that could encourage government bureaucrats to stop any and all permits, and that would be a terrible outcome.

The fact is, neither the legislation we will vote on today nor the legislation we voted on yesterday addresses the bigger issue that our Nation must declare its independence from foreign oil. We can only do that by developing a true national plan for energy independence.

I have come to this floor many times to urge my Republican and Democratic colleagues to work with me to put together an energy plan that works for all of America. In fact, just last week, I came here to address the importance of expanded domestic drilling. I truly believe this Nation needs to develop all of our domestic resources, whether it is drilling for oil or natural gas, mining coal, producing wind and solar, developing better nuclear, biomass, or geothermal so that we can declare our energy independence within a generation. But in developing and pursuing a national energy plan, we cannot lose sight of our commonsense values and our priorities.

This bill falls short of those commonsense priorities, but I assure my colleagues that I will work with any Senator from either party who will try to create a national energy policy that will truly help the Nation achieve energy independence.

I thank all of my colleagues, and I hope we will be able to work together to move this Nation forward for true energy independence.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. ROCKEFELLER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 42, nays 57, as follows:

[Rollcall Vote No. 73 Leg.]

YEAS—42

Alexander	Chambliss	Crapo
Ayotte	Coats	Enzi
Barrasso	Coburn	Graham
Blunt	Cochran	Grassley
Boozman	Collins	Hatch
Brown (MA)	Corker	Heller
Burr	Cornyn	Hoeven
Hutchison	Lugar	Risch
Inhofe	McCain	Roberts
Isakson	McConnell	Rubio
Johanns	Moran	Sessions
Johnson (WI)	Murkowski	Thune
Kirk	Paul	Toomey
Kyl	Portman	Wicker

NAYS—57

Akaka	Harkin	Nelson (FL)
Begich	Inouye	Pryor
Bennet	Johnson (SD)	Reed
Bingaman	Kerry	Reid
Blumenthal	Klobuchar	Rockefeller
Boxer	Kohl	Sanders
Brown (OH)	Landrieu	Schumer
Cantwell	Lautenberg	Shaheen
Cardin	Leahy	Shelby
Carper	Lee	Snowe
Casey	Levin	Stabenow
Conrad	Lieberman	Tester
Coons	Manchin	Udall (CO)
DeMint	McCaskill	Udall (NM)
Durbin	Menendez	Vitter
Feinstein	Merkley	Warner
Franken	Mikulski	Webb
Gillibrand	Murray	Whitehouse
Hagan	Nelson (NE)	Wyden

NOT VOTING—1

Baucus

The PRESIDING OFFICER. On this vote, the yeas are 42, the nays are 57. Under a previous order requiring 60 votes for the adoption of this motion, the motion is withdrawn.

The majority leader.

EXECUTIVE SESSION

NOMINATION OF GOODWIN LIU TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

Mr. REID. I ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 80, the nomination of Goodwin Liu, of California, to be U.S. Circuit Judge for the Ninth Circuit; further, that on Thursday, May 19, following morning business, the Senate resume consideration of the nomination and the time until 2 p.m. be equally divided in the usual form prior to a cloture vote on the nomination as under the previous order.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read the nomination of Goodwin Liu, of California, to be United States Circuit Judge for the Ninth Circuit.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. KIRK. Mr. President, I ask unanimous consent to speak as in morning business for 2 minutes.

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

CALLING FOR THE RESIGNATION OF DOMINIQUE STRAUSS-KAHN

Mr. KIRK. Mr. President, I rise today to call for the resignation of Mr. Dominique Strauss-Kahn, head of the International Monetary Fund. The criminal allegations against Mr. Strauss-Kahn are alarming and undermine confidence in the institution at a critical juncture in our economic history. Mr. Strauss-Kahn has forfeited our confidence and should resign or be fired from his position at the IMF.

Over the last 2 years, the IMF presided over the European debt crisis, which included controversial bailouts of Greece, Ireland and Portugal. I remain especially concerned about the U.S. taxpayer share of funding these European bailouts and American taxpayers' exposure to new sovereign risks. While I have questions about the actions taken by the IMF to handle the debt crisis, the institution's role in our global financial system requires strong leadership.

The IMF's Deputy Managing Director, John Lipsky, should assume full responsibility of the IMF and the process to determine a permanent replacement should commence at once. I encourage U.S. Executive Director of the IMF, Meg Lundsager, to strongly advocate for Mr. Strauss-Kahn's resignation or termination and aid in the search for a more worthy replacement.

The PRESIDING OFFICER. The Senator from Ohio.

TRADE ADJUSTMENT ASSISTANCE

Mr. BROWN of Ohio. Mr. President, I appreciate the courtesy of the senior Senator from Virginia who is about to speak. I will be brief.

I wish to applaud the President today on his comments and the administration's comments, especially the comments of Trade Ambassador Kirk and Gene Sperling, the President's top economic adviser. They have made it clear they will not submit the three free trade agreements—one with Colombia, one with Panama, and one with South Korea—until legislation has come to their desks to take care of the issue of trade adjustment assistance.

This Congress, because of some objections on the other side of the aisle, allowed the trade adjustment assistance language to expire in February. That simply means many workers who lost their jobs because of free trade agreements, or lost their jobs because of trade—not necessarily the countries we had trade agreements with—were going to get some assistance so they could, in fact, be retrained so they could go back to work. Losing their jobs had everything to do with what happens in other ways but has nothing to do with their job performance or even their company's job performance.

The President made the right decision by saying we are not going to move forward with these free trade agreements. I don't much like them, but that is not the point. We are not going to move forward until we have helped these workers find jobs.

Second, we are going to make sure, as Senator CASEY and I have said on the floor before, that the health coverage tax credit is also renewed. That matters, to be able to continue the health coverage of many workers.

And, third, that the work of Senator WYDEN, Senator STABENOW, and Senator MCCASKILL will continue, to work on trade enforcement in making sure

these trade rules and trade laws that are in effect will actually be in force so we can protect American jobs.

When we pass these trade agreements, they always cost us jobs. It is about time we take care of workers and communities that suffer from it.

I thank Senator WEBB, and I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WEBB. Mr. President, I wish to speak today on the pending nomination of Professor Goodwin Liu for a seat on the Ninth Circuit Court of Appeals. Regretfully, I will be voting against this nomination for reasons I will explain. At the same time, I wish to emphasize my profound respect for this institution and for my fellow Senators from both parties, and I believe it would be wrong to vote against a cloture motion whose intent is to proceed with debate on the merits of one who has been nominated to be a judge. I made this point loudly and clearly when the nomination of one of my Virginia constituents, Barbara Keenan, was filibustered. Philosophical consistency—and my admiration and respect for all the work Chairman LEAHY has been doing in order to fill the many vacancies in our Federal court system—compel me to vote to proceed with the debate on Mr. Liu, but I do not, however, intend to vote in favor of his confirmation.

I have met with Mr. Liu. I have read many of his writings and most of the testimony from his two confirmation hearings. He is clearly talented and whatever he ends up doing, he is certain to have a long future in our country. He also has been blessed beyond words by the goodness of our society. Both his parents came to this country already as physicians. He attended our finest universities. He was a Rhodes scholar. He is a Yale Law School graduate, and he has spent almost his entire career as a talented, if somewhat controversial, professor of law. When I met with Mr. Liu I found him to be personable and clearly bright.

But intellect in and of itself does not always give a person wisdom, nor does it guarantee good judgment, and the root word of judgment is, of course, judge. This is our duty today: to decide whether Professor Liu's almost complete lack of practical legal experience, coupled with his history of intemperate, politically charged statements, allows us a measure of comfort and predictability as to whether he would be fair and balanced while sitting on one of the highest courts in the land. Mr. Liu's temperament and his frequently strident political views have been called into question by many well-intentioned observers, including my respected colleague, Senator LINDSEY GRAHAM, who, like myself, voted in favor of both Justices Sotomayor and Kagan. Senator GRAHAM concluded that Professor Liu seems better fit for a life in politics rather than on the bench. My own concern is that we in the Senate have no real ability to know whether Mr. Liu would temporize these views or conduct himself in a different manner if he were to be given a seat in one of the highest judicial positions in our country.

