The third thing, regrettably, that they are going to see is that we are going to continue to play the game the way it has been played: Get the votes to defeat the amendment; we will take a little bit of heat; maybe somebody will notice. I will guarantee you, 20 years from now, our kids are going to notice, our grandkids are going to notice.

One final thought. If you are under 25 in this country, pay attention to me right now. If you are under 25—there are 103 million of you. Twenty years from now, you and your children will each be responsible for $1,919,000 worth of debt of this country for which you will have gotten no benefit—none. The cost to carry that will be about $70,000. That is not per family, that is per individual. The cost to carry that will be about $70,000 a year before you pay your first tax.

Ask yourself if you think we are doing a good job when we are going to take away your ability to get a college education, we are going to take away your ability to educate your children, when we are going to take away your ability to own a home, and we are going to take away your ability to have the capital formation to create jobs in this country. Watch and see. That number is going to grow every time we do something like this without paying for it, without offsets, without getting rid of something less important.

I yield back the time and yield the remainder of my time to the chairman of the committee.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I wish to make a point of clarification. This bill, the pending measure, is made up of two bills which is now S. 1963. It was S. 252, which was reported in July, and S. 801, which was reported in mid-October. Both bills were held at the time they went onto the calendar. No amendment was prepared to either bill. The first amendment was proposed on Monday of this week, 2 weeks after the bills were combined as S. 1963.

In closing, the debate about the United Nations is not one which belongs on a veterans bill. The underlying bill is a bipartisan approach to some of the most urgent issues facing all veterans—for women veterans, for homeless veterans, to help with quality issues, to help rural veterans.

This bill, by the way, also includes construction authorization for six major VA construction projects already funded by the VA spending bill.

I urge our colleagues to reject the amendment to S. 1963.

Mr. AKAKA. I yield back my time.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FRANKEN). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. 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. LEAHY. I thank the Chair.

EXECUTIVE SESSION

NOMINATION OF DAVID F. HAMILTON TO BE UNITED STATES CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to resume consideration of the following nomination, which the clerk will report.

The bill clerk read the nomination of David F. Hamilton, of Indiana, to be United States Circuit Judge for the Seventh Circuit.

Mr. LEAHY. Mr. President, is there a division of time in this matter?

The PRESIDING OFFICER. The time until 2:30 is equally divided.

Mr. LEAHY. Mr. President, I yield myself 10 minutes.

Mr. LEAHY. Mr. President, the Senate is concluding its long-delayed consideration of the nomination of Judge David Hamilton of Indiana to the Seventh Circuit. Early this week, 70 Senators—Democrats, Independents and Republicans—joined together to overcome a filibuster of this nomination. This has been a record year for filibusters by the Republican minority: filibusters of needed legislation, filibusters of executive nominations and filibusters of judicial nominations, which just a few years ago they proclaimed were ''unconstitutional.'' Although their filibuster failed, what they achieved was obstruction and delay. This is a nomination that has been stalled on the Senate Executive Calendar for 5½ months, since June 4. In the days since that bipartisan majority of 70 Senators voted to bring to an end the debate on the Hamilton nomination, and in the more than 30 hours of possible debate time since then, Republican Senators have devoted barely one hour to the Hamilton nomination. Only four Republican Senators have spoken at all and that includes the Senator from Alabama who repeated the claims he had made five times to the Senate since September 17.

As has been reported since the nomination was made in mid-March, President Obama's selection of Judge Hamilton as his first judicial nominee was intended to send a message of bipartisanship. President Obama reached out and consulted with both home State Senators, Senator LUGAR and Senator BAYH, a Republican and a Democrat, in making his selection. This stands in sharp contrast to the methods of his predecessor, who was focused on a narrow ideological effort to pack the Federal courts, often did not consult, and too often tried to force extreme candidates through the Senate. That is what led to filibusters—that and Senate Republicans changing of the rules, procedures and protocols of the Senate.

The nomination of Judge Hamilton is an example of that consultation. Other examples are the recently confirmed nominees to vacancies in South Dakota, who were supported by Senator THUNE, and the nominee confirmed to a vacancy in Florida, supported by Senators MARTINEZ and LEMIEUX. Still others are the President's nomination to the Eleventh Circuit from Georgia, supported by Senators ISAKSON and CHAMBLISS, his recent nominations to the Fourth Circuit from North Carolina, which I expect will be supported by Senator BURR, and the recent nomination to a vacancy in Alabama supported by Senators SHELBY and SESSIONS on which the Judiciary Committee held a hearing 2 weeks ago.

President Obama has respected the Senate's constitutional advice and consent role by engaging in meaningful consultation in making his judicial nominations. He has consulted with home State Senators from both sides of the aisle. This stands in sharp contrast to the methods of his predecessor, who was focused on a narrow ideological effort to pack the Federal courts, often did not consult, and too often tried to force extreme candidates through the Senate. That is what led to filibusters that and Senate Republicans changing of the rules, procedures and protocols of the Senate. In today's Washington Post, columnist E.J. Dionne writes about this occurrence and yesterday's failed attempt at a filibuster. I will ask that a copy of this column be printed in the RECORD.

Yet despite that consultation and the support and endorsement of the senior Republican in the Senate, Senator LUGAR, Republicans have filibustered and now oppose this nomination. Their response to President Obama's outreach and seeking to turn the page and set a new tone in judicial nominations by restoring comity is to attack his well qualified nominees and stall Senate action. In May, just before Judge Hamilton's nomination was reported by the committee, a senior Republican Senator reflected upon the Senate confirmation process for judicial nominees and correctly observed: ''[C]harges come flying in from right and left that are unsupported and false. It's very, very difficult for a nominee to push back. So I think we have a high responsibility to base any criticism that we have on a fair and honest statement of the facts and that nominees should not be subjected to distortions of their record.'' I agree.

Regrettably, however, that is not how Republican Senators have acted. Judge Andre Davis of Maryland, a distinguished African-American judge, was stereotyped as ''anti-law enforcement'' last week by Republican critics, and this week Judge Hamilton, the son of a Methodist minister, is reviled as hostile to Christianity. That is not fair treatment.

The unfair distortions of Judge Hamilton's record by right-wing special interest groups seeking to vilify him

have been repeated in editorials in the Washington Times and by Republican opponents in the Senate. They resort to twisting and contorting his judicial record and his views, and ignore the record before the Senate. Those distortions of Judge Hamilton's record were soundly refuted earlier this week by the senior Senator from Indiana, Senator LUGAR. I doubt that I will add to his sound and thoroughgoing rebuttal. Judge Hamilton's critics are wrong and have been wrong all along.

Senator LUGAR and Senator BAYH believe Judge Hamilton is superbly qualified and a mainstream jurist. I agree. Yet Republican critics of Judge Hamilton are determined to ignore the knowledge and endorsement of these home State Senators as well as Judge Hamilton's long, mainstream record on the bench to paint an unfair caricature of him. They are wrong to ignore Judge Hamilton's record of fairly applying the law in over 8,000 cases and his ''well qualified'' rating by the American Bar Association. These critics ignore Judge Hamilton's testimony before the committee when he said, ''I make decisions based on the facts and applicable law of each case.'' They ignore his statement that ''sympathy for one side or another'' in a case ''has no role in the process'' of judging. Instead, they construct and then seek to impose their own ''litmus tests'' and contort his record and statements in their ends-oriented effort to find him wanting.

Republican Senators did not object when Chief Justice Roberts testified at his confirmation hearing that ''of course, we all bring our life experiences to the bench.'' Republican Senators did not criticize Justice Alito at his confirmation hearings in 2006 for describing the importance of his background when evaluating discrimination cases. Justice Alito said: ''When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. And I do take that into account.''

