

construction company just like Randy Pech did and compete for government contracts on a completely fair playing field, which has always been the gift and the miracle of America. I want him to have that opportunity, just as I want every other American to have it. And I don't want a judge on a circuit court somewhere telling him that his own chance for a fair and prosperous future should be swept into the dustbin of history.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. PORTMAN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ENERGY POLICY

Mr. PORTMAN. Mr. President, over the past couple of days here on the Senate floor we have had a lot of discussion about domestic energy production and there have been a lot of good points made. But, frankly, it is more of a political exercise than something that is going to help the American people.

If one listened to the debate, one might think there is no consensus and no way forward. I disagree with that. I think given our energy challenges, including \$4 a gallon gasoline, we need an energy policy that encourages more affordable, reliable, and cleaner energy. I think we can reach a consensus on a few areas, and let me raise a couple of them today.

The first is natural gas exploration and development. In my own State of Ohio, we have had exciting new developments over the past several years. Geologists have known we have big shale formations in the eastern part of the United States for years, but until recently we haven't had the drilling technologies that allowed us to tap into these huge reserves. We now have that.

In Ohio, we have both the Marcellus and the Utica shale finds that, unfortunately, have not been tapped yet but have tremendous potential. Some of the oil and gas reserve estimates associated with these finds are truly amazing. For the State of Ohio alone, in one of those formations—Utica—I am told we could yield over 15 trillion cubic feet of natural gas. So this is a great opportunity both to be sure we have the energy we need to power our economy but also to create jobs that go into energy production.

By the way, other States around us, including Pennsylvania, West Virginia, and upstate New York, as an example, have even more production potential than Ohio. Already there are some Ohio counties, such as Belmont County and Jefferson County and Columbiana County, that are beginning to explore some of these finds, and we are very hopeful that in some of these counties, where there is incredibly high unemployment, we will be able to begin pro-

duction soon. These counties have been hard hit by the downturn in the economy, and they can use the economic activity and the jobs that will be created by this production.

Earlier this year, I visited an Ohio company that is an example of one of the industries that is going to benefit from this natural gas production. It is V&M Star. It is a company that makes piping. It is near Youngstown, OH. They just decided to expand their manufacturing capability. Why? Because they are looking at Marcellus and Utica, understanding this is going to create great opportunities for them. They are investing in our State. They are investing in jobs. They are doing it because of these finds. We have to be sure we put out the Federal policies to promote and encourage the development of these resources.

In addition to using natural gas for electricity generation and as a feedstock for a lot of industries, including the chemical industry, natural gas holds incredible potential as an alternative to gas. Today, we are talking about the need to be less dependent on foreign oil, which happens to be one of the top issues on both sides of the aisle. Natural gas is a way we can do that very directly because it can be used particularly in fleets. Today, the equivalent price for a gallon of natural gas is \$1.60. Think about that: as compared to \$4 for gasoline, \$1.60 for natural gas. The infrastructure costs create some challenges, but, again, for fleets, where there is central refueling, it makes all the sense in the world. Widespread conversion of our fleets, including our Nation's buses, garbage trucks, and utility vehicles, would help reduce demand for gasoline.

America arguably has the greatest energy reserves in the world, depending on which estimate you look at. We have to find a way to responsibly tap these reserves, in a way that we can become less dependent on foreign nations for energy needs, in a way where we will stop sending so much of our wealth overseas to pay for foreign imports, particularly of crude oil.

Ohio is still in the throes of an economic downturn. Today, we are at 9 percent unemployment in Ohio. Underemployment makes Ohio's situation even worse. One way to create jobs and to get Ohio back on track is by expanding, again, the use of our own resources, including natural gas. There should be a consensus on this issue. We should be promoting Federal policies to encourage the exploration and the development of these resources, and we should do it now.

Another area where I think you could see some consensus on energy policy in the short term in the Senate is in the area of energy conservation and efficiency. We should both find more and use less. It is that commitment to use less that led me, last week, to introduce legislation with Senator SHAHEEN from New Hampshire called the Energy Savings and Industrial Competitive-

ness Act. It is S. 1000, for those who would like to check it out.

It is a bipartisan bill, a targeted and achievable piece of legislation that would leverage energy efficiency investments in a number of areas, including the building and industrial sectors but also with the Federal Government. It would help consumers and the Federal Government save money on their energy bills and help industry improve the efficiency of their production processes.

Again, this is an example of where we should be able to come together as Republicans and Democrats to get something done. There is widespread consensus that energy efficiency is the low-hanging fruit, a way to reduce our energy use and, again, to make America's economy more competitive. As with anything, the devil is in the details. There will be some Senators who may disagree with some of the specifics in this legislation, but, again, it is the type of bill we should be debating on the floor of this Senate. With a little hard work, I believe it is one we can ultimately get enacted into law.