The list is long, and time is short, but I would summarize my concerns through two observations.

The first involves Professor Liu's public comments regarding Supreme Court Justice Alito, which I know will be repeated by others. Mr. Liu's view was that:

> Judge Alito's record envisions an America where police may shoot and kill an unarmed boy to stop him from running away with a stolen purse . . . where a black man may be sentenced to death by an all-white jury for killing a white man . . . I humbly submit that this is not . . . the America that we aspire to be.

Obviously, I share the view of many others that whether one agrees or disagrees with Justice Alito's view of the Constitution, this is hardly a fair representation of his view of our society.

The second observation is more telling and it goes to the America we all should aspire to be: an America where every person, regardless of race, creed, national origin, or personal circumstances, has the same opportunities to succeed to the full extent of their potential. Let me make a point that a lot of people seem uncomfortable with in speeches on this floor. That means White people too. Economic disadvantage is not limited to one's race, ethnic background, or time of immigration to America. When it comes to policies that are designed to provide diversity in our society, we do ourselves an enormous injustice by turning a blind eye to the wide variance among White cultures as we discuss greater representation from different minority groups.

For all of his emphasis on diversity programs, I do not see anywhere that Mr. Liu understands this vital point. In fact, one tends to see the opposite. In 2004, Mr. Liu made a speech at an American Constitution Society Conference. In this speech he mentioned: "The power of the courts to influence society, . . . the power of legal principle to ratify inequality." He then went on to comment:

> If we work hard, if we stick to our values, if we build a new moral consensus, then I think someday we will see Millikan, Rodriquez, Adarand, be swept into the dustbin of history.

So we know, first, that Mr. Liu wants to use the courts to influence society and to ratify his view of inequality. OK. How does that fit into Adarand being swept into the dustbin of history?

What was Adarand about? Well, it was about Randy Pech, one of five kids born to a welder and a mom, whose family had lost their farm in Iowa during the Great Depression. The mom then worked as a sales clerk in a department store. Neither of them had ever gone to college. Mr. Pech left college after 3 years and started a company that put up guardrails along highways. His startup was the money he would have used in his fourth year of college and his loan was accomplished by using his parents' retirement pensions as collateral. He made a bid as a subcontractor on a highway construction project in Colorado that was by far the lowest bid, but he lost to a minority-owned company because our own government was paying bonuses to contractors who made subcontracts with so-called "disadvantaged businesses," and Mr. Pech happened to be White. The Supreme Court decided that this was wrong and decided in Mr. Pech's favor, although the Civil Rights Commission pointed out 10 years later that the Supreme Court's decision was still not being complied with by Federal agencies.

Mr. Liu offered an explanation for his comments during his confirmation process, but taken in the context of his other remarks, I find that statement unconvincing.

Last July I wrote an article in the Wall Street Journal saying that while I continue to support the original goal of affirmative action, which was to assist African Americans who still suffer the badges of discrimination and slavery, it is time for us to recognize that we harm ourselves any time we cut away any person or group from the opportunity to reach their full potential in our wonderful and unique society. As one can imagine, I got a few questions from some groups about this article, so let me answer those questions—and sum up my concerns about Mr. Liu—with an observation.

The same day my Wall Street Journal ran, July 23, a Remote Area Medical Clinic was held in the open air of the Wise County fairgrounds in the Appalachian mountains of southwest Virginia. These clinics bring medical professionals into underserved areas where medical care is hard to find. They are not that different from what we used to do out in the impoverished villages of Vietnam when I was a Marine infantry officer many years ago. Twelve of my staff members went down to Wise County to volunteer. Working in tents, mobile units, and horse stalls, over these 3 days the RAM clinic took care of 6,869 patient visits and pulled more than 4,000 teeth in the open air of the Wise County fairgrounds. In this part of Virginia, nearly half the population lives below 200 percent of poverty, almost a quarter of them have no insurance whatsoever. Age-adjusted mortality rates in some counties are as much as 70 percent higher than in the rest of Virginia. This Appalachian mountain region is, of course, predominantly White. Let me emphasize that these conditions come from cultural issues based on many generations of hardship and strife and not simply individual choice.

Back there in those mountains, there is no doubt somebody who is thinking that if he could put together a little money and maybe get somebody to believe in him, maybe he could start up a

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 production 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 Competitiveness 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, statues, 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 particular 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 abd 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 emeritus, 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 nonprofit 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

State Banking Supervisors. So has the National Association of State Credit Union Supervisors.

This represents all—all—of the regulators of the small financial institutions at the State and national level—every one of them. These are the folks who are tasked with keeping our community banks and credit unions vibrant and strong, ensuring these institutions are well capitalized and making sound loans. Let me say again, all of them—all of them—have raised concerns about the impact of this rule on the small financial institutions they supervise.

These regulators are not convinced these rules are going to be able to work in the way they were intended. My friends on the other side of this debate continue to attack these folks. They have said they are shills for the big banks; that they do not understand market forces; that they don't understand small institutions. This couldn't be further from the truth.

And no one—no one—has been able to explain to me why studying this issue to make sure these rules do what they say they are supposed to do is a bad idea. To stop and to study. That is what the bipartisan bill I am sponsoring does. To stop and to study the unintended consequences for rural America and this country as a whole. If this rule goes into effect, the consumers and businesses who rely on community banks and credit unions—oh, yeah—are going to pay the price. And we can bet many retailers won't be eager to pass the few pennies they save down to you. Yet Doris Rochileau's monthly banking fees will go up. Mark Voyles will have to pay more to keep his money in his bank. The folks at Cabela's will be asking: What is next? And will it hurt their loyal customers? Thousands of Montanans who rely on Rural Dynamics will have more hurdles to jump over to reach economic independence.

These stories hit home. They are the stories I tell when someone asks: Why would a populist farmer be against the government telling the small banks that drive our economy how to do business? I am not asking to repeal this provision; far from it. I am asking us to do our homework in this body, to make sure we understand exactly what it means for Montana and all of America.

With that, I want to express my thanks to the good Senator from Iowa one more time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Madam President, I come to the floor to speak on the nomination of Goodwin Liu to be Circuit Judge of the Ninth Circuit.

I have said many times over the past 2 weeks—and perhaps for longer than the last 2 weeks—that by any fair measure we are moving judicial nominees at a very brisk pace. This month alone, we confirmed 7 judges in 10 days. In the short time we have been in session this year, we have confirmed 24 judges. That is a rate, almost, of one judge every other day. This year, the committee has favorably reported 51 percent of President Obama's nominees, yet it seems the more we work with the majority on filling vacancies, the more complaints we hear.

Furthermore, as we work together to confirm consensus nominees, we are met with the majority's insistence that we turn to controversial nominees, such as the one before us today—Goodwin Liu—because this seems to be the most controversial of President Obama's nominees we have had to this point. I have pledged, and indeed I have demonstrated, cooperation in moving forward on consensus nominations. There is no doubt that Mr. Liu does not fall into the category of being a consensus nominee.

My objections to this nominee can be summarized in five areas of concern: his controversial writings and speeches, an activist judicial philosophy, his lack of judicial temperament, his troublesome testimony and lack of candor before the committee, and his limited experience.

Mr. Liu describes his writings as critical, inventive, and provocative, and that is what they are. He states he is simply a commentator and his role is merely to poke, prod, and critique. The problem I have with that is his legal scholarship goes well beyond simple commentary. The nominee argues the 14th amendment creates a constitutional right to some minimum level of public welfare benefits. That is a real reach. He has said:

> The duty of government cannot be reduced to simply providing the basic necessities of life. . . . The main pillars of the agenda would include . . . expanded health insurance, child care, transportation subsidies, job training, and a robust earned income tax credit.

