27 state attorneys general criticizing the Center for the publication of the climate science chapter and requesting its removal from the RMSE.

We took this criticism seriously and fully considered the situation including how the ongoing criticism of, and controversy around, the climate science chapter would detract from the Center's ability to carry on the broad range of its valuable research and education. Overall, this chapter represents a very small fraction of the work produced and distributed by the Center, much of which is critical to the internal administration of the branch. Our job is not only to act in an impartial and unbiased way with all of our work, but also to be perceived as impartial and unbiased. Considering these factors, the Board voted unanimously to omit the chapter from the Center's version of the RMSE.

The Center asked that NASEM omit the chapter as well. NASEM made an independent decision not to remove the chapter on climate science from the version of the RMSE that appears on NASEM's own website, and the Center cannot require that removal. NASEM's version does include an asterisk that notes the Center's decision to remove the climate change chapter. The Center has not yet distributed any hard copies of the RMSE to federal judges. The Center's version of the RMSE, which the Center will send to all federal judges, omits the chapter, has a cover that differentiates it from the NASEM version, and has a distinct citation format.

The Center has long been a trusted source of objective, non-partisan research and education in the federal judiciary. We remain committed to continuing to be that trusted source. In furtherance of that effort, the Center has identified some lessons learned from its experience with the fourth edition of the RMSE for future collaborative publications. The Center plans to develop more formalized collaborative agreements with any partners; to ensure that it retains copyright in material produced in partnership with other entities; and to take measures to ensure

that calls for chapter proposals for any future edition of the RMSE to which the Center contributes reach a broad audience.