Instead, again, we have spent the better part of this week debating two bills; one that, in my view, would have done more harm than good, by raising taxes on certain businesses, while doing nothing to increase energy production or lower gas prices; and another one I supported that I think would do a lot of good but we knew did not have the necessary 60 votes to move forward and, therefore, we were not able to make progress this week for the American people.

We have all the ingenuity, the know-how, and the resources within our own borders to be able to have the energy we need to run our economy and to improve our economy and to create jobs. I hope moving forward we can find agreement on these issues and begin to tap this great American potential.

I yield the floor and suggest the absence of a quorum.

Mr. CARDIN addressed the Chair.

The PRESIDING OFFICER. Will the Senator withhold his suggestion?

Mr. PORTMAN. I will.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. Thank you very much, Mr. President.

I rise in strong support of the nomination of Goodwin Liu to be U.S. Circuit Judge for the U.S. Circuit Court of Appeals for the Ninth Circuit. I urge my colleagues to invoke cloture on this nomination.

I am disappointed we had to file a cloture motion. I hope my colleagues would want to vote up or down on this nomination, and I hope they would vote for his confirmation.

As we begin the debate on the nomination of Mr. Liu, let me start by telling my colleagues how thoroughly his nomination has been vetted by the Judiciary Committee under the leadership of Chairman LEAHY.

President Obama first nominated Goodwin Liu for this position in February of last year. That was over 1 year

ago. The Judiciary Committee has held two separate hearings on this nomination. Mr. Liu's latest set of questions and answers, for the record, spanned over 130 pages. The Judiciary Committee has favorably reported his nomination on three separate occasions: in May of 2010, September of 2010, and April of 2011.

So I am disappointed my Republican colleagues have refused to allow this nomination to come to a vote without the necessity of filing a cloture motion. As we know, the majority leader has filed cloture on this nomination. Senators have had ample information on the background, experience and qualifications of this nominee and it is time for the Senators to perform their constitutional duty to debate the nomination and to vote up or down on this nominee.

I was privileged to serve on the Judiciary Committee in the 111th Congress and participated in a debate of the Goodwin Liu nomination on several occasions. I was pleased to cast my vote in favor of Mr. Liu's nomination in committee, and I look forward to supporting his nomination on the floor.

When I examine judicial nominations that are submitted by the President, I use several criteria.

First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to each and every American.

Second, a nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests.

Third, a judicial nominee must respect the role and responsibilities of each branch of government, including a healthy respect for the precedents of the court.

Fourth, I look for nominees with a strong commitment and passion for the continued forward progress of civil rights protections.

Finally, I want a judge who has the necessary experience, temperament, and commitment to public service.

I wish to share with my colleagues a little background on Mr. Liu, his qualifications, and why I intend to support his nomination.

Goodwin Liu, in many ways, embodies the American dream. He is the son of immigrants to this country. His parents were doctors who came to the United States from Taiwan in the late 1960s, when foreign doctors were being recruited to work in underserved areas.

Goodwin Liu did not speak English until kindergarten. During high school, Goodwin Liu had the opportunity to serve as a page in the House of Representatives, after being sponsored by late Congressman Bob Matsui of California, whom I had the privilege of serving with in the House of Representatives.

Professor Liu has a sterling academic record. He earned his B.S., Phi Beta Kappa, from Stanford University, where he was elected copresident of the student body. A Rhodes Scholar, he

earned his M.A. from Oxford University. He received his J.D. from Yale Law School, where he was an editor of the Yale Law Journal. He then went on to clerk for DC Circuit Court Judge David Tatel and Supreme Court Justice Ruth Bader Ginsburg.

Professor Liu has a track record of working on public policy issues in public service. He worked for 2 years at the Corporation for National Service. He served as a special assistant to the Deputy Secretary of Education, where he worked on numerous legal and policy issues.

Professor Liu has worked in private practice. After his clerkships, he served as an associate in the Washington, DC, law firm of O'Melveny & Myers, working on a wide range of business matters. About half his practice consisted of appellate litigation, preparing him well to serve on a court of appeals. He has also maintained an active pro bono practice at that firm, which also tells me of his commitment to equal justice under the law.

Professor Liu then went on to his current occupation, joining the faculty of the University of California Berkeley School of Law and helping to teach our next generation of lawyers. He serves as a professor at the law school, was promoted to an associate dean of the law school, and was elected to the American Law Institute.

Professor Liu has received the law school's Distinguished Teaching Award. Professor Liu is considered an expert on constitutional law and education law and policy, with a particular focus on the needs of America's most disadvantaged students. He is the author of numerous law review articles and the coauthor of an influential book on constitutional law interpretation entitled "Keeping Faith with the Constitution."

