

**TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

FOR THE HEARING ON THE NOMINATION OF

GOODWIN H. LIU,

**TO BE UNITED STATES CIRCUIT JUDGE FOR THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

MARCH 24, 2010

BY THE

NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION

AND

ASIAN AMERICAN JUSTICE CENTER

The National Asian Pacific American Bar Association (NAPABA) and the Asian American Justice Center (AAJC) submit this testimony in strong support of Goodwin H. Liu, nominee to be United States Circuit Judge for the United States Court of Appeals for the Ninth Circuit. Associate Dean and Professor Liu has the intellect, integrity, experience and temperament to serve as an excellent circuit court judge.

NAPABA is the national bar association representing the interests of Asian Pacific American attorneys, judges, law professors, and law students. NAPABA represents the interests of over 40,000 attorneys nationally and over 60 local Asian Pacific American bar associations. Its members include solo practitioners, large law firm lawyers, corporate counsel, legal service and nonprofit attorneys, judges, and lawyers serving at all levels of government. Through its national network of affiliates and committees, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace, seeks to eliminate anti-Asian crime and anti-immigrant sentiment, and promotes professional development of minorities in the legal profession.

AAJC is a national organization dedicated to defending and advancing the civil and human rights of Asian Americans through advocacy, public policy, public education, and litigation, and is the nation's leading expert on issues of particular importance to the Asian American community in the areas of equal rights, anti-Asian violence prevention and race relations, census, health law policy, immigrant rights, immigration, language access, and voting rights. It works closely with its three affiliates – the Asian American Institute in Chicago, the Asian Law Caucus in San Francisco, and the Asian Pacific American Legal Center in Los Angeles – and nearly 100 community partners in 44 cities, 25 states, and the District of Columbia.

NAPABA and AAJC thank the Judiciary Committee for considering Professor Liu promptly. NAPABA and AAJC also thank President Obama for his nomination of Professor Liu, and Senators Dianne Feinstein and Barbara Boxer for their support of this nomination.

This nomination is especially important to NAPABA and AAJC. Out of the approximately 175 active federal appellate court judges, there are currently *none* who are Asian Pacific American. Even if Judge Denny Chin, nominee for the U.S. Court of Appeals for the Second Circuit, is confirmed, Asian Pacific Americans would be woefully under-represented on the federal appellate courts. If the number reflected the general population, then there should be 8-9 Asian Pacific American federal appellate court judges nationwide. Indeed, it is especially notable that there are no active Asian Pacific American judges in the Ninth Circuit, given the especially high concentration of Asian Pacific Americans in the states encompassed by that jurisdiction.

Professor Liu is a nationally recognized scholar in the areas of education and constitutional law who will bring outstanding intellect and integrity to the Ninth Circuit. He also has gained significant experience in private practice and with the government. The American Bar Association has rated him unanimously “well qualified.”

Throughout his career, Professor Liu has gained wide respect for his intelligence, independence, and fair-mindedness. That respect has included many Republicans and conservatives. Tom Campbell, former dean of the Haas School of Business at UC Berkeley and a law professor who served nine years in Congress as a Republican, said, “Liu will bring scholarly distinction and a strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit.”

For example, Professor Liu has earned the respect and admiration from many conservatives for his support of school vouchers and his positions on education generally. Clint Bolick, director of constitutional litigation at the Goldwater Institute, said, “Having reviewed several of his academic writings, I find Professor Liu to exhibit fresh, independent thinking and intellectual honesty. He clearly possesses the scholarly credentials and experience to serve with distinction on this important court.” James Guthrie, the Director of Education Policy Studies at the George W. Bush Institute, likewise said that he found common ground with Professor Liu on school finance issues, stating that “[m]ore than an ideologue, I think he’s a pragmatist.”

Government officials from the George W. Bush Administration likewise have expressed support. Former Deputy White House Counsel Bill Burck has stated that “I thought very, very highly of him. I think, intellectually, he is more than capable of doing the job extremely well.” UC Berkeley – and former Deputy Assistant Attorney General in the Office of Legal Counsel – John C. Yoo said that, “for a Democratic nominee, [Professor Liu] is a very good choice.”

Conservative scholars also believe that Professor Liu will serve admirably on the Ninth Circuit. Indiana University Law Professor Gerard Magliocca stated that "I went to law school with Goodwin, and he is exceptionally smart, thoughtful, and fair-minded. Though we do not approach constitutional issues in a similar way, he would be a superb judge." Constitutional law professor and National Review Online contributing editor Jonathan Adler stated that "I believe Prof. Liu is qualified for the job and I would vote to confirm him."

