

# THE WASHINGTON FREE BEACON

## Who's On Deck?

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Justice Anthony Kennedy announced his retirement Wednesday, freeing up a spot on the nation's highest court for one of 25 people on the list from which President Donald Trump has said he will chose a successor.

That list was first floated during the nomination process for the successor to deceased Justice Antonin Scalia and put together by the Heritage Foundation and Federalist Society. Legal analysts from the left to the right have called the judges on it "distinguished," and "outstanding," a deep bench of originalist and textualist jurists generally in the mold of Trump's first appointee, Neil Gorsuch.

"The ones whom I know on the list are actually very impressive people," liberal constitutional scholar Akhil Amar told MSNBC Wednesday night. "I'm a Democrat, I voted for Hillary Clinton. But the list is a distinguished list."

The potential nominees come from all across the country, covering 17 states between them. There are five women and three people of color on the list, although two of the combined eight—Judges Amy Coney Barrett and Amul Thapar—are considered frontrunners. They graduated from a variety of law schools, notable given that every judge on the current court attended Harvard or Yale for their J.D.s.

The options range in age from Judge Patrick Wyrick (37) to Judge Robert Young (67). The plurality of the group is in its late 40s to early 50s: old enough to have respectable experience, but young enough to serve on the bench for decades to come. Neil Gorsuch, Trump's previous appointee, was sworn in at age 49.

One thing that unifies the list is their conservatism, a contrast with the moderate Kennedy. Ilya Shapiro, Senior Fellow in Constitution Studies at the Cato Institute, said it was a "list filled with originalists and textualists." At the same time, they are a group with experience "listening to both sides of the argument and being impartial," according to Carrie Severino, Policy Director of the Judicial Crisis Network.

Speculation about which of the group is a frontrunner for the job has already begun to trickle out. Last time around, Trump narrowed the list to three, including Judges Thomas Hardiman and Bill Pryor, before finally selecting now-Justice Neil Gorsuch. A number of sources have already

highlighted Hardiman as a leading contender; Pryor was already considered a long shot, due to his public opposition to *Roe v. Wade*. In addition to Hardiman, top names include Barrett, Thapar, and Judges Brett Kavanaugh and Raymond Kethledge.

Several of the experts the *Beacon* spoke to saw these five as top picks, highlighting especially Hardiman, Kavanaugh, and Kethledge as likely and desirable choices from a conservative perspective. Each of these frontrunners brings something unique to the table.

The former frontrunner, Hardiman, is 52 and a federal judge in Pennsylvania, unanimously confirmed to the position by the Senate. SCOTUSBlog's profile of him suggests that his votes "have consistently been conservative," especially on the Second Amendment, where he has routinely taken an "originalist" stance: important to a court that has considered two major Second Amendment cases in recent years. Hardiman has not weighed in on abortion explicitly, but did join an opinion rejecting the arrest of an anti-abortion protester.

The name that has topped headlines since Kennedy's announcement is Brett Kavanaugh, 53, who sits on the Court of Appeals for the District of Columbia. Kavanaugh, like Gorsuch, is a former Kennedy clerk with "close ties to his former boss."

Kavanaugh first attracted national attention for writing much of the Starr Report, as well as investigating the death of Vince Foster. He also wrote the majority opinion in a ruling that found the Consumer Financial Protection Bureau's structure unconstitutional, granting Trump the authority to fire its director at will; and was one of three judges dissenting from a recent D.C. Circuit decision granting an illegal immigrant teen the right to have an abortion.

Raymond Kethledge, 51, has been called "laid-back" and "blunt" by profilers, qualities that separate him from the Supreme Court's usually uptight image. Kethledge sits on the Sixth Circuit Court of Appeals, from which he has made rulings including *United States v. NorCal Tea Party Patriots*, which rebuked the IRS for delaying the registration of conservative-leaning interest groups. Another of his recent decisions, *Carpenter v. United States*, fared worse: the Supreme Court overturned it last week.

One of the frontrunners has already received substantial national attention. Judge Amy Coney Barrett, 46, was on the receiving end of a suspicion-charged attack from Sen. Diane Feinstein (D., Calif.) during her hearings to be confirmed to the Seventh Circuit Court of Appeals, with the Senator questioning Barrett's religious beliefs and charging that "the dogma lives loudly within [her]."

Barrett does not have a great deal of experience as a judge, having been a law professor at Notre Dame prior to her confirmation—though a similar lack of experience did not stop the recent nomination of Justice Elena Kagan. Barrett's nomination has already earned the backing of prominent conservative commentator Ramesh Ponnuru, who pointed out the value of having a woman likely to vote in favor of overturning *Roe*.

Last but not least is Amul Thapar, 49, whose appointment to the Sixth Circuit Court of Appeals made him the second Indian-American to hold an appeals court seat. According to the American Bar Association's journal, Thapar attracted attention for a "a colorfully written opinion that

referenced Pappy's bourbon, Vulcans, Casablanca and Moses." Thapar's potential nomination has already attracted criticism from the left: the liberal group Demand Justice launched a campaign against him last week, before Kennedy's retirement was even announced.

Of course, Trump could select another besides these five possibilities. For example, Trump is reportedly weighing Sen. Mike Lee (R., Utah), a constitutional lawyer who would be the first senator appointed to SCOTUS since Justice Sherman Minton (D., Ind.) in 1949.

It's unclear how Trump will make the ultimate pick. He could, for example, follow Ponnuru's advice, and choose one of the five women on his list. Or he could prioritize their political views, as he promised during the campaign.

"I think that he is going to select a committed textualist and originalist very much like Neil Gorsuch. I don't think that he is going to feel the need to appoint a moderate because Anthony Kennedy was somehow perceived as a moderate," John Malcolm, senior legal fellow at the Heritage Foundation, said.

At the end of the day, though, Trump might just go with who he likes the most.

"I think it'll come down to whom Trump personally connect with," Shapiro said.