There is no doubt those may be policy issues Congress ought to deal with, but it is a real stretch to say that they are constitutionally protected rights.

Mr. Liu is a strong proponent of affirmative action and the constitutionality of affirmative action. Celebrating the Supreme Court's decision in Grutter v. Bollinger, he said:

> . . . [a]chieving racial diversity throughout our leading [educational] institutions is not merely constitutionally permissible, but morally required.

He believes bans on gay marriage are unconstitutional. The nominee was one of several law professors who filed a brief with the California Supreme Court in a suit seeking to have the California same-sex marriage prohibition declared unconstitutional.

These statements, just a sample of his works, are not merely a scholarly reflection on the state of law. Instead, they are a prescription for change—big change. He stated, following President Obama's election in an interview with NPR's ''Weekend Edition'':

> Whereas I think in the last seven or eight years we had mostly been playing defense in the sense of trying to prevent as many—in our view—bad things from happening. Now we have the opportunity to actually get our ideas and the progressive vision of the Constitution and of law and policy into practice.

Mr. Liu holds a view of the Constitution that can only be described as an activist judicial philosophy. The centerpiece of his judicial philosophy—a theory he describes as ''constitutional fidelity''—sounds nice until you learn what it actually means. Here is what he means by fidelity:

> The Constitution should be interpreted in ways that adapt its principles and its text to the challenges and conditions of our society in every single generation.

Continuing on, he states:

> On this approach, the Constitution is understood to grow and evolve over time as the conditions, needs, and values of our society change.

That is not a far cry from the unwritten constitution of Great Britain, where the Parliament is supreme and makes a determination from time to time on what the policies are, as opposed to in this country where the natural law—or the laws that are the rights we have given to us by our Creator, not by government—are the basis of our law.

When I questioned the nominee at his hearing regarding his position, he stated his book respects the notion that the text of the Constitution and the principles it expresses are totally fixed and enduring. I must admit some confusion with this contradiction. Either the text and the principles are fixed and enduring or they are adaptable—something that grows and evolves, as it happens with the Constitution of Great Britain. Mr. Liu is, apparently, comfortable with this contradiction. I am not. It is a pattern I find throughout his testimony.

I am concerned by his apparent lack of appreciation for the proper role of a judge in our system of checks and balances. His philosophy leads to an inevitable expansion of the power of the judiciary. For example, according to Mr. Liu, courts should play a role in creating and expanding constitutional welfare rights. He argues that once a legislative body creates a welfare program, it is the proper role of the courts to grasp the meaning and the purpose for that welfare benefit. He states the courts can recognize welfare rights by ''invalidat[ing] statutory eligibility requirements or strengthen[ing] procedural protections against the withdrawal of benefits.'' That is forthrightly an attack on the legislative branch of government, and on its power to make statute and law. The courts are supposed to be interpreting, not making law.

The nominee also seems to favor a social needs-based view of living constitutionalism. His scholarly work argues that judicial decisionmaking should be shaped by contemporary social needs and norms, rather than the certainty of the Constitution. Notably, he has said:

. . . 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.

It is just as if what the writers of the Constitution in 1787 thought ought to be the basic law of this land means nothing today. So as you know, I think this is very troublesome. Our constitutional framework puts the legislative function in the Congress, not the courts. It is the legislative function, through the political process, where the people rule, that determine when a particular value is to become part of our law. This is not the duty of judges. The judiciary is limited to deciding cases and controversy, not establishing public policy.

I would note further that this view of constitutional interpretation does not rely on the acts of the legislature or on the precedents established by higher courts. Rather, it is based on a concept of what he prefers to call ''evolving norms.'' Furthermore, as he testified before the committee, it is those ''evolving norms'' that inform the Supreme Court's elaboration of constitutional doctrine.

Mr. Liu tried to sound like a mainstream jurist when he stated the duty of a circuit judge was to faithfully follow the Supreme Court's instructions on matters of constitutional interpretation. Who is going to argue with that? Again, that sounds nice, doesn't it, but what does it mean? If we accept his premise that the Supreme Court's instructions are based upon evolving norms, it follows that such ''evolving norms'' will shape the circuit courts' decisions as well. This activist theory leads to a judicial system substituting the whims of individual judges over the text and original meaning of the U.S. Constitution. This is not the duty of any circuit judge.

Mr. Liu's legal views and judicial philosophy are clearly out of the mainstream. A small example illustrates this point. I questioned four of President Obama's district judge nominees who followed Mr. Liu on the day of his hearing. I asked each of them concerning a specific point about Mr. Liu's philosophy. Each and every one of them flatly rejected Mr. Liu's position.

This included his view on judges considering ''collective values'' when interpreting the Constitution; on using foreign law; on interpreting the Constitution in ways that adapt its principles and its text; and on considering ''public values and social understandings'' when interpreting the Constitution.

Based on his out-of-the-mainstream views, it is no surprise that his nomination is opposed by so many. Included in that opposition are 42 district attorneys serving in the State of California. They are concerned, among other things, about his views on criminal law, capital punishment, and the role of the Federal courts in second-guessing State decisions.

My third area of concern is that the nominee has made a number of critical statements which indicate a lack of judicial temperament. He has been very openly critical of the current Supreme Court.

In one article, he said that the holding in Bush v. Gore was ''utterly lacking in any legal principle.'' He has claimed that the current Court as a whole is unprincipled, saying that ''if you look across the entire run of cases, you see a fairly consistent pattern where respect for precedent goes by the wayside when it gets in the way of result.''

Mr. Liu was highly critical of the nomination of Justice Roberts. He published an article on Bloomberg.com entitled ''Roberts Would Swing the Supreme Court to the Right.'' In that article, he acknowledged that Roberts was qualified, saying ''[t]here's no doubt Roberts has a brilliant legal mind. . . . But a Supreme Court nominee must be evaluated on more than legal intellect.'' He then voiced concerns that ''with remarkable consistency throughout his career, Roberts ha[d] applied his legal talent to further the cause of the far right.'' He also spoke very disparagingly of Justice Roberts' conservative beliefs:

[b]efore becoming a judge, he belonged to the Republican National Lawyers Association and the National Legal Center for the Public Interest, whose mission is to promote (among other things) ''free enterprise,'' ''private ownership of property,'' and ''limited government.'' These are code words for an ideological agenda hostile to environmental, workplace, and consumer protections.

Let's think about what he just said there, about Judge Roberts, now Chief Justice Roberts. He said private ownership of property, limited government, and free enterprise are code words for an ideological agenda hostile to environment, workplace and consumer protections? Does he think we are Communist-run China, that the government runs everything, that their system of government is a better one? When they bring online a coal-fired plant every week? Plants that pollute the air and put more carbon dioxide into the air than we do in the United States? Where children are dying because the food is poisoned and consumers aren't protected? Where every miner is in jeopardy of losing their lives? That is how far off base this nominee is when he refers to free enterprise, private ownership of property, and limited government as being bad. But if you get government more involved, as they do in China, it is somehow a better place?

The nominee has been very publicly critical also of Justice Alito in particular. He believes it is a valid criticism of Justice Alito to say that ''[h]e approaches law in a formalistic, mechanical way abstracted from human experience.'' And we are all familiar with Mr. Liu's scathing attack at Justice Alito's confirmation hearing. When asked about his testimony, Mr. Liu admitted the language was unduly harsh, provocative, unnecessary, and was a case of poor judgment. That is one statement of Mr. Liu with which I can I agree.

I can appreciate that Mr. Liu now understands the unfortunate language he uses. The trouble I have with this, however, is that it shows that even when stepping out of the academic world, the nominee promotes extreme views and intemperate language. Even if I accept his rationale for the tone of his work in the academic world, that does not explain his congressional testimony. That was one opportunity where he could demonstrate a reasoned, temperate approach. Yet he failed that test. I think it may also indicate what we might expect from a Judge Liu, should he be confirmed—the same thing. To me, that is an unacceptable outcome.

