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## Trump picks Brett Kavanaugh for U.S. Supreme Court

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President Trump's nomination Monday of Brett Kavanaugh, a federal appeals court judge and author of opinions that would expand gun ownership rights and limit abortion, to succeed retiring Supreme Court Justice Anthony Kennedy seems likely to move the court further to the right, possibly for many years.

It also sets up a fierce confirmation fight.

Kavanaugh, 53, has served for 12 years on the U.S. Court of Appeals in Washington, D.C. He has written dissenting opinions that would have allowed the Trump administration to deny an abortion to an undocumented 17-year-old and declared a right to own a semiautomatic rifle. He also wrote an opinion saying a president who considered the federal health care law unconstitutional could simply refuse to enforce it.

His nomination will be considered by a Senate with a 51-49 Republican majority, and one Republican, John McCain of Arizona, will be unlikely to participate because of advanced brain cancer.

Democrats, still angry at Senate Republican leaders for refusing to consider President Barack Obama's nomination of Merrick Garland to succeed the late Justice Antonin Scalia in 2016, are pressing two Republican supporters of abortion rights — Sens. Susan Collins of Maine and Lisa Murkowski of Alaska — to either oppose the nomination or delay a vote until a newly elected Senate is seated in January.

Looking to calm the waters, Kavanaugh told a White House gathering and a national television audience Monday that he will assure senators “that I revere the Constitution” and “will keep an open mind in every case.” He said he was proud that a majority of his law clerks had been women, and he expressed gratitude to the Harvard law school dean who had hired him as a teacher — Elena Kagan, now a member of the Supreme Court's liberal bloc.

Trump, in a rare nod to bipartisanship, thanked “senators on both sides of the aisle” for their “participation and advice” as he considered the nomination. He did not mention his decision to let the conservative Federalist Society choose the list of candidates — including Kavanaugh, a Federalist Society member — he would consider as Kennedy's replacement.

Also unmentioned was Trump's promise, as a presidential candidate, to appoint justices who would "automatically" overturn Roe vs. Wade, the 1973 Supreme Court ruling that declared a constitutional right to abortion.

Trump chose Kavanaugh over three other appellate judges who were reportedly finalists: Thomas Hardiman of the Third U.S. Circuit Court of Appeals in Philadelphia, Amy Coney Barrett, a Trump appointee to the Seventh Circuit in Chicago, and Raymond Kethledge of the Sixth Circuit in Cincinnati.

Reactions to the selection were swift and vociferous.

"Kavanaugh has consistently ruled for the wealthy and powerful over the rights of workers, consumers, and women seeking access to health care," said Vanita Gupta, president of the Leadership Conference on Civil Rights and a former top Justice Department official under President Barack Obama. Groups supporting abortion rights and gun control also denounced the nomination, as did California's two Democratic senators, Dianne Feinstein and Kamala Harris.

Abortion opponents and religious conservatives praised the nomination. Ilye Shapiro, a leader of the libertarian Cato Institute, said Kavanaugh did not deserve "the smears and demagoguery he's about to face." Ed Meese, attorney general under President Ronald Reagan — who appointed Kennedy to the court — attended the White House event and called for a speedy confirmation.

That's what legal and political commentators appear to expect, without any sense of certainty.

"There'll have to be a hidden nugget" for opponents to slow or block Senate approval, said Harold Krent, the law school dean at Chicago-Kent College. He said Kavanaugh was "bright, articulate ... understands partisan politics," and, if confirmed, "absolutely will shift the court to the right."

Kavanaugh was nominated to the appeals court in 2003 by President George W. Bush, for whom he had previously worked as a lawyer. He ran into Democratic opposition and was not confirmed until 2006. Since then, lawmakers have eliminated Senate filibusters for federal judges at all levels, who now can be confirmed by majority votes.

Kavanaugh was part of Bush's legal team that persuaded the Supreme Court in 2000 to halt a recount of the presidential vote in Florida and send Bush to the White House. In 1998, Kavanaugh was one of the main authors of the report by independent counsel Kenneth Starr calling for the impeachment of President Bill Clinton.

