

**MINUTES OF THE  
SENATE JUDICIAL CONFIRMATION COMMITTEE**  
Wednesday, November 12, 2008 – 9:00 a.m. – Room C450 State Capitol

**Members Present:**

Sen. Gregory S. Bell, Chair  
Sen. D. Chris Buttars  
Sen. Mike Dmitrich  
Sen. Lyle W. Hillyard  
Sen. Michael G. Waddoups

**Staff Present:**

Mr. John L. Fellows, General Counsel  
Mr. Jerry D. Howe, Policy Analyst  
Ms. Amanda K. Majers, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Bell called the meeting to order at 9:11 a.m.

**2. Continuation of the Interview of Mr. Robert K. Hilder**

Mr. Matt Davies, testified under subpoena to the child custody report he issued in the *Pochynok v. Turner* case that Judge Hilder presided over.

Mr. Davies answered questions from the Committee.

Chair Bell summarized an email from Mr. David Turner that clarified aspects of his testimony at the November 7, 2008 meeting. Chair Bell stated that Judge Hilder provided a time line of the *Pochynok v. Turner* for the Committee.

Judge Hilder reviewed the chronology and other aspects of that case.

Chair Bell stated that the Committee received numerous emails concerning the University of Utah gun case over which Judge Hilder presided.

Mr. Paul Boyden, Deputy District Attorney, reviewed aspects of the University of Utah gun case for the Committee.

Sen. Waddoups asked for a public comment period for those in the audience who would have additional pertinent material relating to the recommendation of Judge Hilder to the full Senate to be confirmed as a judge on the Court of Appeals.

Mr. Turner testified to the condition of his daughter Natalie's home during the time it was for sale, which was an issue in the *Pochynok v. Turner* case.

Sen. Buttars stated his preference to keep the public comment to issues that are new to the Committee.

Sen. Hillyard reiterated Sen. Buttars preference for the public comment period.

Mr. Nate Alder, Utah State Bar President, was sworn in by Mr. Howe and reviewed a letter from the Bar to the Committee. He reiterated that Judge Hilder is well respected, intellectual, pleasant, and has the Bar's recommendation.

Sen. Hillyard stated regret for the timing of this meeting and expressed that there is not adequate time to fully explore issues concerning Judge Hilder. He stated reservations he had with recommending Judge Hilder to the full Senate and also expressed his reasons for recommending Judge Hilder as a judge in the Court of Appeals.

Chair Bell reminded the Committee that Senate rules require that a vote must be based on a nominee's qualifications of fitness for judicial office and without regard to any partisan political considerations. Factors such as race, color, sex, age, religion, national origin, or disability are irrelevant and must not be considered when making a decision about whether to recommend the confirmation of a judicial candidate.

Sen. Waddoups stated his concern that, during this confirmation hearing, the Committee was retrying cases that he did not feel qualified to try and contended that it is the Committee's responsibility to listen to the qualifications of the judicial candidate to determine if the candidate should be recommended to the full Senate. He also stated his discomfort with Judge Hilder's demeanor during the confirmation hearing. Sen. Waddoups stated he will vote not to recommend Judge Hilder due to his judicial demeanor.

Sen. Buttars stated his concern with Judge Hilder's statement that the University of Utah gun case did not involve a Second Amendment issue. He also stated concern with Judge Hilder's demeanor during the confirmation hearing. Sen. Buttars said that he would not vote to recommend Judge Hilder to be confirmed as a judge to the Court of Appeals.

Sen. Dmitrich recommended that future judges might not want to meet privately with members of the Committee during the confirmation hearing period. He stated his support for the recommendation to confirm Judge Hilder to the Court of Appeals.

Chair Bell summarized the Committee's actions and reiterated the support of the Utah State Bar and current judges for Judge Hilder's confirmation. Chair Bell stated his support for the confirmation of Judge Hilder because of his knowledge of the law and its application, his integrity, his sensitivity with the public, and his intelligence.

**MOTION:** Sen. Hillyard moved to recommend to the full Senate the confirmation of Judge Robert K. Hilder as a judge in the Court of Appeals. The motion passed with Sen. Buttars and Sen. Waddoups voting in opposition.

Sen. Hillyard requested a break and Chair Bell approved the request.

### **3. Interview of Ms. Christine S. Johnson**

Chair Bell deferred Ms. Christine S. Johnson's personal statement to the Committee until after it returned from its closed session.

**MOTION:** Sen. Buttars moved to close the meeting for the purpose of discussing the character, professional competence, or physical or mental health of Ms. Christine S. Johnson. The motion passed unanimously.

**MOTION:** Sen. Buttars moved to open the meeting. The motion passed unanimously.

Ms. Christine Johnson was sworn in by Mr. Howe. She expressed her thanks to the Committee and the Judicial Nominating Commission. She introduced herself and her family. She gave a background of her personal and professional life. She expressed her comfort in the courtroom and related her experience in advocating for both the prosecution and the defense. Ms. Johnson stated that she looks forward to the continued learning she will experience as a judge. She stated reasons why she wants to be confirmed as a judge. Ms. Johnson commented that she believes the role of a judge is limited: it is to read, to interpret, and to apply the law.

Sen. Buttars asked Ms. Johnson to explain her position on judicial activism.

Ms. Johnson reiterated her statement that the role of a judge is a limited one, and she stated that lawmaking should be left to the Legislature.

Sen. Buttars inquired about Ms. Johnson's philosophy on the death penalty.

Ms. Johnson stated that she would be prepared to sign a death warrant if it were before her. She said that she would apply the law in all circumstances.

Sen. Hillyard asked about Ms. Johnson's resume and her experience in family law.

Ms. Johnson stated that she is willing to study areas of law where she has less experience in order to properly apply the law.

Sen. Hillyard inquired how Ms. Johnson would work to make the court system more accessible to the public.

Ms. Johnson answered that the Utah State Bar does a lot to encourage access to counsel and committed herself to work through the judiciary to further facilitate public access to the courts.

Sen. Waddoups asked if there is anything in Ms. Johnson's background that, if it were widely known, could be an embarrassment to the state or would disqualify her from being a judge.

Ms. Johnson stated that there was not.

Sen. Buttars stated his support for the use of summary judgement and encouraged Ms. Johnson to utilize that process.

Chair Bell congratulated Ms. Johnson on her extensive resume and encouraged her to be humble as a judge.

**MOTION:** Sen. Dmitrich moved to recommend to the full Senate the confirmation of Ms. Christine S. Johnson as a judge in the Fourth District Court. The motion passed unanimously.

#### **4. Other Items / Adjourn**

**MOTION:** Sen. Dmitrich moved to adjourn. The motion passed unanimously.

Chair Bell adjourned the meeting at 12:18 p.m.