



Who should Donald Trump nominate to replace Justice Anthony Kennedy on the Supreme Court?

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Sen. Mike Lee: smart with an 'unquestionable commitment' to the Constitution

Trump's list of candidates is an embarrassment of judicial riches, several of whom would be great bets for a Supreme Court seat. But Sen. Mike Lee's name sticks out. Lee is one of the smartest people in the senate. He has an unquestionable commitment to interpreting the Constitution as it was understood when it was ratified, not as it has evolved in the minds of Supreme Court justices and law professors. But he is also humble and gracious, important traits when one has to work with the same eight people for decades.

Most interestingly, he is the only one on the list who is not currently a judge. It used to be more common for politicians to wind up on the court. The increasing reliance on lower court judges has turned the federal judiciary into a career ladder; talented lower court judges may too often have a Supreme Court seat in mind when they write their opinions. Finally, as a non-judge, Lee would have no judicial opinions to defend. Given the likely battle over any confirmation, it would be hard to imagine any of his Republican colleagues breaking ranks to vote against him; and collegiality would likely even carry some Democratic votes.

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Nominate a conservative who is also an economic populist

by Eric Citron

What I'd do if I were Trump — and the thing that would make him most popular and strengthen him most at the polls — would be to nominate someone who fits the mold of his own populist campaign. That means someone who is conservative on the social and constitutional issues that matter to his religious supporters, but who also demonstrates real concern for the plight of the American working class when it comes to the court's business docket. Nothing requires the same judges who question cases like *Roe v. Wade* or who support the religious perspective in Masterpiece Cakeshop to also vote against plaintiffs using class actions to recover from corporate wrongdoers, or in favor of mandatory arbitration agreements that strip workers and consumers of their rights, or against antitrust enforcement actions leveled at historically large and powerful companies like Amazon, or against workplace safety laws and regulations. For

various historical reasons, old Republican Party orthodoxies drove these perspectives together. But Trump's campaign actively drove them apart, and he should find a justice crafted in the image of his own successful presidential run.

Whether such a justice can be found is another question, given the deep-seated nature of anti-worker and anti-plaintiff views among members of the Republican judiciary. Perhaps short-lister Thomas Hardiman, who worked as a taxi driver through college, has greater exposure to and sympathy for the working-class perspective.

Others might too, though: This isn't an aspect of the potential nominees' thinking that is particularly well publicized, and it's as much a question of what they do on the court (and what they tell the president about their perspective in interviews) as it is a question of what they did before, when they were bound by Supreme Court precedent anyway. Whoever Trump picks, if he really wants to cement his own legacy on the court — rather than just Senate Majority Leader Mitch McConnell's — he should nominate a conservative who is an economic populist, and not just a conservative.

Eric Citron is an attorney with Goldstein & Russell and a writer for SCOTUSblog. He clerked on the Supreme Court for Justices Sandra Day O'Connor and Elena Kagan.

Don Willett of the Texas Supreme Court should replace Justice Anthony Kennedy

by Glenn Harlan Reynolds

Who would I pick from Trump's list? (And note how unprecedentedly transparent and helpful it is to have a president with such a list.) My personal first choice would be former Texas Supreme Court Justice and 5th Circuit Judge Don Willett. Writing in Patel v. Texas Department of Licensing and Regulation, Willett quoted Frederick Douglass' joy on receiving the first money he earned as a free man and observed, "Douglass' irrepressible joy at exercising his hard-won freedom captures just how fundamental — and transformative — economic liberty is. Self-ownership, the right to put your mind and body to productive enterprise, is not a mere luxury to be enjoyed at the sufferance of governmental grace, but is indispensable to human dignity and prosperity." There are, sadly, few other judges who understand this.

And Willett knows about such things. As I've argued in my recent book, "The Judiciary's Class War," the current Supreme Court is a monoculture of Ivy League "thoroughbreds" with elite backgrounds. There's nothing wrong with that, but a little variety would be nice. Willett offers some.

After his father died when Willett was 6, his mother supported the family by waiting tables at a truck stop. He attended Baylor University and Duke — first-rate schools, but a change from the Harvard/Yale monoculture that currently fills the court. And like many previous justices but no current ones, he has actually run for office. A first-rate mind with a background that reflects Trump's America, Willett seems like a great choice to me.

