

Trump chooses second ultra-right Supreme Court justice

By Patrick Martin
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President Donald Trump announced the nomination Monday night of Brett Kavanaugh, a federal appellate judge from the Washington, D.C. Circuit Court of Appeals, to replace retiring Supreme Court Justice Anthony Kennedy. The confirmation of Kavanaugh, virtually inevitable given the open capitulation by the Democratic Party, will cement an extreme-right majority on the highest US court for the foreseeable future.

Kavanaugh is set to join the far-right bloc consisting of Neil Gorsuch, Samuel Alito and Clarence Thomas, with Chief Justice John Roberts—an arch-reactionary by historical standards—replacing Kennedy as the “swing” justice, having sided on a handful of occasions with the four more moderate justices who comprise the so-called “liberal” bloc.

The unveiling of the nomination on prime-time television, broadcast by all the networks and cable channels, provided a blare of publicity to an event that otherwise was completely empty. Trump repeated a few scripted platitudes about the Constitution being the “crown jewel” of American society, only days after he had demanded the summary expulsion of immigrants from the United States with no intervention by courts or judges, a flagrant violation of constitutional requirements.

The nominee, Kavanaugh, appeared with his wife and children, thanked the president, his parents, God and the “vibrant Catholic community” in the Washington, D.C. area, where he grew up. The religious references were the sole hint of his right-wing judicial stance, demonstrated in more than 300 opinions handed down over the past 12 years on the most powerful appellate panel below the Supreme Court.

Like Gorsuch before him, Kavanaugh is a dyed-in-the-wool right-wing partisan. Gorsuch came

from right-wing Republican stock, as the son of Anne Gorsuch Burford, the Reagan administration EPA director who was forced to resign in disgrace for withholding documents from Congress about the favors she was providing to big polluters.

Kavanaugh was involved in right-wing provocations from his first years as a lawyer, playing a significant role in the Kenneth Starr investigation that culminated in the impeachment of Democratic President Bill Clinton. He actually drafted the bulk of Starr’s 450-page report, filled with salacious details about Clinton’s affair with Monica Lewinsky.

He went on to work on the successful effort by the 2000 Bush campaign to steal Florida’s electoral votes, which led to the notorious *Bush v. Gore* decision, engineered by ultra-right Justice Antonin Scalia, which placed George W. Bush in the White House. Bush then hired Kavanaugh as a White House deputy counsel, where he vetted judicial appointments, then as staff secretary, before nominating him, at age 38, for a position on the D.C. Circuit Court of Appeals.

At the time, the *World Socialist Web Site* wrote, after reviewing Kavanaugh’s role in the Starr investigation and the Florida recount: “Now the wheel comes full circle, with the Republican president, installed in office by right-wing judges, naming one of Kenneth Starr’s hatchet men to one of the highest judicial positions in the land.”

Kavanaugh’s appointment to the D.C. Circuit was considered so provocative that it was blocked for two years by Democratic Party opposition, despite a Republican majority in the Senate at the time. Finally, in 2006, as part of a backroom deal to push through most Bush appeals court nominees and withdraw a few of the most odious, the Democrats dropped their opposition and allowed Kavanaugh’s nomination to be

voted on. It was ratified by the Senate in a 57-36 vote.

The period between oppositional blustering by the Democrats and final capitulation will be measured in days, not years, this time around. Even though Senate Republicans have the narrowest of majorities, 50-49, given the absence of John McCain due to terminal brain cancer, the Democrats have already abandoned their initial appeals that Trump wait until after the November 6 election to nominate a successor to Kennedy.

Senate Minority Leader Charles Schumer declared last week, in an op-ed piece published in the *New York Times*, that he will rely on a handful of “pro-choice” Republican senators—primarily Susan Collins and Lisa Murkowski—to vote against any Trump nominee committed to overturning the *Roe v. Wade* decision that legalized abortion. Even if these two do break ranks, however, their defection would be offset by Democratic defections. Three Senate Democrats, Heidi Heitkamp of North Dakota, Joe Donnelly of Indiana and Joe Manchin of West Virginia, voted to confirm Gorsuch last year.

The backroom maneuvering on Capitol Hill will ensure a confirmation vote on Kavanaugh well before the November 6 election, with just enough Democrats backing the nominee to ensure confirmation, while Schumer and the majority of Democrats provide only token opposition.

Heitkamp, for example, opposed delaying the confirmation vote and indicated—before Kavanaugh was named—that she might well support Trump’s nominee. Tellingly, she called on Trump to nominate someone “who reflects the same qualities embodied by Justice Kennedy of being fair, pragmatic, and empathetic to all.”

While the Democrats and their media apologists moan over the departure of Kennedy, this reactionary justice was part of a long series of right-wing 5-4 decisions, including *Bush v. Gore*. He wrote the majority opinion in the notorious *Citizens United* case, which green-lighted unlimited election campaign contributions from corporations and billionaires.

In the court’s most recent term, Kennedy provided what one observer described as a “a taste of what a post-Kennedy court might look like,” providing the fifth vote for numerous right-wing decisions, most notably the ruling upholding Trump’s ban on visitors

and refugees from five predominantly Muslim countries. He did not join the four moderates for a single 5-4 ruling.

In the course of his career, Kennedy’s only major deviation from the ultra-right consensus came in relationship to gay rights, where he authored a series of rulings striking down state laws directed against homosexuals, and ultimately legalizing gay marriage. Here, of course, he was following, not leading, a developing social trend, one that did not pose any threat to the capitalist system or the property and wealth of the ruling financial aristocracy.

From that standpoint, Kavanaugh is an entirely safe pair of hands for the ruling class. He has been an adamant upholder of executive authority and the “rights” of corporations and the wealthy, and especially unsympathetic to those seeking to use the courts to oppose crimes committed by the government—ruling, for example, that the widow of a Guatemalan man tortured and murdered by the CIA did not have standing to sue the agency.

A particularly clear statement of the support for Kavanaugh in the ruling class was the editorial published Monday in the *Wall Street Journal*, which reviewed the four reactionaries on Trump’s semi-public “short list”—Kavanaugh, Raymond Kethledge, Amy Coney Barrett and Thomas Hardiman—and virtually demanded the selection of Kavanaugh as the most reliable defender of corporate interests. The editorial concluded that “if a GOP Senate can’t confirm someone like Brett Kavanaugh, it doesn’t deserve to hold the majority.”

In reality, the selection of Kavanaugh is so provocatively partisan, it suggests that the Trump White House has fully taken the measure of the Senate Democrats and wishes to make a public demonstration of their spinelessness.

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