

NOMINATION OF DAVID HAMILTON

Ms. MURKOWSKI. Madam President, when the Senate considers the nomination of David Hamilton to the Seventh Circuit U.S. Court of Appeals later this afternoon, I intend to vote no. Some may regard this as perhaps inconsistent with my vote yesterday when I joined with a number of my colleagues on this side of the aisle in voting for cloture on the nomination. I certainly do not regard the two positions as inconsistent.

While I do not believe this nominee should be confirmed, I do believe judicial nominees deserve a straight up-or-down vote. I have come to the Chamber today to explain my views on the Hamilton nomination and expand upon why I voted as I did yesterday.

Our process for consideration of judicial nominees is broken. It has been broken since I came to the Senate in 2003. In fact, on April 30, 2003, I was among 10 freshman Senators, bipartisan, who wrote our respective leaders to say the confirmation process needed to be fixed. For reasons I can't fathom, we still seem to be light-years away from a process in which a President's judicial nominees come to the floor expeditiously for a straight up-or-down vote. This is a far cry from the process I am told the Senate adhered to prior to 2001 when there existed a strong presumption against the filibuster of judicial nominees. A cloture vote on a nomination was virtually unprecedented.

I understand all of that changed in February of 2001 when our colleagues on the other side of the aisle decided they would engage in the regular practice of blocking the confirmation of courts of appeals nominees with whom they had ideological disagreements through the use of the filibuster process.

Miguel Estrada, deemed "well-qualified" by a unanimous vote of the American Bar Association, had to suffer through seven failed cloture votes. This was in his bid to serve on the DC Circuit. Finally, he decided to move on with his life.

Priscilla Owen, also a recipient of a unanimous "well-qualified" rating by the ABA, suffered through four failed cloture votes before ultimately being confirmed to the Fifth Circuit.

David McKeague, a Sixth Circuit nominee, unanimously deemed "well-qualified" by the ABA was filibustered. I could go on.

In the 2003 letter, my cosigners and I noted that in some instances when a well-qualified nominee for the Federal bench is denied a vote, the obstruction is justified on the ground of how prior nominees, typically the nominees of a previous President, were treated.

Without doubt, a number of President Bush's nominees to the U.S. court of appeals were treated unfairly by this body. Off the top of my head, I can probably count 11 nominees to the courts of appeals, each of whom was deemed qualified to serve by the Amer-

ican Bar Association raters, many "well-qualified" in that rating, who had to suffer the filibuster.

It would not be my place to venture an opinion whether this entered into the cloture debate yesterday. However, I wish to make clear this is not how I evaluate judges for confirmation. In voting to end debate on the nomination of Judge Hamilton, I wanted to make the point that the qualified nominees of a President to the Federal bench deserve a straight up-or-down vote. This is what I believe the Constitution expects of this body in most cases.

Having said that, I have substantial concerns about the elevation of Judge Hamilton. I have considered his record on the Federal district court in Indiana as well as criticisms of his record. I regard it as my personal responsibility to consider these matters. My confirmation votes reflect my personal judgment as to the qualifications of the nominee.

As a Senator and as a mother, I have grave concerns about Judge Hamilton's judgment in recommending executive clemency for a 32-year-old police officer who was convicted of violating Federal child pornography laws. The defendant pled guilty to Federal charges that he photographed in one case and videotaped in the other sexual encounters with two women, one age 16 and the other age 17. Although it may have been lawful for the defendant to engage in these encounters under the laws of Indiana, it is not lawful to photograph them under the laws of the United States.

Judge Hamilton went out of his way to argue that the 15-year mandatory minimum sentence imposed by Congress for such violations was a miscarriage of justice in this case. He argued vociferously that executive clemency is warranted. This Senator does not understand why Judge Hamilton would choose this cause to champion. While I understand Judge Hamilton has imposed substantial sentences in other child pornography cases, I do not agree with his reasoning in this matter and cannot, in good conscience, support his confirmation.

With that, Madam President, I appreciate the attention of the Chair. I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. INHOFE. Madam President, it is my understanding—and I wish to reaffirm this with a unanimous consent request—that I will be recognized at the hour of 1:30 for, let's say, 1 hour 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

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

HEALTH CARE REFORM

Mr. CASEY. Thank you very much, Madam President.

I rise this afternoon to speak about health care. We all have been concentrating on this issue for many months, and we are now into a period of time when we will be getting a bill very soon to the floor. That is our hope and our expectation.

One of the parts of the Health, Education, Labor, and Pensions Committee bill that I voted on, as did the Presiding Officer this summer back in July when we passed our bill out of committee, one of the real priorities in that bill, and what I believe will continue to be a priority in the final legislation before the Senate, is children and what happens to children as a result of health care reform. We have a lot to be positive about in terms of legislation over the last decade or more as it relates to children, and I will speak about that.