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Judge Don Willett will stand up against Trump's administration

by Ilya Somin

In an age of overreaching government, and an authoritarian-minded president who admires brutal dictators, we need a Supreme Court justice who will not defer to government power, and will aggressively protect our rights. I am not familiar with all of the judges on Trump's Supreme Court list. But of those whose records I do know, the one who best fits that bill is probably 5th Circuit Judge Don Willett. As a justice of the Texas Supreme Court, Willett was known for supporting a broad range of rights. That includes opposing asset forfeiture laws that enable law enforcement officials to seize property with little or no due process, a practice that often victimizes the poor and minorities, and was expanded by Attorney General Jeff Sessions.

Willett's statements suggest he will strongly enforce constitutional limits on the scope of federal government power — a stance that benefits not only conservative supporters of “states' rights,” but also liberals now relying on federalism doctrines to protect sanctuary cities. Both sides of the political spectrum could benefit from tighter restrictions on federal authority.

Willett was highly critical of Trump during the 2016 campaign, even comparing his border wall to the Death Star. That suggests Willett will not hesitate to rule against the administration, when necessary.

Judge Willett is by no means perfect. For example, he is probably opposed to the landmark Obergefell decision striking down laws banning same-sex marriage. While the Supreme Court is unlikely to overrule Obergefell, it could uphold other policies discriminating against same-sex couples. But Trump's other potential nominees have similar social conservative streaks. What distinguishes Willett from many others is his less deferential approach to abuses of government power. In these troubling times, we need more of that on the Supreme Court.

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Judge Amy Coney Barrett would represent conservative women

by William Vogeler

Trump should nominate Judge Amy Coney Barrett because she will add a conservative voice for women on the national's highest court. Barrett, of the U.S. Circuit Court of Appeals for the 7th Circuit, is a former law professor. At 46, she is the second-youngest woman among six who are on the president's short list. Trump has named Barrett, Allison Eid, Britt Grant, Joan Larsen, Margaret Ryan and Diane Sykes as possible picks. All are well-qualified justices, but Barrett is the best fit for Trump's plans for the federal judiciary.

Three women currently serve on the Supreme Court, but they were all nominated by Democrats. Barrett would become the only female, Republican appointee since Sandra Day O'Connor, the first woman elevated to the high court.

William Vogeler is a California attorney who writes for FindLaw's Legal Professional Blogs.

Trump will likely nominate conservative Judge Brett Kavanaugh

by Adam Feldman

In December, I wrote that I thought Trump would nominate Judge Brett Kavanaugh from the D.C. Circuit if there was an additional vacancy on the Supreme Court. I still think Judge Kavanaugh is the most likely nominee for several reasons. He has a strong track record of ruling on behalf of conservative agenda items and especially on behalf of big businesses' interests. He also has an extensive record as a judge on a federal court of appeals, which is in contrast to several of the other judges on the short list, including Judges Amul Thapar and Barrett. This is important because the president does not want to be blindsided by a pick thought to be conservative but who later turns out to align with the liberal justices.

Kavanaugh is the only judge on the list from the D.C. Circuit, which is often a feeder to the Supreme Court because of the similarity of cases they hear and because a high proportion of D.C. Circuit cases relative to the other circuits later make their way to the Supreme Court. Justices Clarence Thomas, Ruth Bader Ginsburg and Antonin Scalia and Chief Justice John Roberts all previously served on the D.C. Circuit. Lastly, Kavanaugh has had strong ties to the Federalist Society (like Neil Gorsuch), which has played a large role in helping Trump choose nominees for all levels of the federal judiciary.

Dr. Adam Feldman is the creator and main author of Empirical SCOTUS. You can follow him on Twitter: @AdamSFeldman.

Trump can help himself by appointing the more moderate Judge Don Willett

by George S. Khoury

Given the short list of SCOTUS candidates we've been given, Trump should consider tapping the tweeting Judge Don Willett. I'm an optimist and thus have no delusions about @CamryofJustice getting the nod, as that would just be too reliable.

Although Willett was just recently nominated and confirmed to the federal circuit court of appeals, despite having given Trump a tough time, that might be all the more reason to see him get a promotion. After all, in the Trump Cabinet, people seem to get promoted a wee bit too quickly, and not appointing a "yes man" would be seen as a more moderate move by Trump. Also, it would make for an easy confirmation, given that Willett basically breezed through his appellate court confirmation by a three-vote margin.

Additionally, given Willett's massive Twitter presence, and how beloved he is by #AppellateLawyer Twitter (yes, that's a thing), and regular Twitter, POTUS could actually improve his approval numbers with a Willett nomination just based on the fact that Willett is known by the public. As we're all learning the hard way these days, celebrity status is a boon for politics.

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