

According to E&E News, the D.C. Circuit has set oral argument for Feb. 28 and Feb. 29 in the complex legal challenges to EPA's endangerment finding and initial batch of rules regulating greenhouse gases. As I've written previously, I consider the endangerment-finding a slam dunk; the tougher issue is the "tailoring" rule that exempts smaller sources from the initial round of regulation. Industry is attacking the exemption, which is a bit ironic since it is a pro-business feature of the regulations, but they hope to overwhelm the permitting system and make the regulations completely unworkable if they win.

The make-up of the panel is mostly good news for EPA. It will contain two-Clinton appointees, Judith Rogers and David Tatel. But it will also contain David Sentelle, a Reagan appointee, who voted against giving environmentalists standing in climate change litigation in *Massachusetts v. EPA*. Overall, however, this seems like as good a panel as EPA could hope for, and it gives the agency at least a fighting change of winning on the tailoring rule.

By the way, litigation during the Reagan Administration established that once a rule goes into effect, as this one has, it can only be withdrawn by the agency after another round of rule making. So even if the Republicans take the White House, the regulations won't just silently disappear before the case is argued.