In terms of that guiding principle, I have a very strong belief—and I think it is the belief of a lot of people in this Chamber and across the country—that every child in America—every child in America—is born with a light inside them. For some children, that light is limited by circumstances or their own personal limitations, but no matter what that light is, we have to make sure the light for their potential burns as brightly as we can possibly ensure. For some children, of course, that light is almost boundless. You almost can't measure it because the child has advantages other children don't have or they have a family circumstance that allows them to grow and to develop and, therefore, to learn and to be very successful. But I believe every child in America is born with a light, and whatever the potential is for that child, we have to make sure he or she realizes it. We have a direct role to play. Those of us who are legislators, those of us who are working on the health care bill have an obligation, I believe, to make sure that light shines ever brightly.

One of the other themes under this effort to expand health care for Americans is to focus on children who happen to be either poor or who have special needs. I believe the goal of this legislation, as it relates to those children, those who are poor or children with special needs, is four words: "No child worse off." We need to ensure that a

poor child isn't worse off at the end of this debate and enactment of health care reform and that a child with special needs is not worse off. I think that is the least we should do when it comes to protecting our children.

There are at least two programs—one older than the other but both very important—that relate to our children. The older of the two programs is the Medicaid Program. It has been around for more than 40 years now. Medicaid, as it pertains to children, is a program we have come to rely upon to provide children with very good medical care, the best medical care, in some ways, that a child can have. We have to make sure we pay attention to how Medicaid is treated in this bill. We will talk a little bit more about that in a moment.

In Pennsylvania, the State I represent, we have a 15-year experiment with the Children's Health Insurance Program or CHIP. The one thing we know about CHIP is it works. It works very well for children. As we know, in a general sense, the Children's Health Insurance Program is for children of low- and middle-income families in America who can't get coverage from their employer, for one reason or another, and don't have a family income that is low enough to qualify for Medicaid. So it fills a gap that had been there for years. We know, with regard to the Children's Health Insurance Program, today there are about 7.8 million children covered. That is wonderful. I am very proud and happy about that, but we are even happier and more positive about the future because the reauthorization of the Children's Health Insurance Program means that by 2013, 7.8 million children covered will rise to 14.1 million children. So an easy way to think about children's health insurance is 14 and 13: 14 million kids covered in the year 2013. That is a tremendous achievement—historic in American history. We have never had anything close to that, to have 14 million children covered in a good program such as CHIP.

The caveat to that is we still have millions—by some estimates 8 million—of children who will not be covered even in 2013. One of the reasons we are debating health care reform is to make sure we are doing everything possible to strengthen the Children's Health Insurance Program and do not allow it to be weakened in any way.

One way to weaken it—and fortunately the Senate Finance Committee did not do this in their final bill—is to take a stand-alone, successful, effective Children's Health Insurance Program and put it in the health insurance exchange. It may sound good—within one system—but I believe, and many others believe, it would be very bad. The Finance Committee, led by Senator ROCKEFELLER, worked very hard to make it possible to keep the Children's Health Insurance Program as a separate stand-alone program. I believe we have to do that.

As we know, legislation passed recently in the House. The health care

bill got through not just the committees but through the House itself. One of the problems with the House bill is it would end the Children's Health Insurance Program in 2013. We don't want to do that. We want to make sure, in the Senate, we do it differently than the House did.

One component that is good about the House bill on this subject, however, is it does expand Medicaid. The House bill expands Medicaid for children to 150 percent of poverty for all States, and States would get assistance in paying for this expanded population. But then there is another caveat in terms of what I think has to be improved upon in the Senate. Children above 150 percent of poverty will go into a new exchange, which I think is, as I said before, the wrong way to go. We want to make sure, if something such as that were to happen, they would have cost-sharing protections and better benefits. Unfortunately, if they go into that exchange, they would not. This could have a direct impact on a State such as Pennsylvania. By one estimate, in Pennsylvania alone, this means that nearly 100,000 children who currently have children's health insurance coverage would lose it because of that change. So we want to make sure we don't go in the direction the House did as it relates to this issue of children's health insurance and the exchange—keeping it out of the exchange.

We do need to expand Medicaid for children and we need to maintain CHIP as a stand-alone program. What are some of the numbers here? We are talking about nationally, in the Medicaid Program, 30 million children enrolled in Medicaid. As I said before, enrolled in CHIP are 7.8 million kids. Putting them together we have one-third of all children in America covered by those two programs. But as I said before, we still have plenty—millions and millions—of children who still are not covered by either program.

