would pick up the rest of the total of $14,700 in premiums. In a year with high medical expenses—in other words, somebody gets ill, somebody has an accident and ends up in the hospital for 3 weeks—that family would pay up to $5,800 out of pocket. So you have premiums of $3,087, out-of-pocket costs of $5,800. That is a total potential payment in premiums and out-of-pocket expenses of $8,887 for health care under the Finance Committee's bill. This would be about 31 percent of the net income, aftertax income, of a family in Vermont, and I don't know that Vermont is any different than Maryland or any other State earning $44,000—31 percent.

Somebody could tell us that is health care reform, but I really don't see it. Asking people in this country who, admittedly, have had a tough year with illness to pay 31 percent, and then say, hey, we passed health care reform, that, frankly, is not good enough for me, and I am going to do everything I can to make sure the final product out of the Senate is a lot better than that for ordinary middle-class families.

The second issue that concerns me as we proceed down the line in terms of this health care debate is the issue of public option. I think there is a lot of confusion about what a public option is, but let me say this: My belief is the vast majority of the American people want to have a choice as to whether they stay in a private insurance company or whether they go into a Medicare-type public option which is funded by premiums. It is not Medicare; it is funded by premiums. But there are large numbers of Americans, for right reasons—I agree with them—who do not trust private insurance companies because they understand that a private insurance company wants to make as much money as possible off of their premiums. They would like the choice of looking at and maybe going into a public option. My view is we should make that choice available to as many people as possible.

I have the sad thought that many folks out there are hearing us talking about a public option saying: Hey, that is great. I am going to have a choice. I don't like my employer-based health care. Now I am going to have a public option. That is great.

Let me break the bad news to you if that is what you believe. That is not the case as it now stands. Relatively few people—people who are currently uninsured; small, very small, businesses; people who today get their insurance companies privately for themselves or their families; the self-employed, those are the people for whom a public option is currently available based on what has been passed. I think that is wrong. I think we need to expand it. Frankly, I think virtually every American should have that choice.

There is the great debate: Should Members of Congress have the public option as our rightwing friends talk about? Yes, we should. And if the public option is better than Blue Cross Blue Shield or private insurance companies, many of us would take it. But as does everybody else, we deserve the option. That is what it is, an option. If you like private insurance, it is working well for you, stay with it. If you like the public option because it is better for you, you go with it. Let's give as many Americans the choice, not 2 or 3 percent but the vast majority of the people in our country who are now in private insurance.

That takes us to another issue because, in the midst of a bill which is very complicated—and I am not a great fan of complicated. I think when you have a bill that is 1,900 pages, that just begs for the big money interests and the special interests to get their little things in it, and I worry about that a whole lot. This is much too complicated, but there it is. I think the House bill is 1,900 pages. But when we talk about opening the public option for more Americans, it means to say you have to open the exchange, the gateway for more Americans. The gateway means if you choose either your private insurance company or a public option, you are going to get subsidized by the Federal Government. Right now, as this bill stands, there are many people stuck in bad private insurance plans.

Maybe you work for Wal-Mart, maybe you work for Dunkin' Donuts, maybe you work for McDonald's, and they are offering you some kind of insurance program which either costs a fortune or doesn't cover very much. Well, under the current legislation, up to now at least, you are stuck with that. That is what you have. That is not health care reform, to be stuck in a bad Wal-Mart plan. We have to do better than that. So we want to expand that gateway for more people.

The other question is—I don't know what Majority Leader REID's bill is going to end up costing, but the estimates are that we are looking at about, over a 10-year period, $800 billion to $1 trillion. Well, the simple question is, Where is the money coming from? Where is the money coming from?

There are some people who have said: Well, maybe we want to tax good, strong insurance programs out there. That is the way to go. Well, not for this Senator, it is not, and I will do everything I can to oppose any movement in that direction. Workers have fought, in many cases, long and hard—given up wage increases—in order to get decent health insurance programs for their families, and now we are going to tax them? Not me. I am not going to do that. This country has the most unequal distribution of income and wealth. The rich are getting much richer while the middle class is shrinking.

