

Some Thoughts on Yesterday's Judiciary Committee Hearing

Randy Barnett • February 4, 2011 12:18 am

I have been too busy with page proofs for my forthcoming article in the NYU Journal of Law & Liberty to blog about yesterday's Senate Judiciary Hearings. I suppose my one overall reaction was that if the Democrats, who called this hearing, hoped to blunt the momentum of the legal challenges by showing that the lawsuits had no merit, they failed in their objective. If anything, press coverage generally reflected the view that both sides made strong arguments, and that only the Supreme Court could settle the matter. Indeed, my impression is that the hearings served to advance the credibility of the challenges. The room was packed (they moved it to a larger room where Supreme Court nomination hearings are held) and I am told that the press table was full, which is unusual.

Substance aside, all the panelist were very satisfied with the civility of discussion among the five of us and with the Senators. I had expected a far more adversarial atmosphere, but with a few exceptions it was highly respectful. I was particularly struck by the cordiality and collegiality shown to all the witnesses by Senator Durbin. Not only did he genially greet each one of us beforehand and thank us individually afterwards, he paid close attention to everything each of us said, and what each fellow Senator said, for more than two hours of the hearing. I am sure he must have been zoning out more than a few times, but he really seemed genuinely to be trying to listen to everyone. I am not suggesting he was any more open to persuasion than anyone else, but that he was genuinely attentive throughout. And his final question to me, which could have been asked in a critical way, could not have been more courteous and considerate.

Anyway, you can see for yourself by watching the whole C*SPAN broadcast [here](#) (they don't have an embedding code). If you wish to see only my opening statement, you can click on this: