

GOODWIN LIU: CORRECTING THE RECORD

PROFESSOR LIU UNDERSTANDS THE LIMITED ROLE OF A JUDGE

MYTH: Republicans wrongly claim that Professor Liu is a judicial activist who will indulge his own policy preferences in determining what the law means.

IN HIS OWN WORDS: At his hearing and in response to written questions, Professor Liu repeatedly demonstrated his proper understanding of the role of a judge.

- At his second confirmation hearing, just as he did in his confirmation hearing in April 2010, Professor Liu emphasized that judges serve a limited role: “If I were fortunate enough to be confirmed . . . 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’s exactly what I would do.**” (March 2, 2011)
- In response to a question from Senator Grassley regarding his qualifications, Professor Liu said: “I appreciate the distinction between the roles [of an academic and a judge] ... I think there are important facets of being a scholar that are beneficial to being a judge.... **What is not transferable, absolutely, are the substantive views that one might take as a matter of legal theory. Those are left at the door. When one becomes a judge, one applies the law as it is to the facts of every case.**” (March 2, 2011)
- In responding to a written question from Senator Sessions, Professor Liu rejected the idea that he would rely on his scholarly work when interpreting the Constitution: “If confirmed, **I would take my instruction on issues of Constitutional interpretation from the Supreme Court precedents applicable to each case, and not from my scholarly writings.**” (QFR response to Senator Sessions)

Professor Liu’s scholarly writings recognize the limited role of the judiciary, and Republican Senators understand that good nominees leave their scholarship behind once they take the bench.

- **FACT:** During a confirmation hearing for his 2002 nomination to the Tenth Circuit, Republican Senators praised Judge Michael McConnell’s academic scholarship and asserted that his controversial statements would not impact his judicial decision-making.
 - Senator Hatch: “I think we should **praise and encourage the prolific exchange of honest and principled scholarly writing**, assuming such scholars know the proper role of a judge . . . and I should say to leave the innovative scholarship at home once confirmed to the bench.”
 - Senator Bennett: “I know he has written things that are controversial. I cannot imagine anyone who would be a law professor commenting on as many subjects as he has taken on who would not have written controversial things. **But the question is not what he has said in his writings. The question is what he will do on the bench.**”
- **FACT:** Professor Liu has emphasized the Constitution’s relevance to public education in America, but he **has not urged the courts to recognize an inherent constitutional duty** to provide educational opportunity for all Americans. Instead, **he has called on Congress** to effectuate the core values of the Fourteenth Amendment by “ensur[ing] a meaningful floor of educational opportunity throughout the nation.” (*Yale Law Journal*, Nov. 2006)

**Several confirmed Bush circuit court judges did not have prior service
on the bench, including four law professors**

- **Two dozen confirmed circuit court nominees of President George W. Bush did not previously serve as a judge.**
Four of these nominees had been law professors.
 - Debra Ann Livingston, Paul J. Kellner Professor of Law and Vice Dean of the Columbia Law School, was confirmed 91-0 to the Second Circuit in 2007
 - Kimberly Ann Moore, Professor of law at George Mason University, was confirmed 92-0 to the Federal Circuit in 2006 (109th)
 - Jay S. Bybee, who had a controversial role as head of Department of Justice's Office of Legal Counsel and had been a Professor of Law at M. Hebert Law Center, Louisiana State University, was confirmed 74-19 to the Ninth Circuit in 2003.
 - Michael W. McConnell, Professor at University of Utah Law School and the University of Chicago, was confirmed by voice vote to the Tenth Circuit in 2002.