I think it is fair as we move forward in health care reform to ask the wealthiest people in this country to start paying their fair share of taxes.

There is another issue which is kind of a local issue, I admit, and that is on the impact on early-acting States in terms of Medicaid reimbursements. It was just in the newspapers today—and I am very proud of this—that for whatever it is worth, according to some group, the State of Vermont is now the healthiest State in the country. What that tells me and what I know for a fact is that Vermont, which is not a wealthy State, has said we are going to take care of our kids. We are going to make sure that as many kids as possible are involved in what we call our SCHIP program. It is called Dr. Dinosaur. It is a very good, popular program. We are going to have other public health insurance programs. We are going to do the best we can.

I am proud that today Vermont was acknowledged to be perhaps the healthiest State in the country. I am not going to sit by idly while Vermont and Massachusetts—another State that has taken major steps forward—are penalized because we have made reimbursement rates. Because we have done the right thing is not a reason to penalize us. I am all for helping out States that have not done the right thing, but we should not and will not penalize States that have done the right thing.

So let me conclude by saying this: This country faces a major crisis in health care. Because of the power of big money, we are not going to do the right thing and pass a Medicare-for-all, single-payer approach, which is the only way to provide quality, affordable, cost-effective health care for all Americans. What we are now looking at is a 1,900-page bill which is enormously complicated which clearly has been heavily influenced by the drug companies, by the insurance companies, and by every other special interest that is making billions off of health care.

I think it is very important as we proceed down this path to take a very hard look at the end of the day as to what this bill will mean for middle-class families, for working-class families, and for the financial stability of our country as a whole. I am going to do everything I can to make sure this bill is something worth voting for—worth voting for.

So with that, I thank the Chair for the indulgence, and I yield the floor.

Mr. COBURN. Mr. President, I seek recognition to speak on the nomination of Judge Hamilton.

The PRESIDING OFFICER (Mr. MERKLEY). Without objection, it is so ordered.

NOMINATION OF JUDGE DAVID HAMILTON

Mr. COBURN. I come to the floor—I am a member of the Judiciary Committee—to raise significant concerns about this nominee. There is no question he is a fine man. There is no question he has a lot of experience, a great

education. But there is also no question in my mind that he is a highly activist Federal judge who will be promoted to a level of making final determinations on most of the decisions that come before him and his circuit.

He does have a distinguished history, but his history is complicated by, in my opinion, a view that it doesn't matter what the Congress says; that it doesn't actually matter what precedent says; it doesn't matter what stare decisis, the precedent of the Supreme Court, says; he believes he can rule against that.

After attending his hearings, I would note there were over 10,000 pages of decisions and his vote on the committee was well before we could actually consider all 10,000 pages of decisions. He was voted out of our committee.

I want to raise in detail some of my problems and then give some case histories to back them up. For example, I asked Judge Hamilton whether he thought it was appropriate for a judge to consider foreign law when interpreting the Constitution. Rather than recognize the court should not be looking to foreign law when interpreting our Constitution, Judge Hamilton used an analogy of judges considering law review articles of American lawyers with consulting decisions of foreign courts. He stated:

[C]ourts . . . will look to guidance from wise commentators from many places—professors from law schools, experts in a particular field who have written about it. And in recent years, the Supreme Court has started to look at some courts from other countries where members of the Court may believe that there is some wisdom to be gained. As long as it is confined to something similar to citing law professors' articles, I do not have a problem with that.

I have serious concerns with that. Let me put out what those are. What he fails to recognize when he equates the two is that professors who are writing on American law in American journals are writing about the interpretation of our Constitution based on American statutes and American values. They begin their analysis with an understanding of the creation of our Constitution by our Founders and our system of limited government.

