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Florida Supreme Court Declines to Adopt Florida Legislature's Daubert Amendment

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For many years Florida followed the *Frye* standard for the admissibility of expert testimony based upon new or novel scientific evidence. See *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). In 2013, the Florida Legislature, through what has been dubbed the *Daubert* Amendment, replaced the *Frye* standard with the *Daubert* standard. The *Daubert* standard stems from the United States Supreme Court's decision in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), which established the federal court standard for expert testimony. Since then, federal courts have continued to apply the *Daubert* standard, and 36 states have adopted the *Daubert* standard.

The Florida Legislature's *Daubert* Amendment was called into question by The Florida Bar's Code and Rules of Evidence Committee ("Florida Bar Committee"), which, by a 16 to 14 vote, recommended that the Florida Supreme Court not adopt the *Daubert* Amendment. Many others have spilled much ink debating whether the *Daubert* Amendment is appropriate. Earlier today, the Florida Supreme Court issued its *per curiam* opinion declining to adopt the *Daubert* Amendment.

In reaching its opinion, the majority referenced the Florida Bar Committee's and some commenters' belief that there were "grave constitutional concerns" associated with the *Daubert* standard. Those "grave constitutional concerns," the supreme court noted, include "undermining the right to a jury trial and denying access to the courts." Ultimately, "due to the constitutional concerns raised," the supreme court declined to adopt the *Daubert* Amendment, to the extent that it is procedural. In closing, the supreme court noted that the "constitutional concerns raised" must be left for a future "proper case or controversy," leading us to expect more from the court when it has before it what it deems to be a proper case.

In an interesting dissent, Justice Polston queried whether the entire federal judiciary and the state courts in 36 states have been applying a gravely unconstitutional *Daubert* standard, denying "parties' rights to a jury trial and access to courts." Justice Polston's response was, "[o]f course not." Justice Polston, by posing and answering his own question, to us suggests quite clearly that Florida should be in line with the federal courts and the majority of the states in applying the *Daubert* standard in lieu of *Frye*.

As always, please reach out to us if you have any questions. In the interim, we will keep you posted on any further developments.