

RELEASE IN PART
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Talking Points for Secretary Clinton's Calls to Encourage Rs to Support Cloture for Goodwin Liu

Background:

WHAT: Phone calls to key Republican Senators to encourage them to vote for cloture in order to allow an up or down vote on the merits of Goodwin Liu's nomination to the U.S. Court of Appeals for the Ninth Circuit.

WHEN: Senator Reid is expected to file cloture on Tuesday, in which case the cloture vote would occur Thursday morning, May 19, 2011.

WHY: Senator Reid is working to hold all 53 Democrats for cloture. We have strong indications that 4 Republicans will vote for cloture: Senators Scott Brown (MA), Susan Collins (ME), Senator Lisa Murkowski (AK), and Senator Snowe (ME). If these all hold, we have 57 "yes" votes on cloture.

In an effort to get the remaining three votes needed for cloture, we are targeting seven Senators: Lamar Alexander (TN), Saxby Chambliss (GA), Johnny Isakson (GA), Mark Kirk (IL), Richard Lugar (IN), Senator Rob Portman (OH), and John Thune (SD).

WHO:

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In the past, Senators Alexander and Isakson have made very strong statements against filibustering judicial nominees and in the most recent cloture vote (on controversial district court nominee Jack McConnell of Rhode Island) both voted for cloture:

- **Senator Lamar Alexander (TN):** "I have pledged and I still pledge to give up my right to filibuster any president's nominee for the appellate courts" (5/20/05). In 2005, Senator Alexander declined to join the Gang of 14, explaining that "[t]hey kept all kinds of exceptions and qualifying phrases in [the agreement], so I couldn't participate. I said, 'No filibusters; no exceptions'" (5/25/05).
- **Senator Johnny Isakson (GA):** "[T]he Constitution require[s] an up-or-down vote" on judicial nominees. "I will vote to support a vote, up or down, on every nominee. Understanding that, were I in the minority party and the issues reversed, I would take exactly the same position because this document, our Constitution, does not equivocate" (5/19/05).

Despite voting against cloture in the most recent cloture vote on a judicial nominee, we believe Senators Lugar and Portman could support cloture on Goodwin:

- **Senator Richard Lugar (IN):** In his thirty years in the Senate, Senator Lugar has only twice voted against cloture on judicial nominees. The first was a vote against Stephen Breyer when he was put forward for the First Circuit and the second was a vote against the recent federal district court nominee, Jack McConnell of Rhode Island. In both instances, concerns were raised about the ethical conduct of the nominee.
- **Senator Rob Portman (OH):** While Senator Portman is new to the Senate and voted against cloture for the recent district court nominee, there are several indicators that lead us to believe he could vote for cloture: (1) He's a moderate R, with a reputation for being reasonable, decent, and level-headed; (2) Ohio is a closely divided state politically. Like Brown in Massachusetts and Kirk in Illinois, Portman can't go too far to the right. (3) There are a lot of Asian Americans in Ohio. Many are Republicans. They are weighing in. (4) We have some key Republican business leaders in Ohio weighing in.

In addition to these indications on cloture, it is important to remember that Senators Alexander and Lugar voted in favor of then Judge Sonia Sotomayor on the merits. Goodwin's record, like Sotomayor's record, is well within the legal mainstream.

Talking Points for Phone Calls

- Thank you for taking my call. I'm calling today not with my hat on as Secretary of State, but with my hat on as a friend, mentor and fan of judicial nominee Goodwin Liu, who I know you will be voting on later this week.
- During my time as Secretary of State, I have never weighed in on judicial nominees and don't intend to make this a practice. But this is personal. Goodwin is not only a friend, but he is one of the brightest young minds I have met in my time in public service and I want to urge you to support cloture on his nomination so that he can get an up or down vote on the merits of his nomination.
- Goodwin Liu is an award-winning scholar and teacher, is a former Supreme Court law clerk, Rhodes Scholar, and Yale law graduate. Before becoming a law professor, he practiced appellate litigation at a large firm and served as a special assistant to the Deputy Secretary at the U.S. Department of Education.

- The ABA has given Liu its highest rating of “unanimously well-qualified,” and he has the support of conservative legal scholars such as Ken Starr, Tom Campbell, and John Yoo.
- Given his qualifications and bipartisan endorsements, it is only fair that Liu—who has waited over 400 days, longer than any current judicial nominee—receive an up-or-down vote on the merits of his nomination.
- Although some have labeled Liu’s writings as “extreme,” the reality is that Goodwin’s scholarship is well within the American legal mainstream. To be sure, his writings are subject to reasonable disagreement, just as most academic work is. But if substantive disagreement with Liu’s scholarly work is grounds for a filibuster, then we are surely on a path to confirmation gridlock. There are no “extraordinary circumstances” warranting a filibuster here.
- In my personal experience, Goodwin is thoughtful and measured. I have co-authored a law review article and worked with him on legal speeches, followed his legal career and taken notice when he has departed from others on the left—supporting school vouchers, for example. Goodwin follows the law to its logical conclusion, even when it is not convenient to those on the left.
- I recognize that you may not be able to support Goodwin’s confirmation when the merits vote is taken, but I’m calling because...
 - [FOR ALEXANDER AND ISAKSON]...in the past, you have voted consistently in favor of giving every judicial nominee, regardless of party, a fair up-or-down vote. Your voice of reason has kept excessive partisanship out of the confirmation process, and I hope you will follow the same approach on Goodwin’s nomination and vote “yes” on cloture.
 - [FOR LUGAR]...in the past, you have voted in favor of giving judicial nominees, regardless of party, a fair up-or-down vote. Your voice of reason has kept excessive partisanship out of the confirmation process, and I hope you will follow the same approach on Goodwin’s nomination and vote “yes” on cloture.
 - [FOR PORTMAN]...while you are new to the Senate, I know you are reasonable and measured and experienced your own frustration over the nominations process when you served in the Bush Administration. We need more voices of reason to keep excessive partisanship out of the confirmation process, and I hope you will be one of those voices of reason and vote “yes” on cloture for Goodwin Liu.