Kenneth W. Starr, Dean and Professor at Pepperdine University School of Law, effusively praised Professor Liu's qualifications. In a letter to this Committee, Dean Starr – along with Professor Akhil Reed Amar of Yale Law School – summarized his support as follows:

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.

Professor Liu's tenure at UC Berkeley School of Law reflects the excellence that he will bring to the Ninth Circuit. Jesse Choper, a leading constitutional scholar and chair of Professor Liu's tenure committee at UC Berkeley, said, "Liu's qualifications to be a judge are nothing short of outstanding. He is a person of excellent judgment, with carefully considered and balanced views. I am confident he would be an especially fair jurist, and one with real intellectual firepower." In the classroom, Professor Liu is one of the most popular teachers, and his courses are some of the most over-subscribed and highly rated by the students. As Associate Dean of the law school, Professor Liu oversees the curriculum and takes the lead in setting instructional priorities, including the promotion process for tenure-track faculty, the hiring of new faculty, and the supervision of the law school's lecturers and adjunct faculty. "Goodwin is admired by his colleagues for his integrity, fairness, and good judgment," said Christopher Edley, Dean of the law school. "He is one of the brightest and most capable colleagues I've had in my three decades in academia."

Professor Liu also has practical experience in the law. Professor Liu served as a Special Assistant to the Deputy Secretary at the U.S. Department of Education. In that capacity, he advised the Secretary and Deputy Secretary on a range of legal issues, including the development of guidelines to implement a \$134 million congressional appropriation in 2000 to help turn around low-performing schools. Former South Carolina Governor Richard Riley, who

was U.S. Secretary of Education at the time, said Professor Liu was a “‘go-to’ person for important projects and complex issues because of his ability to see the big picture while also mastering the details of legal and policy problems.” In addition to his public service, Professor Liu was an attorney with the corporate litigation practice of O’Melveny & Myers in Washington, D.C. Walter Dellinger, chair of O’Melveny’s appellate practice, said Professor Liu was “widely respected in law practice for his superb legal ability, his sound judgment, and his warm collegiality.” Since 2008, Professor Liu has served as a consultant for the San Francisco Unified School District, providing legal counsel to the San Francisco public school system on redesigning its student assignment plan to comply with federal and state law while minimizing racial and socioeconomic segregation.

Professor Liu has received numerous awards for his academic work and service to the community. In 2009, Professor Liu received UC Berkeley School of Law’s Distinguished Teaching Award, which is the university’s most prestigious award for teaching excellence. Also in that year, he was selected by the students to give the commencement address. Other awards that Professor Liu has received include: Doctor of Public Service (honorary degree), Unity College (1995); Pacific Islander, Asian, and Native American Law Students Association Alumni Award, Yale Law School (2009); Stanford Associates Governors’ Award for Exemplary Volunteer Service, Stanford University (2005); Asian American Alumni Award, Stanford University (2005).

Professor Liu’s upbringing reflects the American attitude that, with hard work, anyone can succeed. Professor Liu was born in Augusta, Georgia, where his parents were living as doctors recruited from Taiwan to work in underserved areas. His parents came to the U.S. when Taiwan was under martial law, and they have always admired and respected America for its commitment to the rule of law, a trait that his parents passed on to him. The Liu family arrived with little money but worked hard and sacrificed to make the most of the opportunities that America offered. In 1973, the family moved to Clewiston, Florida, a small sugarcane town near the southwest shore of Lake Okeechobee. In 1977, Professor Liu and his family moved to California. Professor Liu attended public schools in Clewiston, Florida and then Sacramento, California. His interest in government service was sparked when Congressman Robert Matsui sponsored his application to serve as a page in the U.S. House of Representatives. Professor Liu ultimately was the first in his family to become a lawyer. Notwithstanding his busy schedule as a teacher and school administrator, Professor Liu values his time with his family, which includes a three-year-old daughter and a son born one week ago. Professor Liu and his family enjoy the outdoors, and he is an avid fisherman – a skill that he learned from his father and hopes to pass on to his children someday.

Professor Goodwin Liu would make an immediate contribution as a federal circuit court judge. His qualifications, integrity, intellect, and commitment to the justice system are clear. He also brings a life story that is inspiring. Especially given the lack of any active Asian Pacific American federal appellate court judges nationwide, the confirmation of Professor Liu is important to NAPABA, AAJC, and the Asian Pacific American community. Accordingly, the National Asian Pacific American Bar Association and the Asian American Justice Center extend

their strong support and urge for the speedy confirmation of Associate Dean and Professor Goodwin H. Liu for the United States Court of Appeals for the Ninth Circuit. Thank you for considering this testimony today.