



JUDGE DAVID HAMILTON **Nominee to the Seventh Circuit Court of Appeals**

United States District Court Judge David Hamilton has been nominated to a seat on the United States Court of Appeals for the Seventh Circuit. Judge Hamilton's nomination is promising; it signals that President Obama is committed to selecting judges who will approach each case with an open mind, make fair decisions based upon the merits of the case, and apply the Constitution and the law to provide equal justice for all.

EXCELLENT QUALIFICATIONS

Judge Hamilton has an exemplary background. After graduating from Yale Law School in 1983, he spent two years clerking on the Seventh Circuit for Judge Richard Cudahy. Hamilton then went to the Indiana office of Barnes and Thornburg, a private firm where he first worked as an associate and later as partner. From 1989 to 1991, he served as Counsel to then-Indiana Governor Evan Bayh. From 1994 to the present, he has been a federal judge on the United States District Court for the Southern District of Indiana where he currently sits as Chief Judge.

The American Bar Association's Standing Committee on the Federal Judiciary gave Judge Hamilton a rating of "well qualified."¹ This is the ABA's highest level of support bestowed upon a nominee.

BIPARTISAN BACKING

Judge Hamilton's nomination enjoys the bipartisan support of both his home state senators. Republican Senator Richard Lugar (R-IN) stated, "I enthusiastically support the Senate confirmation of David Hamilton for U.S. 7th Circuit Court of Appeals. Judge Hamilton has served the Southern District of Indiana with distinction as U.S. District Court Judge."² Senator Evan Bayh (D-IN) agreed, saying, "I am so encouraged by the president's decision to make David Hamilton his first judicial appointment. I was proud to work side by side with Senator Lugar to recommend Judge Hamilton for this lifetime appointment. President Obama is right that Democrats and Republicans can work together to put highly qualified jurists on the federal bench."³

Support from senators on both sides of the aisle is coalescing. Chairman of the Senate Judiciary Committee Patrick Leahy (D-VT) noted, "[a]fter the partisan and divisive approach that President Bush took with judicial nominations, I appreciate President Obama's seriousness in making his selection . . .

¹ American Bar Association, Ratings of Article III Judicial Nominees 111th Congress, Mar. 17, 2009, <http://www.abanet.org/scfedjud/ratings/ratings111.pdf>.

² Press Release, White House, President Obama Announces David Hamilton for the United States 7th Circuit Court of Appeals (Mar. 17, 2009), http://www.whitehouse.gov/the_press_office/President-Obama-Announces-David-Hamilton-for-the-United-States-7th-Circuit-Court-of-Appeals/.

³ Press Release, Senator Evan Bayh, Bayh Supports Nomination of Judge Hamilton for Seventh Circuit (Mar. 17 2009), <http://bayh.senate.gov/news/press/release/?id=91ce080b-94aa-441a-a860-79d211471a24>.

The President is doing his part to remove these matters from partisan politics, and that's a healthy change for the nation and for all three branches of government."⁴ Both Senators John Cornyn (R-TX) and Lamar Alexander (R-TN) stated that Senator Lugar's support of Judge Hamilton's nomination was a good start.⁵ And, while reserving ultimate judgment, Senator Orrin Hatch (R-UT) suggested his potential support by stating "I tend to want to support the president and his nominees or her nominees, whoever is president."⁶

BROAD-BASED APPEAL

Groups from across the political spectrum support Judge Hamilton's nomination to the Seventh Circuit. Even the president of the Indianapolis chapter of the conservative Federalist Society group, Geoffrey Slaughter, praised the nomination observing, "I regard Judge Hamilton as an excellent jurist with a first-rate intellect. He is unfailingly polite to lawyers. He asks tough questions to both sides, and he is very smart. His judicial philosophy is . . . well within the mainstream."⁷

Academics familiar with his work also praise his record on the bench. Indiana Law Professor Patrick L. Baude called Hamilton a "careful judge" who has "not pursued a political agenda."⁸ And, Daniel Conkle, a church-state expert at Indiana University -- identified as a conservative by the Christian Broadcasting Network -- said that his rulings on religious freedom issues were "extremely careful, thoughtful, balanced and well-reasoned."⁹ Judge Hamilton's ruling on the prayer case,¹⁰ which has received wide attention since his nomination, was described by Professor Conkle as reflective of "prevailing doctrine established by the U.S. Supreme Court, and is unlikely to be reversed on appeal."¹¹

CASES

In nominating Judge Hamilton to the Seventh Circuit, President Obama put forth a highly qualified candidate whose record demonstrates he will keep faith with our nation's core constitutional values of equality and justice for all.

