



this issue:

David Hamilton, Nominee to be
Judge on the U.S. Court of
Appeals for the 7th Circuit

Hamilton's Background

U.S. District Judge for the
Southern District of Indiana

Partner, Barnes & Thornburg

Counsel to Governor Bayh of
Indiana

Associate, Barnes & Thornburg

Law Clerk, Judge Richard D.
Cudahy, U.S. Court of Appeals for
the 7th Circuit.

EDUCATION

Haverford College
Yale Law School

Who is David Hamilton?

On March 17 President Obama nominated Judge David F. Hamilton to a judge on the U.S. Court of Appeals for the 7th Circuit.

Before the announcement was officially made a

“senior administration official” told the New York Times that, “part of the reason for making the Hamilton nomination the administration’s first public entry into the often contentious field of judicial selection was to serve ‘as a kind of signal’ about the kind of nominees Mr. Obama will select.” Fn.1.

Hamilton was rated as “Well Qualified” by the American Bar Association (ABA) to be a Circuit Judge. This rating came out the same day as the nomination, March 17, 2009. However, when he was nominated by President Clinton in 1994 to be a District Judge he received a “Not Qualified” rating by the ABA. The ABA said then that Hamilton, who had been nominated to that post by President Bill Clinton, lacked sufficient trial experience and years practicing.” The only factor that has changed since 1994 is the rulings Hamilton has issued while a District Judge. Fn.2.

These rulings have drawn the ire of the 7th Circuit which has used strong language in reversing Hamilton. For instance, the 7th Circuit delivered a smack-down to Hamilton in an abortion case involving an Indiana statutory requirement of

“Hamilton was unqualified the first time he was nominated for a judgeship. His string of bad decisions as a judge should not now be rewarded by giving him a promotion.”

*-Bill Wilson, President,
Americans for Limited
Government*

informed consent before the abortion was performed. Hamilton found that the informed consent requirement was an “undue burden” on obtaining an abortion, the magic words from relevant caselaw, and thus ruled the statute unconstitutional. That ruling was tossed on appeal by the 7th Circuit which stated:

For 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. Fn.3.

That “one district judge in Indiana” was of course Hamilton.

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Sources for further reading:

Fn.1. Neil A. Lewis, *Moderate Is Said to Be Pick for Court*, THE NEW YORK TIMES, March 17, 2008, at A14.

Fn.2. Ratings of Article III Judicial Nominees 103rd Congress, American Bar Association, undated.

Ratings of Article III Judicial Nominees 111th Congress, American Bar Association, March 17, 2009.

Maureen Groppe, *Indiana Judge Nominated for U.S. Court of Appeals*, INDIANAPOLIS STAR, March 18, 2009. Available online at: <http://www.indystar.com/article/20090318/NEWS05/903180380>. (Accessed November 11, 2009.)

Fn.3. *A Woman's Choice - East Side Women's Clinic v. Newman*, 305 F.3d 684, 639 (7th Cir. 2003).

Fn.4. Michael A. Fletcher, *Obama Names Judge to Appeals Court*, THE WASHINGTON POST, March 18, 2009, at A04.

Fn.5. *People of the Center*, Center for Constitutional Democracy website, available online at: <http://ccdps.indiana.edu/people.shtml>. (Accessed November 11, 2009.)

Fn.6. David Ingram, *Obama Announces First Judicial Nominee*, Blog of Legal Times, March 17, 2009. Available online at: <http://legaltimes.typepad.com/blt/2009/03/obama-announces-first-judicial-nominee.html>. (Accessed November 11, 2009.) See also, Wendy Long, *Obama's First Appellate Court Nominee: Hard Left*, Bench Memos, National Review Online, March 17, 2009. Available online at: <http://bench.nationalreview.com/post/?q=MGY3ZjMyNWxMGVmNmQ3OWM0ZjAzNzZkxNjNlZDA3NDY=>. (Accessed November 11, 2009.)

What you really need to know about Hamilton.

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Other notable cases were recently summarized by the Indianapolis Star. They are as follows:

HIGHLIGHTS OF HIS RULINGS

» Struck down a provision that would have allowed sex offenders' computers to be searched long after their sentences had been served. "These plaintiffs have rights under the Fourth Amendment," Hamilton wrote. "The state may not force them to waive those rights under threat of criminal prosecution for failing to do so." When: June 24, 2008.

» Dismissed environmentalists' bid to block a 142-mile extension of I-69. They said the route would violate endangered species and environmental policy laws and would destroy nearly 7,000 acres of farmland, forests and wetlands. Hamilton wrote that arguments by the environmentalists "show reasonable differences of opinion about whether and how the highway should be built, but they do not show violations of law." When: Dec. 11, 2007.

» Barred prayers that mention Jesus Christ or endorse any religion at the opening of each daily session of the Indiana House of Representatives. "The individuals do not have a First Amendment right . . . to use an official platform like the Speaker's podium . . . to express their own religious faiths," Hamilton said. When: Nov. 30, 2005. That ruling has since been overturned by the 7th U.S. Circuit Court of Appeals, which said the plaintiffs, four taxpayers, didn't have the legal standing to sue.

» Rejected part of a state law that would have required women to get information in person about the risks of abortions and other choices at least 18 hours before the procedure. He found that the requirement would impose an undue burden on the ability of many women to exercise their constitutional right to choose to end a pregnancy. When: 2001. The ruling was reversed by the appeals court, which deemed the law "reasonable, sensible and lawful." In 2003, the Supreme Court upheld the appellate ruling. (See Maureen Groppe, Fn.2.)

Hamilton was "active in the Indiana branch of the American Civil Liberties Union." He served as their Vice President for Litigation and also as a board member. Fn.4.

Hamilton along with other notables such as Justice Ruth Bader Ginsburg is on the advisory board of the Center for Constitutional Democracy in Plural Societies at Indiana University School of Law. He is also listed in the staff directory as an associate director. The Center "studies and promotes constitutional democracy in countries marked by ethnic, religious, linguistic, and other divisions.... The center focuses its efforts on the constitutional aspects of democratic reform, enabling plural societies to peaceably provide meaningful self-governance to all their citizens." Fn.5.

Curt Levey of the Committee for Justice was quoted by Legal Times blogger David Ingram on Hamilton as follows:

Even if we put aside Hamilton's leadership role in the Indiana ACLU and his fundraising efforts for ACORN, an examination of his judicial record on abortion, the Establishment Clause, sex offenders and suppression of evidence indicate that he is decidedly liberal. More disturbingly, Hamilton's rulings on those issues show that he has a penchant for judicial activism and overreach. If he's part of the mainstream of legal thought – a charitable characterization – it's only because he falls on the left edge of the mainstream. I expected Obama to appoint liberal judges, but I was certainly hoping they would be closer to the American center. Hopefully, Judge Hamilton's nomination is a sop to the far left and thus unrepresentative of his future judicial picks. Fn.6.

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