When American courts look to foreign law, they are considering opinions and wisdom of people who do not share our values and who are unfamiliar with American statutes and constitutional interpretations. By conflating the two types of references, Judge Hamilton tries to minimize the damage courts can inflict on our Constitution when they look to foreign courts for guidance.

I was even more disturbed by Judge Hamilton's answers to my written questions following his hearing. In his responses, Judge Hamilton embraced President Obama's empathy standard, writing that empathy was ''important in fulfilling [the judicial] oath.''

As a matter of fact, Supreme Court Justice Sotomayor cited just the opposite. What she said was that she looks at facts, not empathy. She rejected the empathy standard.

He also explained why he believed he fit this standard and emphasized his effects-based approach, stating:

Because I will continue to do my best to follow the law, to treat all parties who come before me with respect and dignity, and to understand how legal rules or decisions will affect behavior and incentives for different people and different institutions.

That is nowhere in the oath of a judge. Nowhere is that. Considering the consequences of his ruling and how that might affect people should not be part of the decisionmaking, in making the ruling.

These statements following his hearing only confirmed what I feared prior to his hearing: that Judge Hamilton embraces a liberal activist philosophy and has implemented that philosophy in his legal decisions.

As evidence of his activist tendencies on the bench, I will turn now to some of his opinions as a district court judge that illustrate his propensity to allow his personal biases to influence his decision. In the case of Women's Choice v. Newman, Judge Hamilton succeeded in blocking the enforcement of a valid Indiana law for informed consent for 7 years—7 years. The law required doctors to give certain medical information to women in person before an abortion could be performed and required a waiting period before an abortion was performed.

There is already precedent, clearly by Casey, in the Supreme Court. When overturning Judge Hamilton's ruling, the Seventh Circuit harshly criticized his decision by stating:

[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.

That is a harsh review.

Further, Judge Coffee, in his concurring opinion in this case, was even more critical of Judge Hamilton's opinion, and he specifically criticized Hamilton's reliance on one study which was conducted by the Planned Parenthood-affiliated Guttmacher Institute.

Here is what he said about Judge Hamilton's decision:

[His decision] invades the legitimate province of the legislative and executive branches.

That is the problem with judicial activists. They see no limits. They take a personal bias, and they use that bias rather than interpreting the statutes and looking at precedent. They make their own decision. For 7 years Indiana was without a duly-passed statute passed by the elected representatives of that State, in error, because Judge Hamilton believed something different.

He didn't rely on precedent. He relied on his personal bias, a strong personal bias that said that wasn't right, when all the other courts had recognized the precedent by Casey.

Here is what Judge Coffee also said:

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 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.

As the Seventh Circuit properly notes, as a result of his activism, Judge Hamilton effectively prevented the people of Indiana from enforcing a duly enacted, reasonable restriction on abortion in violation of existing law and Supreme Court precedent.

In two other cases, Judge Hamilton succeeded in excluding traditional religious expression from the public square. In the case of Hinrichs v. Bosma, Judge Hamilton prohibited prayers in the Indiana State Legislature that mentioned Jesus Christ while allowing those that mentioned Allah. The Seventh Circuit reversed that decision.

In another case, Grossbaum v. Indianapolis-Marion County Building Authority, Judge Hamilton's decision prohibited a rabbi from placing a menorah in a public building. A unanimous Seventh Circuit court panel reversed Judge Hamilton's ruling and noted that he had ignored two Supreme Court cases that were directly on point.

Why would a learned judge ignore precedent? There is only one reason for ignoring precedent, and that is a judicial activist bias that he does not have to follow the law; that he is not limited by the Constitution, but he is limited to his personal feelings and his personal beliefs. That is the exact opposite of what we want in terms of neutrality of those directing court proceedings.

Judge Hamilton's record also suggests he is empathetic toward criminal defendants rather than the victims of crimes. According to the Almanac of the Federal Judiciary, local practitioners have said Judge Hamilton ''is the most lenient of any judge in the district. . . .''

