



May 18, 2011

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the hundreds of thousands of members of People For the American Way, we write to express our strong support for the confirmation of Professor Goodwin Liu to the US Court of Appeals for the Ninth Circuit.

Goodwin Liu's qualifications are not in doubt. In fact, he is one of President Obama's most qualified nominees. Formerly the Associate Dean and Professor of Law at Berkeley School of Law, Liu has been unanimously judged "well qualified" by the American Bar Association, the organization's highest rating.

Professor Liu has written extensively on a number of legal topics, has testified before the Senate Judiciary Committee, and has submitted detailed, comprehensive written responses on various issues to the committee. His writings and other legal work indicate a jurist who puts political ideology aside, carefully analyzes all sides of an argument, and makes thoughtful conclusions based on the law.

Perhaps the most powerful testament to Professor Liu's superb qualifications is the extensive support his nomination has garnered from across the ideological spectrum. It is not only progressive and moderate legal thinkers who admire his work: He has received endorsements from conservatives such as Ken Starr, Solicitor General under President Ronald Reagan; Richard Painter, the chief ethics counsel for President George W. Bush; and Clint Bolick, Director of the conservative Goldwater Institute.

When a judicial nominee attracts such strong support independent of political ideology, you can be confident that he is exactly the kind of mainstream, talented, and fair jurist we need on the federal bench.

Although Liu has the support of a majority of senators, his opponents are working to block his nomination from receiving an up or down vote. Their claim is that Liu's nomination constitutes one of those rare "extraordinary circumstances" warranting a filibuster, under the benchmark developed by the Gang of 14 during the George W. Bush Administration.

By no measure can this nomination be considered to even approach "extraordinary circumstances." Even a cursory look at President Bush's nominees who were approved using that test – those whose nominations were not considered to constitute "extraordinary circumstances" – makes clear that Liu's nomination must be permitted to go forward.

- Pricilla Owen's dissenting positions on the Texas Supreme Court were so extreme that even her fellow conservatives on the Supreme Court in different cases described them with phrases like "an unconscionable act of judicial activism," "disregard of the procedural elements the

Legislature established,” “def[y]ing] the Legislature’s clear and express limits on our jurisdiction,” and “inflammatory rhetoric.” Her nomination was not considered extraordinary, and the Senate afforded her an up-or-down vote for a seat on the Fifth Circuit, where she is now serving.

- Thomas Griffith pushed to severely curtail laws ending discrimination against women and girls’ participation in school athletic programs, declaring “illegal” a test upheld by all eight of the nation’s Circuit Courts of Appeals that had considered the issue. He was also suspended from the DC Bar for failure to pay mandatory Bar dues yet continued to practice law in the District during that time. Published reports and an examination of Utah law indicated that he had been engaged in the unauthorized practice of law in Utah for the four years prior to his nomination. Nevertheless, the Senate did not consider Griffith’s nomination extraordinary, and he received an up-or-down vote confirming him to a seat on the DC Circuit Court of Appeals.
- Janice Rogers Brown criticized opposition to the *Lochner* decision, which began the period when the Supreme Court issued its most pro-corporate rulings—rulings that struck down laws requiring minimum wages, regulating working hours and conditions, and banning improper business practices. In addition, despite several Supreme Court rulings to the contrary, she explicitly suggested that Title VII of the 1964 Civil Rights Act is unconstitutional. Despite this record, her nomination was not considered an “extraordinary circumstance,” and the Senate was allowed to cast an up-or-down vote, confirming her to the DC Circuit Court of Appeals.
- William Pryor called *Roe v. Wade* “the worst abomination of constitutional law in our history” and urged Congress to consider repealing or amending Section 5 of the Voting Rights Act. Despite the significant opposition that these and other extreme positions garnered, his nomination was not filibustered, and he was confirmed to the Eleventh Circuit Court of Appeals.

Each of these nominees attracted substantial controversy and was opposed by numerous civil rights and civil liberties groups, but not one was found to constitute “extraordinary circumstances.”

The claim that Goodwin Liu is out of the mainstream as compared to any of these nominees simply does not bear scrutiny. In fact, a fair reading of his work makes clear that Liu is well within the judicial mainstream.

By any standard articulated by either party, Goodwin Liu’s nomination deserves a vote on the Senate floor, and he should be confirmed to the Ninth Circuit Court of Appeals.

Sincerely,



Michael B. Keegan
President



Marge Baker
Executive Vice President for Policy and
Program