I recall one nominee who spoke during his confirmation hearing of his personal struggle to overcome obstacles. He made a point of describing his life as:

> [O]ne that required me to at some point touch on virtually every aspect, every level of our country, from people who couldn't read and write to people who were extremely literate, from people who had no money to people who were very wealthy. So, what I bring to this Court, I believe, is an understanding and the ability to stand in the shoes of other people across a broad spectrum of this country.

That is the definition of empathy. And that nominee was Clarence Thomas. Indeed, when President George H.W. Bush nominated Justice Thomas to the Supreme Court he touted him as, ''a delightful and warm, intelligent person who has great empathy and a wonderful sense of humor.'' Justice O'Connor, who had a long and distinguished record of evenhandedness on the Supreme Court, explained recently: ''You do have to have an understanding of how some rule you make will apply to people in the real world. I think that there should be an awareness of the real-world consequences of the principles of the law you apply.''

Yet now Republican Senators seek to apply a newly constructed ''litmus test'' that rejects what they had previously viewed as positive attributes as disqualifying. Their opposition to President Obama is so virulent that they act as if they must oppose anything he supports. If he sees value in judges with real world perspectives who consider the real impact of various readings of the law on everyday Americans, they must react in knee jerk opposition. They use a distorted lens to review a 15-year judicial record in which he has not substituted empathy for the law to somehow conclude that he will if confirmed to the new appointment. It is reminiscent of the Salem witch trials. They see what they want to see.

Senator LUGAR noted this week that the President of the Indiana Federalist Society endorsed Judge Hamilton as an ''excellent jurist and first-rate intellect'' with a judicial philosophy ''well within the mainstream.'' Senator LUGAR's own review of his record, with help from a former Reagan counsel, led him to conclude based on that record that ''Judge Hamilton has not been a judicial activist and has ruled objectively and within the judicial mainstream.'' Senator BAYH reinforced that conclusion with his statements in support of the nomination.

Republican critics are slavishly channeling the talking points of far right narrow special interest groups to twist a handful of the Judge Hamilton's 8,000 cases to make biased and unfair attacks on the character and record of a moderate judge and a good man. For example, they have misrepresented two of his cases, Hinrichs v. Bosma, 2005, and Grossbaum v. Indianapolis-Marion County Bldg. Authority, 1994, to falsely describe Judge Hamilton, the son of a Methodist minister, as hostile to religion, and to Christianity in particular. In fact, these cases show nothing more than that Judge Hamilton has consistently and objectively performed his duty as a judge to apply the law carefully to the case before him.

In Hinrichs v. Bosma, Judge Hamilton did not eliminate prayer, as some critics have charged. In fact, his narrow and carefully considered ruling was that the Indiana Legislature may begin its sessions with any non-denominational, nonsectarian prayers—prayers that do not advance a particular faith. He noted that those prayers ''must be non-sectarian and must not be used to proselytize or advance any one faith or belief or to disparage any other faith or belief.'' Prayers from any religion—be they Christian, Jewish, Muslim or from another religion—that advance a particular faith were not permissible.

The plaintiffs in Hinrichs had challenged the Christian orientation of most of the prayers delivered during the 2005 Indiana House session. So, as part of his analysis, Judge Hamilton reviewed the 45 available transcripts of the 53 opening prayers that were offered during that session. He relied on undisputed testimony of scholars and clerics of different faiths who themselves concluded that ''many of the legislative prayers delivered during the 2005 House session were sectarian, Christian in orientation, and sent a strong message of non-inclusion to those who are not Christian.'' His careful ruling did not depart from settled precedent. It followed the settled law from the Supreme Court and in the Seventh Circuit interpreting the establishment clause of the first amendment of the Constitution.

The critics of Judge Hamilton who have made much of the fact that Judge Hamilton's decision was overturned by the Seventh Circuit ignore the fact that it was overturned only on the technical issue of standing, not on the merits of Judge Hamilton's opinion. In fact, even on this narrow technical point the Seventh Circuit initially upheld Judge Hamilton's 2005 decision that taxpayers had standing to sue the Indiana House of Representatives, challenging the practice of offering sectarian prayers at the beginning of sessions as a violation of establishment clause. The Seventh Circuit only reversed Judge Hamilton on this technical threshold question after the Supreme Court handed down an intervening 2007 decision, Hein v. Freedom from Religion Foundation, 2007, was issued after Judge Hamilton's decision was on appeal. In doing so, the Seventh Circuit acknowledged that it also was reversing its own previous decision in the case that affirmed Judge Hamilton's ruling that plaintiffs had standing.

These same critics have gone so far as to claim that Judge Hamilton favors Muslim prayers to Christian ones by allowing prayers to Allah, while forbidding prayers to Jesus Christ. This slur led to a Washington Times editorial denouncing the nomination. As Judge Hamilton explained in a ruling on a post-trial motion in Hinrichs, closely following Supreme Court precedent from Marsh v. Chambers, 1983, the mere use of the word for ''God'' in another language, such as the ''Arabic Allah, the Spanish Dios, the German Gott, the French Dieu, the Swedish Gud, the Greek Theos, the Hebrew Elohim, the Italian Dio'' does not make a prayer sectarian, because it does not ''advance a particular religion or disparage others.'' However, as Judge Hamilton testified in response to a question from Senator GRAHAM, under the reasoning of his ruling in Hinrichs, ''a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer'' and impermissible.

Senators who charge that Judge Hamilton's ruling allows Muslim prayers whole forbidding Christian ones have either not read the case or choose to ignore what it says. Judge Hamilton's analysis of the 53 opening prayers that were offered in the Indiana House during the 2005 legislative session, found that all but one were delivered by Christian ministers or ministers identified with Christian churches. He noted that the one prayer that was not, which was delivered by a Muslim man, unlike the vast majority of the prayers from Christian clergy, was ''inclusive and was not identifiable as distinctly Muslim from its content.''

Judge Hamilton also faithfully applied binding precedent when deciding Grossbaum. In that case, Judge Hamilton correctly relied on then-current Supreme Court and Seventh Circuit precedent interpreting the free speech clause of the first amendment to reach his decision that the Indianapolis building authority acted lawfully in refusing to allow a rabbi to display a menorah in the lobby of the city-county building. His decision relied on a 1990 Seventh Circuit decision, Lubavitch Chabad House, Inc. v. City of Chicago, which upheld a decision by the city of Chicago to put a Christmas tree in the O'Hare Airport and, at the same time, to exclude private displays of religious symbols.

As with Hinrichs, right wing critics point to the Seventh Circuit's reversal of Judge Hamilton's decision to argue that he got it wrong and did not apply the law. What this account leaves out is that the Supreme Court case relied on by the Seventh Circuit to reverse Judge Hamilton did not come down until 1995, after Judge Hamilton issued his decision in Grossbaum. In reversing Judge Hamilton's decision, the Seventh Circuit specifically noted that Judge Hamilton acted without benefit of the Supreme Court's new guidance in this area provided by Rosenberger v. Rector & Visitors of the University of Virginia, 1995.

Had Judge Hamilton ignored the binding precedent in certain religion cases to make his decision based on personal beliefs and not the law, he would have been an activist going beyond his role as a district judge. As I read these cases, I had in mind the words of Senator LUGAR who said when he testified in support of Judge Hamilton:

> I have known David since his childhood. His father, Reverend Richard Hamilton, was our family's pastor at St. Luke's United Methodist Church in Indianapolis, where his mother was the soloist in the choir. Knowing first-hand his family's character and commitment to service, it has been no surprise to me that David's life has borne witness to the values learned in his youth.

