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## Obama Pick for Court Is 3rd in a Row Blocked by Republicans

By [JEREMY W. PETERS](#)

WASHINGTON — Senate Republicans on Monday blocked President Obama’s third consecutive nominee to the country’s most powerful and prestigious appeals court and insisted they would not back down, inflaming a bitter debate over a president’s right to shape the judiciary.



By a vote of 53 to 38, the Senate failed to break a filibuster of Robert L. Wilkins, a federal judge who was nominated to fill one of three vacancies on the United States Court of Appeals for the District of Columbia Circuit, falling seven votes short of the 60 needed. Two Republicans — Lisa Murkowski of Alaska and Susan Collins of Maine — voted with the Democrats.

The impasse over Mr. Wilkins followed Republican blockades of two other candidates for the court since Oct. 31. Unlike previous fights over judicial nominees, the dispute is not as much about the judges' individual political leanings as it is about the overall ideological makeup of the court. Republicans have raised few objections to the three candidates' qualifications or legal positions.

Rather, Republicans are seeking to prevent Mr. Obama from filling any of the three existing vacancies on the 11-seat court, fearing that he will alter its conservative tilt. The court has immense political importance because it often rules on questions involving White House and federal agency policy.

Democrats accused Republicans of exercising a nakedly political double standard for confirming presidential nominees.

"Appointing judges to fill vacant judicial seats is not court-packing," Senator Harry Reid of Nevada, the Democratic majority leader, said Monday. "It's a president's right as well as his duty."

After the vote, Mr. Obama issued [a statement](#) saying he was being held to an unfair standard. "Four of my predecessor's six nominees to the D.C. Circuit were confirmed," he said. "Four of my five nominees to this court have been obstructed."

Mr. Obama added, "The American people and our judicial system deserve better."

Republicans have argued that the court does not have a caseload large enough to merit filling the vacancies, and they have proposed legislation to shrink it by three seats. But that has no chance of becoming law in a Democratic-controlled Senate, so instead they have vowed to block any nominees for that court.

For one day at least, business on Capitol Hill shifted away from the problematic effort to carry out the president's health care law, prompting Republicans to accuse Democrats of trying to change the subject.

"Unfortunately, the Senate will not be voting on legislation to allow Americans to keep their health insurance if they like it," said Senator Mitch McConnell of Kentucky, the Republican leader. "Rather, we will be voting on another nominee to a court that doesn't have enough work to do. The Senate ought to be spending its time dealing with a real crisis, not a manufactured one."

Republicans are making a bold gamble: Hold firm and allow no more judges to get through while hoping that Democrats do not alter filibuster rules so that the minority can no longer block judges. At times, they have dared Democrats to change the rules, saying that any move to stop filibusters will haunt them if the Senate and the White House ever flip back to Republican control and a seat opens on the Supreme Court.

Senate aides said Monday that members of the Democratic leadership had started to gauge support for a rules change inside its caucus. Any changes would require 51 of the 55 members aligned with Democrats.

Mr. Reid can bring the stalled nominees back up again at any time, individually or all at once.

Judge Wilkins became the fourth of Mr. Obama's choices for the District of Columbia court to be blocked by Republicans this year. Angry Democrats, noting that Judge Wilkins is African-American and that the three other nominees are women, said Republicans were stifling diversity.

Democrats have sought to portray Republicans as callous to the concerns of women and minorities.

Judge Wilkins, who serves on the United States District Court and was confirmed three years ago in a unanimous voice vote, gained national prominence in a case that helped popularize the term "driving while black" when he sued the Maryland State Police after they pulled him over in the 1990s.

Patricia Ann Millett, who was filibustered late last month, has argued nearly three dozen cases before the Supreme Court. To bolster Ms. Millett, whose husband serves in the military, friends from military spouse support groups have come to the Capitol to plead her case.

Cornelia T. L. Pillard, rejected last week, is a law professor at Georgetown who litigated racial discrimination cases for the NAACP Legal Defense and Educational Fund Inc.

Caitlin J. Halligan, who went down in a filibuster earlier this year, is the general counsel for the Manhattan district attorney. She has withdrawn her nomination.

Republicans are on the verge of exhausting the last bit of tolerance Democrats have shown for such regular use of the filibuster on nominations. Senator Patrick J. Leahy of Vermont, the Senate's longest-serving current member, who has fought to safeguard the institution's traditions, said Monday that momentum was building toward a rules change — a move so controversial that it is referred to as the nuclear option.

"I've never seen anything like this," Mr. Leahy said.

By the Republicans' own count, the cases scheduled for oral argument per active judge on the court has declined, but not by a large amount. They have said there were 90 per judge in 2006 compared with 81 this year. The Senate has confirmed only one of Mr. Obama's nominees for the court, Srikanth Srinivasan, in May.

Democrats do not have entirely clean hands on the subject of filibustering nominees to the District of Columbia court. In 2003, when Democrats were a minority in the Senate, Senator Charles E. Schumer of New York persuaded initially reluctant members of his party to take what was considered an extreme step at the time: blocking a confirmation vote

on Miguel Estrada, a lawyer nominated by President George W. Bush to fill a vacant seat on the court. Altogether that year, Democrats blocked six judicial nominees by using the filibuster.

Republicans eventually threatened to make the same rule change Democrats are considering now. But they backed down after a bipartisan group of 14 senators agreed to approve the circuit court judicial nominees awaiting confirmation. Mr. Estrada had withdrawn, but another conservative judge, Janice Rogers Brown, was put on the District of Columbia appeals court.

Many senators and outside advocates have begun to ask whether the atmosphere has grown so poisoned that Democrats see little reason to hold back.

Fred Wertheimer, president of Democracy 21, a group that advocates transparency in government and campaign finance, said Republicans would be likely to exercise the nuclear option themselves if they ever faced a Democratic blockade of important nominees.

“The reality is that the Republicans were willing to do this before and gained enormous advantage in the deal that was made to prevent it,” he said, referring to the compromise by the group of 14 senators. “We’re not in a situation where the tradition and rules and history of the Senate are being recognized today. We’re in a situation where politics and partisan reasons have overridden the sense that there are rules of fair play that must be maintained.”