

POLITICO

Trump Picked Kavanaugh. How Will He Change the Supreme Court?

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June 10, 2018

Will he be too much like John Roberts?

Donald Trump's pick of Brett Kavanaugh to be the next Supreme Court justice shows that an unconventional president can play a conventional political game. Judge Kavanaugh would have been considered by a Ted Cruz or Marco Rubio administration — and that's a good thing. It shows how serious constitutionalism has permeated the Republican Party regardless of who's in the White House.

As Kavanaugh himself said: “A judge must be independent and must interpret the law, not make the law. A judge must interpret statutes as written. And a judge must interpret the Constitution as written, informed by history and tradition and precedent.” That all seems straightforward, but Kavanaugh has a long track record of holding government officials' feet to the constitutional fire, pushing back on administrative agencies and enforcing the separation of powers.

He's also a scholar and a teacher, and a wily political operator. It's that last bit that makes his selection a bit of a surprise — particularly given Trump's “drain the swamp” ethos and a Supreme Court list that originally didn't have any “coastal elites.” That too is not necessarily a knock on Judge Kavanaugh, but a double-Yale D.C. lifer doesn't have the hardscrabble life story that might better resonate in the heartland (or put as much pressure on Red State Democratic senators).

The one issue of potential pause for originalists and textualists has nothing to do with Kavanaugh's dedication to those interpretive theories, but rather to those extra-legal concerns that made him a quick frontrunner for this slot. Will he be too much like John Roberts, restrained and minimalist rather than letting the political chips fall where they may? I hope not; I hope instead that President Trump gave us the Gorsuch 2.0 that this country needs.

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