United States v. Hagerman

525 F. Supp. 2d 1058 (S.D. In. 2007), *aff'd*. 555 F.3d 553 (7th. Cir. 2009).

Judge Hamilton sentenced Derrik Hagerman to five years in prison after a jury found that he and his company were guilty of ten counts of violating the Clean Water Act by falsifying records to cover up the fact that the company was discharging hazardous substances in violation of its permit. In addition, in an opinion explaining the reasons for this sentence, Judge Hamilton categorically rejected arguments that the crime was a "relatively minor reporting offense," and reasoned that the offenses "were cold-blooded, deliberate, and repeated decisions to profit from unlawful pollution and to cover-

⁴ Press Release, Senator Patrick Leahy, Comment of Senator Leahy On President Obama's First Judicial Nomination, (Mar. 17, 2009), <http://leahy.senate.gov/press/200903/031709b.html>.

⁵ Keith Perine, With GOP Support, Obama Makes First Judicial Nomination, CQ Politics, Mar. 17, 2009, http://news.yahoo.com/s/cq/20090317/pl_cq_politics/politics3076855.

⁶ David Ingram, *Hatch Reserving Judgment on First Judicial Nominee*, Blog of Legal Times, Mar. 18, 2009, <http://legaltimes.typepad.com/blt/2009/03/hatch-reserving-judgment-on-obamas-first-judicial-nominee.html>.

⁷ David Savage, Obama Announces First Judicial Nomination, Mar. 18, 2009, Los Angeles Times, <http://www.latimes.com/news/nationworld/nation/la-na-judge18-2009mar18,0,3103312.story>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Hinrichs v. Bosma*, 2005 U.S. Dist. LEXIS 38330 (S.D. Ind. Dec. 28, 2005) (Hamilton ruled that Indiana state legislature could not begin sessions with Christian prayers because they violated U.S. Constitution; also found that non-denominational and non-sectarian prayers could continue); *rev'd on other grounds*, 506 F.3d 584 (7th Cir. 2007)

¹¹ David Brody, Defining Judge Hamilton, Mar. 18, 2009, CBN News, <http://www.cbn.com/CBNnews/561590.aspx>.

up the crime and obstruct justice.” Judge Hamilton also reasoned that the need for deterrence in such cases was especially great given that the Clean Water Act relies on self-reporting and there is a strong temptation to lie to avoid sanctions by regulators. Accordingly, by imposing this sentence, Judge Hamilton sent the message that “managers of those businesses need to understand that if they make the choice Mr. Hagerman made – to lie and cover-up violations on this scale – they face more than fines and civil penalties as a cost of doing business. They face prison.”

Franklin v. H.O. Wolding

2004 U.S. Dist. LEXIS 26592 (S.D. In. Dec. 8, 2004).

Phyllis Franklin contracted Hepatitis C through a blood transfusion in 1987 and needed a life-saving liver transplant, but was initially denied coverage by her insurance carrier. After a lengthy legal battle, the company ultimately approved the surgery. At issue was whether the company should pay the legal fees Ms. Franklin incurred, totaling over \$60,000, in her attempt receive medical care. Specifically, the insurance company had misled the court by rewriting Ms. Franklin’s records and then arguing that the rewritten records were incorrect. Judge Hamilton awarded attorney fees stating that “[e]mployers and employees pay businesses like Midwest Security precisely so they can be assured that money will be available for medically necessary but very expensive treatments like liver transplants.”

Hayes v. City of Indianapolis

2009 U.S. Dist. LEXIS 22423 (S.D. In. March 16, 2009)

Phillip Hayes, the plaintiff in this civil rights action, sued the City of Indianapolis, the Indianapolis Metropolitan Police Department, and certain police officers alleging that his rights had been violated. The facts of the case arose from an incident in which the police arrested Mr. Hayes for speeding, running red lights on his motorcycle, and initially fleeing from police. Mr. Hayes alleged that after a brief chase he stopped his motorcycle and surrendered, but that after his voluntary surrender, the police punched, kicked, and stomped on him. Judge Hamilton rejected Hayes’ argument that the police stopped him without reasonable cause in violation of the Fourth Amendment because it was clear that the traffic stop was justified given that Mr. Hayes was admittedly speeding, running red lights, and resisting arrest. Judge Hayes also found that Hayes’ single statement that he knew of other unnamed cases of excessive force was too vague to maintain a case that the City had a policy or practice of excessive force. However, Judge Hamilton denied the defendants’ motion for summary judgment and allowed Mr. Hayes to proceed on his claim that the police used excessive force, reasoning that even a person who resists arrest can be subjected to excessive force and Mr. Hayes’ version of events could support a finding that excessive force had been used.

