

JOHN McCAIN
ARIZONA

COMMITTEE ON ARMED SERVICES
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COMMITTEE ON HEALTH,
EDUCATION, LABOR, AND PENSIONS
COMMITTEE ON HOMELAND SECURITY
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COMMITTEE ON INDIAN AFFAIRS

United States Senate

April 13, 2010

The Honorable Patrick Leahy
Chairman
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Leahy:

I am writing you to express my deep concern with your decision to move forward with a nomination hearing for Goodwin Liu, the President's nominee to the Ninth Circuit Court of Appeals. As you know, the Ninth Circuit Court of Appeals hears appeals filed by residents of Arizona so I have a keen interest in this nominee. Mr. Liu has failed to disclose as many as 117 speeches and articles to the Judiciary Committee prior to the hearing, and members need time to review these newly discovered submissions in order to ensure that there are no further omissions.

In order for any member of the Committee or the Senate to meet their constitutional obligation to provide "advice and consent" on a nomination, the nominee must provide complete and forthright access to his or her record. This Administration has been a vocal advocate for "sunshine in government," and I expect that the Administration would share members' concerns that this nominee has repeatedly failed to fully disclose the body of his legal work.

However, I am not only troubled by Mr. Liu's omissions to the Committee, but I am also concerned about Mr. Liu's ability to respect the limited nature of the judicial power under our Constitution. In a November 2008 article published in the Stanford Law Review, Mr. Liu wrote, "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."

Mr. Liu's remarks raise concerns that he may interpret the law in a manner that creates new law as an appellate judge. Judges who stray beyond their constitutional role believe that they somehow have a greater insight into the meaning of the broad principles of our Constitution than representatives who are elected by the people. For this reason, I remain concerned about Mr. Liu's nomination. However, I will continue to review and consider his nomination if it is approved by the Committee.

241 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0303
(202) 224-2235

5353 NORTH 16TH STREET
SUITE 105
PHOENIX, AZ 85016
(602) 952-2410

122 NORTH CORTEZ STREET
SUITE 108
PRESCOTT, AZ 86301
(928) 445-0833

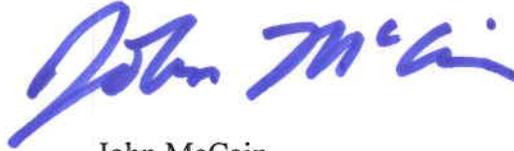
4703 SOUTH LAKESHORE DRIVE
SUITE 1
TEMPE, AZ 85282
(480) 897-6289

407 WEST CONGRESS STREET
SUITE 103
TUCSON, AZ 85701
(520) 670-6334

TELEPHONE FOR HEARING IMPAIRED
(602) 952-0170

If confirmed, Mr. Liu will obtain a lifetime appointment as a judge for the people of Arizona. The omissions in Mr. Liu's record, as well as an apparently deep activist understanding of judicial power, demand a more comprehensive review by the Committee. I request that you postpone Mr. Liu's hearing to allow such a process to take place.

Sincerely,

A handwritten signature in blue ink that reads "John McCain". The signature is fluid and cursive, with the first name "John" being larger and more prominent than the last name "McCain".

John McCain
United States Senate