

**Responses of David F. Hamilton
Nominee to the U.S. Court of Appeals for the Seventh Circuit
to the Written Questions of Senator Lindsey Graham**

- 1. In 2005, you ruled that the prayers offered to open Indiana House sessions were sectarian Christian prayers, in violation of the Establishment Clause. You ruled that the prayers at issue were "expressly and consistently sectarian" and that such prayers may not use "Christ's name or title or any other denominational appeal." In contrast, on a post-judgment motion you ruled that the use of "Allah" in such a prayer would likely not advance a particular religion. After an intervening Supreme Court case, the Seventh Circuit dismissed the case for lack of standing.**

Please explain why you ruled that using "Allah" in such a prayer would not violate the Establishment Clause, but using "Christ" would. Under your reasoning at the time, would using "Mohammad" in such a prayer have violated the Establishment Clause?

RESPONSE:

In my decision in *Hinrichs v. Bosma*, I applied the standard and reasoning of *Marsh v. Chambers*, 463 U.S. 783 (1983), which required attention to the content and circumstances of the prayers. The reasoning applies to sectarian prayers of any faith. A prayer asserting that Christ is divine would ordinarily be considered "sectarian." See *Lee v. Weisman*, 505 U.S. 577, 641 (1992) (Scalia, J., dissenting) (a government endorsement of religion would be "sectarian" if it "specif[ied] details upon which men and women who believe in a benevolent, omnipotent Creator and Ruler of the world are known to differ (for example, the divinity of Christ)"). Under this reasoning, similarly, a prayer asserting that Mohammed was God's prophet would ordinarily be considered a sectarian Muslim prayer. In the observation about use of the Arabic word for God, "Allah," I pointed out that one might use the terms for God from many languages without making a prayer sectarian. That reasoning would not foreclose the possibility that other aspects of a Muslim cleric's prayers' content and setting could lead one to conclude that they were sectarian.

- 2. In 2006, you suppressed evidence obtained through a warrant based on information revealed by a 9-year-old about her mother during questioning by a school social worker. You ruled that there was a violation of the mother's constitutional right of family privacy and integrity under Fourteenth Amendment substantive due process. The Seventh Circuit unanimously reversed your ruling.**

Given that law enforcement officials had some reason to believe that the child's mother was engaged in illegal activity, please explain why you did not view the government's interest in speaking to the child in this case as compelling, unlike the Seventh Circuit. Given that the child voluntarily confided in the school officials,

please explain your ruling that the method with which the evidence was obtained "shocked the conscience."

RESPONSE:

As detailed in my opinion, 2006 WL 2460757 (S.D. Ind. 2006), the child voluntarily told the principal that her mother and her boyfriend would need to get "the stuff" out if school officials visited the home. All further information was obtained when the police used the social worker to question the child for purposes of the police investigation. The police investigation was carried out for the sole purpose of a possible prosecution of the child's mother, without taking steps associated with child protection. The case was a difficult one in an area of constitutional law that does not arise often.