

The Volokh Conspiracy

- Home
 - About
 - E-Mail Policy
 - Linking Policy
 - Stuff
 - Who Are We?
 - Search
 - Subscribe
 - Twitter
 - RSS
 - Blogroll
 - Archives
-

Liu Goes Before the Judiciary Committee

Jonathan H. Adler • March 24, 2010 8:01 am

The *Los Angeles Times* previews today's Senate Judiciary Committee hearing on the nomination of Berkeley law professor Goodwin Liu's nomination to the U.S. Court of Appeals for the Ninth Circuit. As I predicted, it looks like this nomination will face substantial opposition from Republicans.

UPDATE: At NRO, Ed Whelan outlines the case against Liu. I expect Republicans will raise many of the issues Whelan identifies at today's hearing. The Liu nomination also concerns the Cato Institute's Ilya Shapiro. On the other hand, one of Professor Liu's students has set up a pro-confirmation website.

Categories: Judicial Nominations

11 Comments

1. ***Adlerwatcher* says:**

What? No self-serving notes of how Prof. Adler is more moderate than the evil conservatives to his right? Could it be? Could Prof. Adler's appetite for gaining approval from the left by criticizing anyone slightly more conservatives than himself be at an end?

Doubtful.

Quote

March 24, 2010, 8:38 am

2. ***Anton* says:**

volokh.com/.../liu-goes-before-the-judi...

"As I predicted, it looks like this nomination will face substantial opposition from Republicans."

And so it should. Liu sounds like a card-carrying, certifiable Moonbat.

Quote

March 24, 2010, 9:21 am

3. **RowerinVA says:**

This passage of Liu's:

The problem for courts is to determine, at the moment of decision, whether our collective values on a given issue have converged to a degree that they can be persuasively crystallized and credibly absorbed into legal doctrine. This difficult task requires keen attention to the trajectory of social norms reflected in public policies, institutions, and practices, as well as predictive judgment as to how a judicial decision may help forge or frustrate a social consensus.

... is truly remarkable. He looks to judges to determine collective values, then turn them into Constitutional rights (Constitutional rights are the subject of this paper) not connected to the specific text of the Constitution. Of course, when will those values/rights be enforced by courts? When the legislature or the populace as a whole *rejects* those particular values/rights. When is the decision to invent these rights (to welfare and housing, to name two of his examples) made? "[A]t the moment of decision" in a case where those rights are first proposed by the plaintiff, and resisted by the majority.

So, judges get to decide that there exists a consensus in favor of certain rights at the very moment that they are confronted by irrefutable evidence that there is *no* consensus, via majority action rejecting such rights.

Quote

March 24, 2010, 10:00 am

4. **Mark T says:**

Just as the 40% Anthem premium hike was a fortuitously timed godsend to the proponents of health insurance reform, the Liu nomination is an equally fortuitously timed godsend to the opposition party. This is another Lani Guinier / Robert Bork type of nomination. Liu's Constitutional views are so far out that they just serve as fodder for another massive philosophical debate, only here there are no tangible benefits for the proponent to offer to offset the philosophical argument.

Quote

March 24, 2010, 10:02 am

5. **bartman says:**

As I predicted, it looks like this nomination will face substantial opposition from Republicans.

Given the attitude of the Party of No, that prediction isn't exactly going out on a limb. Heck, if Obama nominated Dick Cheney for a judgeship they'd would fight it tooth and nail. It's a shame watching the Republican party dig its grave by pandering to the teabagger crackpots and racists, because the country really does need some sensible and credible opposition to the current government.

Quote

March 24, 2010, 10:06 am

6. **bartman says:**

Mark: "fortuitous" doesn't mean what you think it means.

Quote

March 24, 2010, 10:07 am

7. **Jonathan H. Adler says:**

bartman –

The Senate has confirmed most of President Obama's appellate nominees by unanimous (or near-unanimous) votes. Whatever Republicans may have done to slow down the pace of these nominations, I think it is fair to say their opposition to Liu will be significantly more "substantial."

JHA

Quote

March 24, 2010, 10:11 am

8. **ChrisHo says:**

No offense bartman, but I have encountered far more racists in who openly call themselves liberals, they drop the n word, they talk about helping "them" because they aren't as good as "they" are. They make posters with racist comments about anyone of color who dares think differently.

The Republicans need to be the party of No because children need to be told that and Congress has been acting like a bunch of entitled children

Quote

March 24, 2010, 10:14 am

9. **Mark Field says:**

What? No self-serving notes of how Prof. Adler is more moderate than the evil conservatives to his right? Could it be? Could Prof. Adler's appetite for gaining approval from the left by criticizing anyone slightly more conservatives than himself be at an end?

Doubtful.

I guess "Adlerwatcher" may watch often but isn't watching very carefully.

Quote

March 24, 2010, 10:35 am

10. **Arthur Kirkland says:**

If this nomination gives grieving conservatives such as Whelan and Shapiro a chance to vent, and becomes a casualty of the raw feelings occasioned by health care reform, it won't be the end of the world so much as a relatively small price to pay for progress.

Quote

March 24, 2010, 10:57 am

11. **enjointhis says:**

/sigh. I oppose his nomination because I'm quite convinced (a) he's younger than me, (b) I'm smarter than him, and (c) it should be ME who is nominated to the Court of Appeals. Aaah, if it were only that easy.

Quote

March 24, 2010, 10:59 am