I heard my colleague talk about Goodwin Liu. But I would just urge my colleagues not to penalize an individual because he is active or expresses his own opinions. We should judge the nominees based upon their qualifications and their commitments to interpret the law as required on the court.

Professor Liu answered numerous questions about his approach to constitutional interpretation during his two confirmation hearings. He testified:

The role of the judge is to be an impartial, objective and neutral arbiter of specific cases and controversies that come before him or her, and the way that process works is through absolute fidelity to the applicable precedents and the language of the laws, statutes, or regulations that are at issue in the case.

I do not know who would disagree with that. That is what many of us have been calling for on both sides of the aisle.

He has also answered questions about his ideology as a judge. He testified:

It would not be my role to bring any particular theory of constitutional interpretation to the job of an intermediate appellate judge. The duty of a circuit judge is to faithfully

follow the Supreme Court's instructions on matters of constitutional interpretation, not any particular theory. So that is exactly what I would do. I would apply the applicable precedents to the facts of each case.

Once again, I could not agree with that statement more. In written responses to Senators' questions, he also stated:

I do not believe it is ever appropriate for judges to indulge their own values or policy preferences in determining what the Constitution and laws mean.

Professor Liu certainly has written a number of thought-provoking articles on controversial public policy issues of the day, but this should not disqualify him from being a judge. I am confident Professor Liu understands the difference between being an advocate and being a judge and I hope we can draw that distinction and will respect the difference if he is confirmed and puts on the judicial robe.

Specific questions concerning affirmative action were asked during his confirmation hearings. So let me quote from Professor Liu's testimony to the Judiciary Committee:

I absolutely do not support racial quotas, and my writings, I think, have made very clear that I believe they are unconstitutional.

He then said:

I think affirmative action, as it was originally conceived, was a time-limited remedy for past wrongs, and I think that is the appropriate way to understand what affirmative action is.

I think we should take a look at his record on this, and I think it is unfair to judge him based upon certain innuendoes.

Professor Liu also has broad support from distinguished legal scholars from both parties. The former Solicitor General and White House prosecutor, Ken Starr, praised Professor Liu's "strong intellect, demonstrated independence, and outstanding character"—qualifications we all want to see on the court. We want to see intellect, we want to see independence, and we want to see character. Ken Starr summed that up fairly well.

In a March 19, 2010, letter to the Senate Judiciary Committee, Mr. Starr joined with another professor, stating:

Goodwin is a person of great intellect, accomplishment, and integrity, and he is exceptionally well qualified to serve on the court of appeals. . . . What we wish to highlight, beyond his on 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. . . .

These are qualities we expect in a judge. And Goodwin clearly possesses them. . . . [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 . . . adherence to circuit precedence as well. . . . 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.

That is what Ken Starr said about a person he knows very well, Goodwin

Liu, and he strongly recommends his confirmation to our colleagues. I also want to discuss the importance of improving diversity on our courts. If confirmed, Professor Liu would be only the second Asian American currently serving on a Federal appeals court, and the only Asian American in active service in the Ninth Circuit.

The Ninth Circuit is home to over 40 percent of the Asian American population in the United States. Finally, Professor Liu has received the highest possible judicial rating, “unanimously well qualified” from the American Bar Association’s Standing Committee on the Federal Judiciary.

With this distinguished record and recommendations that we have received, we have an excellent nominee to serve on the court of appeals. I urge my colleagues to vote for his confirmation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, it is my privilege, it is my honor, to support Goodwin Liu, a Californian—and a brilliant Californian—who has been nominated by the President to the U.S. Ninth Circuit Court of Appeals. And what a fine nomination this is. I thank the President for his belief in Goodwin, and his, I think, amazing perception that this is a young man—and he is young, he is about 40. This is a young man who is just exceptional, is a perfect example of the American dream, and someone who has worked so hard to put himself into this position where he was nominated for this great honor.

I want to show folks a picture of Goodwin. He is a very special and talented person. He has had a long struggle with this nomination, which we will talk about. I also wish to thank, of course, Chairman LEAHY for working hard to bring this nomination to the Senate floor, and Senator FEINSTEIN, my colleague, for her hard work in the committee and her leadership in helping to shepherd this nomination in the Senate.

This vote is not only historic, because Goodwin will make history—if he gets this vote. This vote is long overdue. First, let me talk about why it is historic. It is historic because if we get the 51 votes we need today, Professor Liu will be one of only two Asian Americans currently serving as a Federal appellate judge in the United States. There is currently only one Asian American among the 160 active judges on the Federal Courts of Appeals, and there is no active Asian American judge on the Ninth Circuit, which has jurisdiction over an area that is home to more than 40 percent of our Nation’s Asian American population.