Senator LUGAR knows Judge Hamilton's character. And the cases critics would use to savage it show nothing more than that Judge Hamilton understands, again in Senator LUGAR's words, ''the vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws, rather than seeking to impose their own policy views.''

Critics have similarly twisted and disparaged Judge Hamilton's record on reproductive rights to paint him as an agenda-driven ideologue by pointing to a single case, A Woman's Choice v. Newman, 1995, even though in that case he carefully applied Supreme Court precedent.

In A Woman's Choice, Judge Hamilton blocked enforcement of part of an Indiana abortion law that required pregnant women to make two trips to a clinic before having an abortion. Judge Hamilton applied the law set forth by the Supreme Court in Planned Parenthood v. Casey, 1992, and, after carefully examining the facts, concluded that many Indiana women would not be able to make a second trip to a hospital or a clinic. Therefore, under the standard in Casey—the standard that Chief Justice Roberts and Justice Alito pledged to follow as binding precedent when nominees before the Judiciary Committee—Judge Hamilton concluded that the law undermined a woman's constitutionally protected right to choose.

Critics have seized on a split decision from the Seventh Circuit reversing Judge Hamilton's decision to grant a pre-enforcement injunction of the informed consent provision to mischaracterize his decisions in that case as activist. However, in reversing Judge Hamilton on the injunction, noted conservative icon Judge Easterbrook was criticized by another judge on the panel for ''disregard[ing] the standards that were established by the Supreme Court in [Casey]'' and was criticized for ''brush[ing] aside the painstakingly careful findings of fact'' that Judge Hamilton made. Even the concurring opinion recognized that Judge Easterbrook's opinion embraced dissenting opinions in other cases. Critics have also seized on a falsehood that Judge Hamilton blocked enforcement of the law for seven years, ignoring his modification of the initial injunction to permit Indiana to enforce most of its informed consent law after the Indiana Supreme Court ruled on a State law question of first impression that Judge Hamilton had certified so that he could be guided by the State's highest court on a question of State law, and ignoring Indiana's choice not to appeal Judge Hamilton's timely-issued decisions on the injunction until after trial, which Indiana had asked Judge Hamilton to postpone. Judge Hamilton's decisions in that case show that he was a careful judge showing appropriate deference to Indiana when addressing a matter of first impression in that State, not an ideologue or an activist.

Senators painting a false picture of Judge Hamilton's record have also cherry-picked his long record on the bench of handling criminal cases to focus on one or two cases they assert show that he is too lenient on criminals. Like the other charges against Judge Hamilton, this does not hold up to scrutiny. In his 15 years on the bench, the government has appealed only 2 of the approximately 700 criminal sentences Judge Hamilton has handed down. Judge Hamilton's critics ignore cases like U.S. v. Turner, 2006, in which Judge Hamilton sentenced a child pornographer to 100 years in prison. They ignore U.S. v. Clarke, 1999, in which Judge Hamilton sentenced a defendant to 151 months on three counts of drug distribution and an additional 60 months on a firearm charge, denying the defendant's motion for a reduced sentence citing the defendant's ''dangerous role in the distribution network.'' They ignore cases like U.S. v. Garrido-Ortega, 2002, in which Judge Hamilton sentenced a defendant to 70 months imprisonment for possession of counterfeit alien registration receipt cards and for being found in the United States as an alien previously deported after conviction, then denied the defendant's motion for reconsideration of sentence. They ignore decisions like U.S. v. Steele, 2009, U.S. v. Hagerman, 2007, and U.S. v. Ellis, 2007, in which Judge Hamilton imposed heavy sentences for drug dealing, obstruction of justice and for tax evasion. This charge against Judge Hamilton simply does not hold up.

Finally, we have heard repeatedly the falsehood that Judge Hamilton is an activist judge who will try to amend the Constitution through ''footnotes.'' However, Judge Hamilton testified in response to written questions from Senators that he believes that ''judges do not 'add' footnotes to the Constitution'' and that ''constitutional decisions must always stay grounded in the Constitution itself.''

In response to Senator SESSIONS, Senator GRASSLEY and others, Judge Hamilton wrote:

> The phrase ''footnotes to the Constitution,'' described by my late colleague Judge S. Hugh Dillin, refers to the case law interpreting the Constitution. By that phrase, I believe he meant that the general provisions of the Constitution take on their life and meaning in their application to specific cases, that the case law is not the Constitution itself, and that constitutional decisions must always stay grounded in the Constitution itself. In my view, judges do not ''add'' footnotes to the Constitution itself. They apply the Constitution to the facts of the particular case and add to the body.

Further, in response to another question from Senator SESSIONS, Judge Hamilton testified: ''I have not added footnotes to the Constitution. I believe the constitutional decisions I have made have been consistent with the express language and original intent of the Founding Fathers.'' I am hard-pressed to understand why Senators would ask such questions if they do not consider the nominee's clear answers.

I hope that Senators now considering whether to support this well-qualified mainstream nominee resist the partisan effort to build a straw man out of one or two opinions in a 15-year record

on the bench. I hope they do not allow right wing talking points to overshadow Judge Hamilton's long and distinguished record on the bench. Instead, I urge Senators to heed the advice of Senator LUGAR who urged that ''confirmation decisions should not be based on partisan considerations, much less on how we hope or predict a given judicial nominee will 'vote' on particular issues of public moment or controversy.''

This is a nomination that should be confirmed and should have been confirmed months ago. David Hamilton is a fine judge and will make a good addition to the United States Court of Appeals for the Seventh Circuit.

Mr. President, I ask unanimous consent to have a copy of the Washington Post article to which I referred printed in the RECORD.

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

[From the Washington Post, Nov. 19, 2009]

THE GOP'S NO-EXIT STRATEGY

(By E.J. Dionne, Jr.)

Normal human beings—let's call them real Americans—cannot understand why, 10 months after President Obama's inauguration, Congress is still tied down in a procedural torture chamber trying to pass the health-care bill Obama promised in his campaign.

Last year, the voters gave him the largest popular-vote margin won by a presidential candidate in 20 years. They gave Democrats their largest Senate majority since 1976 and their largest House majority since 1992.

Obama didn't just offer bromides about hope and change. He made specific pledges. You'd think that the newly empowered Democrats would want to deliver quickly.

But what do real Americans see? On health care, they read about this or that Democratic senator prepared to bring action to a screeching halt out of displeasure with some aspect of the proposal. They first hear that a bill will pass by Thanksgiving and then learn it might not get a final vote until after the new year.

Is it any wonder that Congress has miserable approval ratings? Is it surprising that independents, who want their government to solve a few problems, are becoming impatient with the current majority?

Democrats in the Senate—the House is not the problem—need to have a long chat with themselves and decide whether they want to engage in an act of collective suicide.

But it's also time to start paying attention to how Republicans, with Machiavellian brilliance, have hit upon what might be called the Beltway-at-Rush-Hour Strategy, aimed at snarling legislative traffic to a standstill so Democrats have no hope of reaching the next exit.

We know what happens when drivers just sit there when they're supposed to be moving. They get grumpy, irascible and start turning on each other, which is exactly what the Democrats are doing.

Republicans know one other thing: Practically nobody is noticing their delay-to-kill strategy. Who wants to discuss legislative procedure when there's so much fun and profit in psychoanalyzing Sarah Palin?

Yet there was a small break in the Curtain of Obstruction this week when Republican senators unashamedly ate every word they had spoken when George W. Bush was in power about the horrors of filibustering nominees for federal judgeships. On Tuesday, a majority of Republicans tried to block a vote on the appointment of David F. Hamilton, a rather moderate jurist, to a federal appeals court.

