

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Hearing On Judicial Nominations
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The Judiciary Committee welcomes Professor Goodwin Liu of California back to the Committee for a second hearing on his nomination to fill a judicial emergency vacancy on the Ninth Circuit. We are holding this unusual second hearing at the request of the Republican Members of the Committee. I hope that in having Professor Liu back before us, even after he answered hundreds of questions last year and even after his nomination was twice reported favorably by the Committee, all Members of the Committee will keep an open mind in evaluating his qualifications for the Federal bench. We also welcome Kevin Sharp, Roy Dalton, Jr., Claire Cecchi and Esther Salas, who have been nominated to fill vacancies on district courts in Tennessee, Florida, and New Jersey. All have the support of their home state Senators who are here today to introduce them.

I thank Senator Feinstein for chairing this important hearing and for her strong and consistent efforts on behalf of Professor Liu's long-pending nomination. I also want to commend our Ranking Republican, Senator Grassley, who has worked with me on each of the judicial nominations that President Obama renominated this January. I have accommodated his request to hold this second hearing on Professor Liu's nomination. We also expect to be able to move forward with Judiciary Committee consideration of the renominations of two district court nominees, Edward Chen of California and Jack McConnell of Rhode Island, in the next few weeks. We have already favorably reported 15 judicial nominations reported by the Committee last year, but who were blocked from receiving a Senate vote before the last Congress adjourned. I look forward to debating and voting on these nominations without delay so that we can begin to make progress to address the judicial vacancies crisis that is putting at serious risk the ability of all Americans to have a fair hearing in court.

Professor Liu first appeared before the Committee at a hearing last April that was twice delayed, once to accommodate a Republican request and a second time when Republicans employed a seldom-used procedural rule at the last minute to prevent him from appearing even after he and his family had traveled from across the country. Regrettably, even though his hearing was delayed, the attacks on Goodwin Liu and his record were not. Republican Senators declared themselves "disappointed" as soon as he was nominated and immediately began claiming that he was "far outside the mainstream of American jurisprudence."

These attacks were instantaneous and have continued, painting a caricature of Professor Liu at odds with his reputation as a well-respected constitutional law professor with sterling credentials. This caricature has also ignored Professor Liu's extensive responses to the Committee in the more than 100 questions he answered during a three-hour hearing last April, and in the more than 200 follow-up questions sent to him by Republican Senators following that hearing.

Senator Feinstein was correct to note at Professor Liu's first hearing that he has an extraordinary legal mind and is a person of integrity. No fair-minded person who watched his testimony last year can or should question his qualifications, talent or character, all of which are first rate. Nobody can doubt his temperament. He answered every question. He assured this Committee that he understands the role of a judge and the need for a judge to follow the law and adhere to the rule of law. He met and exceeded every standard we have used to measure judicial nominees. He met every test the Senators on this Committee threw at him. I have no doubt he will meet any test the Committee throws at him today.

Goodwin Liu is rightfully admired by legal thinkers and academic scholars from across the political spectrum. Professor Liu has spent his career in public service, private practice and as a teacher since receiving degrees from Stanford University and Yale Law School. He is a Rhodes Scholar. After law school, Professor Liu clerked for D.C. Circuit Judge David Tatel and Supreme Court Justice Ruth Bader Ginsburg.

His parents, wife, children, friends and community are justifiably proud of him and look forward to his confirmation to the Court of Appeals. The son of Taiwanese immigrants, Professor Liu would bring much-needed diversity to the Federal bench. There is currently only one active Asian Pacific American Federal appeals court judge in the country -- Judge Denny Chin of the Second Circuit, who was confirmed last year.

I hope that this second hearing for Professor Liu proves to be an opportunity for Senators on the Committee to treat him more fairly and to give serious and open-minded consideration to his nomination. It is a new opportunity to walk back from the reflexive opposition Republican Senators demonstrated from the outset of Professor Liu's nomination. Without an open mind, these hearings--in particular this second hearing--become merely a source of delay and opportunity for a preemptive set of closing statements rather than the important component of the confirmation process that they should be.

I also hope that no member of this Committee seeks to trap Professor Liu by putting him in the impossible position of asking questions they know he should not--must not--answer to avoid prejudging cases that might come before him as a judge. Instead of demanding a level of specificity about how Professor Liu might rule as a judge, that Senators on both sides of the aisle have deemed inappropriate for prior judicial nominees to answer, I hope that Senators will be willing to credit his answers that he will follow the law and his reassurances that he understands the role of the judge.

I again urge Senators to approach this nomination the way I approached Professor Michael McConnell's nomination when President Bush nominated him to the Tenth Circuit. He was another widely-regarded law professor, who appeared before our Committee as a nominee championed by the Senior Senator from Utah, Senator Hatch. Like Professor Liu, Professor

McConnell from the University of Utah was nominated to a Federal appeals court without having first served as a judge. He was one of two dozen such nominations confirmed after being nominated by President Bush. Professor McConnell's own provocative writings included staunch advocacy for reexamining the First Amendment Free Exercise Clause and the Establishment Clause jurisprudence. He had expressed strong opposition to Roe v. Wade and to the clinic access law, and he had testified before Congress that he believed the Violence Against Women Act was unconstitutional. Professor McConnell's writings on the actions of Federal District Court Judge John Sprizzo in acquitting abortion protesters could not be read as anything other than praise for the extra-legal behavior of both the defendants and the judge.

I had concerns that Professor McConnell would turn out to be a conservative activist on the Tenth Circuit. I was concerned about his refusal to take responsibility for his harsh criticism of the Supreme Court's decision in the Bob Jones case. But I put faith in Professor McConnell's assurances that he understood the difference between his role as a teacher and advocate, and his future role as a judge. He assured us that he respected the doctrine of stare decisis, and that as a Federal appeals court judge, he would be bound to follow Supreme Court precedent. And I valued Senator Hatch's support of him.

I supported the confirmation of Professor McConnell, as did other Democratic Senators. He was reported favorably by this Committee, and he was confirmed to the Tenth Circuit by voice vote in the Senate just one day after his nomination was reported. Now that he is back again before the Committee, I challenge the Republican members of this Committee to treat Professor Liu with that same fairness.

I have no doubt that Professor Liu will again demonstrate to the Committee a command of the law and devotion to it. I have no doubt that he will again show that he understands the role of the judge and how it differs from his career as an advocate and an academic. The litmus test for judicial nominations must not be whether their writings and speeches share the same judicial philosophy as the Republican Senators or Democratic Senators. Professor Liu's understanding of constitutional law, from well before his nomination a target of the far right, falls well within the mainstream of American legal thought. Nothing I have read or heard from Professor Liu gives me any reason to doubt his conviction about the critical importance of the rule of law as the guiding principle of judicial decision-making. As a professor he has done what great professors do--challenge our view of the law. But he has left no doubt that as a judge he would do what great judges do in applying the law fairly to each case.

I hope Republican Senators will give the same weight to Professor Liu's assurances that he understands the proper role of a judge that we did to Professor McConnell's identical assurances. I hope that after this second hearing and his third time being considered by the Committee that the Senate will finally be able to consider this extraordinary nominee.

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