Let me repeat that. There is no active Asian American judge on the Ninth Circuit, which has jurisdiction over an area that is home to more than 40 percent of our Nation’s Asian American population. The beauty of our great Nation—one of the beauties—is our great diversity. America is great because we are representatives of so many faiths and so many ethnic backgrounds. We know all of our institutions, whether it is here in the Senate or anywhere, all of our institutions do better when they have a diversity of views and diversity. Clearly, when someone as brilliant as Goodwin gets this nomination, we should be so proud in this body. We should be joining hands over party lines. We should be pleased that our court would have such a brilliant member.

Professor Liu was originally nominated in February 2010 for a judicial emergency seat, one that has been vacant since January 2009. So we have had a judicial emergency, and yet we have had a hard time getting this vote to the floor.

Chief Justice Roberts called on Senators not to play politics with our nominees. He warned that “delays in filling vacancies have created acute difficulties in some judicial districts.” Undoubtedly, the Ninth Circuit certainly is one of the jurisdictions that Chief Justice referred to because the Ninth Circuit is the Nation’s largest and busiest appellate court in the country, accounting for over 20 percent of all new appellate cases in the country, according to court statistics.

Now, I have said—and I heard Senator CARDIN, and I thought he just did a beautiful job of laying out why he is supporting Goodwin Liu. But I also heard some other comments that did not connect to Goodwin Liu. I heard comments that just did not fit what Goodwin Liu has said about his role as a judge.

So I wanted to put up a couple of the quotes directly from Professor Liu and what he said about his role as a judge. He said:

I think the role of the judge is to be an impartial, objective, and neutral arbiter of specific cases and controversies that come before him or her. And the way that that process works is through absolute fidelity to the applicable precedents and the language of the laws, statutes, regulations that are at issue in the case.

Another statement by Professor Liu I wanted to share with you. He said:

If I were fortunate enough to be confirmed in this process, it would not be my role to bring any particular theory of constitutional interpretation to the job of an intermediate appellate judge. The duty of a circuit judge is to faithfully follow the Supreme Court’s instructions on matters of Constitutional interpretation, not any particular theory. And so that is exactly what I would do, is I would apply the applicable precedents to the facts of each case.

It could not be clearer. So if you hear any colleague of mine saying something else about how Professor Liu views the role of a judge in this par-

ticular appellate area, just refer them to these quotes.

Professor Liu has sat before the Senate Judiciary Committee twice for more than 5 hours—5 hours—answering any and all questions posed to him during the hearing. He has also answered numerous written questions from committee members. He has been voted out of the Judiciary Committee three times.

I just ask the American people, as they tune in to this debate—they may not be familiar with the confirmation process—if they think it is fair for someone like Professor Liu—and we will put his picture back up so we personalize this—this young man, this husband, this father, this teacher, to have to sit for all of those hours, and then to finally be brought to the floor, after the third time we voted it—that is why I praised Senator LEAHY for doing this again because sometimes there are reasons that we go back and back and back. There are reasons of fairness and justice and because we do not want to miss an opportunity to put someone like Professor Goodwin Liu on the bench.

Now, I will tell you, there have been 12 months of attacks on Goodwin Liu, misrepresentations, unfounded distortions of his record. I want the American people to know this. Politics is tough. I can tell you, running four times for Senate, it is tough. It is brutal. It is ugly. But there is no reason to turn that venom on a nominee like this, and it is offensive to me.

Through it all, Professor Liu could have said: You know what, I cannot take this. I do not need this. My kids do not need this. My family does not need this. But he showed courage and character and dignity.

I was so pleased when President Obama nominated Goodwin Liu to serve on the U.S. Ninth Circuit Court of Appeals because Goodwin Liu is considered one of the brightest legal scholars not just in California but in the Nation. He is a respected authority on constitutional law.

At UC Berkeley’s Boalt Hall School of law, where he is an associate dean and a professor, he is admired widely for his writings and his devotion to his students.

To Professor Liu, if you are watching these proceedings, I am proud of you. To Professor Liu’s wife, Ann, and his two small children, Violet and Emmett, I say thank you for your patience and your unyielding support. You should be so proud of your dad.

Let me tell you a little bit about Goodwin Liu’s background. He was born in Augusta, GA, the son of Taiwanese immigrants who came to this country to practice medicine in underserved areas.

In 1977, they moved to Sacramento, where his parents were primary care physicians for over 20 years. In Goodwin, his parents instilled both perseverance and a strong work ethic, even leaving math problems on the kitchen

table every day of the summer to supplement his school work. As a high school student, he pulled all-nighters studying the dictionary to expand his vocabulary and raise his SAT scores. His hard work paid off, propelling him to Stanford University, where he graduated Phi Beta Kappa, and then to Oxford University, where he was a Rhodes scholar.