Sen. Jeff Sessions of Alabama explained the GOP's about-face by saying: ''I think the rules have changed.''

That was actually a helpful comment, because the Republicans have changed the rules on Senate action up and down the line. Hamilton's case is just the one instance that finally got a little play.

Thankfully, this filibuster failed because some Republicans were embarrassed by it. But Republican delaying tactics have made Obama far too wary about judicial nominations for fear of controversy. He is well behind his predecessor in filling vacancies, a shameful capitulation to obstruction. There's also the fact that the nomination of Christopher Schroeder as head of the Justice Department's Office of Legal Policy, which helps to vet judges, is snarled—guess where?—in the Senate.

Republicans are using the filibuster to stall action even on bills that most of them support. Remember: The rule is to keep Democrats from ever reaching the exit.

As of last Monday, the Senate majority had filed 58 cloture motions requiring 32 recorded votes. One of the more outrageous cases involved an extension in unemployment benefits, a no-brainer in light of the dismal economy. The bill ultimately cleared the Senate this month by 98 to 0.

The vote came only after the Republicans launched three filibusters against the bill and tried to lard it with unrelated amendments, delaying passage by nearly a month. And you wonder why it's so hard to pass health care?

Defenders of the Senate always say the Founders envisioned it as a deliberative body that would cool the passions of the House. But Sessions unintentionally blew the whistle on how what's happening now has nothing to do with the Founders' design.

The rules have changed. The extra-constitutional filibuster is being used by the minority, with extraordinary success, to make the majority look foolish, ineffectual and incompetent. By using Republican obstructionism as a vehicle for forcing through their own narrow agendas, supposedly moderate Democratic senators will only make themselves complicit in this humiliation.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, we moved three judges through committee today, and I think, all in all, Senator LEAHY is working us to death. But we are making some progress.

I would note for the record, if anybody would like to know, there are 21 circuit vacancies for circuit courts in America. The President has nominated 10 people for those vacancies. There are 76 district court vacancies, and as of November 16 the President has nominated 10. He has more vacancies than President Bush had at this time and he has nominated fewer people. But a lot of things are happening. They will catch up. You have to do backgrounds on nominees, and they should not just throw up names for the sake of throwing up names.

Most of his nominations are receiving bipartisan support. Unfortunately, I have not been able to support Judge Hamilton, and I would like to explain a few of the things that concern me, particularly about his judicial philosophy and about his rulings. I think they are significant. I wish they weren't. He is not a bad person, but a lot of people in America today have a philosophy that I think is not appropriate for the Federal bench.

In Hinrichs v. Bosma, Judge Hamilton enjoined or issued an order prohibiting the speaker of the Indiana House of Representatives, the duly elected speaker, from allowing a sectarian prayer, as he described it, because some of those prayers had mentioned Jesus Christ and therefore ''might advance a particular religion, contrary to the mandates of the Constitution.''

Judge Hamilton also ordered the speaker to make sure to advise any officiant who is delivering a prayer that a prayer must be nonsectarian, must not advance any one faith or disparage another, and must not use ''Christ's name or title or any other denominational appeal.''

I note parenthetically that every day we have a paid chaplain who commences the Senate with a prayer. Heaven knows we need it. Hopefully we recognize we need it. I notice the words up there on the wall, ''In God We Trust,'' haven't been chiseled out by the secularists as of this date. We are a nation that believes in freedom of religion, and the Constitution says Congress shall make no law respecting the establishment of a religion or prohibiting the free exercise thereof. We have ceased to balance that out, in my opinion, in some of these matters.

So he made that ruling and that injunction to the speaker. In a later ruling denying the speaker's request to stay this injunction, Judge Hamilton produced a novel notion that prayers in the name of Jesus would be sectarian and, therefore, prohibited, but prayers in the name of Allah would not be sectarian and, therefore, would be allowed. They had an Islamic imam pray there in Indiana.

This is what Judge Hamilton wrote:

> Prayers are sectarian in the Christian tradition when they proclaim or otherwise communicate the beliefs that Jesus of Nazareth was the Christ, the Messiah, the Son of God, or the Saviour, or that he was resurrected, or that he will return on Judgment Day or is otherwise divine.

He went on to say:

> If those offering prayers in the Indiana House of representatives choose to use the Arabic Allah . . . the court sees little risk that the choice of language would advance a particular religion or disparage others.

In other words, that would be OK. I find it hard to justify that position intellectually, frankly. I am not saying he is anti-religion. I am saying this judge's approach to the law is confused about an important legal question involving religion.

The Seventh Circuit reversed Judge Hamilton, finding that the taxpayers lacked standing to bring the lawsuit in the first place. The court of appeals did not reach the merits of the case, but the question naturally arises: Why did

Judge Hamilton skip over the very basic preliminary legal issue of standing and instead move directly to the merits of the case, if the standing didn't exist? I submit he perhaps desired to rule on the merits because he favored the outcome he produced.

In A Woman's Choice v. Newman, Judge Hamilton succeeded in blocking the enforcement of a reasonable informed consent law for 7 years, an Indiana law. In 1995, the Indiana Legislature enacted a statute that required certain medical information to be provided to women seeking an abortion at least 18 hours prior to the procedure. The Supreme Court, in Planned Parenthood v. Casey, a very important case, had already held very similar requirements were constitutional and did not restrict the right to an abortion. It just required that the information provided to you 18 hours in advance. Notwithstanding the Supreme Court precedent, Judge Hamilton granted a preliminary injunction against enforcement of the law. In other words, he stopped the law from going into effect. He assumed the role of a legislator. He took out his judicial pen and struck some of the language from the statute, language he didn't like.

The statute required that women receive this information in person, not through some third person. Judge Hamilton modified the injunction so as to prevent the State from enforcing the requirement that the information be provided ''in the presence of'' the pregnant woman. He later entered a permanent injunction that prohibited enforcement of the law, in essence vetoing the law.

Finally, the case reached the Seventh Circuit. In an opinion by Judge Easterbrook, the court reversed, concluding that Judge Hamilton had abused his discretion. A Federal judge with a lifetime appointment has power over the States. If he says the Constitution is violated by what a State does, the judge has the power to invalidate what the State does. But this is an awesome power and ought to be used carefully. When this case reached the Seventh Circuit, this is what the opinion said:

> [F]or 7 years, Indiana has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in Casey, by this court in Karlin, and by the fifth circuit in Barnes. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since Casey . . . Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences.

If it is a bad law, the people would change it. They have the power to do so.

I suggest that is a pretty stark criticism and a very serious one. One single judge has frustrated a law that was constitutional for 7 years.

In U.S. v. Woolsey, Judge Hamilton disregarded a defendant's prior conviction for a felony drug offense in order to avoid imposing a mandatory sentence of life imprisonment for persons convicted of a third felony drug offense. Here the defendant was convicted of drug and firearms offenses after police executed a search warrant at his home where they discovered a half pound of cocaine, 31 pounds of marijuana, 2 pounds of methamphetamine—and that is a lot of methamphetamine—a cache of guns, and $16,000 in currency. Because the defendant had two prior felony drug convictions, the defendant was subject to recidivism penalties under Federal law. Judge Hamilton was reversed because he ignored one of those prior convictions, reversed unanimously by the circuit court on which he now wants to sit.

This is what they said about his willfulness:

> [W]e have admonished district courts that the statutory penalties for recidivism . . . are not optional, even if the court deemed them unwise or an inappropriate response to repeat drug offenders.

