I've just spent some time reading the initial briefs in the D.C. Circuit on the endangerment issue. They strike me as much more political documents than legal ones.

A brief recap for those who haven't been following the legal side of the climate issue. After the Bush Administration decided not to regulate greenhouse gases under the Clean Air Act, the Supreme Court held that greenhouse gases would be covered if they met the statutory requirement of endangering human health or welfare. After much stalling by the Bush administration, EPA followed the scientific consensus by finding that (1) yes, climate change is real and caused by human emissions of greenhouse gases, and (2) that climate change would indeed harm humanity (including Americans). That determination is now being challenged by states such as Texas and Virginia and various other parties like the Chamber of Commerce.

Why do I say that the documents seem more legal than political to me? Two reasons: they rely on debaters' points that don't survive examination of the record, and they are crafted to appeal primarily to ideological fellow-travelers rather than the open-minded.

First, like much political argument, briefs make assertions that depend for their credibility on the unwillingness or inability of the audience to engage in fact-checking. For example, they assert that EPA delegated its decision-making to outside groups like the IPCC; it's plain to anyone who reads the EPA documents that this isn't true, as EPA explained at some length. In general, while repeating arguments that the challengers made to the agency, the briefs seldom mention the reasons why EPA rejected their arguments — but it is the validity of EPA's justification that is legally at issue. They also tend to ignore the fact that similar arguments were made to the Supreme Court in *Massachusetts v. EPA* and were handily rejected by the Court.In short, they are more interested in scoring debaters' points than in closely reasoned legal arguments. In other words, they assume that the audience will just take their word about the facts. Just like politicians, in other words.

Second, many of the challengers' arguments in the briefs are likely to be convincing only to an audience that is already committed to their conclusions. It's important to keep in mind that the challengers have a heavy burden in trying to overturn EPA. EPA wins if the court decides that its interpretation of the statute is reasonable (even if weaker than some alternative) and that EPA has given a reasoned

explanation of its decision based on the evidence. In short, the reviewing court can think that EPA reached the wrong conclusions and EPA still wins, so long as the court thinks that EPA was operating in the zone of reasonable judgment. So the challengers have to show, not just that their own views are reasonable or even correct but that their view is the *only* reasonable one.

Yet, the best that can be said for the challengers' arguments is that they show that EPA could (arguably) have reached contrary conclusions. I'm not at all sure that even that is true — but even if it is, it's not enough to justify overturning EPA. To overturn EPA, a judge has to think that the views of nearly all climate scientists are completely unreasonable (not just wrong), and only a right-wing ideologue could think that. For example, one of the briefs contends that "EPA cannot rationally conclude that reducing GHG emissions will reduce warming." Who could possibly believe that its *irrational* (not just possibly mistaken) for EPA to reach a conclusion that is supported by hundreds of studies and leading scientific bodies? The answer is: the same kind of person who *knows* beyond doubt that Obama was born in Kenya, contrary evidence notwithstanding.

In short, like politicians, the briefs are preaching to primarily to their own "base." There are some judges in the D.C. Circuit and the Supreme Court who may fit that description, but not a controlling majority. For those who are not hopelessly trapped by ideology, the case is fairly simple. The Supreme Court told EPA to make a scientific determination of whether emission of greenhouse gases causes harmful climate change. EPA said yes, in accord with the views of 99.9% of scientists. It's hard to see how that's unreasonable or arbitrary.