I say to my colleagues on the other side, who often say it ought to be the results of your life that count, it ought to be your record that counts, it ought to be your qualifications that count—Stanford University, Phi Beta Kappa, Oxford University Rhodes scholar.

Liu's experience at Stanford and Oxford in student government, as a summer school teacher for low-income youth, codirecting a K-12 youth education conference, and studying philosophy encouraged him to pursue the law and public service. In fact, Liu spent the next 2 years at the Corporation for National Service helping to launch the groundbreaking AmeriCorps program. He led the agency's effort to build community service programs at colleges and universities throughout the country, and he traveled to over 30 States to encourage service among students.

The spark of public service and the law clearly ignited, Liu then went on to attend Yale Law School. His stellar record of achievements continued at Yale, where Liu, along with a classmate, won the prize for the best team argument in the moot court competition. Several of his papers won awards, and he earned prestigious clerkships on both the court of appeals and the Supreme Court.

What more does anyone want from a nominee? I can't even imagine, frankly, even matching this.

In between the clerkships, Liu again chose public service, working at the U.S. Department of Education, helping to implement a congressional appropriation to help turn around low-performing schools. Former South Carolina Governor Richard Riley, who was Secretary of Education at the time, called Liu a "go-to" person—in his words—"for important projects and complex issues because of Liu's ability to see the big picture while also mastering the details of legal and policy problems." What else do you want in a judge? He has an "ability to see the big picture while also mastering the details of legal and policy problems." That is a quote from former South Carolina Governor Richard Riley.

After completing his Supreme Court clerkship, Liu joined the litigation practice at O'Melveny & Myers, working on a wide range of business matters while maintaining an active pro bono practice. So you have a person who worked in government, private practice, and in education. He earned high praise from his peers, including Walter Dellinger, chair of O'Melveny's appellate practice, who said Liu was "widely respected in law practice for his superb legal ability, his sound judgment and warm collegiality."

Then Liu joined the faculty at UC Berkeley's Boalt Hall School of Law in 2003 and quickly established himself as an outstanding teacher as well as a constitutional law and education law and policy expert.

Think about this. This is a young life, with all these experiences, including raising a family.

In the classroom, Liu is popular and well regarded. His introductory constitutional law course is consistently one of the most oversubscribed at Boalt. They want to hear him. They want to be in his presence to understand how the Constitution works and why this country is so special. In 2009, Liu received UC Berkeley's Distinguished Teaching Award, the university's most prestigious teaching excellence award, and was selected by that year's graduating class to be commencement speaker.

Students often remark on Liu's efforts to illustrate the impact of the law on everyday life. As anyone who has taken his con law class knows, to demonstrate that principle, Liu uses a wedding photo that shows him and his new bride, Ann O'Leary, the Irish American daughter of a social worker and union leader from Orono, ME. The two married in Virginia, a State that restricted interracial marriages until the Supreme Court invalidated the provision in the landmark 1967 case *Loving v. Virginia*.

Berkeley Law School Dean Christopher Edley describes Professor Liu this way:

Goodwin Liu is an outstanding teacher, a brilliant scholar, and an exceptional public servant.

Professor Liu is widely respected and has tremendous support across the legal spectrum and from both sides of the political aisle.

I want to read what Ken Starr said about Goodwin Liu. Remember Ken Starr, the former Whitewater prosecutor? This is what he said. He wrote this with Professor Amar in an op-ed piece that ran:

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.

I point out to my Republican friends that Ken Starr is one of your heroes. Come on, listen to what he says about Goodwin Liu. Don't come to the floor and say things about Goodwin that aren't so. Please come to your senses about Goodwin Liu.

There is another supporter I want to talk about too. This is former Bush administration counsel, Richard Painter:

I have done my share of vetting judicial candidates and fighting the confirmation wars. I didn't know much about Liu before his nomination, but I became intrigued by the attention the nomination generated, and

I wondered if his Republican critics were deploying the same tactics Democrats used to attack Republican nominees. They were. If anything, the attacks on Liu have been even more unfair. Based on my own review of his record, I believe it is not even a close question that Liu is an outstanding nominee whose views fall well within the legal mainstream.

That conclusion is shared by leading conservatives who are familiar with Liu's record. We even have a quote from Clint Bolick of the Goldwater Institute, one of the most conservative institutes. They endorsed Liu. This is what they said:

Because of his fresh, independent thinking and intellectual honesty, as well as scholarly credentials and experience, he will serve with distinction on this important court.

If that is not enough for my Republican friends, I have some more. I have former Republican Congressman Bob Barr. He offered praise of Professor Liu's "commitment to the Constitution and to a fair criminal justice system." Barr also noted that "[Liu's] views are shared by many scholars, lawyers and public officials from across the ideological spectrum."