They were saying: Judge, you have been letting your own personal views override what you are required to do by the law. You are a judge. You are supposed to follow the law. The oath you take is to serve under the Constitution and the laws of the United States. You are not above it.

The opinion makes clear that Judge Hamilton either made several unnecessary errors or intentionally ignored the law.

In Grossbaum v. Indianapolis-Marion County Building Authority, Judge Hamilton denied a request by a rabbi to place a menorah in a county building. A unanimous panel of the Seventh Circuit reversed Judge Hamilton's ruling, noting that two Supreme Court cases were directly on point.

For 8 years the plaintiff in this case had been able to display a menorah during Chanukah until the ACLU challenged the display as violative of the first amendment. Because of the ACLU's challenge in 1993, Marion County unanimously adopted a ''policy on seasonal displays.'' They set up a policy to try to make everybody happy. It was done to try to keep the courts happy by preventing a menorah from being displayed.

In 1994, when the plaintiffs submitted a request to display the menorah, they were denied.

Mr. President, I know my time is up, and I ask unanimous consent for 1 additional minute.

Mr. LEAHY. Provided there is another minute on this side.

Mr. SESSIONS. I understand.

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

Mr. SESSIONS. Mr. President, there are other matters that I don't have time to go into in detail. Any nominee is entitled to a fair hearing. They ought not have their record distorted. As the Senator said, people can make mistakes sometimes. But I think the pattern is such that it indicates to me there are extraordinary circumstances that justify an objection to the nomination because the nominee has shown a willfulness to override the law. A judge must be under the law.

I offer the following more detailed explanation to try to go into even more detail and to fairly analyze the judge's rulings and why I think they are unacceptable.

There have been some accusations that we have mischaracterized Judge Hamilton's record, and, specifically, some of his cases. I would like to take just a few moments to explain why I am concerned about Judge Hamilton's judicial philosophy and demonstrate how we have not mischaracterized his rulings.

In *Hinrichs* v. *Bosma*, 400 F. Supp. 2d 1103, S.D. Ind. 2005, the Indiana ACLU, representing some taxpayers, brought suit against the Speaker of the Indiana House of Representatives claiming that ''most'' of the prayers that opened legislative sessions were sectarian Christian prayers in violation of the first amendment. Although 29 out of 45 of the prayers for which there were transcripts were Christian, many prayers were offered by state legislators, a rabbi, and a Muslim imam.

Nevertheless, Judge Hamilton enjoined the speaker from allowing sectarian prayers because some of them mentioned Jesus Christ and therefore might ''advance a particular religion, contrary to the mandate of the Establishment Clause.'' Judge Hamilton also ordered the speaker to advise any officiant that a prayer must be nonsectarian, must not advance any one faith or disparage another, and must not use ''Christ's name or title or any other denominational appeal.''

In so holding, Judge Hamilton relied on what I think is a flawed reading of the Supreme Court's decision in *Marsh* v. *Chambers*, 463 U.S. 783, 1983, which held that a legislative body may open its session with a prayer, much like we do here in the Senate every day. Judge Hamilton said that the *Marsh* case did not expressly permit prayers that were ''explicitly Christian or explicitly Jewish.'' But the Supreme Court in *Marsh* said:

> The content of the prayer is not of concern to judges where . . . there is no indication that the prayer opportunity has been exploited to proselytize or advance any one, or to disparage any other, faith or belief. That being so, it is not for us to embark on a sensitive evaluation or to parse the content of a particular prayer.

Judge Hamilton ignored the Supreme Court's clear directive that the content of such prayers should not be of concern to a judge. He had no concerns about whether he would parse through the content by dictating from the bench what constitutes sectarian prayer. In fact, in a later ruling denying the speaker's request to stay the permanent injunction, Judge Hamilton came up with the radical notion that prayers in the name of Jesus Christ would be sectarian and therefore prohibited, but prayers in the name of Allah would not

be sectarian and therefore allowed. He said:

> Prayers are sectarian in the Christian tradition when they proclaim or otherwise communicate the beliefs that Jesus of Nazareth was the Christ, the Messiah, the Son of God, or the Savior, or that he was resurrected, or that he will return on Judgment Day or is otherwise divine. . . .

He went on to say:

> If those offering prayers in the Indiana House of Representatives choose to use the Arabic Allah . . . the court sees little risk that the choice of language would advance a particular religion or disparage others.

I find it hard to believe that anyone would not associate a reference to Allah with Islam.

After full briefing and oral argument, the Seventh Circuit reversed Judge Hamilton's decision, finding that the taxpayers lacked standing to bring the lawsuit in the first place. The court of appeals did not reach the merits of the case, but the question naturally arises: Why did Judge Hamilton skip over the very basic, preliminary issue of standing and instead move directly to the merits of this case? I submit that Judge Hamilton wanted to get to the merits because he sought this particular outcome.

In *A Woman's Choice* v. *Newman*, 904 F. Supp. 1434, S.D. Ind. 1995, Judge Hamilton succeeded in blocking the enforcement of a reasonable informed consent law for 7 years. In 1995, the Indiana legislature enacted a statute that required women seeking an abortion to receive certain medical information at least 18 hours prior to the abortion being performed. Specifically, the statute required that the women be informed of the following information:

1. The name of the physician performing the abortion.
2. The nature of the proposed procedure or treatment.
3. The risks of and alternatives to the procedure or treatment.
4. The probable gestational age of the fetus.
5. The medical risks associated with carrying the fetus to term.
6. The availability of fetal ultrasound imaging.
7. That medical assistance benefits may be available for prenatal care . . . from the county office of the division of family resources.
8. That the father of the unborn fetus is legally required to assist in the support of the child.
9. That adoption alternatives are available and that adoptive parents may legally pay the costs of prenatal care, childbirth, and neonatal care.

The Supreme Court in *Planned Parenthood* v. *Casey*, 505 U.S. 833, 1992, had already held that very similar requirements did not restrict the access to abortions and that is an important point here.

Despite the Casey decision, and an almost identical Seventh Circuit opinion upholding a Wisconsin statute, the plaintiffs filed a lawsuit challenging the constitutionality of the Indiana law on the grounds that it was likely to impose an undue burden on a woman's right to choose. I am not sure how knowing the name of the doctor who is performing an abortion imposes an undue burden. In support of their argument, the plaintiffs presented evidence that the law was likely to prevent abortions for approximately 11 to 14 percent of women who would otherwise choose to have them and the ''medical emergency'' exception would probably fail to meet constitutional standards as unduly narrow.

Judge Hamilton granted the plaintiffs a preliminary injunction with certified questions to the Supreme Court of Indiana concerning the interpretation of the ''medical emergency'' exception under State law.

The Indiana Supreme Court answered the certified questions and basically held that Indiana's law did not violate the Supreme Court holding in Casey. The Indiana Supreme Court concluded:

> the medical emergency provision of Public Law 187 permits dispensing with the informed consent requirements when the attending physician, in the exercise of her clinical judgment in light of all factors relevant to a woman's life or health, concludes in good-faith that medical complications in her patient's pregnancy indicate the necessity of treatment by therapeutic abortion. We add that the physician may do so with respect to serious and permanent mental health issues. A physician may not, however, dispense with the informed consent provisions as to health problems when they are temporary.

This holding by the Indiana. Supreme Court should have resolved the matter.

Notwithstanding, Judge Hamilton assumed the role of a legislator, took out his judicial pen and struck some language from the Indiana statute. The statute required that women receive this information in person. Judge Hamilton modified the preliminary injunction that he had issued so as to prevent the State from enforcing the requirement that the information be provided ''in the presence'' of the pregnant woman. Judge Hamilton later entered a permanent injunction that prohibited enforcement of the law—in essence vetoing the law.