The fourth major area of concern is Mr. Liu's testimony and candor before the committee, which was troubling at times and lacked credibility. Even before he appeared before the committee, the nominee had difficulty providing the committee, with materials required by his questionnaire. As Senator SESSIONS said at the time:

At best, this nominee's extraordinary disregard for the Committee's constitutional role demonstrates incompetence; at worst, it creates the impression that he knowingly attempted to hide his most controversial work from the Committee.

During his testimony, the nominee said, in reference to his past legal writings, ''whatever I may have written in the books and the articles would have no bearing on my action as a judge.'' Oh? Trying to paint himself as a judicial conservative, the nominee attempted to walk away from his previous positions. He tried to distance himself on the proper role of a judge, on the use of foreign law, on the appropriateness of racial quotas and from his previous views on free enterprise and private ownership of property. Even the Washington Post found his testimony a bit hard to believe. The Post's editorial stated:

Mr. Liu is unlikely to shunt aside completely the ideas and approaches he has spent years developing. But the real problem, of course, is not that he adheres to a particular judicial philosophy, but that he—like so many others before him—feels the need to pretend not to have one.

We have often heard the term ''confirmation conversion'' applied to nominees who appear to have a change of legal philosophy when they are nominated to a Federal judgeship. As I review the record, I think this nominee has taken that concept a step further—I would use the phrase ''confirmation chameleon.'' It seems to me that Mr. Liu is willing to adapt his testimony to what he thinks is most appropriate at the time.

I have discussed other contradictions already, but let me give you a clear example. Senator CORNYN of Texas asked him about his troubling record contained in his work-product that expressed opinions on issues such as the

death penalty, same-sex marriage, and welfare rights. Senator CORNYN then stated ''You are now saying, 'Wipe the slate clean because none of that has any relevance whatsoever to how I would conduct myself as a judge if confirmed by the Senate.' Is that correct?'' Mr. Liu responded, ''That is correct, Senator.''

A few minutes later I asked him, ''If we were to, let us just say, wipe the slate clean as to your academic writings and career, what is left to justify your confirmation?'' The nominee responded, ''I would hope that you would not wipe my slate clean, as it were. You know, I am what I am.''

Mr. Liu cannot have it both ways. Either his record stays with him or we wipe the slate clean. Perhaps in the long run it doesn't matter, because either way it leaves us with an individual who should not be given a lifetime appointment. If you include his record as a law professor, then we are left with the evidence of a left-leaning, judicial activist. If you do not include it, then we are left with a 2-year associate with law clerk experience and little else.

That leads me to my final point. I am concerned about the nominee's lack of experience. After graduating from law school in 1998, he clerked for Judge David S. Tatel on the U.S. Court of Appeals for the District of Columbia. When his clerkship ended, Mr. Liu became special assistant to the Deputy Secretary of Education for 1 year.

In 2000, he worked as a contract attorney for the law firm of Nixon Peabody, LLP, where he ''assisted with legal research and writing.'' From 2000 to 2001, the nominee clerked for Justice Ruth Bader Ginsburg on the Supreme Court. After his Supreme Court clerkship, he became an associate at O'Melveny & Myers, where he remained for less than 2 years. According to his questionnaire, he appeared in court only ''occasionally.'' He also reported that his other work as an attorney has not involved court appearances. He has not tried any cases to verdict, judgment, or final decision, Since 2003, the nominee has been a full-time law professor at UC Berkeley School of Law, and in 2008 he became associate dean.

After his nomination last year, the ABA Standing Committee on the Federal Judiciary gave Mr. Liu the rating ''Unanimous Well-Qualified.'' I am somewhat perplexed by this rating. According to the standing committee's explanation of its standards for rating judicial nominees, ''a prospective nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law.''

Further, ''the Committee recognizes that substantial courtroom and trial experience as a lawyer or trial judge is important.'' At the time of his nomination and rating, the nominee had graduated from law school less than 12 years prior. He has been a member of a State bar only since May 1999. As noted above, he has no trial experience and has never been a judge.

I will conclude with this thought. Given his record and testimony, I do not believe the nominee has an understanding and appreciation of the proper role of a judge. I believe, if confirmed, he will bring a personal agenda and political ideology into the courtroom.

It is ironic that in commenting on the Roberts nomination, Mr. Liu sad ''the nomination is a seismic event that threatens to deepen the Nation's red-blue divide. Instead of choosing a consensus candidate [the President] has opted for a conservative thoroughbred who, if confirmed, will likely swing the Court sharply to the right on many critical issues.''

If confirmed, I am concerned that Mr. Liu will deeply divide the Ninth Circuit and move that court even further to the left—if that is possible. If confirmed, his activist ideology and judicial philosophy would seep well beyond the Berkeley campus—and it seems that is difficult. Sitting on the Ninth Circuit, his opinions and rulings would have far reaching effect on individuals and businesses throughout the nine-State circuit, including places like Bozeman, MT; Boise, ID, and Anchorage, AK.

For the reasons I have articulated—No. 1, his controversial writings and speeches; No. 2, an activist judicial philosophy; No. 3, his lack of judicial temperament; No. 4, his lack of candor before the committee, and No. 5, his limited experience—as well as many other concerns which I have not expressed today, I shall oppose this nomination.

I yield the floor.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from California.

Mrs. FEINSTEIN. I ask unanimous consent I might be given permission to speak for one-half hour.

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

Mrs. FEINSTEIN. Mr. President, I have been on the Judiciary Committee for 18 years. I have never heard a harsher statement about a brilliant young man than I have just heard. During those 18 years, I have seen the standards for appointment change rather dramatically. I have seen a search engine develop on the Republican side to go out and find anything and everything an individual may have written, and then compile a dossier, almost like one would of a criminal, and then characterize and depict the individual in the terms they wish to do.

I regret this, and I hope to lay out how the Democratic side, with a number of nominees, has not done the same thing. But to see a young man with the credentials Goodwin Liu carries belittled in the way he has been belittled in these hearings and also on this floor really upsets me.

This man is a professor of law and the former associate dean of one of the 10 best law schools in America. He is a nationally recognized constitutional scholar. He is a truly brilliant legal mind. I have every confidence in his intellectual firepower, his integrity, and his even-keeled demeanor, and I believe it will make him a fine judge.

Let me tell my colleagues a little about his background. He was born in Augusta, GA. He is the son of Taiwanese immigrants who were recruited to America to provide medical services in rural areas.

He attended public schools in Clewiston, FL, and in Sacramento, CA. He first struggled to learn English and master vocabulary but, ultimately, he graduated co-valedictorian from Rio Americano High School in Sacramento.

He was admitted to Stanford University, my alma mater. He graduated Phi Beta Kappa. He received numerous awards for his contributions to the university, and he was elected co-president of the student body. Pretty good.

He received a Rhodes scholarship. He graduated with a master's degree from Oxford University. He attended Yale Law School. Once again, he was at the top of his class. He was editor of the Yale Law Journal. He won the prize for the best team argument in the moot court competition and won awards for the best academic paper by a third-year law student and the best paper in the field of tax law.

He received prestigious judicial clerkships with Circuit Judge David Tatel on the U.S. Court of Appeals for the DC Circuit and then with Ruth Bader Ginsburg on the U.S. Supreme Court.

He worked in the Department of Education as a special assistant to the Deputy Secretary of the United States of the U.S. Department of Education.

He spent 2 years in private practice at O'Melveny & Myers, which is a prestigious law firm—not a minor firm, a major firm—where he handled commercial matters, including antitrust, insurance, and class action cases. Appellate law comprised roughly half his practice.

Finally, in 2003, he accepted a tenure-track position on the faculty of Boalt Hall School of Law. At Boalt, he quickly established himself as one of our most astute legal scholars, with specialties in constitutional law, the Supreme Court, education law, and education policy.

He published articles in the Yale Law Journal, the Stanford Law Review, the California Law Review, the Iowa Law Review, the Harvard Law and Policy Review, and many other academic journals.