Tom Campbell of California, a former Republican Congressman—someone who actually attempted to run against me a couple of times for the Senate—wrote that "Goodwin will bring scholarly distinction and a strong reputation for integrity, fair-mindedness, and collegiality to the Ninth Circuit." Reflecting on Liu's many years of work in serving the public interest, Campbell also said, "I am not surprised that [Liu] has again been called to public service."

Yes, he has been called and nominated, but he won't be able to continue his extraordinary work unless we get 51 votes here. I know there is some letter that is circulating that attacks Goodwin Liu again. I hope my colleagues will read not just what I am saying but what leading Republicans are saying about how talented Goodwin Liu is. Every single thing the man has done has turned to gold—every single thing he has done. He is best at everything he does. Why would we lose this opportunity for the American people to have him serve them in this important capacity? I ask that rhetorically. I cannot imagine why anybody would vote no.

Here is another one. Professor Liu has even drawn praise from Brian Jones, who served as General Counsel at the Department of Education after Liu's tenure there. This is what Brian Jones, the General Counsel at the Department of Education, said:

During [2001 and 2002], and even after he became a law professor in 2003, [Goodwin] volunteered his time and expertise on several occasions to help me and my staff sort through legal issues he worked on during the previous administration. In those interactions, Goodwin's efforts were models of bipartisan cooperation. He brought useful knowledge and careful lawyerly perspectives that helped our administration to achieve its goals.

But I am convinced, based on his record and my own experiences with him, that he is

thoughtful, fair-minded and well qualified to be an appellate judge.

I don't know why the Republicans filibustered this nomination. I don't know why they filibustered this. I don't understand it.

Let's look at some of the organizations that back Goodwin. Of course, those in the Asian American community are so proud, as they should be and as I am, because Goodwin is a Californian by choice.

In an op-ed published just today, former Secretary Norm Mineta, the first Asian Pacific American member of a President's Cabinet; that is, the Bush Cabinet, wrote that "Professor Liu is an extremely well-qualified nominee who has the intellectual capacity, experience, temperament and integrity to be an excellent jurist." Mineta went on to warn that "if Liu is not confirmed, Asian Pacific Americans may be left with the impression that there continues to be a glass ceiling blocking Asian Pacific Americans from top-level leadership positions regardless of their qualifications."

Again, Norm Mineta—and anybody who knows Norm knows what a wonderful human being he is. George W. Bush chose Norm Mineta, who is a Democrat, to be the Secretary of Transportation. Norm Mineta says that because Professor Liu is so qualified and has so much intellectual capacity, such great experience, such great temperament, and so much integrity, he warns that "if Liu is not confirmed, Asian Pacific Americans may be left with the impression that there continues to be a glass ceiling blocking Asian Pacific Americans from top-level leadership positions regardless of their qualifications."

We also have a quote from the Committee of 100, a national nonprofit, nonpartisan membership organization that addresses issues concerning Sino-U.S. relations affecting the Chinese American community. They wrote that "[Liu's] ascension to the bench would signal that talented people of all backgrounds are integral to our justice system."

What we do here matters. It matters whom we send to these important positions. We have someone here who will break down barriers, but, do you know what, that would not be enough. He has to be great, he has to be outstanding, and he is all those things. Yet we are very nervous about getting 51 votes. We are very nervous that politics is being played. We don't know what is going to happen at the end of the day. That is why I am taking this time, because I want my colleagues to know that if they cast an "aye" vote, it should bring a smile to their faces, and they should feel good in their hearts and their minds that they are doing the right thing.

Twenty-five prominent Asian-Pacific Americans who serve as general counsel to Fortune 1000 companies and other large companies wrote:

Professor Liu has earned praise from conservatives and progressives alike for his

sense of fairness, open-mindedness, and integrity. His intellect and qualifications are beyond dispute. Indeed, Professor Liu has been rated unanimously "well-qualified" by the American Bar Association.

They go on:

It is worth noting that Professor Liu, if confirmed, would become the only Asian Pacific American active appellate court judge in the Ninth Circuit, and only the second Asian Pacific American active appellate court judge nationwide. Especially given the large number of Asian Pacific Americans in California, Hawaii, and other states, covered by the Ninth Circuit—

And I said before I think it is 40 percent of Asian Americans who live in this particular area that the court covers—

the lack of an Asian Pacific American judge in this circuit is striking. We feel that Professor Liu would serve our country well and with distinction.

Professor Liu has drawn law enforcement support, including the California Correctional Peace Officers Association, as well as the National Asian Peace Officers Association, which noted that Professor Liu has "earned the respect of [its] members and the large audience of the law enforcement community."

David Lum, the president of National Asian Peace Officers Association, went on to compliment Liu as "a person of integrity, dedication, passion, enthusiasm, and law and order."