Finally, the case reached the Seventh Circuit, which reversed Judge Hamilton's ruling. In a 2–1 opinion by Judge Easterbrook, the court concluded that Judge Hamilton abused his discretion:

> [F]or seven years Indiana has been prevented from enforcing a statute materially identical to a law held valid by the Supreme Court in Casey, by this court in Karlin, and by the fifth circuit in Barnes. No court anywhere in the country (other than one district judge in Indiana) has held any similar law invalid in the years since Casey . . . Indiana (like Pennsylvania and Wisconsin) is entitled to put its law into effect and have that law judged by its own consequences.

In a concurring opinion, Judge Coffee concluded:

> [Judge Hamilton's opinion which was] pronounced without the support of even one citation to the record, invades the legitimate province of the legislative and executive branches and places a straitjacket upon their power to regulate and control abortion practice. As a result, literally thousands of Indiana women have undergone abortions since 1995 without having had the benefit of receiving the necessary information to ensure that their momentous choice is premised upon the wealth of information available to make a well-informed and educated life-or-death decision. I remain convinced that [Judge Hamilton] abused his discretion when depriving the sovereign State of Indiana of its lawful right to enforce the statute before us. I can only hope that the number of women in Indiana who may have been harmed by the judge's decision is but few in number.

Three different courts, including the Indiana Supreme Court, had looked at the Indiana statute and similar laws and concluded they passed constitutional muster. This apparently did not satisfy Judge Hamilton and so he ignored the precedent and ruled based on his own policy preferences.

In *United States* v. *Woolsey*, 535 F.3d 540 (7th Cir. 2008), Judge Hamilton disregarded a defendant's prior conviction for a felony drug offense in order to avoid imposing a mandatory sentence of life imprisonment for persons convicted of a third felony drug offense. Judge Hamilton was reversed by a unanimous Seventh Circuit:

> [W]e have admonished district courts that the statutory penalties for recidivism . . . are not optional, even if the court deems them unwise or an inappropriate response to repeat drug offenders.

Here, the defendant was convicted of drug and firearms offenses after police executed a search warrant at his home, where they discovered a half pound of cocaine, 31 pounds of marijuana, 2 pounds of methamphetamine, a cache of guns and $16,000 in currency. Because the defendant had two prior felony drug convictions in 1997 and 1974, the defendant was subject to recidivism penalties under Federal statute.

At sentencing, the government properly filed an enhancement information detailing the two prior convictions, which should have triggered a mandatory term of life imprisonment. Although the defendant conceded that his 1997 drug conviction would count for enhancement purposes, he contested the eligibility of the 1974 conviction. The defendant argued that he believed the 1974 conviction—possession with intent to distribute 125 pounds of marijuana—should have been set aside upon successful completion of his probation pursuant to the Federal Youth Corrections Act. The Federal Youth Corrections Act allows previous sentences to be set aside in cases where there was an early discharge of probation and where the probationer had ''demonstrate[ed] good behavior to the sentencing court before the probationary period ended.''

Here, the Arizona district court that had sentenced the defendant did not grant the early discharge. The defendant claimed this was an oversight, so Judge Hamilton postponed the defendant's sentencing to give him a chance to petition the Arizona court to have the 1974 conviction cleared. According to the opinion reversing Judge Hamilton, ''the Arizona court was not inclined to grant the request.'' We know

the defendant had another conviction beyond 1974, so perhaps he did not meet the good behavior requirement.

The Seventh Circuit also noted that the Federal statute:

bars any challenge to the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction . . . [The defendant] never denied the 1974 conviction, and the five-year window closed some time ago.

At sentencing, Judge Hamilton chose to disregard the 1974 conviction and not impose a life sentence. He stated:

I believe it is also appropriate under these circumstances to not count the 1974 marijuana conviction for this purpose. On that issue, with respect to both the guidelines and the [federal statute], I will say that it seems to me that there is no apparent reason in this record why the defendant should not have been discharged early as to what is the customary practice as was intended and, in essence, the Court ought to treat as having been done what should have been done under general equitable powers.

The Seventh Circuit vacated the sentence and admonished Judge Hamilton: ''[the] Indiana district court was not free to ignore Woolsey's earlier conviction. . . . as Tuten makes clear, the court that imposed a sentence under the YCA should be the one to exercise the discretion afforded by the Act.'' The court further stated:

sentencing is not the right time to collaterally attack a prior conviction unless the prior conviction was obtained in violation of the right to counsel-which [the defendant] does not suggest. . . . Accordingly, the decision to disregard [the defendant's] prior conviction in light of what the court believed 'should have been done' three decades earlier was incorrect.

I think this opinion makes it clear that Judge Hamilton either made several unnecessary errors in his ruling or intentionally ignored the rule of law because he did not like the sentence. I believe it was the latter of the two.

In *Grossbaum* v. *Indianapolis-Marion County Building Authority*, 870 F. Supp. 1450 (S.D. Ind. 1994), Judge Hamilton denied a request by a rabbi to place a menorah in a county building. A unanimous panel of the Seventh Circuit reversed Hamilton's ruling and noted that two Supreme Court cases were directly on point.

For 8 years the plaintiffs in this case had been able to display a menorah during Chanukah until the ACLU challenged the display as violative of the First Amendment. Because of the ACLU's challenge, in 1993 Marion County unanimously adopted a ''policy on seasonal displays'' that prevented the menorah from being displayed. So in 1994 when the plaintiffs submitted a request to display the menorah, their request was denied. The plaintiffs responded by filing a motion for a preliminary injunction to require the county building manager to allow them to display a menorah in the non-public-forum lobby of the building, something they had been allowed to do every holiday season between 1985 and 1992.

Judge Hamilton denied the motion, stating that the First Amendment's free speech clause did not require Marion County to allow the display and that the county was reasonable in believing the establishment clause prohibited it from doing so. He refused to apply controlling Supreme Court precedent and instead embraced what appears to be an evolving standard based on something other than the law. He said: ''[o]ne of the challenges . . . is to keep the structure of abstract analytic categories and logical tests in touch with the practical realities before the courts.''

Judge Hamilton also ruled that Marion County's policy was a permissible ''subject matter restriction'' under the first amendment, rather than prohibited ''viewpoint discrimination.'' Specifically, he decided that the county could put up its own ''secular holiday symbol,'' a Christmas tree, while excluding anyone from expressing a religious view of the holiday season. He then concluded that the county could choose to avoid the controversy that might be provoked by the display of religious symbols and that ''practical considerations'' justified his reading of the Constitution. Indeed, Judge Hamilton stated that the plaintiff's position could not be correct because, if it were, the result would be that:

every time a government [put] up a Christmas tree (or perhaps a wreath or some evergreen branches) in a ''nonpublic forum,'' that government [would have] extended an open invitation to all interested private parties to display the religious symbols of their choice in the same area. As a practical matter, that result would be dramatic.

In an opinion by Judge Ripple, the Seventh Circuit unanimously reversed. The court rejected Judge Hamilton's attempts to distinguish the case from the Supreme Court's decisions in Rosenberger and Lamb's Chapel, holding that the prohibition of the menorah's message because of its religious perspective was unconstitutional viewpoint discrimination. The court found that the county's policy:

''clearly concerns 'seasonal displays' in its government building. The policy . . . clearly is a prohibition of one type of seasonal display, namely religious displays and symbols.''

The Seventh Circuit also said:

the court's colloquy with counsel at oral argument made it quite clear that the policy challenged here was to prevent one thing: seasonal holiday displays of a religious character.

Because neutrality and equal access to the nonpublic forum lobby avoided establishment clause problems, the Seventh Circuit held the county's establishment clause defense was insufficient.