He received the Education Law Association's Steven S. Goldberg Award for Distinguished Scholarship in Education Law, and he was elected into membership of the American Law Institute.

In 2008, his colleagues on the faculty of Boalt selected him as their associate dean. In 2009, the University of California at Berkeley awarded him their Distinguished Teaching Award, the highest award for teaching across the entire university.

I believe he holds a deep appreciation for what opportunities our country affords. I believe his background and his legal prowess are fitting for him to become an appellate court judge. When one speaks with him about his family and upbringing, one gains a sense of him as someone who loves this country and bears an abiding belief that ours is a land of opportunity and a place where everyone has a chance to learn and grow and to thrive.

Some of my colleagues have questioned a number of his writings and his temperament, and what figures very formidably, as I have talked to the Republican side, is particularly testimony he gave on the confirmation of Justice Alito. What he did was provide a long analysis of Alito's opinions and then at the end he used a rhetorical flourish that was, quite frankly, misguided. He strung together a series of facts from cases Alito had decided and then made a statement that I believe he very much regrets. It was over the top. But he has acknowledged it, he has been forthright, and he has apologized.

Before the Senate Judiciary Committee he said:

> What troubles me most is that the passage has an ad hominem quality that is unfair and hurtful. I regret having written this passage.

He said if he had to do it again: ''I would have deleted it.''

It was a mistake—no question about it—but a mistake should not color this man's entire record.

I wish to read from two letters we received in the Senate from people who knew and know Goodwin Liu well, not just for a moment but for years. The first was sent to us jointly by three successive presidents of Stanford University. I have never seen a letter on behalf of a nominee from three different presidents of a university of the quality of Stanford.

Donald Kennedy was president when Goodwin Liu was a student at Stanford. He worked with Liu at the Haas Center for Public Service and was present when Liu won not only the Dinkelspiel Award, which is the university's highest award for undergraduate service, but also the James W. Lyons Dean Award for Service and the President's Award for Academic Excellence.

Gerhard Casper is president emeritus of Stanford and currently provost at the University of Chicago. He knows Liu both as a Stanford alum as well as a colleague in the field of constitutional law. He is familiar with Liu, as, in his own words, ''a measured interpreter of the Constitution.''

Finally, John Hennessy is Stanford's current President. He describes Liu as insightful, hardworking, collegial, and of the highest ethical standards.

Together, these three presidents of the university wrote the following:

> Goodwin Liu as a student, scholar and trustee, 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.

It is a fitting and, I believe, an accurate tribute.

We have one of the most brilliant legal scholars of our time. There is a majority here to confirm him. We know that. But, unfortunately, the minority is trying to use cloture to prevent us from ever casting a vote to confirm him.

Let me turn to another letter. This one is from eight top executives of major American companies, including Yahoo, General Atlantic, Morgan Stanley, and Google. They have all worked closely with Liu on the Stanford board of trustees. They wrote to say the following:

> 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.

Goodwin's strengths, they said:

> . . . are exactly what we expect in a judge: objectivity, independence, respect for differing views, sound judgment.

We know the American Bar Association has unanimously rated him ''well qualified'' for the U.S. court of appeals, and his background is similar to many who have been confirmed to the circuit court in the past. But some on the other side, nevertheless, say he is too young and he doesn't have judicial experience, or his credentials are not right.

For those who ask for a judicial record to review, I would ask, what about Edward Chen? We considered Judge Chen's nomination last week. He was a district court nominee with a 10-year judicial record. He had written more than 350 published opinions, and the minority didn't criticize one. But most in the minority voted against his nomination anyway. So a judicial record doesn't get it done.

Then there is the criticism based on age or other qualifications. But Liu's qualifications surpass those of many we have confirmed under Republican Presidents.

Since 1980, the Senate has confirmed 14 circuit court nominees who were under the age of 40. That means they were all younger than Liu is now. All 14 were nominated and confirmed during Republican administrations.

Let me give two examples. Judge Kimberly Moore sits on the U.S. Court of Appeals for the Federal Circuit. She was nominated by President Bush at the age of 38. She had 2 years of experience as a law clerk, less than 4 years in private practice, and 6 years as a professor at three different law schools. The Senate confirmed her unanimously.

Judge Harvey Wilkinson is a judge on the U.S. Court of Appeals for the Fourth Circuit. He was nominated by President Reagan at the age of 39. He had 1 year experience as a law clerk, 3 years as a newspaper editor, 1 year of government practice, and 5 years as a professor. He was confirmed.

Judge Brett Kavanaugh, who now sits on the U.S. Court of Appeals for the DC Circuit, also comes to mind. He was 38 when he was nominated. Unlike Liu, he had little track record to review and much of the record that did exist was partisan. He had been a law clerk for 3 years, spent 3 years in private practice, and spent the remainder of his career in the Solicitor General's Office, Ken Starr's Office of Independent Counsel, and the Bush White House. When the ABA conducted its reviews, many troubling reports were received, but I voted for cloture, as did many of my colleagues on this side, and he was confirmed.

Professors are hardly a new game for us when it comes to judicial nominees.

John Rogers is a judge on the U.S. Court of Appeals for the Sixth Circuit. At the time President Bush nominated him, he had only 4 years of practice experience, no appellate clerkships, and had spent the remainder of his career as a professor. He was confirmed by the Senate by a voice vote.

Finally, there is Michael McConnell from the State of Utah. President Bush nominated Professor McConnell for the Tenth Circuit. At the time, he had been a constitutional law professor for 16 years and his writings contained scores of controversial thoughts, ideas, and provocations. In reviewing McConnell's record, many of us on the Democratic side found writing after writing that we strongly disagreed with. McConnell had repeatedly stated that Roe v. Wade was wrongly decided. He called the Supreme Court decision ''a grave legal error'' and ''an embarrassment.''

He wrote that the Freedom of Access to Clinic Entrances Act and the Violence Against Women Act were unconstitutional. He criticized a Supreme Court decision barring racial discrimination at tax-exempt schools and one prohibiting sex discrimination in civic associations. He called the fundamental guarantee of one person, one vote ''wrong in principle.''

But similar to Professor Liu, he made clear in the Senate confirmation process that he understood the difference between the role of a professor and the role of a judge. Here is what he said when asked about all of his writings:

> I have a whole bunch of writings out there that were provocative, and innovative, and taking a different view. Well, within—my academic colleagues understand that that's what we do. If you try to make those look as though they are legal analysis, as if they were what a lawyer thinks the law is, of course they don't reflect the law. They're not meant to. They're not a description of the law.

Professor Michael McConnell, Senate Judiciary Committee, September 18, 2002.

He then assured us he would apply the law as written, not as put forward in academic theory. Guess what. He

was confirmed to the Tenth Circuit by voice vote. There was no cloture vote. He was confirmed by voice vote because the Democrats on this side of the aisle believed he would do just what he said. I don't understand why this same situation is not accorded to this brilliant young American.

Today, we have Professor Liu before us. He has also written article after article as a law professor and people have disagreed with some of what he has written.

Here is what he said:

> I think that there's a clear difference between what things people write as scholars and how one would approach the role of a judge. And those two are very different things. As scholars, we are paid, in a sense, to question the boundaries of the law, to raise new theories, to be provocative in ways that it's simply not the role of a judge to be. The role of the judge is to faithfully follow the law as it is written and as it is given by the Supreme Court. And there is no room for invention or creation of new theories. That's simply not the role of the judge.

A very similar statement. It was made by Goodwin Liu before the Senate Judiciary Committee, April 16, 2010.

Professor McConnell went through by voice vote. The same kind of situation—voice vote—yet we may be prevented from even taking a vote on Professor Liu's nomination because he may not get a supermajority for cloture. I must say, what is sauce for the goose is sauce for the gander.

