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Filibuster by Senate Republicans Blocks Confirmation of Judicial Nominee

By CHARLIE SAVAGE and RAYMOND HERNANDEZ

WASHINGTON — Senate Republicans on Tuesday blocked confirmation of Caitlin J. Halligan, a prominent New York lawyer, to be a federal appeals court judge, raising the question of whether a political deal to prevent the filibuster of most judicial nominations has broken down.

Democrats failed to pick up the 60 votes needed under Senate rules to break a filibuster of a confirmation vote for Ms. Halligan, a former New York State solicitor general. The vote to break the filibuster was 54 to 45 and was largely along party lines; only one Republican, Senator Lisa Murkowski of Alaska, favored allowing an up-or-down vote on Ms. Halligan, while no Democrats voted against it.

President Obama had nominated Ms. Halligan for one of three vacancies on the United States Court of Appeals for the District of Columbia Circuit, which is generally is considered the second-most powerful court in the country because it frequently hears cases involving the federal government.

In a statement shortly after the Senate vote, Mr. Obama expressed disappointment and accused Republicans of undermining the judicial confirmation process for partisan purposes.

“Her nomination fell victim to the Republican pattern of obstructionism that puts party ahead of country,” Mr. Obama said. “Today’s vote dramatically lowers the bar used to justify a filibuster, which had required ‘extraordinary circumstances.’ The only extraordinary things about Ms. Halligan are her qualifications and her intellect.”

The Senate minority leader, Mitch McConnell of Kentucky, led the Republican Party’s opposition to the nomination, saying Ms. Halligan’s record demonstrated that she viewed the court as a means of advancing a social agenda instead of as a forum for even-handedly deciding legal questions.

Mr. McConnell argued, for example, that as New York's solicitor general, Ms. Halligan "advanced the dubious legal theory" that gun manufacturers could be held legally responsible for crimes committed with firearms. Republicans also attacked her on several other issues.

During her confirmation hearing, Ms. Halligan distanced herself from positions she had taken on behalf of clients — saying, for example, that she believed that the Second Amendment protects individuals' right to bear arms. Republicans, however, questioned whether she had been candid and portrayed her as an extremist.

"We shouldn't be putting activists on the bench," Mr. McConnell said. "I think she would use the court to put her activist judicial philosophy into practices, and for that reason alone she shouldn't be confirmed."

Senate Democrats strongly criticized the use of the filibuster against Ms. Halligan, who is now the general counsel for the New York County District Attorney's Office. Senator Patrick J. Leahy, a Vermont Democrat who is the chairman of the Judiciary Committee, described her as a mainstream and well-qualified legal thinker who was being attacked by "concocted controversies and a blatant misreading" of her record.

And Senator Charles E. Schumer of New York, the chamber's No. 3 Democrat, warned that the Republican action could undo a bipartisan agreement that has guided the way the Senate has handled most appeals court nominations since 2005. The agreement was put together by seven Democrats and seven Republicans known as the Gang of 14. It was reached after Democrats, who were in the Senate minority at the time, employed the tactic to prevent up-or-down votes on several of President George W. Bush's nominees.

Many Republicans at the time argued that it was unconstitutional to block votes on judicial nominees, and the Republican leader, Senator Bill Frist of Tennessee, threatened to change Senate rules to ban judicial filibusters.

The crisis was averted after seven Democrats agreed not to block certain appeals court nominees and to eschew filibusters except in "extraordinary" circumstances, which were not defined. In exchange, the seven Republicans promised not to vote for changing Senate rules.

After the 2008 election, the balance of power shifted: Democrats controlled the White House and had a majority in the Senate. In May, Senate Republicans used a filibuster to prevent the chamber from voting on another one of Mr. Obama's appeals court nominees, Goodwin Liu.

Mr. Liu, however, had unusually outspoken liberal views. He also drew fire for failing to

disclose some of his past writings and speeches to the Judiciary Committee. (He has since become an associate justice on the California Supreme Court.)

Democrats argued Tuesday that Ms. Halligan should not be seen as meeting a standard of “extraordinary circumstances” that would justify a filibuster. Mr. Schumer said that her defeat “could throw into chaos nominations at the Circuit Court for a long time.”

Of the seven Republican senators who were part of the Gang of 14, four — John McCain of Arizona, Lindsey Graham of South Carolina, and Olympia J. Snowe and Susan Collins of Maine — are still serving. All voted against allowing a vote on Ms. Halligan. Mr. Obama, who was a senator from 2005 through 2008, was not one of the Democrats in the Gang of 14; he voted to filibuster several of Mr. Bush’s nominees.