The Seventh Circuit saw very clearly what Judge Hamilton seems to have been far too distracted by ''practical realities'' to realize—that the government policy in question was based solely on the viewpoint expressed and, thus, was unconstitutional. Judge Hamilton, by all accounts, has a talented legal mind. Therefore, I can only conclude that the ''practical reality'' Judge Hamilton was so concerned with was, in fact, the result he wanted to reach.

Finally, in *United States* v. *Rinehart*, 2007 U.S. Dist. LEXIS 19498, S.D. Ind. February 2, 2007, the defendant, a police officer who filmed himself having sex with a minor and took pictures of another minor, pled guilty to two counts of producing child pornography. Although Judge Hamilton sentenced him to the mandatory minimum of 15 years in prison, he took the highly unusual step of issuing a separate written opinion ''so that it may be of assistance in the event of an application for executive clemency,'' an action that Judge Hamilton called ''appropriate.''

The defendant, a 32-year-old cop, engaged in ''consensual'' sexual relations with two young girls, ages 16 and 17. According to Judge Hamilton's opinion, the sexual relationships were legal under State and Federal law. However, the defendant took photos and videos of himself and the girls engaged in ''sexually explicit conduct'' and sexual relations. These images were found on his home computer and he was charged under the Child Protection Act of 1984.

In his written opinion, Judge Hamilton noted his disapproval of the mandatory minimum and concluded by expressly injecting his personal views into the case:

This case, involving sexual activity with victims who were 16 and 17 years old and who could and did legally consent to the sexual activity, is very different. But because of the mandatory minimum 15 year sentence required by [the Child Protection Act of 1984] this court could not impose a just sentence in this case. The only way that Rinehart's punishment could be modified to become just is through an exercise of executive clemency by the President. The court hopes that will happen.

That last sentence embodies precisely the type of activist philosophy that I have been talking about. But here, we do not need to read between the lines. We do not need to infer a thing. Judge Hamilton laid it on in an opinion. And the opinion had the express aim of urging the executive to adopt his policy preferences. When a judge steps outside of his coinstitutional role of interpreting and applying the law as written, he undermines the entire justice system.

These are just a few of the problematic cases in Judge Hamilton's record. To date, the Seventh Circuit has been able to reverse these errors, but if he is elevated, only the Supreme Court will be able to reverse most of his errors. I am afraid the Supreme Court might not hear some of them. This body should elevate those judges who have performed admirably during lower court service, not those who have performed poorly.

I yield the floor.

Mr. CORNYN. Mr. President, I will not support Judge David Hamilton's elevation to the Court of Appeals for the Seventh Circuit. After close review, I believe Judge Hamilton's writings

and statements show an unwillingness to serve as a neutral arbiter of the law.

At the time he was appointed to the district court for the Southern District of Indiana, the American Bar Association rated Judge Hamilton ''not qualified.'' This rating is still apt.

In numerous opinions written during his tenure on the district court, Judge Hamilton has displayed a lack of impartiality, a disregard for precedent, and a willingness to legislate from the bench. His writings also evince his propensity to value ''an understanding of the world from another's point of view'' above an understanding of the facts of a case.

For instance, in striking down Indiana's popularly enacted informed-consent abortion law, Judge Hamilton radically ruled that the law unconstitutionally imposed an ''undue burden'' on the right to an abortion because it qallegedly forced ''women to make two trips to a clinic.'' *A Woman's Choice* v. *Newman*, 132 F.Supp.2d 1150, 1151, S.D. Ind. 2001. In making this ruling, Judge Hamilton flaunted the directly applicable precedents of the Supreme Court and the Seventh Circuit. He also, according to Seventh Circuit opinion that reversed his ruling, relied on a ''faulty study by biased researchers who operated in a vacuum of speculation.'' *A Woman's Choice* v. *Newman*, 305 F.3d 684, 689, 7th Cir. 2002.

Similarly, in a case where a child's complaint to school officials about her mother's drug abuse led to the mother's arrest, Judge Hamilton suppressed the drug evidence against the mother on the ground that the police had violated her substantive due process right to ''family integrity.'' *United States* v. *McCotry*, 2006 U.S. Dist. LEXIS 62777, S.D. Ind., July 13, 2006. To reach this conclusion, Judge Hamilton ignored controlling Seventh Circuit law and relied instead on the dissenting opinions of Ninth Circuit judges. And when the Seventh Circuit reversed Judge Hamilton, it chastised him for not properly considering the wrongs of the mother in the case, who ''risked her relationship with her nine-year old daughter by dealing drugs.'' *United States* v. *Hollingsworth*, 495 F.3d 795, 803 n.3, 7th Cir. 2007.

In these cases, and many more, Judge Hamilton has shown an unvarnished result-orientation and has confirmed his reputation as ''one of the more liberal judges in the district.'' Almanac of the Federal Judiciary. This record has not earned him the honor of elevation to a higher court.

As President Obama's first nominee, there is no doubt that Judge Hamilton possesses the empathy and desire to write ''footnotes to the Constitution'' that catch the eye of liberal activists and partisan politicians. But these qualities are not ones that a Circuit Judge of the United States should possess. Accordingly, I will vote no on the confirmation of Judge David Hamilton.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, as I sit here and listen, I wonder who in Heaven's name they are talking about. Judge Hamilton had 8,000 cases. Apparently, there is no problem with any of them except for a tiny handful of cases, and those have been so distorted by Judge Hamilton's opponents that I don't even understand them. Basically, I think they are saying what he should have done is gone by his personal beliefs and not the law. Of course, then they could say he was an activist judge.

He is in a situation where they will try and get him either way. A judge can follow the law, do what they are supposed to do, try 8,000 cases, get strong support from people from the right to the left, and get the highest possible rating a judge can get. But don't worry. We are going to take some case or two out of context from their 15 years on the bench. We will ignore 8,000 cases. We will call them a gender-driven ideologue. We will point to a single case, even though in that case they carefully applied Supreme Court precedent.

Come on. Let's be fair. Eight thousand cases, the highest rating possible, endorsed by everybody who knows him, and strongly backed by Senators LUGAR and BAYH. Judge Hamilton is not an ideologue. Apparently, there is no problem with any of his 8,000 cases except a couple that people have taken out of context. We should be the conscience of the Nation. We are above that, and we should vote for his confirmation.

AMENDMENT NO. 2785

Mr. President, I also want to take a couple of minutes to speak against Senator COBURN's amendment to the veterans health bill we will be voting on shortly.

Senator AKAKA has already explained that we do not need the Coburn amendment to fund the programs in this veterans health bill. So do not be misled by the suggestion that we need to cut funding for the United Nations to care for our veterans. That is a false choice.

This is nothing more than a ploy to take a swipe at the United Nations. Senator COBURN spoke earlier, and his statement consisted of a laundry list of factual inaccuracies about the United Nations.

Is the United Nations perfect? Far from it. But legitimate criticism is one thing. Inventing facts is another. To say that the U.N. Development Program provided millions of dollars to North Korea which used the funds to ''purchase conventional arms and ballistic missiles,'' when there is no proof of that, does not belong in this debate..

I would say to those Senators who think the United States should not fulfill its treaty obligations to the United Nations, who think we should renege on our commitments to support U.N. peacekeeping missions, and who favor walking away from our pledges to NATO, the International Atomic Energy Agency, the World Health Organization, and many other organizations we were instrumental in creating, then vote for this misguided amendment.

But if Senators believe that United States leadership in the world means paying our share and being able to use our influence, then I urge Senators to oppose it.