We hear a lot of acronyms around here, but one important acronym for this debate, as it relates to children and to health care, is EPSDT: early pediatric screening diagnosis and treatment. The American Academy of Pediatrics has called EPSDT the “gold standard” for children's health care. This is essential that we keep that kind of standard in place. That means Medicaid, for example, covers all medically necessary treatment for children, including preventive care, primary care, dental, hearing, vision, and it goes down the list.

Unfortunately, sometimes people say: Well, under commercial coverage you will get as much coverage for children of the same quality. Unfortunately, that is not true. There may be advantages to provider networks of commercial coverage for families who are wealthy enough, have the means to afford it and who can get out of the network and pay for something extra, but, of course, many families don't have that benefit.

I wish to spend a couple moments on EPSDT. I will go to the first chart. The Commonwealth Fund and George Washington University did an excellent comparison of the benefits between commercial insurance and Medicaid. The first benefit we have on this chart is called developmental assessment. Some of these terms get a little long and there is a lot of policy jargon. One of the most important things for any child, especially very young children, is to have regular and high-quality developmental assessments, so we can catch anything that might be going wrong at an early enough age and give that child the benefit of early intervention and treatment in the dawn of their lives, in the early months and years of their lives. We can see, under Medicaid, for example, that this developmental assessment is covered. We can also see that under the Federal Employees Health Benefits Plan, there is a lot of verbiage there which I will not read, but suffice it to say it is limited. It is not covered to the extent it is in Medicaid.

Another example is this phrase down here: “Anticipatory guidance,” another fancy term of policy, but it is this simple: It is helping parents understand what they should be expecting from their child physically, emotionally, and developmentally so they can get help, as I said before, early enough in the life of that child. This kind of guidance, again, is covered under Medicaid but not explicitly covered under the Federal Employees Health Benefit Program, which, as a beneficiary of that program, is a great health insurance program for Federal employees, but even something that significant, in terms of coverage and quality, would not be, in my judgment, good enough for poor children who should be covered in terms of developmental and anticipatory guidance with their parents under Medicaid. So Medicaid is better for poor children than even something as significantly good as the Federal employees plan.

Let me go to the next chart. I know we are getting close to our time and I will be observing that. This chart shows EPSDT as it relates to physical, speech, and related therapies. We have heard horror stories from mothers of children with disabilities—either mild or severe. Physical therapy, speech therapy, and occupational therapy, these are all critical to a child who may have a disability. Sometimes early intervention can help a child recover to normal functioning and sometimes it is a disability that persists throughout a child's life. Under Medicaid, again, beyond the medically necessary threshold, basic therapies, such as physical, speech, and occupational therapy, are covered without limitation. I think it is vitally important we ensure that under Medicaid we continue to fortify that program so our children can get that kind of quality coverage.

Let me conclude with a couple thoughts, very briefly. No. 1 is, at the

end of this process of getting a health care bill enacted, I believe we have to live up to that basic standard of four words for poor kids: "No child worse off" at the end of the road. Dr. Judith Palfrey, a pediatrician, child advocate, and president-elect to the American Academy of Pediatrics, spoke at one of our hearings earlier this year, and here is what she said:

Sometimes, we as child advocates find it hard to understand why children's needs are such an afterthought and why, because children are little, policymakers and insurers think that it should take less effort and resources to provide them with health care.

I think that challenges all of us to make sure children are not second-class citizens when it comes to health care reform and what we do.

Let me conclude with this thought: As I said before about that bright light inside every child who is born, we have to do everything possible to make sure that at the end of the road, at the end of this debate, and at the end of voting on this bill, we ensure that that light burns ever brightly, especially for children who happen to be poor or have special needs.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Madam President, I understand that according to the unanimous consent agreement, I have the floor for a period of time now.

The PRESIDING OFFICER. The Senator is correct.

GLOBAL WARMING

Mr. INHOFE. Madam President, next month, thousands of U.N. delegates from over 190 nations, members of the press, and eco-activists from around the world will descend upon Copenhagen as a part of the U.N. Conference on Global Warming. Yet, even before it begins, that U.N. conference is being called a disaster.

Just this morning, the *Telegraph*—a UK newspaper—noted:

The worst-kept secret in the world is finally out—the climate change summit in Copenhagen is going to be little more than a photo opportunity for world leaders.

Not too long ago, however, the Copenhagen meeting was hailed to be the time when an international agreement with binding limits on carbon dioxide and other greenhouse gases would finally be agreed upon.

