



Yale Law School

AKHIL REED AMAR · *Sterling Professor of Law*

March 19, 2010

Senator Patrick J. Leahy, Chairman
Senator Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6225

Dear Chairman Leahy and Ranking Member Sessions:

Enclosed please find a copy of a joint letter written by myself and Dean Ken Starr in reference to the nomination of Goodwin Liu to serve on the U.S. Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Akhil Reed Amar

March 19, 2010

Senator Patrick J. Leahy, Chairman
Senator Jeff Sessions, Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510-6225

Dear Chairman Leahy and Ranking Member Sessions:

As your Committee considers the nomination of Goodwin Liu to serve on the U.S. Court of Appeals for the Ninth Circuit, it is our privilege to speak to his qualifications and character, and to urge favorable action on his nomination in the discharge of your constitutional duties of advice and consent. In short, Goodwin is a person of great intellect, accomplishment, and integrity, and he is exceptionally well-qualified to serve on the court of appeals. The nation is fortunate that he is willing to leave academia to engage in this important form of public service.

The Committee is no doubt familiar with Goodwin's personal story as the son of immigrants from Taiwan and his sterling record of achievements and accolades. We know Goodwin as a fellow teacher and scholar of the law; we have read some of his writings, and we have seen him speak in academic and public settings. What we wish to highlight, beyond his obvious intellect and legal talents, is his independence and openness to diverse viewpoints as well as his ability to follow the facts and the law to their logical conclusion, whatever its political valence may be. These are the qualities we expect in a judge, and Goodwin clearly possesses them.

Two examples help make the point. First, Goodwin (and his co-author Bill Taylor) wrote an article in *Fordham Law Review* in 2005 defending the use of school vouchers to provide better educational opportunities for children trapped in failing schools. The article provides a careful and candid review of the evidence on how vouchers have worked in practice, and it responds to the critics of vouchers in a direct and forceful way. We are fairly sure that this piece did not win Goodwin any friends in the liberal establishment, but it reflected his sincerely reasoned view about one way to improve the life chances of some of our most disadvantaged children. Goodwin's commitment to this issue brought him to Pepperdine in 2006 for a meeting organized by Clint Bolick, then president of the Alliance for School Choice. Given how far apart he and Clint are on other issues, Goodwin's enthusiastic participation in that meeting demonstrates his willingness to find common ground even with people who have quite different beliefs from his own.

A second example hits closer to home for one of us. In 2008, Goodwin joined an amicus brief by constitutional law professors in support of the plaintiffs who challenged California's marriage laws in the state supreme court. The court ruled for the plaintiffs, but in November 2008 the voters of California effectively reversed that ruling by enacting Proposition 8, a state constitutional amendment that limits marriage to opposite-sex couples. In October 2008, before Proposition 8 passed, Goodwin was called to testify at a joint

hearing of the California Assembly and Senate Judiciary Committees on the legal issues raised by Proposition 8. He was asked to testify as a neutral legal expert (indeed, he was the sole witness tapped for that role), and on the core issue that later became the subject of a state constitutional challenge, Goodwin correctly forecasted that Proposition 8 would be upheld by the California Supreme Court under applicable precedents. Again, Goodwin's position, which he also stated in a *Los Angeles Times* editorial, could not have pleased his friends who sought to invalidate Proposition 8. But, as the example shows, Goodwin knows the difference between what the law is and what he might wish it to be, and he is fully capable and unafraid of discharging the duty to say what the law is.

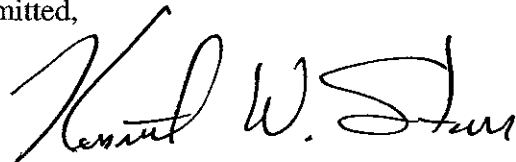
As his academic colleagues, we would add a further point. Given what we know of Goodwin, it seems no accident that he was asked by his dean (literally before the ink was dry on his tenure review) to assume the role of associate dean. If Berkeley is like other law schools, the duties of that position include planning the curriculum and, importantly, serving as something of a catch-all for faculty requests and complaints. His appointment to that role is additional evidence of his reputation for collegiality, fairness, and good judgment.

In sum, you have before you a judicial nominee with strong intellect, demonstrated independence, and outstanding character. We recognize that commentators on all sides will be drawn to debate the views Goodwin has expressed in his writings and speeches. In the end, however, a judge takes an oath to uphold and defend the Constitution, and in the case of a circuit judge, fidelity to the law entails adherence to Supreme Court precedent and (apart from the en banc process) adherence to circuit precedent as well. Thus, in our view, the traits that should weigh most heavily in the evaluation of an extraordinarily qualified nominee such as Goodwin are professional integrity and the ability to discharge faithfully an abiding duty to follow the law. Because Goodwin possesses those qualities to the highest degree, we are confident that he will serve on the court of appeals not only fairly and competently, but with great distinction. We support and urge his speedy confirmation.

Respectfully submitted,



Akhil Reed Amar
Sterling Professor of Law
and Political Science
Yale Law School



Kenneth W. Starr
Duane and Kelly Roberts Dean
and Professor of Law
Pepperdine University School of Law