Our assessed contributions to the United Nations, which the Coburn amendment would cut, support a wide range of activities that advance our own national interests. That was as true during the Bush Administration, which would have opposed this amendment, as it is today. The State Department opposes this amendment.

Here are some examples of what the funds are used for by the U.N. and other international organizations that Senator COBURN's amendment would cut:

Preparing for and holding elections in Iraq.

Monitoring nuclear programs in North Korea and Iran. Do we really want to cut funding for the international nuclear inspectors who Iran finally allowed into one of their facilities?

Supporting NATO. I can't imagine any Senator wants to cut our contribution to NATO, when we are asking our NATO allies to do more in Afghanistan.

Funding 17 U.N. peacekeeping missions, including in Haiti, Liberia, Lebanon, Darfur and the Congo. We don't contribute troops for these missions other nations like Bangladesh and Morocco do. But they rely on us to pay our share of the cost, and it is a lot less expensive than sending our own troops.

Supporting the Food and Agriculture Organization's forecasts of global food production, identifying areas of drought and famine, to provide emergency food assistance.

Coordinating tsunami and earthquake relief in Indonesia and Pakistan.

Supporting the World Health Organization's work to detect outbreaks of avian flu and Swine Flu and other infectious diseases and defending against a world pandemic.

Creating and maintaining protections for the intellectual property rights of American companies.

Coordinating international aviation safety standards.

Coordinating efforts by the global shipping industry and governments to prevent and respond to acts of piracy on the high seas.

These are organizations that are advancing our own interests.

President Obama has stated his commitment that the U.S. will pay its dues to U.N. peacekeeping and international organizations. The Appropriations Committee has acted on that commitment. We are once again in good financial standing at the United Nations. This amendment would put us back in arrears.

Our dues to the United Nations and other international organizations are treaty obligations. Not paying is not an option.

Let's stop acting like the United States doesn't matter. Let's not say that because the U.N. isn't perfect, we should cut our dues.

We are the world's leading military and economic power, and there is much we can achieve on our own. But we cannot stop genocide in Darfur alone any more than we can stop the spread of HIV/AIDS without the cooperation of other nations.

We need to lead by example in the United Nations, in NATO, at the World Health Organization, the International Atomic Energy Agency, the Organization for the Prevention of Chemical Weapons, the Food and Agriculture Organization, the World Intellectual Property Organization. We can't do that without paying what we owe.

This body has already voted for the funds to support United Nations peacekeeping and these international organizations. Senator COBURN's amendment would cut those funds.

I also want to set the record straight on another misstatement of Senator COBURN's. He said his amendment to the fiscal year 2008 State and Foreign Operations appropriations bill was unanimously passed and then dropped in conference. It was not dropped in conference.

His amendment would have withheld all U.S. contributions to international organizations. The House and Senate conferees did not support that. What emerged from conference was a 10 percent withholding of funds, still tens of millions of dollars, tied to audits, budget reports, and oversight. It also withheld 20 percent of the U.S. contribution to the U.N. Development Program.

Was it everything Senator COBURN wanted? No. Was it dropped in conference? No. The substance of his amendment was included in the conference agreement, and for the benefit of anyone who cares to read it, it is section 668 of Public Law 110–161.

I agree with Senator AKAKA and urge Senators to oppose the Coburn amendment.

Mr. President, I strongly join Senators LUGAR and BAYH in the support of Judge Hamilton.

I yield back any time.

The PRESIDING OFFICER (Mr. BEGICH). All time is expired.

The question is, Will the Senate advise and consent to the nomination of David F. Hamilton, of Indiana, to be U.S. circuit judge for the Seventh Circuit?

Mr. LEAHY. 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 clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), and the Senator from West Virginia (Mr. BYRD) are necessarily absent.

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

The result was announced—yeas 59, nays 39, as follows:

[Rollcall Vote No. 350 Ex.]

YEAS—59

Akaka	Hagan	Murray
Bayh	Harkin	Nelson (NE)
Begich	Inouye	Nelson (FL)
Bennet	Johnson	Pryor
Bingaman	Kaufman	Reed
Boxer	Kerry	Reid
Brown	Kirk	Rockefeller
Burris	Klobuchar	Sanders
Cantwell	Kohl	Schumer
Cardin	Landrieu	Shaheen
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Conrad	Levin	Tester
Dodd	Lieberman	Udall (CO)
Dorgan	Lincoln	Udall (NM)
Durbin	Lugar	Warner
Feingold	McCaskill	Webb
Feinstein	Menendez	Whitehouse
Franken	Merkley	Wyden
Gillibrand	Mikulski	

NAYS—39

Alexander	Crapo	LeMieux
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker

NOT VOTING—2

Baucus	Byrd

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

CAREGIVERS AND VETERANS OMNIBUS HEALTH SERVICES ACT OF 2009—Continued

AMENDMENT NO. 2785

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the amendment offered by the Senator from Oklahoma, Mr. COBURN.

The Senator from Oklahoma is recognized.

Mr. COBURN. This is a straightforward amendment. You get to decide whether you want to continue to send money to an organization that is bankrupt, fraudulent; has peacekeeping troops that rape men, women, and children; has absolutely no transparency in spite of our law that demands it, or to pay for the courage and the support of people who do deserve it.

We always find a reason not to make the hard choice. I suspect we will find a good reason not to make the hard choice this time. But for $3.7 billion to help the people who help us and quit sending money that goes down the tube—half of everything we send to the United Nations gets wasted or defrauded—it is time for us to make the hard choice. That is what the amendment is about. There are a lot of reasons you can find to vote against it. It will take real courage to vote for it.

The PRESIDING OFFICER. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I urge our colleagues to reject the pending amendment. For one thing, it appears that the amendment could end up denying caregiver assistance to many OEF/OIF veterans by significantly narrowing the eligibility criteria for caregiver assistance. While the amendment seeks to ''pay for'' the costs associated with this bill, I understand from CBO, however, that this amendment does not even accomplish what I believe the amendment's author intends.

Every major veterans group supports the underlying bill because of what it means for all veterans—for women veterans, for homeless veterans, and for veterans of every era.

I urge a ''no'' vote on the amendment, followed by a vote to pass S. 1963.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment.

Mr. LEMIEUX. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) and the Senator from West Virginia (Mr. BYRD) are necessarily absent.

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

The result was announced—yeas 32, nays 66, as follows:

[Rollcall Vote No. 351 Leg.]

YEAS—32

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bayh	Enzi	Murkowski
Bennett	Graham	Risch
Brownback	Hatch	Roberts
Bunning	Hutchison	Sessions
Burr	Inhofe	Shelby
Chambliss	Isakson	Thune
Coburn	Johanns	Vitter
Cornyn	Kyl	Wicker
Crapo	LeMieux	

NAYS—66

Akaka	Gillibrand	Mikulski
Begich	Grassley	Murray
Bennet	Gregg	Nelson (NE)
Bingaman	Hagan	Nelson (FL)
Bond	Harkin	Pryor
Boxer	Inouye	Reed
Brown	Johnson	Reid
Burris	Kaufman	Rockefeller
Cantwell	Kerry	Sanders
Cardin	Kirk	Schumer
Carper	Klobuchar	Shaheen
Casey	Kohl	Snowe
Cochran	Landrieu	Specter
Collins	Lautenberg	Stabenow
Conrad	Leahy	Tester
Corker	Levin	Udall (CO)
Dodd	Lieberman	Udall (NM)
Dorgan	Lincoln	Voinovich
Durbin	Lugar	Warner
Feingold	McCaskill	Webb
Feinstein	Menendez	Whitehouse
Franken	Merkley	Wyden