''He is one of the more liberal judges in the district.''

''He leans towards the defense.''

''He is your best chance for downward departures.''

''In sentencing, he tends to be very empathetic to the downtrodden or those who commit crimes due to poverty.''

Blind justice doesn't recognize wealth when you commit a crime. It doesn't recognize wealth. If, in fact, that were the case, we should have more severe penalties for people who have greater means. But, instead, we treat everybody the same under the law.

I believe his judicial record confirms the statements of these local practitioners. For example, in the case of United States v. Woolsey, Judge Hamilton ignored the prior conviction of a defendant in order to avoid imposing a life sentence and was reversed by the Seventh Circuit. He ignored a prior conviction. He chose to ignore it. Activist, not following the law, not following the Code of Judicial Conduct. You do not get the choice to ignore it. It is a breach of his judicial oath. Yet he does it.

Here is what the Seventh Circuit said as they criticized Judge Hamilton's decision:

[The] Indiana district court was not free to ignore Woolsey's earlier conviction . . . we 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.

In yet another case demonstrating his empathy toward criminals, Judge Hamilton took the unusual step of issuing a separate written order of judgment and conviction ''so that it may be of assistance in the event of an application for executive clemency'' because he believed the 15-year mandatory sentence he was forced to impose on a child pornographer was too harsh.

In this case, U.S. v. Rinehart, the defendant, a police officer, pled guilty to two counts of producing child pornography after he took pictures of a 16-year-old girl engaged in ''sexually explicit conduct'' and took videos of himself and a 17-year-old girl engaging in sexual relations. These images ended up on his home computer, and he was charged under the Child Protection Act of 1984.

In a separate written order of judgment, Judge Hamilton concluded by stating his personal views in this case and urging executive clemency. He is stating his personal views in this case, in other words, not that of a judge. He has stepped out of being a judge. Now, using the role of a judge, he is using his personal views to influence clemency. Here is what he said:

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 sentence of 15 years required by 18 U.S.C., 2251(e), 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.

He later confirmed to us that he thought that action was appropriate. When Congress passed the Child Protection Act of 1984, at issue in this case, it determined that in order to strengthen Federal child pornography laws, a child is defined as someone under the age of 18. So what did Judge Hamilton do? He said what we say doesn't make any difference. The fact that the legislative body signed it, and it was put into law by the executive branch—he didn't think that counted because he didn't agree with it. So he went outside of it to try to get clemency based on him thinking we were wrong. He didn't have any basis of law to do it, but then did it anyway.

In our constitutional system of government the power to create legislation is assigned to the Congress and a judge must simply interpret the law as it is written. This judge refused to do that.

When a judge second-guesses Congress, criticizes its legislative decisions as being unfair, and invites a grant of clemency, he undermines the rule of law and the confidence the American people have in their government. Judge Hamilton's action in this case belies his tendency to empathize with criminal defendants.

These are just a few of the statements and opinions in Judge Hamilton's record that form the basis of my opposition. I believe he is an activist jurist. He has shown that he will allow his personal biases and prejudices to affect the outcome of cases before him. I do not believe he deserves a promotion to the Seventh Circuit where he will be even less constrained by precedent and the possibility of a reversal on appeal.

I will be voting against his confirmation, and I believe the people of this country should be very wary of other judges who have an activist bent, who disrespect the rule of law, who believe they do not have to look at precedent, who, because their personal bias is different than what the law says, believe they can be in a position to effect change in the law rather than have it come through, or all the way to the court, to do that.

The job of the judge is to interpret the law and the facts carefully. This judge does not do that.

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.

The PRESIDING OFFICER (Ms. STABENOW). The distinguished assistant majority leader.

Mr. DURBIN. 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. DURBIN. I rise to speak in support of the nomination of David Hamilton, who is President Obama's nominee to serve on the U.S. Court of Appeals for the seventh Circuit.

