

Newsweek

Brett Kavanaugh on Supreme Court: Here's what could change on abortion, gun control, and presidential power

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Controversial Supreme Court nominee Brett Kavanaugh is set to be appointed to the highest court in America Saturday afternoon, after a Senate hearing and FBI investigation into allegations of sexual assault and misconduct.

Kavanaugh, who could join the bench as early as next week, is the first Justice to be appointed both by a president who lost the popular vote and by Senators representing less than half of the country.

Still, he will likely cement the Court's strong Conservative bloc, with five Republican-appointed Justices and just four appointed by Democratic presidents sitting. The change gives the now right-leaning court the ability to rule on a number of important and controversial cases that shape the U.S. Here's what could change in the next few years.

Abortion Rights

When pressed during Senate hearings, Kavanaugh refused to elaborate exactly where he stood on the status of *Roe v. Wade*, the landmark Supreme Court case that legalized abortion in all 50 states.

Senator Dianne Feinstein asked the Judge about it specifically, but the devout Catholic's answer was vague. "It has been reported that you have said that *Roe* is now settled law," she said. "What do you mean by settled law? Do you believe it is correct law?"

The case, replied Kavanaugh, "is an important precedent of the Supreme Court that has been reaffirmed many times."

He specifically mentioned the 1992 challenge to abortion rights in the case of *Planned Parenthood vs. Casey*. Kavanaugh said that it had created "precedent upon precedent" to reaffirm *Roe*, and that "matters, involving the most intimate and personal choices a person may make in a lifetime ... are central to the liberty protected by the Fourteenth Amendment."

In a public speech last year, however, Kavanaugh applauded Chief Justice William Rehnquist's dissent in that decision.

In a 45-minute Senate floor speech Friday, Senator Susan Collins said she was sure that Kavanaugh would not vote to overturn the case, but that doesn't mean he couldn't vote to limit access to safe abortions. In an appeals case to allow a 17-year-old, undocumented girl being held in an immigration detention center an abortion without delay, Kavanaugh dissented, saying that while the government allows women to choose abortions, they're also allowed to enact "reasonable regulations that do not impose an undue burden."

Kavanaugh could join the anti-Roe bloc of the court, Justices Clarence Thomas, John Roberts, Samuel Alito and Neil Gorsuch, making it the majority voting bloc.

Environmental Protection

Judge Kavanaugh's Judicial history shows that he often sides with businesses over administrative agencies like the EPA when they try to impose environmental regulations.

Kavanaugh does not believe that the courts should defer to an agency's interpretation of its own power, and in 2012 ruled against an EPA clean air law that attempted to regulate greenhouse gas emissions. "The task of dealing with global warming is urgent and important," he wrote, but "a court's assessment of an agency's compliance with statutory limits does not depend on whether the agency's policy is good or whether the agency's intentions are laudatory."

An analysis by EarthJustice finds that Kavanaugh's appointment to the Supreme Court, "would make the Court even more likely to gut laws like the Clean Air Act and the Clean Water Act, and to dilute the authority of federal agencies to implement and enforce those laws."

By examining Kavanaugh's judicial records, the nonprofit environmental law organization found that, "sixteen of his eighteen rulings (89 percent) in which he took a position on the U.S. Environmental Protection Agency's rules curbing air and water pollution were anti-environmental in nature."

Gun Rights

Kavanaugh has voted to the right of his colleagues on guns rights, and takes a very loose stand on regulatory issues.

In a 2011 case that asked District of Columbia residents to register guns and banned the possession of semi-automatic rifles, he dissented saying that a ban on semi-automatic weapons is unconstitutional because they "have not traditionally been banned and are in common use by law-abiding citizens for self-defense in the home, hunting and other lawful uses." He used the same logic to strike down gun registration.

In 2008, Kavanaugh wrote that when analyzing the constitutionality of new gun laws, he looks at the "text, history, and tradition" instead of the government's interest in public safety.

In a speech last year, he said that as a Judge, "I've been be a lonely voice," on the topic of gun regulation.

Kavanaugh could be the Justice that tips the Supreme Court against gun control. Together, Kavanaugh, Justices Clarence Thomas and Neil Gorsuch, could create a bloc and become "the kind of gun-rights justices that you could reliably see striking down a bunch of regulations," said Trevor Burrus, a research fellow and gun rights advocate at the libertarian Cato Institute, to NPR.

Those regulations could include "10-day waiting periods, magazine restrictions, assault weapons bans, things like that."

Presidential Power

Kavanaugh could play a deciding role in Special Counsel Robert Mueller's investigation into Russian interference in the 2016 elections. That's because it may be up to the Supreme Court to decide if President Donald Trump can be indicted or made to testify.

During his hearing, Senator Feinstein asked him if a sitting president could be required to respond to a subpoena. His response? "I can't give you an answer on that hypothetical question." He also refused to answer a question about whether a president would be able to pardon himself.