Professor Liu, like Professor McConnell, is a brilliant legal mind. He has written extensively. He has been absolutely clear that if confirmed he would follow not any academic theory or writing, but the law as it is written and handed down by the U.S. Supreme Court. We took Professor McConnell at his word. Professor Liu deserves the same treatment.

(Mr. WHITEHOUSE assumed the chair.)

Mrs. FEINSTEIN. What is interesting to me is how much things have changed on this committee—and we have a new Presiding Officer who also is on the committee—since before the Presiding Officer came on, when we would look at a person's personal record, what they have said, what they think the kind of judge they will be, and make a decision.

So I do not understand, if we can confirm Professor McConnell by unanimous consent, why can't we grant cloture to a man who has distinguished himself as one of the great legal scholars of our country?

Let me address one particular criticism that has been made of Professor Liu's writings, and that is his writings on constitutional interpretation and fidelity to the Constitution.

Some in the Senate have harshly criticized his book ''Keeping Faith with the Constitution'' because he says at one point that the Supreme Court has taken ''social practices, evolving norms, and practical consequences'' into account when interpreting the Constitution. This, some colleagues say, means he will be an activist.

First, Liu has said this book was written as a professor, as an academic, that it is in no way a roadmap for how he would decide cases as a judge. He said, in his own words:

> 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.

But I think some are using this nomination to try to set a new standard, to say that the only valid theory of constitutional interpretation is originalism. So I want to point out that Liu's comments about constitutional interpretation are hardly exceptional.

In fact, they echo statements made by some of our very best jurists across the span of American history: Chief Justice John Marshall, Justice Oliver Wendell Holmes, and Justice Sandra Day O'Connor, to name a few.

The most famous example: Chief Justice John Marshall wrote, in 1819, in the case of McCulloch v. Maryland:

> We must never forget that it is a constitution we are expounding.
>
> . . . This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.

Chief Justice John Marshall.

We are not all originalists here, and originalism does not define the legal mainstream. In an interview, published in the California Lawyer in January, Justice Scalia made the shocking statement that he does not believe the U.S. Constitution guarantees women equal protection of the law. This came out this January. This is a sitting Supreme Court Justice saying the Constitution does not guarantee women equal protection under the law.

The text of the 14th amendment says no ''person'' shall be denied equal protection of the law—and after decades of precedent, unanimous Supreme Court decisions agree that women are protected. But regardless of text and precedent, Justice Scalia says it cannot be so because that is not what the drafters of the 14th amendment intended.

This is not the American mainstream. Following this line of reasoning, the minimum wage would be unconstitutional, schools could still be legally segregated, States could prohibit married couples from using birth control, and I, as a woman, could be prohibited from standing here today as an elected Member of the Senate.

That kind of thinking cannot be a criterion for acceptance onto our Federal courts. So some may disagree with Liu's statement about constitutional interpretation, but it is hardly far afield of the legal mainstream today.

Let me tell you what others who are familiar with Liu's full record—full record—have said about his work.

Richard Painter, a chief ethics officer for President George W. Bush, relayed similar thoughts after reviewing Liu's record. Here is a quote: Liu's ''views are part of the legal mainstream'' and that the ''independence, rigor, and fair-mindedness of his writings support a confident prediction that he will be a dutiful and impartial judge.'' ''Liu respects the law, which is what we should expect of a judge.''

Yet the Senate may well not give him cloture even to come to a vote on his confirmation. That is unfair.

Jesse Choper, who reviewed all of Liu's writings as the chair of his tenure committee, has similarly said, ''in addressing a wide range of issues, Liu demonstrates rigor, independence, fair-mindedness, and—most importantly for present purposes—sincere respect for the proper role of courts in a constitutional democracy.'' ''One thing is clear,'' he says, ''Liu's interpretive approach is part of mainstream legal thought.''

Finally, someone who has been quoted often here today, Kenneth Starr, a prominent conservative and former Reagan appointee to the DC Court of Appeals, has written to us together with Professor Akhil Amar to say, Goodwin Liu is ''a person of great intellect, accomplishment, and integrity, and he is exceptionally well qualified to serve on the court of appeals.''

Continuing to quote:

> 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.

I have a very hard time understanding why people would do this: we listened to and read Judge McConnell's views, which were antithetical to many of us on this side, but we believed he would be a fair and good judge, and he was confirmed by voice vote; but today someone who has the finest education America has to offer, who is supported by scholars on both sides of the political aisle, who is truly scholastically exceptional, who could quote case after case after case in his hearings, may be denied cloture.

If he is, this is not the Senate of the United States of which I am most proud. I hope I am wrong. I hope he will be granted cloture because he deserves a vote up or down. A majority vote—that is America—a majority vote on his confirmation. We will see what happens.

Mr. INOUYE. Mr. President, I rise today in support of Goodwin Liu for confirmation to the U.S. Court of Appeals for the Ninth Circuit.

Goodwin Liu and I share the immigrant experience. He is the proud son of Chinese immigrants and my father came to this great Nation from Japan. He holds degrees from some of the top universities in the world. Before attending Yale Law School, he worked with the Corporation for National

Service in Washington, DC, where he helped launch the AmeriCorps program. In 2000, he served as a law clerk for U.S. Supreme Court Justice Ruth Bader Ginsburg. Since 2003, he has taught law at the University of California, Berkeley School of Law, Boalt Hall. He has also served as a special assistant to the Deputy Secretary at the U.S. Department of Education, advising the Department on a range of legal issues including the development of guidelines to help turn around low performing schools.

Goodwin also practiced as a litigant for the firm of O'Melveny & Myers in Washington, DC. There, appellate litigation comprised nearly half his practice.

Were these accolades not enough to demonstrate Goodwin's capacity to serve as a Federal appellate judge, I would also point to the ''unanimously well qualified'' rating he received from the American Bar Association, ABA, the ABA's highest rating for Federal judgeships. I believe Goodwin's extensive knowledge of the law, understanding of appellate procedure, and appellant litigation experience make him an outstanding candidate for confirmation.

I would like to remind my colleagues that there are still many judicial vacancies that need to be filled. The constitutional right to a speedy trial correlates to the number of judges able to hear cases. While it is important to ascertain the character and capacity of a nominee to such an important position, postponing Goodwin Liu's confirmation does a disservice to our Nation, and to this body's responsibility for confirming Presidential nominees. I believe Goodwin Liu will make a fine judge, and will serve with distinction in the Ninth Circuit Court of Appeals. I ask my colleagues to join me in confirming Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit.

I thank the Chair and yield the floor.

Mr. President, 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.

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

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

Mr. BARRASSO. Mr. President, I ask unanimous consent to speak for up to 15 minutes as in morning business.

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

HEALTH CARE

Mr. BARRASSO. Mr. President, I come to the floor, as I have week after week since we passed the health care law, giving a doctor's second opinion of the law. I come today because last month President Obama delivered a very big speech on spending. Unfortunately, it seemed to be more of a political attack than a substantive speech offering a detailed plan to attack the American debt crisis.

The President did, however, mention one bit of substance that really should raise a red flag to the American people. He said:

> We will slow the growth of Medicare costs by strengthening an independent commission.

Well, the Washington commission he is referring to is called the Independent Payment Advisory Board. This board may sound harmless, but let me assure you that the American people deserve to know and have a right to know more detail about the board and its work.

Many Americans may not remember that the health care law created this unelected, unaccountable board of Washington full-time bureaucrats. The sole purpose of the board is to cut Medicare spending based on arbitrary budget targets—not based on the number of people on Medicare or the number of seniors but based on arbitrary budget targets. These are cuts above and beyond the $500 billion already taken from a nearly bankrupt Medicare Program during the health care law—taken from our seniors—not to save Medicare but to start a whole new government program.

Now the President wants to slow the growth of Medicare costs by strengthening this independent commission. Well, this board empowers 15 unelected Washington bureaucrats to make these Medicare cuts, all without full transparency and accountability to the American seniors and also to elected officials.