This appellate court has jurisdiction over three states, including my home State of Illinois. Because the Supreme Court takes so few cases these days, the circuit courts have the final word in 99 percent of Federal cases. In other words, the buck stops with the Seventh Circuit for the vast majority of my constituents when they have a legal grievance.

Yesterday, we had to have a cloture vote on the Hamilton nomination because a majority of Republican Senators wanted to filibuster it. Three-quarters of the Republican caucus voted to filibuster Judge Hamilton. That is astonishing.

Judge Hamilton is a moderate, mainstream judge who has earned an outstanding reputation during his 15 years of service on the Federal district court. He has strong bipartisan support, including the support of Republican Senator RICHARD LUGAR.

Another reason I was surpri ed to see the filibuster attempt is because, during the Bush administration, Senate Republicans made speech after speech about their fervent belief that every judicial nominee deserved an up or down vote on the Senate floor. If I had a dollar for every time a Republican Senator advocated for this position, I would be a wealthy man.

This was such an article of faith among the Senate Republicans during the Bush years that they tried to change the rules of the Senate to ban the filibuster of judicial nominees and to require up or down votes. This was called the ''nuclear option'' and the Senate spent days and weeks debating this issue. Thankfully, a handful of courageous Republican Senators opposed it, and this cynical effort was defeated.

We are today seeing a complete double standard when it comes to the way some of my Republican colleagues are treating judicial nominations. When President Bush was in office, they wanted to rubberstamp every nomination. Now that the tables have turned and we have a Democratic President, we have seen unprecedented obstructionism from the Republican side.

Under President Bush, over half of his judicial nominees were confirmed by voice vote or unanimous consent. The Democrats consented to their confirmation without requiring time being spent on a rollcall vote on the Senate floor. The Republicans, by contrast, haven't agreed to a voice vote or unanimous consent on a single one of President Obama's judicial nominees.

In addition, many of the Bush nominees were confirmed within days of being approved by the Judiciary Committee. The average circuit court nominee under President Bush was confirmed just 29 days after being voted out of the Judiciary Committee. By contrast, the average Obama circuit court nominee has had to wait 141 days between the committee vote and confirmation. President Obama's circuit court nominees have had to wait five times longer than President Bush's nominees for a vote.

As a result, the Republicans have ground the judicial nomination process almost to a halt. They have agreed to votes on only seven of President Obama's judicial nominees.

Let's compare this confirmation rate with the number of judges who were confirmed by Thanksgiving under past Presidents. Under President Bush, there were 18 judges confirmed by Thanksgiving. Under President Clinton, there were 28. Under the first

President Bush, there were 15. Under President Reagan, there were 29, and under President Carter there were 26. President Obama has had only 7 judges confirmed—due to Republican stalling tactics.

The Republican obstructionism isn't limited to President Obama's judicial nominations. As of today, they are holding up 40 different nominations, including 10 judicial nominees and 30 executive branch nominees. The vast majority of these nominees are noncontroversial. They were passed with unanimous support in the Senate committee of jurisdiction.

Many of the individuals who are being held up by Senate Republicans have been nominated for important administration positions and long-vacant Federal judgeships. Without Senate confirmation of these nominees, many Americans will see delays in their ability to seek justice in our courts, and delays in the ability of the Obama administration to tackle some of our most pressing national problems.

Unlike many of the judicial nominees sent up by President Bush, the current President has bent over backwards to identify consensus nominees—like Judge David Hamilton—who have bipartisan support. Many of President Bush's judicial nominees, by contrast, did not have bipartisan support or home-State Senator support. With many of President Bush's nominees, it was clear that the Bush White House wanted to pick a fight, rather than a judge.

President Obama is a breath of fresh air. Every single one of his judicial nominees has the support of their home State Senators, be they Democrats or Republicans.