Rodriguez v. Westside Limited Partnership

2008 Lexis 102167 (S.D. In. Dec. 15 2008)

Judge Hamilton ruled in favor of an employee who faithfully executed her job duties while working for a company under state investigation. Patricia Rodriguez worked for a nursing home being investigated by the Indiana State Department of Health (ISDH). In the course of gathering personnel files requested by ISDH investigators, Ms. Rodriguez found two personnel files with documents discussing the possibility of nurses stealing patients’ medication. Ms. Rodriguez was told by one of the administrators to remove these documents from the files before turning them over to ISDH; Ms. Rodriguez refused and reported this to other nursing home managers. Thereafter, according to Ms. Rodriguez, she was subjected to a hostile work environment and ultimately fired. Ms. Rodriguez filed a wrongful discrimination suit under Indiana law against the nursing home and the nursing home sought to dismiss the suit arguing that Ms. Rodriguez was an at-will employee who could be terminated without cause. Judge Hamilton, however, ruled that Ms. Rodriguez’s suit could proceed based on a public policy exception to Indiana’s at-will employment doctrine.

Tucker v. SmithKline Beecham Corp.

2008 U.S. Dist. LEXIS 55919 (S.D. Ind. July 18, 2008).

This case was brought against SmithKline, a drug company, after a priest who had been taking the anti-depressant Paxil committed suicide. The company claimed that the suit against it shouldn't be allowed to go forth because federal law pre-empted any state tort claims. Initially, Judge Hamilton ruled that federal law would supersede any state law claim. But, on reconsideration, he allowed the claim to proceed. Specifically, he held that federal regulations allow manufacturers of products to unilaterally and immediately modify their labeling to warn patients of any dangers. His reasoning why the claim wasn't preempted almost mirrors the recent Supreme Court decision by Justice Stevens in *Wyeth v. Levine*, which upheld the right of an injured patient to sue a drug company for its faulty product.

King v. Barnhart

2007 U.S. Dist. LEXIS 26052 (S.D. In. Feb. 26, 2007).

Plaintiff Brian King sought review before Judge Hamilton after an administrative law judge determined that Mr. King was not disabled under the Social Security Act because he retained the capacity to perform a number of unskilled jobs. At issue was whether he met the standard for "mental retardation" under the law. Because the record showed that Mr. King suffered from both mental and severe physical impairments, the law entitled him to benefits without further inquiry. Thus, Judge Hamilton awarded him social security benefits stating, "[w]hen he had been in better physical shape at a younger age, he had managed to hold a number of different jobs, almost always for brief periods, despite his intellectual limitations. But the combination of physical impairments with his intellectual limitations is sufficient to satisfy the severity criteria of [the Social Security Act]."

A Woman's Choice East-Side Women's Clinic v. Newman

132 F. Supp. 2d 1150 (S.D. Ind., Mar. 30, 2001), rev'd, 305 F.3d 684 (7th. Cir. 2002).

Judge Hamilton struck down an Indiana informed consent statute requiring a woman seeking abortion services to receive in-person "counseling" from her doctor at least 18 hours before the procedure. The law essentially required a woman to make two separate trips to the hospital or clinic from where she sought services. Judge Hamilton ruled that the law created an unconstitutional undue burden – the standard under which abortion restrictions are analyzed. Plaintiffs in the case were health care providers and a licensed physician. Over a strong dissent by Judge Diane Wood, a three judge panel on the Seventh Circuit reversed his decision. After the opinion was published, the Circuit took the somewhat unusual step of voting to reconsider the case *en banc*, which would give all sitting judges a chance to rule on the matter. Five of the eleven judges on the Circuit, including Reagan-appointee Judge Richard Posner, supported the rehearing. Although the case wasn't reheard, the majority opinion's author, Judge Frank Easterbrook, noted the conflicting Supreme Court precedent which left lower court judges with "irreconcilable directives" on the issue.

Hinrichs v. Bosma

400 F.Supp. 2d 1103 (S.D. Ind., Nov. 30, 2005), rev'd for standing 440 F.3d 393 (7th. Cir 2006).

Indiana residents and taxpayers sued the Speaker of the Indiana House of Representatives alleging that most prayers the Speaker permitted to open House sessions were sectarian, in violation of the Establishment Clause of the First Amendment. Judge Hamilton applied well-established jurisprudence which holds that prayers offered at the opening of legislative session do not, without more, violate the Clause. Yet, prayers which proselytize or advance one religion at the disparagement of another violate the Constitution. The evidence showed that the prayers offered before the Indiana House of Representatives repeatedly and consistently advanced one single religion. Judge Hamilton wrote that

“[a]ll are free to pray as they wish in their own houses of worship or in other settings.” However, there is no right “to use an *official* platform like the Speaker’s podium at the opening of a House session.” Thus, the Speaker’s actions permitting Christian prayers were no longer constitutionally sound, as they were not inclusive and non-sectarian. The Seventh Circuit Court of Appeals reversed the decision on procedural grounds, not the merits of Judge Hamilton’s ruling the case. The appeals court held that the taxpayers lacked the requisite standing necessary to challenge the prayers.