Once again, this board proved that the President and the Democrats in Congress who voted for the health care law simply didn't have the political courage to make tough spending decisions. Instead, they took the easy road and pulled a classic Washington maneuver: they created a board and then punted the tough decisions to the board. Well, this forced Congress to abdicate two important congressional duties. First is the constitutional responsibility to manage Medicare spending. The second is the responsibility to explain to the American people why specific payment changes might be necessary to keep Medicare afloat—all because the President and Washington Democrats refused to lead. They simply threw up their hands and said: Let someone else deal with it.

If expanding this independent board is—they call it ''independent,'' but I am not so convinced it is. It is called the Independent Payment Advisory Board. If expanding the board is the one and only concrete proposal the President has to reform Medicare and reduce the debt and most Americans have never even heard of it, then it is important that we take the time on the Senate floor today to discuss exactly how this board works and the impact it will have on medical care in America.

I call this the top 10 things you need to know about the Independent Payment Advisory Board. To me, this issue is so important that I plan to talk about five of them today, and I will come back next week, as part of the doctor's second opinion on the health care law, and talk about the next five.

No. 1, this board is how Washington will limit patient care.

When Congressman PAUL RYAN offered his 2012 budget plan, the President and members of his party launched an all-out media assault on Medicare spending. The White House and Democrats used inflammatory and patently false statements to scare people about the Ryan plan. What they failed to mention, however, is that the President's own health care law actually has significant caps on Medicare spending. To enforce the caps, the President and Washington Democrats went with their tried-and-true solution: create another board.

What does this mean for people who are currently on Medicare and for future Medicare patients? A centralized Washington board will arbitrarily cut payments to Medicare providers—doctors, nurses, and other people taking care of patients. They are going to squeeze Medicare savings by cutting provider payments and treatment options, which will punish patients. Why? To start a whole new government program—not for the people who paid into Medicare but for a whole different group of people. Not only will medical professionals facing these cuts decide to simply stop seeing Medicare patients—and we see that now. Frankly, doctors are running away from Medicare, not wanting to see those patients. Individuals and families will watch helplessly as a Washington bureaucrat decides what kind of treatments that person can have.

No. 2, this board is going to make recommendations, and those recommendations will automatically become law.

How can it be that something the board does automatically becomes law? But their spending recommendations automatically become law—unless Congress acts to stop it. If Congress would actually want to stop the board's policies, there are very few options. The options are severely limited. Overriding the board's recommendations requires a three-fifths majority vote in the Senate, a high hurdle to jump, or Congress can pass a different Medicare spending plan. But there is a catch. It still has to meet the same arbitrary spending target. So if Congress does nothing, then Health and Human Services Secretary Kathleen Sebelius will implement the board's plan.

Medicare consumes about 13 percent of the Federal budget, and former Office of Management and Budget Director Peter Orzag called this board ''the largest yielding of sovereignty from Congress since the creation of the Federal Reserve.''

The bottom line is that this board isn't making recommendations to Congress; this board is passing law. Well, Congress doesn't have to approve these policies of the board, and the President

doesn't have to sign them. They are law. This represents an unprecedented shift of power from the legislative branch of the Federal Government to an unelected board of 15 bureaucrats.

No. 3, the policies of this board cannot be challenged in court.

On April 19 of this year, the New York Times published an article entitled ''Obama Panel to Curb Medicare Finds Foes in Both Parties.''

This article explains that:

> In general, federal courts could not review actions to carry out the board's recommendations.

Well, there is an institute called Arizona's Goldwater Institute. They filed a lawsuit based upon this payment advisory board. Part of the lawsuit says:

> Congress has no constitutional power to delegate nearly unlimited legislative power to any federal executive branch agency, much less to entrench health care regulation against review, debate, revision, or repeal. . . . Such federal overreaching must be rejected if the principles of limited government and the separation of powers by the United States Constitution mean anything.

That is what the lawsuit says.

Let's go to No. 4. This board's mission is to cut provider payments. The board is strictly limited in what it can do to achieve Medicare spending reductions. By law, the board cannot raise revenue by increasing taxes. It cannot increase patient cost-sharing methods, such as premiums, copayments, and deductibles. It cannot alter Medicare eligibility or benefit package.

What can it do? One thing and one thing only: It will adjust provider reimbursement rates. We all know Medicare payment rates are already well below market rates. That is why so many doctors are limiting the number of Medicare patients they see and, in more severe cases, refusing to treat Medicare patients at all.

Additional subjective cuts to Medicare will not make the program more efficient or more available. These measures will simply reduce the supply of medical care to the Medicare patients of America.

The Medicare Chief Actuary, Richard Foster, warned us that the health care law's Medicare cuts would cause providers to leave the program, and we are seeing that today. It is not because they do not want to treat Medicare patients; it is because the doctors know the payments will be too low to even cover their costs. Mr. Foster, the Medicare Chief Actuary, has said approximately 15 percent of our Nation's hospitals would drop out of Medicare in 10 years.

Then No. 5: This board could eventually impact all patients, not just Medicare patients. Washington Democrats have long supported policies that give government more power to set health care prices, not just in public programs such as Medicare, but also in the private sector. President Bill Clinton asked for this authority in a 1994 debate on what at the time was called ''Hillary care.'' It was one reason his effort failed. President Obama learned from that failure. Make no mistake, he wants to achieve the same objective. This time he is using this board as a Trojan horse to sell it.

If President Obama's health care law remains the law of the land, millions of Americans will have government-subsidized health insurance. Paying for this new entitlement program will cost trillions. It will be no surprise when we inevitably hear cries for increased cost control. This is when the President will make his move—proposing to extend this board's reach beyond Medicare to the new health care law's subsidized insurance premiums. Last month, the President opened the door to this strategy when he proposed in his speech to expand this board's power and its control over Medicare.

That is why I come to the Senate floor each and every week to deliver a doctor's second opinion about the health care law—a law that I believe is bad for patients, bad for providers—the nurses and doctors who take care of those patients—and bad for our taxpayers. I believe the more the American people discover about this so-called independent payment advisory board, the more unpopular the President's health care law will become.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

Mr. FRANKEN. Mr. President, I rise to speak in support of the confirmation of Professor Goodwin Liu to the U.S. Court of Appeals for the Ninth Circuit. As a member of the Judiciary Committee for the past 2 years, I have had the opportunity to meet with Professor Liu and vote on his nomination on several occasions. He is a singularly talented individual, and I wish to associate myself with the remarks all my colleagues have made in support of his confirmation.

But the strongest arguments I have heard in support of Professor Liu haven't come from my colleagues. In fact, they haven't even come from a Democrat. No, the most persuasive arguments I have heard for confirming Professor Liu come from the former chief ethics lawyer for the administration of President George W. Bush, a gentleman named Richard Painter. Professor Painter, a Republican, is now a prominent law professor at the University of Minnesota.

Earlier this year, Professor Painter wrote a lengthy article that systematically catalogued Professor Liu's strengths and systematically answered his critics. This is his conclusion:

> In sum, Liu is eminently qualified. He has support from prominent conservatives. . . . He is pragmatic and open-minded, not dogmatic or ideological. . . . Many, though by no means all, of his scholarly views do not align with conservative ideology or with the policy positions of many elected officials in the Republican Party. . . . Nevertheless, his views are part of the American legal mainstream. The independence, rigor, and fairmindedness of his writings support a confident prediction that he will be a dutiful and impartial judge.

When I circulated Professor Painter's article to the members of the Judiciary Committee, my Republican colleagues sent me a series of articles critiquing Professor Liu. I would like to take a few moments to rebut the criticisms in these articles because they simply don't hold water.

The first and most common criticism of Goodwin Liu is that he somehow believes in a so-called living Constitution. His opponents are especially worried about his suggestion that in interpreting the Constitution, judges should consider the ''evolving norms and traditions of our society.''

