



## Court Watchers Predict Kennedy's Replacement

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The speculation has begun on whom President Donald Trump will nominate to replace retiring U.S. Supreme Court Justice Anthony M. Kennedy.

Kennedy announced his retirement June 27, after serving for 43 years in the federal judiciary and 30 on the high court.

The president said June 27 he will make his selection from his list of 25 potential nominees that he released during the campaign and has updated.

Four names came up repeatedly in a Bloomberg Law informal poll of courtwatchers:

- Judge Brett M. Kavanaugh, of the U.S. Court of Appeals for the District of Columbia;
- Judge Thomas M. Hardiman, of the Third Circuit;
- Judge Don R. Willett, of the Fifth Circuit;
- and Judge Amul R. Thapar, of the Sixth Circuit.

Other names mentioned include:

- Sixth Circuit Judge Raymond Kethledge;
- Eighth Circuit Judge Raymond W. Gruender;
- and Seventh Circuit Judge Diane S. Sykes.

"I'm just very grateful that President Trump has such an excellent list prepared," Carrie Severino, chief counsel and policy director of the conservative Judicial Crisis Network, told Bloomberg Law by telephone June 27.

It "makes my job easier," Severino said. JCN has advocated for conservative nominees in the past, including a \$10 million ad campaign supporting Justice Neil M. Gorsuch's nomination.

### **Recent Addition, Kennedy Clerk**

Kavanaugh is one of the five names most recently added to Trump's list in November 2017. The other four were Seventh Circuit Judge Amy Coney Barrett, 11th Circuit Judge Kevin Newsom,

Georgia Supreme Court Justice Britt Grant, and Oklahoma Supreme Court Justice Patrick Wyrick.

Kavanaugh “was clearly the reason for adding” those five, Ilya Shapiro, who is a senior fellow in constitutional studies at the Cato Institute, told Bloomberg Law via Twitter direct message.

The nominee is “likely to come from people who were added to the most recent list,” Josh Blackman, a professor at South Texas College of Law Houston who specializes in constitutional law, told Bloomberg Law by email.

They “were put there for a reason,” Blackman, who declined to predict anyone specifically, said.

Kavanaugh’s status as a former Kennedy clerk could weigh in his favor.

In 2016, he listed three dissents by Justice Antonin Scalia that could become the law of the land following his death earlier that year.

Kavanaugh’s nomination could result in those predictions coming true.

### **Last Time’s Runner-Up**

Hardiman was one of two finalists for the vacancy eventually filled by Justice Neil M. Gorsuch.

Some say that makes him the frontrunner this time.

Justices Stephen G. Breyer and Elena Kagan were both “runners-up before their later appointments,” Kenneth Jost, author of the “Supreme Court Yearbook” series and the “Jost on Justice” blog, told Bloomberg Law by email.

A 2016 study categorized Hardiman as a moderate, but he has a solid conservative record.

### **Twitter Persona**

Many predicted that Trump would select Willett the last time there was a Supreme Court vacancy.

His name is still being mentioned this time around. He’s built a following in the legal community, partly through his Twitter presence.

“I’d put Willett on the very-short list, partly because he’s so nice and popular on Twitter—it would undermine opposition to him,” appellate attorney Jason Steed of Kilpatrick Townsend & Stockton, Dallas, told Bloomberg Law by email.

Trump has already chosen Willett once. He nominated Willett to the Fifth Circuit while he was on the Texas Supreme Court.

### **Surprise Finalist, Diversity**

Like Willett, Trump nominated Thapar for a circuit court seat.

Before that nomination, Thapar was a surprise finalist to fill the last Supreme Court vacancy. He was one of four potential nominees personally interviewed by Trump.

Thapar is a possibility “if Team Trump has any interest in a non-white nominee,” Steed said.

Thapar was the nation’s first South Asian-American Article III judge.