Senator LUGAR—a conservative Republican from Indiana—came to the Senate floor this week and made a strong and compelling case for Judge Hamilton's confirmation. When he introduced Judge Hamilton to the Senate Judiciary Committee in April, Senator LUGAR said the following:

> I believe our 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. I have instead tried to evaluate judicial candidates on whether they have the requisite intellect, experience, character and temperament that Americans deserve from their judges, and also on whether they indeed appreciate the vital, and yet vitally limited, role of the Federal judiciary faithfully to interpret and apply our laws, rather than seeking to impose their own policy views. I support Judge Hamilton's nomination, and do so enthusiastically, because he is superbly qualified.

I hope my colleagues across the aisle will keep these words in mind when they vote on the Hamilton nomination.

Is Senator LUGAR the only Republican in Indiana who supports Judge Hamilton? No. Another prominent Republican supporter is the president of the Indiana Federalist Society: Geoffrey Slaughter. The Federalist Society is an organization of ultraconservative lawyers, and they don't typically support Obama nominees. But the Indiana Federalist Society president has said:

> I regard Judge Hamilton as an excellent jurist with a first-rate intellect. He is unfailingly polite to lawyers. He asks tough questions to both sides, and he is very smart. His judicial philosophy is left of center, but well within the mainstream.

Does that sound like the type of judicial nominee who should be filibustered?

The critics of Judge Hamilton have singled out a handful of decisions in his 15 years on the bench and 8,000 cases. Senator LUGAR has done an excellent job explaining why Judge Hamilton's rulings were sensible and defendable.

The Hamilton nomination has been pending on the Senate floor for nearly 6 months. Enough is enough.

NOMINATION OF MARY L. SMITH

Madam President, I would also like to discuss another nominee whom the Republicans have been stalling: Mary L. Smith. She is President Obama's nominee to be the Assistant Attorney General for the Tax Division at the Justice Department. Mary is from my home State of Illinois, and Senate Republicans have been holding up her nomination for over 5 months.

Mary Smith is a highly qualified nominee who has had a distinguished 18-year legal career. After graduating from the University of Chicago law school, she clerked for a prestigious Federal judge and then litigated at a large Chicago law firm. She then worked as a trial attorney in the Justice Department's Civil Division and as a lawyer in the Clinton White House.

Mary returned to private practice and joined the international law firm of Skadden, Arps, Slate, Meagher & Flom, where she focused on business litigation. After 4 years at Skadden, she went to work at Tyco International, where she managed what has been called the most complex securities class action litigation in history.

Mary has also been deeply devoted to pro bono work and public service, which really tells the story of a lawyer's dedication to the profession. She serves on many bar association boards including the Chicago Bar Foundation, which helps provide free legal services to low-income and disadvantaged individuals.

Mary Smith is not only a highly qualified nominee, she is a historic nominee. Mary is a member of the Cherokee Nation and, if confirmed, she would be the first Native American to hold the rank of Assistant Attorney General in the 140-year history of the Justice Department. She would be the highest ranking Native American in DOJ history.

I was sorry to see that when we took up Mary Smith's nomination in the Senate Judiciary Committee, the Republican members voted against her. They alleged she was unqualified for the job because she doesn't have as much tax law experience as other recent Tax Division nominees.

The Judiciary Republicans are grasping at straws with this allegation. First of all, it is an inherently subjective determination. There is no record of how much time Mary Smith has spent working on tax issues compared with previous nominees.

It is true Mary is not a traditional tax lawyer, but she has worked on tax law and tax policy issues throughout her career. During the years she worked at Tyco International, she worked closely with that company's tax department on responding to IRS subpoenas and assessing the complex tax implications of the $3 billion settlement of the Tyco securities litigation.

When she served in the Clinton White House she worked with congressional offices, the Treasury Department, and the National Economic Council to address tax disparities between Indian tribes and State governments.

