



The Honorable Harry Reid  
Majority Leader  
United States Senate  
522 Hart Senate Office Building  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
361A Russell Senate Office Building  
Washington, DC 20510

November 16, 2009

Dear Majority Leader Reid and Minority Leader McConnell:

I am writing on behalf of Americans United for Life to express our deep opposition to the nomination of Judge David Hamilton to the Seventh Circuit Court of Appeals. The confirmation of Judge David Hamilton to the Seventh Circuit Court of Appeals would be another step away from common ground by the President and the Democratic Senate.

We at Americans United for Life, like most Americans, believe that a nominee's judicial philosophy goes to the heart of his or her qualifications to serve as a Circuit Court judge. During his Judiciary Committee hearing, Judge Hamilton failed to distance himself from a clearly activist philosophy. As a District Court Judge, Hamilton's decisions, which are subject to review by the Seventh Circuit Court of Appeals, were reversed often.

The Court of Appeals ruled Judge Hamilton abused his judicial discretion in obstructing the right of the people of Indiana to enact constitutional pro-life legislation. For seven years, through a series of rulings in *A Woman's Choice v. Newman*, 904 F. Supp. 1434 (S.D. Ind. 1995), he blocked the enforcement of Indiana's informed consent law. Reversing Judge Hamilton's rulings, the Court of Appeals noted the law was "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*." Judge Hamilton ignored clear precedent. He tied up the court system and wasted the citizens of Indiana's financial resources requiring them to defend a constitutional law.

In his Senate confirmation hearing, Judge Hamilton affirmed his embrace of judicial activism. While Justice Sotomayor rejected the empathy standard during her confirmation hearing for the Supreme Court, Judge Hamilton used his hearing as an opportunity to reiterate his belief that empathy is "important" in fulfilling the judge's oath of office. However, empathy for

one litigant is injustice to another, for it violates the judge's obligation to refrain from taking sides in a dispute.

Judge Hamilton's record and commitment to continue legislating from the bench not only do not warrant a promotion, but warn against it. As a district court judge, Judge Hamilton refused to follow precedent. Clearly, he will not feel bound by precedent as a Circuit Court Judge.

Americans want judges who apply the law, not make policy. We respectfully ask that you vote against Judge Hamilton's nomination. This vote will be recorded in AUL Action's annual scorecard.

Sincerely,



Charmaine Yoest, Ph.D.  
President & CEO, Americans United for Life

CC:

Members of the United States Senate