The Starr report has potential implications for the current investigation of Trump for alleged collusion with Russia during the 2016 campaign. The report argued that Clinton committed impeachable offenses by lying to the public about his relationship with White House intern Monica Lewinsky and by refusing to testify to a grand jury. The House voted to impeach Clinton on different grounds, for allegedly lying under oath about Lewinsky, and the Senate rejected those charges.

Kavanaugh took a softer line, however, in later law review articles about presidential investigations, saying a sitting president should not be subject to criminal charges or civil suits

while in office. And he suggested new dimensions of presidential power in a 2011 dissent from a ruling upholding Obama's health care law: Under the Constitution, Kavanaugh asserted, a president "may decline to enforce a statute that regulates private individuals when the president deems the statute unconstitutional."

Krent, who has written a book on presidential powers, said Kavanaugh was "a strong proponent of a centralized, powerful executive."

The Cato Institute's Shapiro put it another way: Kavanaugh has shown a "willingness to question the excesses of the regulatory state."

Kavanaugh graduated from Yale University and its law school and served as a law clerk for Kennedy, along with Trump's first Supreme Court appointee, Neil Gorsuch.

Kennedy, 81, announced at the end of the court's 2017-18 term last month that he would be stepping down July 31 after more than 30 years on the court.

Kennedy was the author of all of the court's major rulings on gay rights, including the 5-4 decision in 2015 that established a constitutional right to same-sex marriage. A newly constituted court could reverse that ruling or narrow it to let states deny some marital benefits to same-sex couples.

A more vulnerable target could be the right to abortion, declared by the Supreme Court in the 1973 *Roe vs. Wade* decision. Kennedy cast a deciding vote in 1992 that preserved much of the earlier ruling by prohibiting states from placing an "undue burden" on the right to abortion. Trump has promised to appoint justices who would overturn *Roe vs. Wade*, and chose Kavanaugh from a list of candidates submitted by an ardent foe of abortion, Leonard Leo, executive vice president of the Federalist Society.

On the appeals court, Kavanaugh wrote a decision last year that would have allowed Trump administration officials to deny an abortion to an undocumented, pregnant 17-year-old girl by keeping her in immigration custody. When the full appeals court overruled him and allowed the abortion, Kavanaugh wrote in dissent that the government should not have to facilitate "immediate abortion on demand."

Groups on both sides of the issue responded quickly Monday to Kavanaugh's selection.

"With this nomination, the constitutional right to access safe, legal abortion in this country is on the line," said Dawn Laguens, executive vice president of Planned Parenthood Federation of America. "We already know how Brett Kavanaugh would rule on *Roe vs. Wade*, because the president told us so."

Marjorie Dannenfelser, president of the antiabortion Susan B. Anthony List, described Kavanaugh as "an experienced, principled jurist with a strong record of protecting life and constitutional rights," and said it would mobilize abortion opponents in key Senate battleground states to support confirmation.

On gun issues, a dissenting opinion by Kavanaugh would have extended the right to possess handguns for self-defense, declared by the Supreme Court in 2008, to include semiautomatic rifles. The court has not taken up a major gun-law issue in the last decade, reflecting an apparent deadlock that could be broken by a new justice.

A gun-control advocate, attorney Hannah Shearer of the Giffords Law Center to Prevent Gun Violence, said Kavanaugh “has expressed a dangerous hostility toward reasonable gun regulations.”

On other issues, Kavanaugh argued in a 2015 dissent that the federal health care law’s contraceptive mandate violated the rights of a group called Priests for Life, which objected to filling out a form that would allow its employees to receive insurance coverage for birth control. In another religious case, he wrote a 2010 opinion rejecting an atheist group’s challenge to the invocation “so help me God” at the presidential inaugural.

He also dissented from his court’s 2016 ruling upholding an order by Obama appointees on the Federal Communications Commission to establish net neutrality, requiring internet service providers to treat all carriers’ content equally rather than allowing some to pay more for faster service. Kavanaugh contended the FCC lacked authority to impose such regulations. Since then, a commission led by a Trump appointee has repealed net neutrality.