And more recently, she served on President Obama's Justice Department transition team, and she helped review and analyze the Tax Division, the very office she has been nominated to lead.

The second reason the Republican allegation about Mary Smith's qualifications is off base is because Mary has more litigation, management, and Justice Department experience than previous Tax Division nominees. Those are critical qualifications to lead the Tax Division. In this respect, Mary Smith is more qualified than her predecessors.

Mary is a seasoned litigator who has had multiple trials and courtroom experience. The head of the Tax Division needs first and foremost to be a person with litigation experience, and Mary Smith fits the bill. She has been a litigator in the Justice Department, in two large law firms, and in one of the largest corporations in the country. Two of the recent Tax Division leaders—whom the Judiciary Republicans hold up as models of what it takes to lead that office—had no litigation experience and never had a single trial.

Mary is also more qualified than some of her predecessors when it comes to management experience. The Tax Division is an office with over 350 attorneys. When she worked on the Tyco litigation, Mary managed over 100 lawyers and a $50 million budget. She managed large litigation teams while working at the Skadden Arps law firm. And during her service in the White House, she helped manage and coordinate the work of multiple Federal agencies. None of the other recent Tax Division nominees had as much management experience as Mary Smith, a fact that has little value to the Judiciary Republicans who voted against her.

Mary also has more Justice Department experience than her recent predecessors. She worked in the DOJ Civil Division as a trial attorney, and she was a key member of President Obama's DOJ review team last winter. She understands the Justice Department as an institution, and the perspective of the DOJ career staff.

In short, Mary has an excellent background to lead the Tax Division. She has litigation experience, management experience, DOJ experience, and tax experience. None of the previous heads of that office had all of these qualifications combined.

One of those prior Tax Division leaders, Nathan Hochman, has come forward in support of Mary Smith's nomination. Mr. Hochman was the head of the Tax Division under President George W. Bush, so he's not exactly a partisan Democrat. Mr. Hochman wrote a letter to the Senate and said the following:

I am confident Mary will provide strong leadership for the [Tax] Division and is a good choice. . . . Mary's private practice experience in complex financial litigation gives her a working background for the type of cases litigated by the [Tax] Division.

I would suggest that President Bush's Tax Division leader has a better understanding of what it takes to lead the Tax Division than a handful of Senators.

Ted Olson is another prominent Republican who supports Mary Smith for this position. Mr. Olson is one of the most respected lawyers in America and he served as the Solicitor General at the Justice Department under President George W. Bush. He worked closely with the Tax Division and represented that office in cases before the Supreme Court.

Ted Olson wrote a letter to the Senate and called Mary Smith ''a first-rate litigator'' and ''a fine choice to be this nation's Assistant Attorney General for the Tax Division.''

The Senate has received dozens of other letters of support for Mary Smith, including many from our Nation's leading Native American leaders. They are eager for the Senate to confirm Mary so she can become the highest ranking Native American in the history of the Justice Department.

The month of November is National American Indian and Alaska Native Heritage Month. We would honor our Native American community by confirming Mary Smith this month.

I urge my Republican colleagues to stop blocking this important nomination and agree to a vote on my Illinois constituent, Mary Smith.

Mr. BUNNING. Madam President, I rise today to speak in opposition to the nomination of Judge David Hamilton for the Seventh Circuit Court of Appeals.

First of all, I would like to speak on the state of the judicial nomination process in the Senate. For several weeks now, I have listened to my colleagues on the other side of the aisle speak on this floor about so-called obstructionism by the minority regarding judicial nominations. For 214 years, the U.S. Senate enjoyed a tradition of holding fair up-or-down votes on judicial nominees regardless of the Senate's political makeup. Beginning in 2003, my colleagues on the other side of the aisle ended that tradition when they successfully filibustered 10 judicial nominations by President Bush whom they considered ''out of the mainstream.'' At the time, we insisted that this was a bad and inefficient precedent to set. However, the other side insisted on traveling down that road. Now the majority claims that if we in the minority care about the good of the country, we should just let any judicial nomination by the President sail through the Senate without any objection. I would encourage those Senators to come to my office to listen to the hundreds of Kentuckians who call and write every day in opposition to the nomination of Judge Hamilton and tell those people that they are being ''obstructionists.''