Liu has also received support from the business community, including from the prominent business executives with whom Liu served on the Stanford University board of trustees. In a letter of support, Liu's fellow trustees wrote the following:

Across a wide range of complex issues, Goodwin routinely asks thoughtful and incisive questions. He is good at thinking independently and zeroing in on important issues that need attention. Even in a room full of highly accomplished leaders, Goodwin is impressive. He is insightful, constructive, and a good listener. Moreover, he possesses a remarkably even temperament; his demeanor is unfailingly respectful and open-minded, never dogmatic or inflexible. Given these qualities, it was no surprise that he was asked to chair the board's Special Committee on Investment Responsibility after serving just one year of his five-year term.

Again and again, there is a thread running through this man's life at 40. That is how old he is, 40—40 years old. Everything this man has done, this young man has been unbelievably—I want to say unimaginable at his age that he has done all he has done.

They continue:

In short, Goodwin's strengths are exactly what we expect in a judge: objectivity, independence, collegiality—

This is what the Stanford trustees say—

respect for differing views, sound judgment. Goodwin possesses these qualities on top of the brilliant legal acumen that is well-established by his professional record and the judgment of those most familiar with his scholarly work.

It goes on and on.

The President of Stanford University, along with two presidents emer-

itus, wrote to endorse Liu's nomination. They said that Liu "has epitomized the goal of Stanford's founders, which was to promote the public welfare by exercising an influence on behalf of humanity and civilization, teaching the blessings of liberty regulated by law, and inculcating love and reverence for the great principles of government as derived from the inalienable rights of man to life, liberty and the pursuit of happiness."

This eloquence that is coming out of people's mouths about Goodwin—honestly, I have stood here many times, and I have spoken on behalf of many nominees. I honestly have not had a situation where the eloquence and passion of the supporters has come through as it has for this young man. He is a blessing, honestly. I feel at this moment we need to back him—all of us—and bring this country together around someone who epitomizes the American dream.

I want to speak about, as I wind down, newspapers across the country that weighed in to support Liu's nomination.

The Washington Post remarked that:

Mr. Liu has sterling credentials that earned him the highest rating from the American Bar Association. And there have been no allegations of impropriety to disqualify him from serving. The brilliant professor [they call him], who just turned 40 in October, testified that he would not allow his academic musings to interfere with the duties of a lower-court judge to follow precedent. He should be confirmed and given the opportunity to demonstrate that he can do that.

I was going to ask unanimous consent because I know Senator TESTER has been waiting for 40 minutes—I ask the Senator, does he need about 5 or 7 minutes in morning business?

Mr. TESTER. Yes.

Mrs. BOXER. I ask unanimous consent that Senator TESTER be able to speak for 7 minutes in morning business before we get to Senator GRASSLEY; is that acceptable?

Mr. GRASSLEY. If the Senator is done, that is OK.

Mrs. BOXER. I am almost done.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mrs. BOXER. I am closing in the next 2 minutes.

The Sacramento Bee noted that Liu would add luster to any court. The Los Angeles Times joined the New York Times in endorsing his confirmation.

We heard from Professor Liu when I opened, and I am going to close by saying this: When we ask people in this country to give back to this Nation and they step to the plate and they want to give their talent to this Nation and they are supremely qualified and they bring with them mainstream views, mainstream endorsements, bipartisan endorsements from the progressive community to Ken Starr, for goodness' sake, give this man an up-or-down vote and do not say that you believe that judges deserve an up-or-down

vote when you are in the majority and suddenly say they do not deserve it now.

I hope we will see the 60 votes for cloture and then the 51 votes for confirmation. I am privileged to have had this opportunity to share the story of Professor Goodwin Liu with my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. TESTER. Madam President, I think this is appropriate. I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEBIT INTERCHANGE FEES

Mr. TESTER. Madam President, I thank Senator BOXER and Senator GRASSLEY for their generosity. I am not here to talk about Goodwin Liu. I am going to talk about the debate over debit interchange.

In a matter of weeks, the government is planning to price-fix debit card swipe fees below—below—the cost of doing business. They are going to price-fix debit card swipe fees below the cost of doing business.

On the surface, the plan might make sense. But peel back the layers and we will see why a whole bunch of folks out there on both sides of the aisle are raising a flag.

I am not asking to repeal the rules or even change them. I am asking that we take a closer look so we can get the information to understand the impacts, both intended and unintended. I have listened to the feedback my colleagues have shared on this issue. I have heard their concerns.

While it is important to stop and examine the impact of limiting debit card swipe fees, some have said 2 years is simply too long. I am willing to adjust my legislation to address those concerns. Senator CORKER and I have decided to shorten the timeframe from 24 months to 15 months.

