Kagan Joins Supreme Court After 63-37 Vote in Senate

By CARL HULSE

WASHINGTON — The Senate confirmed Elena Kagan to a seat on the Supreme Court on Thursday, giving President Obama his second appointment to the court in a year and a victory over Republicans who sharply challenged her credentials and record.

Ms. Kagan, who is set to be sworn in Saturday as the newest member of the court, was approved by a vote of 63 to 37 after hearings and floor debate that showcased the competing views of Democrats and Republicans about the court but exposed no significant stumbling blocks to her confirmation.

In welcoming the Senate action, Mr. Obama said he expected that Ms. Kagan would be a strong addition to the court because she “understands that the law isn’t just an abstraction or an intellectual exercise.”

“She knows that the Supreme Court’s decisions shape not just the character of our democracy, but the circumstances of our daily lives,” the president said.

Ms. Kagan, the former dean of the Harvard Law School, a legal adviser in the Clinton administration and solicitor general in the Obama White House, becomes the fourth woman to serve on the court. She will join two other women currently serving, including Justice Sonia Sotomayor, who was confirmed almost exactly a year ago, and Justice Ruth Bader Ginsburg. She will be the only justice on the court not to have served previously as a judge.

At age 50, the New York native could have a long tenure, but her confirmation is not seen as immediately altering the current closely divided ideological makeup of the court, which is often
split 5 to 4 on major decisions. She succeeds Justice John Paul Stevens, the leader of the court’s liberal bloc, who is retiring.

“Her qualifications, intelligence, temperament and judgment will make her a worthy successor to Justice John Paul Stevens,” said Senator Patrick J. Leahy, Democrat of Vermont and chairman of the Judiciary Committee.

The court she is joining has grown more assertive in placing a conservative stamp on decisions under Chief Justice John G. Roberts Jr., and is likely to confront an array of divisive issues in coming years, like same-sex marriage, immigration and the federal government’s role in health care.

Among the cases she is expected to sit in on when the new term starts in October are two major First Amendment clashes: one involving California’s attempts to limit the sale of violent video games to minors, the other on the free speech rights of protesters at military funerals.

Because of her role as solicitor general in the Obama administration, Ms. Kagan has already identified 11 cases on the docket for the next term in which she would disqualify herself because she had worked on them for the White House. One concerns the privacy rights of scientists and engineers at the Jet Propulsion Laboratory who object to federal background checks.

In the final vote, 5 Republicans joined 56 Democrats and 2 independents in supporting the nomination; 36 Republicans and one Democrat, Senator Ben Nelson of Nebraska, opposed her. In a sign of the import of the moment, senators formally recorded their votes from their desks.

The partisan divide over the nomination illustrated the increasing political polarization of fights over Supreme Court nominees, who in years past were backed by both parties in the absence of some disqualifying factor. Ms. Kagan received fewer Republican votes than Justice Sotomayor, who was supported by nine Republicans in her 68-to-31 confirmation on Aug. 6, 2009. Democrats balked at Samuel A. Alito Jr., nominated by President George W. Bush, with only four endorsing him in a 58-to-42 vote in January 2006.

Most Senate Republicans challenged Ms. Kagan’s nomination until the end, asserting that she lacked sufficient experience and had unfairly stigmatized the military by supporting a bar on recruiters at Harvard Law over the military’s policy against allowing gay men and lesbians to
serve openly. They said her record in both Democratic administrations and her strong ties to Mr. Obama suggested that she would try to imprint her own political values and those of the president on court decisions.

“Whether it’s small-claims court or the Supreme Court, Americans expect politics to end at the courtroom door,” said Senator Mitch McConnell of Kentucky, the Republican leader. “Nothing in Elena Kagan’s record suggests that her politics will stop there.”

Republicans said the need to interpret the Constitution strictly was, in their view, reaffirmed by this week’s federal court ruling against California’s voter-imposed ban on same-sex marriage, a case considered likely to eventually reach the Supreme Court.

Senator Jeff Sessions of Alabama, the senior Republican on the Judiciary Committee, warned that the American public would “not forgive the Senate if we further expose our Constitution to revision and rewrite by judicial fiat to advance what President Obama says is a broader vision of what America should be.”

But Democrats described the new justice as a brilliant legal scholar who would broaden the outlook of the court.

“When it opens this fall, three women — a full third of the bench — will preside together for the first time,” Senator Harry Reid, the Nevada Democrat and majority leader, said. “That’s really progress.”

Mr. Obama called Ms. Kagan’s confirmation “a sign of progress that I relish not just as a father who wants limitless possibilities for my two daughters, but as an American proud that our Supreme Court will be more inclusive, more representative and more reflective of us as a people than ever before.”

Ms. Kagan has never been a judge and her previous courtroom experience was limited — she argued her first case before the Supreme Court last year — leading some Republicans to cite her lack of time on the bench as a chief factor in their opposition. They included Senator Scott Brown, a Massachusetts Republican, who announced Thursday that he would oppose the nomination of the woman he introduced at her confirmation hearings.

“When it comes to the Supreme Court, experience matters,” he said in a statement.
Democrats dismissed that argument, with Senator Christopher J. Dodd of Connecticut noting that more than one-third of the 111 Americans who have served on the court were not previously judges, including former Chief Justice William H. Rehnquist, whose tenure was highly regarded by many Republicans.

“I would therefore submit to my colleagues that there are other important measures of the quality of a Supreme Court nominee besides the depth of his or her experience on the bench,” Mr. Dodd said.