Professor Liu has written an entire book about his theory of constitutional interpretation. On page 2 of that book, he writes that we need to consider a lot of different things when we interpret the Constitution. We need to consider the original understanding of the Framers. We need to consider the purpose and structure of the Constitution. We need to consider precedent. We need to consider the practical consequences of our laws. Lastly, we need to consider the evolving norms and traditions of our society. So this is just one thing—one thing—that we should take into account.

But even more important, this idea that we should merely consider the evolving standards of our society in interpreting the Constitution is not a radical idea. In fact, it isn't even a new idea. This issue frequently comes up in fourth amendment cases. Over 40 years ago, in a 1967 case called U.S. v. Katz, the Supreme Court was asked to determine whether a wiretap constituted a search under the fourth amendment. If it did, law enforcement would have to get a warrant to get a wiretap.

The problem, of course, was that the Founders never anticipated the telephone, let alone the wire to the telephone. So this was a new question for the Court. But the Court voted 7 to 1 to find that a wiretap was, in fact, a search under the fourth amendment, and one of the main reasons they cited was that people in modern society had come to expect and assume that their phone calls were private. Two years later, in a separate case called Smith v. Maryland, the Court formally adopted the rule that the fourth amendment will protect people where our society recognizes a reasonable expectation of privacy. So for 40 years, it has been the law of this land that you have to look at social norms when interpreting the fourth amendment.

Here is another example, one that Senator FEINSTEIN cited, but still, it bears repeating. This is what Chief Justice Marshall said about the Necessary

and Proper Clause in McCulloch v. Maryland.

> . . . [t]his provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs.

McCulloch v. Maryland was decided in 1819. So the idea that we should merely consider the state of our society when we interpret the Constitution isn't new, it is old. It is very old. In fact, it is arguably older than the Senate Chamber we are standing in, which first opened in 1859.

Professor Liu's detractors have also accused him of believing that judges may ''legitimately invent constitutional rights to a broad range of social 'welfare' goods, including education, shelter, subsistence, and health care.'' That is the accusation. This argument is based on an article Professor Liu wrote in 2008.

But if you actually read the article, you will find this statement right in the introduction. This is a quote from the article:

> [B]ecause the existence of any welfare right depends on Democratic instantiation of our shared understandings, the Judiciary is generally limited to an interstitial role within the context of a legislative program. Courts do not act as 'first movers' in establishing welfare rights . . .

In other words, Professor Liu is being accused of saying judges can invent welfare rights because of an article he wrote where he said judges cannot invent welfare rights.

The final point I wish to address is the idea that Professor Liu somehow supports ''using foreign law to redefine the Constitution.'' Professor Liu's critics cite an obscure speech he gave at a Japanese law school 5 years ago. According to his critics, he said in this speech that it is ''difficult for him to grasp how anyone could resist the use of foreign authority in American constitutional law.''

I went and got a copy of the speech. If you read it, you will see that Professor Liu was referring to a series of Supreme Court decisions written by Justice Anthony Kennedy, where Justice Kennedy reviewed the laws of foreign countries on certain issues. Justice Kennedy didn't use the laws of foreign countries to decide the cases before him, he used them to get a sense of how other countries were resolving the legal issues before him.

Professor Liu was basically saying he found it difficult to grasp how people could disagree with Justice Kennedy. He has repeatedly said in his testimony, under oath, that he does not believe that foreign law should be binding in any way on Federal law.

There are other critiques against Professor Liu that I will not go into further, but I urge my colleagues to dig behind these blanket statements. To paraphrase Gertrude Stein, I think you will find there is no there there.

I think what my colleagues will find is an extraordinary intellect, a fundamentally decent man, and someone who will be a strong and impartial jurist. I urge my colleagues to vote for cloture and to vote to support his nomination.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. REID. Madam President, I ask unanimous consent we now proceed to a period for morning business, with Senators permitted to speak for up to 10 minutes each.

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

TRIBUTE TO BRIGADIER GENERAL STEPHEN R. HOGAN

Mr. MCCONNELL. Madam President, I rise today to congratulate a friend of mine who is a valued servant to the people of Kentucky, BG Stephen R. Hogan. On March 12 of this year, the former colonel had his promotion ceremony to the rank of brigadier general. This promotion to general is a very special accomplishment, as very few career officers in our Armed Forces ever reach the general rank.

This promotion is well deserved for all that Brigadier General Hogan has done for his country. Serving as the assistant adjutant general for the Kentucky Army National Guard, he is responsible to the adjutant general for balancing the requirements of readiness, modernization, force structure, and sustainment of the National Guard for mobilization and domestic missions.

Brigadier General Hogan's significant duty assignments include tours with the 101st Airborne Division (Air Assault), Fort Campbell, KY; the 6th Infantry Division Light, Fort Richardson, AK; the Army Operations Center, the Pentagon; and with the Multi-National Corps Iraq based in Baghdad, Iraq. When not serving on Federal active duty, he has served in the Kentucky Army National Guard as an active-duty guardsman with the State's Counter-Drug Unit, and $11 billion worth of illegal marijuana has been eradicated during his service.

Brigadier General Hogan's awards, medals and decorations include the Meritorious Service Medal, with three Bronze Oak Leaf Clusters; the Army Commendation Medal, with one Bronze Oak Leaf Cluster; the Army Reserve Components Achievement Medal, with one Silver Oak Leaf Cluster; the National Defense Service Medal; with one Bronze Service Star; the Iraq Campaign Medal; the Global War on Terrorism Service Medal; the Armed Forces Reserve Medal, with ''M'' Device and Silver Hourglass; the Army Service Ribbon, the Overseas Service Ribbon; the Master Parachutist Badge; the Pathfinder Badge; the Air Assault Badge; the Kentucky Merit Ribbon; the Kentucky Service Ribbon, with three Oak Leaf Clusters; and the Kentucky Counter Drug Ribbon.

Despite all this accomplishment, at his promotion ceremony, Brigadier General Hogan said, ''All I ever wanted to do in life is be a professional soldier.'' Well, we in Kentucky are certainly glad he got his wish. I want to congratulate him on his promotion, and I know my colleagues in the U.S. Senate will join me in honoring his service and his sacrifice for our country.

An article extolling the virtues of Brigadier General Stephen R. Hogan appeared recently in the Marion Star. I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Marion Star, April 18, 2011]

CONNER HIGH GRAD NAMED BRIG. GENERAL—STEPHEN HOGAN SERVED AT PENTAGON, IN BAGHDAD

(By Stephanie Salmons)

FRANKFORT.—Conner High School graduate Stephen Hogan, of Frankfort, has been promoted to the rank of brigadier general.

A 1981 Conner graduate, Hogan is the son of Paul and Marilyn Hogan of Burlington. He is a 1985 graduate of Morehead State University and a 2008 graduate of the U.S. Army War College.

Hogan received his commission from the Morehead ROTC in 1985 and since 1993 has worked with the Kentucky Army National Guard as an active-duty Guardsman with the state's Counter-Drug Unit, where Paul Hogan says his son works for a marijuana eradication program.

His assignments have included tours with the 101st Airborne Division (Air Assault), Fort Campbell, KY.; 6th Infantry Division Light, Fort Richardson, Alaska; The Army Operations Center, Pentagon; and Multi-National Corps Iraq, Baghdad, Iraq.

Hogan has also received numerous awards during his time in the military.

The Hogans said they're proud of their son.

''It's something you don't comprehend—when someone goes that far,'' Paul Hogan said.

Stephen Hogan has always had an interest in the military and has finally obtained his goal, Paul Hogan said.

''We're very pleased and proud of him. He's worked very hard,'' Marilyn Hogan said.

HONORING OUR ARMED FORCES

LANCE CORPORAL CHRISTOPHER S. MEIS

Mr. BENNET. Madam President, today I pay tribute to a young Coloradan, LCpl Christopher S. Meis, who died on March 17, 2011, from wounds he received while supporting combat operations in Helmand Province, Afghanistan. He was 20 years old. The loss of Lance Corporal Meis weighs heavily on his hometown of Bennett, CO, where he grew up dreaming of serving his country as a marine.