Here is how the 15 months is going to be used. Fifteen months will provide the agencies with 6 months for a study. It will provide the Federal Reserve 6 months to rewrite the rules using that study. It will allow 3 months to implement the final rules. Fifteen months is the bare minimum to get this study right, and we want to get it right.

For me, stopping and studying the unintended consequences of government price-fixing has everything to do with access to capital for small businesses and consumers in rural America. Make no mistake, the big banks are going to do fine no matter what. So I opposed bailing them out. All but two banks in my entire State are considered small community banks and will be affected by this debit interchange price-fixing rule.

All of Montana's credit unions will be affected as well. They will feel the pinch, and they will lose because the government is going to set a price for doing business that does not cover their costs.

Let me say it again. The Federal Government is going to tell these folks what price to set on interchange rates, and it will not be enough for the little guys to be able to compete in the marketplace.

Let me ask this: How would a big box retailer react if we set the price of T-shirts below what it cost to make, ship, and market them? You can bet the retailers would be up in arms—and rightfully so—about the government setting prices and telling them how to run their business.

Some have suggested that the only way to have a competitive marketplace is by capping rates. That kind of reasoning does not make sense to a farmer like me. When we slant the playing field against small banks, they cannot compete with the big guys. If they go under, the businesses and consumers who rely on them are left hanging. That is why a populist farmer from rural America is on the side of common sense in this debate, and I am on the side of Montana small businesses and consumers.

Last Thursday, I asked Fed Chairman Ben Bernanke about the impact of government price fixing as it applies to rural America. He is not the only major regulator who has raised serious questions about whether the supposed exemption for small banks will work. He is not the only one. Last week, Chairman Bernanke said "it could result in some smaller banks being less profitable and failing."

Let me repeat that, in the words of Chairman Bernanke, the small banks in Montana and across America could fail under this planned rule.

What does it mean if more banks fail? It means more consolidation in the banking industry. How in the world is that good for consumers? How is it better for a small business in Glendive, MT, to have to ask a bank headquartered on Wall Street for a loan instead of going to the bank on Main Street? Are big banks going to provide the same level of service as community banks? I think not. Will they be able to evaluate the prospects of a small business by only looking at data, without understanding the communities they serve? Will big banks create strong relationships with the people in rural America? Will they do that? How about those folks who are looking to start a small business?

We know credit unions are one of the few financial institutions to ever consider going into Indian Country to help bring investment to some of the most impoverished areas in this country. Do you think if these small folks go under, there will be anyone else willing to lend on reservations? No way. No way.

During last week's hearing, FDIC Chairwoman Sheila Bair said this new rule is "going to reduce revenues at a number of smaller banks, and they will have to pass that on to customers in terms of higher fees." Rural America—especially in this fragile economy—cannot afford that.

Today I want to share why a few businesses in Montana are opposed to government price fixing. Their stories are not uncommon. They are quite ordinary.

Doris Rocheleau runs Doris's Day Care in Great Falls, MT. She has been doing business for nearly 30 years with a community bank. She tells me she is struggling to make ends meet, as many small businesses are, and paying more in monthly checking would hurt her very much.

Also, in Great Falls there is a small business owner named Mark Voyles. Mark owns Y-Not Trucking. His reason for supporting my amendment to stop and study the government limit is because he "doesn't want to pay more fees on his money in his bank."

Cabela's is a large retailer, a popular sporting goods store in Billings, MT. They are wary of the Durbin amendment because they offer their customers a reward credit card. They have real concerns with government price controls and what they will mean for their ability to meet the needs of their customers.

The bottom line is this: Allowing the government to price-fix debit card swipe fees is a slippery slope. Maybe that is why my amendment is to stop and study the impact of this proposed rule. It has broad bipartisan support from folks such as the National Education Association and Americans for Tax Reform—different sides of the economic equation. Then there are non-profit organizations, such as Rural Dynamics in Montana. Rural Dynamics serves the entire State of Montana—thousands of folks every year. Their mission? To help individual people and families achieve economic independence, to make sure folks can earn, keep, and grow their assets to reach economic independence.

Rural Dynamics is a well-respected organization. Many of their strategies involve helping Montanans manage their assets and save for their future, enabling them access to banking services. Anything that would result in undue higher fees would take their mission backwards.

Rural Dynamics says simply: We want to understand the long-term risk associated with limiting debit card swipe fees, how it will impact rural America, how it will affect economic independence.

Just as convincing as the small businesses in my State are the administration experts who have been tasked with trying to make this rule on debit interchange work. Chairman Bernanke last week said he is still not sure whether the small issuer exemption would work, saying:

There are market forces that would work against the exemption.

Sheila Bair, Chairwoman of the FDIC, raised similar concerns about the workability of the small issuer exemption. So has Chairwoman Debbie Matz of the National Credit Union Administration. So has the Conference of