The eco-activists believed that with a Democratic President in the United States and a Democratically controlled House and a Democratically controlled Senate, we would finally push through mandatory cap-and-trade legislation, and the United States would finally be

ready to succumb to the demands of the U.N. I say demands of the United Nations because there are so many people in this Chamber who think if something isn't multinational, U.N. or something else, it is not good. You have to ask: Whatever happened to sovereignty in this country?

Not too long ago, the Copenhagen meeting was hailed as a time that all this would come to an end and they would be successful and pass in this country the largest tax increase in history. In reality, it will be a disaster. Failure comes at a high cost. Despite the millions of dollars spent by Al Gore, the Hollywood elite, the U.N., climate alarmists, it has failed.

Perhaps the *Wall Street Journal* said it best in an article entitled "Copenhagen's Collapse." I will read this because I think it is worthwhile:

The Climate Change Sequel is a Bust.

The editorial states:

"Now is the time to confront this challenge once and for all." President-elect Obama said of global warming last November. "Delay is no longer an option." It turns out that delay really is an option—the only one that has worldwide support. Over the weekend, Mr. Obama bowed to reality and admitted that little of substance will come of the climate change summit at Copenhagen next month. For the last year, the President has been promising a binding international carbon-regulation treaty à la the Kyoto Protocol.

We remember that.

But instead, negotiators from 192 countries now hope to reach a preliminary agreement that they'll sign such a treaty when they meet in Mexico City in 2010.

Wait a minute. That is 2010. That is next year. This year, it hasn't even come yet. This is Copenhagen 2009.

I am continuing to read:

The environmental lobby is blaming Copenhagen's preemptive collapse on the Senate's failure to ram through a cap-and-trade scheme like the House did in June, arguing that "the world" won't make commitments until the United States does. But there will always be one excuse or another, given that developing countries like China and India will never be masochistic enough to subject their economies to the West's climate neuroses. Meanwhile, Europe has proved with Kyoto that the only emissions quotas it will accept are those that don't actually have to be met.

We say that because many of these Western European countries made commitments for emissions and they have not met them.

During my position as chairman and ranking member of the Environment and Public Works Committee, since 2003, I have been the lead Senator standing and exposing the science, the cost, and the hysteria about global warming alarmism. I will be traveling to Copenhagen leading what has been called the truth squad, to say what I said 6 years ago in Milan, Italy. Let's keep in mind what these meetings are. The U.N.—that is where this all started, with the IPCC at the U.N.—said that the world is going to come to an end because of CO₂ emissions. They started having these meetings, and

they have had—I don't know how many. They started in 1999, I think. They had the one in Milan, Italy, in 2003, the only one I went to. They were inviting all the countries to come in and join this club, saying we are going to do away with CO₂.

It is interesting that one of the participants I ran into in 2003 was from West Africa—and I remember this well because I knew this guy knew better. I said: What are you here supporting this for? He said: This is the biggest party of the year. We have 190 countries coming in, and it is a big party. It is all you can eat and drink. So anyway, the United States is not going to support a global warming treaty that will significantly damage the American economy, cost American jobs, and impose the largest tax increase in American history. Further, as I stated in 2003, unless developing countries are part of the binding agreement, the United States will not go along, given the unemployment rate of 10 percent—10.2 now—and given all the out-of-control spending in Washington. The last thing we need is another 1,000-page bill that increases costs and ships jobs overseas, all with no impact on climate change.

That was in Milan, Italy. I remember in Milan, Italy, all the telephone poles had my picture on them, "wanted" posters, because of something I said, which I will quote in a minute. I said then that the science was not settled, and it was an unpopular view. Since Al Gore's science fiction movie, more and more scientists, reporters, and politicians are questioning global warming alarmism. I am proud to declare 2009 the year of the skeptic, the year in which scientists who question the so-called global warming consensus are being heard.

Rather than continue down a road that will harm the U.S. economy and international community, we should forge a new path forward that builds on international trade, new and innovative technology, jobs, development, and economic growth.

If you have followed the Senate, you will know that the Senate's position on global warming treaties couldn't be more clear. In 1997, let's remember what happened then. President Clinton and Vice President Al Gore were attempting to get us to ratify the Kyoto treaty. We passed something in the Chamber called the Byrd-Hagel resolution. It passed 95 to 0. It said this: If you bring back anything from Kyoto or anywhere else for us to ratify, and if that treaty we are supposed to ratify either doesn't include developing countries or is harmful to our economy, then we will not ratify it. I think the Byrd-Hagel resolution still commands strong support in the Senate. Therefore, any treaty President Obama submits must meet this criteria or it will be easily defeated.

Proponents of securing an international treaty are slowly acknowledging that the gulf is widening between the United States and other industrialized nations that are willing to