

Tomorrow, Berkeley's [Center on Law, Energy & the Environment](#), and its [Edley Center on Law & Democracy](#), will be cohosting a [conference](#) on science and democracy. The conference will dive deeper into the troubling situation that now faces us.

It seems obvious — I would have said “everyone agrees” until recently — that you can't make sound regulatory decisions unless you take the relevant science seriously. If you're searching for examples, you need look no farther than the latest federal proposals to limit vaccine access. But even beyond its utility, science also models some important features of democracy. It aspires to a marketplace of ideas in which everyone with the needed background knowledge can participate, and in which conclusions are based on debate and data rather than power. As a recent D.C. Circuit case illustrates, the law calls on government agencies to make decisions in the same way, considering all the scientific evidence and arguments, then providing a reasoned explanation for its decision.

The D.C. Circuit case, [New Mexico Cattle Growers's Ass'n v. Fish & Wildlife Serv.](#), involved the Endangered Species Act (ESA). The Service had listed the willow flycatcher as an endangered subspecies and had refused to change despite a later scientific paper critiquing the evidence and concluding that the southwestern willow flycatcher wasn't a subspecies after all (so it couldn't be an endangered subspecies either). Or in lay terms, the issue was whether southwestern willow flycatchers are really a thing, or just flycatchers who happen to live in the Southwest.

The cattlemen petitioned the Service to remove the birds from the endangerment list, basing the argument largely on the later paper. The Service took the argument seriously and began a yearlong analysis of the evidence. After receiving public comment, and reviewing the evidence, the Service decided to stick with its original conclusion, in part because of another peer-reviewed article critiquing the one relied on by the cattlemen.

The D.C. Circuit, in a unanimous opinion, upheld the Service's decision. Notably, the panel included Neomi Rao, who had been Trump's regulatory czar in his first term. The court carefully reviewed the evidence and concluded that:

*“The Service's decision ... was reasonable, reasonably supported, and adequately explained, and its decision as to what constitutes the best available scientific evidence is well within its zone of expertise. The Service set forth its definition of a subspecies; explained how scientists operationalize that*

*definition; examined the relevant studies and rationally explained why it found some more convincing than others; and reasonably explained why it found the petition's counterarguments unpersuasive."*

There are several features of this process that contribute to its democratic nature. Anyone can file a delisting provision with the Service. The Service didn't blow off this public input but instead devoted time and resources to considering it. It sought comments from the public about its analysis before making a final decision. The cattlemen got a chance to appeal to independent judges and to make their arguments in writing and in person. The court carefully reviewed the record to determine whether the Service gave a reasoned explanation of its decision.

There are several prerequisites for this process to work. The agency has to have scientists who can analyze the evidence in light of the critiques. Then those scientists have to have the freedom to give their honest opinions, rather than simply bowing down to their political bosses. Their bosses need to take their scientists' opinions seriously. And the judges have to be independent — uninfluenced by government intimidation or rewards — and fair-minded enough to give both sides honest consideration.

This open, democratic process is under threat from several directions. First, under Trump, the government has been shedding scientists left and right. It has also been trying to defund scientific research that might lead to inconvenient evidence. Second, it has also rolled back protections for scientific integrity and made clear its willingness to punish dissenting voices within the government. And third, it has also attempted to intimidate federal judges. None of those bodes well for American science, or American democracy for that matter.