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THE BAR ASSOCIATION *of the* District of Columbia

December 5, 2011

The Honorable Harry Reid
U.S. Senate Majority Leader
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
U.S. Senate Republican Leader
317 Richard B. Russell Senate Office Building
Washington, D.C. 20510

Re: Cloture Vote on Nomination of Caitlin Halligan to D.C. Circuit

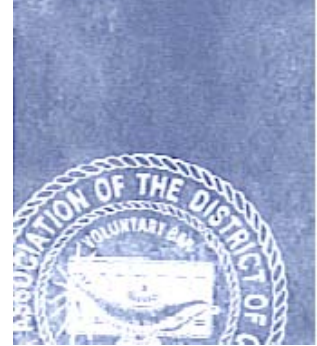
Dear Leaders Reid and McConnell:

The Bar Association of the District of Columbia (BADC), our nation's third oldest bar association, calls upon the Senate to invoke cloture and to afford the limited debate that will ensure a vote on the merits of the President's nomination of Caitlin Halligan to serve on the United States Circuit Court of Appeals for the District of Columbia Circuit.

Our U.S. Circuit Court currently has not one, not two, but three vacancies. Given the institutional significance of the D.C. Circuit, the BADC understands the political considerations that bear on the confirmation process with respect to appointments to this Circuit. At a minimum, however, when our local U.S. Circuit Court of Appeals is burdened by three vacancies, the BADC submits that the time has come for the Senate to at least allow for an up-or-down vote on this nomination.

The seat to which Ms. Halligan has been appointed – vacant since September 29, 2005 – appears to be the second-oldest vacancy on the federal bench. Ms. Halligan was nominated to this seat on September 29, 2010, and re-nominated in January 2011. Her nomination cleared the Senate Judiciary Committee by a divided vote, but she has now waited an additional eight months for a floor vote. During that time, another D.C. Circuit Judge, the Hon. Douglas H. Ginsburg, took senior status, depleting the ranks of the active members of our Circuit even further. So we call upon the Senate to act.

The BADC strongly believes that the D.C. Circuit's caseload is not a proper reason for failing to fill these seats that Congress has authorized. The D.C. Circuit's cases are often atypical of other Circuits, and include the review of complex rulemaking by federal agencies and some of the most important terrorism and national security cases in the United States. Moreover, in 2008, Congress already reduced the number of active judgeships on the D.C. Circuit from 12 to 11 to take into account its declining caseload.



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U.S. Senate Leaders Harry Reid & Mitch McConnell
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Page Two

Having so recently declared that the proper number of judges on the D.C. Circuit is 11, the Senate should not allow the work of the court to be impeded by the absence of necessary judicial resources. The court should not now be limited to 10 or 9 judges – and certainly not 8. The Senate confirmed four of President George W. Bush’s nominations to the D.C. Circuit, twice filling the 10th seat, and once filling the 11th seat. In 2005, when President Bush’s nominee to the D.C. Circuit’s 11th seat was confirmed, there were about 121 pending cases for each active D.C. Circuit judge. Today, there are 161 pending cases for each active judge – a ratio one-third higher. And according to the Administrative Office of the U.S. Courts, written decisions per active judge have also increased 20% since 2007.

Given the vacancy in one-quarter of the active judgeships for this important court, Ms. Halligan’s nomination at the very least should be moved to an up or down vote. The BADC takes no position on whether Ms. Halligan should actually be confirmed, although we note that her credentials are sufficiently impressive to be deserving of a confirmation vote on the merits. Ms. Halligan has received a unanimous well-qualified rating from the American Bar Association. She is a former judicial clerk to D.C. Circuit Judge Patricia M. Wald and to U.S. Supreme Court Justice Stephen G. Breyer. She has served as the Solicitor General of the State of New York, and later led the appellate practice of Weil, Gotshal & Manges LLP, before assuming her current role as General Counsel of the New York County District Attorney’s Office. She has argued five times before the U.S. Supreme Court. Her nomination has received endorsements not only nationally, but also locally from, among others, the *Washington Post*, the Women’s Bar Association of the District of Columbia, and noted D.C. appellate counsel Carter G. Phillips and Miguel A. Estrada. If confirmed, Ms. Halligan would become just the sixth woman to serve on the D.C. Circuit in its 120-year history.

Accordingly, the BADC urges the Senate to invoke cloture and consider on the merits the nomination of Caitlin Halligan to serve on the U.S. Court of Appeals for the D.C. Circuit. We ask the Senate to move promptly to fulfill its constitutional duty to consider whether this nominee is sufficiently qualified and appropriately suited to be confirmed for appointment, particularly in light of the need to alleviate the depletion in the ranks of the D.C. Circuit bench.

On behalf of the BADC, I appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory S. Smith", with a long horizontal line extending to the right.

Gregory S. Smith
BADC President