



March 17, 2011

Hon. Harry Reid
Majority Leader, United States Senate
522 Hart Senate Office Bldg
Washington, DC 20510

Hon. Mitch McConnell
Minority Leader, United States Senate
361-A Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that Caitlin Halligan be confirmed promptly to the United States Court of Appeals for the District of Columbia Circuit.

Ms. Halligan is overwhelmingly qualified to serve on the D.C. Circuit. She has stellar academic credentials and an exemplary professional record as a litigator, as an appellate advocate, and as a dedicated public servant. A graduate of Princeton University and Georgetown Law School, Ms. Halligan clerked for Judge Patricia M. Wald of the D.C. Circuit and for Supreme Court Justice Stephen Breyer. Ms. Halligan has spent a significant portion of her career in public service, most notably as the Solicitor General of the State of New York, and currently as the General Counsel of the New York County District Attorney's Office. She has also, during the course of her distinguished career, practiced law with some of the nation's leading law firms.

While most lawyers go through their entire careers without appearing before the United States Supreme Court, Ms. Halligan has argued four cases before the High Court, and will argue her fifth on March 21, 2011. She is a lawyer's lawyer who has earned the great respect of her peers, as evidenced not only by the "Unanimously Well Qualified" rating that she has received from the ABA, but also by the letter supporting her confirmation submitted to the Judiciary Committee by a bipartisan group of preeminent attorneys who have worked with her in various capacities, including such conservative luminaries as Carter Phillips and Miguel Estrada.¹ These attorneys have praised Ms. Halligan as "an outstanding selection for the D.C. Circuit," explaining that:

[s]he is a first-rate lawyer and advocate. She is well respected and highly regarded as a leader of the profession. Caitlin also has an ideal judicial temperament. She brings reason, insight and

¹ Letter to Senate Judiciary Committee from Clifford M. Sloan, *et al.*, March 4, 2011, available at: <<http://legaltimes.typepad.com/files/halligan-030411-jointletter.pdf>> (last visited March 16, 2011).

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judgment to all matters. Even those of us who have been on opposite sides of Caitlin in litigation have been greatly impressed with her ability and character. We have no doubt that she would serve with distinction and fairness.

Despite Ms. Halligan's impeccable qualifications to be a federal appellate court judge, her confirmation has been opposed by conservative Senators on the Judiciary Committee and organizations including the National Rifle Association. We believe the concerns expressed about Ms. Halligan's nomination are deeply misguided.

One issue, raised by Judiciary Committee Ranking Member Charles Grassley, centers around the workload of the D.C. Circuit. Although Senator Grassley noted on March 10 that the Senate did not act on President George W. Bush's nomination of Peter Keisler to fill the same seat on that court to which Ms. Halligan has been nominated, the analogy to the Keisler nomination is inapt. When Mr. Keisler was nominated, there were ten active judges on the D.C. Circuit; there are only nine now. In rejecting the "workload" argument against Ms. Halligan, Judiciary Committee Chairman Patrick Leahy stated in response to Senator Grassley that the D.C. Circuit's caseload is similar now to what it was during the Bush Administration, and observed that the Senate during that Administration had *twice* filled what was then the 10th seat on the Circuit (with Janice Rogers Brown and later with Brett Kavanaugh), as well as the 11th seat once (with Thomas Griffith). Ms. Halligan, if confirmed, would fill the 10th seat.

Critics of Ms. Halligan, including the NRA, have also seized on aspects of her record that they contend indicate a hostility to Second Amendment rights or otherwise suggest she holds progressive views on certain legal topics. As Senator Leahy has pointed out, however, these arguments against Ms. Halligan are largely based on her work as a lawyer for a client – primarily as the Solicitor General of the State of New York. It is always very dangerous to attribute to a lawyer positions taken on behalf of a client; all lawyers are required to represent their clients' interests zealously, and they violate their ethical obligations if they fail to do so. Moreover, with respect to the Second Amendment, Ms. Halligan made it expressly clear in her testimony at her confirmation hearing on Feb. 2, 2011 that she recognizes that the Supreme Court has held that an individual's right to keep and bear arms under the Second Amendment is a fundamental right, and pledged to follow the Court's precedent if she were confirmed, as she of course would be obligated to.

It is also worth noting that Ms. Halligan's conservative opponents have been engaged in cherry-picking through her record. As with most if not all attorneys who have had the great honor of serving as the lawyer for a State or other governmental entity dealing with a myriad of legal and political concerns and interests, Ms. Halligan's record is replete with arguments made on behalf of her clients that could be characterized as "conservative," along with others that could be characterized as "liberal." In fact, the case that Ms. Halligan will be arguing before the Supreme Court on March 21, *Tolentino v. New York*, No. 09-11556, is a Fourth Amendment case in which Ms. Halligan has urged the Court not to expand the exclusionary rule. Her position is supported in a brief filed by the Attorneys General of 26 other States, including the conservative Attorneys General of such States as Virginia, Texas, Utah, and South Carolina, as well as in a brief filed by the New York State Association of Chiefs of Police and the New York State Sheriffs' Association Institute. Ms. Halligan has been given the honor of representing New York before the Supreme Court in this case not because she's a conservative lawyer or a progressive lawyer, but because she's a great lawyer.

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Caitlin Halligan has the qualifications, experience, intellect and temperament to serve with great distinction on the D.C. Circuit. We urge every Senator to support her confirmation.

Respectfully,

Handwritten signature of Douglas T. Kendall in cursive script.

Douglas T. Kendall
President

Handwritten signature of Judith E. Schaeffer in cursive script.

Judith E. Schaeffer
Vice President