As reported in the L.A. Times and Wall Street Journal, the U.S. Chamber of Commerce has petitioned EPA to hold a trial-type hearing before finalizing its proposed finding that greenhouse gas emissions endanger public health and welfare. (We blogged about the proposed endangerment finding here.)

The main argument in the petition is that a formal hearing is required to effectuate the administration’s stated commitment to scientific integrity and transparency. Don’t be fooled. Scientific integrity is nowhere near the top of the Chamber’s wish list. Chamber officials have made that clear by telling the L.A. Times that the proceeding they have in mind would be “the Scopes monkey trial of the 21st century.” Scopes was convicted in 1925 of violating Tennessee’s law against teaching evolution in the public schools. His trial was a media circus (no doubt something the Chamber would like to replicate), but hardly a triumph for scientific integrity or transparency. No expert scientific testimony was presented at the Scopes trial because the only legally relevant question was whether the defendant had taught evolution. The trial did not address, much less resolve, the truth of evolution. (NPR has a timeline and retrospective on the Scopes trial here.)

But putting motivation aside, is there anything to the Chamber’s claim that a trial-type hearing on endangerment would enhance scientific integrity or transparency? Absolutely not.

The “informal rulemaking” process EPA is following in the endangerment proceeding is actually a better vehicle for exploring the strength of the scientific evidence than the formal hearing the Chamber seeks. And it is much better suited to resolving the policy issues that are at the heart of the Chamber’s objections to EPA’s proposed finding.

Informal rulemaking requires that EPA explain the basis for its proposed decision and take comment from all interested parties, as it has done. EPA provided a 60-day period for submission of comments after it issued its proposed endangerment finding. (The Chamber complains that wasn’t long enough, but the proposed endangerment finding didn’t catch anyone by surprise. EPA had issued an Advance Notice of Proposed Rulemaking ten months earlier seeking comment on whether, in the wake of the Supreme Court’s decision in Massachusetts v. EPA, it could or must regulate greenhouse gas emissions under the Clean Air Act.) Although it was not required to do so, it also held two public hearings, on opposite sides of the country, to take additional testimony.

The informal rulemaking process allows written comments of any length. Commenters can (and should) include citations or even attach supporting literature. The agency must review the comments and respond to any that raise important questions about the scientific basis

for the decision. If the agency’s explanation is inadequate, reviewing courts are not shy about remanding for further explanation. The process is far closer to the type of exchange the scientific community uses to resolve disagreements or clarify what is and is not known than the formal hearing the Chamber wants.

The Chamber insists that testimony and cross-examination are necessary here because that’s the way the adversarial system works. Live testimony and cross-examination may be useful for allowing a decisionmaker to evaluate who is telling the truth when the contending parties disagree about, say, what happened in a car accident or what a defendant intended. It’s never been a good way to test the strength of support for a scientific proposition. It’s not the witness’s demeanor that matters in scientific disputes but the strength of her reasoning, which is better evaluated on a careful written record than under attack in a “gotcha” type of hearing.

Cross-examination would serve no function here, because EPA didn’t generate the data supporting its finding. It did an extensive literature survey of what is known about climate change and its impacts, and explained what conclusions it drew from that survey. It makes no sense to say that EPA should have to get on the stand and defend the methods in those studies or the data they generated. Of course EPA should have to explain its interpretation of the data and its judgments about the reliability of the methods, but it has done that in the proposed finding and will do so again when it responds to comments and finalizes the decision.

As for transparency, EPA has explained the basis for its finding, with citations to the supporting literature. It has put every submitted comment and transcripts of the two public hearings on the web through regulations.gov (the docket is here, if you’re inclined to go through the 12,000+ comments). Nothing has been hidden.

What the Chamber wants is further delay, and as much confusion as it can sow about the basis of EPA’s decision. EPA is right that a trial-type hearing would be a “waste of time,” as the agency’s spokesman told the LA Times.