Judge Hamilton's judicial record is not only insufficient for the Seventh Circuit, it is downright scary. He prides himself on blatant judicial activism. On multiple occasions, Judge Hamilton has argued that judges have the power to change the Constitution when making court decisions. He has stated:

part of our job here as judges is to write a series of footnotes to the Constitution.

If Judge Hamilton would have properly read the Constitution, I am sure he would have realized that it explicitly says that Congress is the only branch which has the authority to make any kind of additional mark to that document.

Looking at his record, Mr. Hamilton has issued some very troubling rulings on child predators. He specifically invalidated a law that required convicted sex offenders to provide information to law enforcement agencies for tracking purposes. In another instance, Mr. Hamilton petitioned the President to grant clemency for someone guilty of producing child pornography. The Supreme Court only hears a small fraction of petitioned cases, and, in many cases, precedent is set at the circuit level. Does anyone want someone on the bench setting this kind of precedent?

Furthermore, in practicing his judicial activist point of view, Judge Hamilton struck down an Indiana law that simply required women to receive medical information on the effects of an abortion before going through the procedure. This is a commonsense law and similar laws have never been invalidated by any other judge in the country. The Seventh Circuit Court, to which Mr. Hamilton has been nominated, reversed and was harshly critical of this ruling. The Seventh Circuit reversed another outlandish ruling of Judge Hamilton's. He prohibited prayer in the Indiana House of Representatives that mentioned Jesus Christ, but inconsistently allowed prayers that mention Allah. These outline a very troubling pattern on the bench.

If any of the President's judicial nominees deserve scrutiny, Judge Hamilton is one of them. His record is clearly out of the mainstream of public opinion and he clearly is motivated to push his own political agenda. A good judge is able to set aside his or her own personal opinions when deciding cases. I do not believe that Judge Hamilton can do this. I strongly encourage my colleagues to oppose this nomination.

Mr. DODD. Madam President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I ask unanimous consent that the order for the quorum call be rescinded.

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

CREDIT CARD RATE FREEZE ACT OF 2009

Mr. DODD. Madam President, I wish to make some brief comments. I will yield to my colleague from Colorado, Senator UDALL, in a moment, and then at the conclusion of his comments I will propound a unanimous consent request. I will not do that until I know there is an objection that will be rendered, and I would certainly wait until I know that is coming. I will not, obviously, make the request until that person arrives so they can express their objection. Regretfully, I might add, they are going to express that objection, but, nonetheless, I don't want them to be worried that I would somehow try to sneak this in, knowing there is an objection to be filed.

I rise this afternoon in support of legislation that would do something that I think most Americans would support as well, regardless of where you live and what your economic circumstances may be; that is, to freeze interest rates on existing credit card balances until the full protections of the Credit Card Accountability Act we wrote earlier this year go into effect. As many of my colleagues will recall, on a vote of 90 to 5, we passed a bill early this year by a near unanimous vote because we all heard the same stories from our constituents across the country: Credit card companies charging outrageous fees; consumers finding out that the interest rates had been jacked up for no apparent reason whatsoever; families struggling to make ends meet and being driven further and further and further into debt by what I would describe as abusive practices.

On that day, on the day we passed the bill, we declared that credit card companies were unfairly padding profits at the expense of the people we work for, so we put a stop to it. Today, it is no different, unfortunately. Knowing that the Credit Card Act will finally protect consumers from these abuses, the industry has tried to make one last grab for their customers' pocketbooks, and that is what has been going on over these past several months. I think this behavior is deplorable, to put it mildly. We can, once