News



Brett Kavanaugh appears before the Senate Judiciary Committee on Capitol Hill in Washington on April 26, 2004. President Donald Trump's nominated Kavanaugh to Supreme Court Monday night July. (AP Photo/Dennis Cook, File)

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Washington — July 9, 2018
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Updated July 9 at 8:35 p.m. CDT with additional reporting from NCR staff.

President Trump has nominated U.S. Court of Appeals Judge Brett Kavanaugh to be his Supreme Court nominee to replace Justice Anthony Kennedy, setting the stage for a heated confirmation battle that will likely focus on his views regarding both law and religion.

Trump made the announcement from the White House on Monday evening (July 9) after keeping observers guessing for several days.

"Judge Kavanaugh has impeccable credentials, unsurpassed qualifications, and a proven commitment to equal justice under the law," Trump said, as Kavanaugh stood nearby with his wife and children. "He is a brilliant jurist with a clear and effective writing style universally regarded as one of the finest and sharpest legal minds of our time."

In announcing the nominee, Trump said that Kavanaugh, a Catholic, "has devoted his life to public service."

"Beyond his great renown as a judge, he is active in his community," Trump said. "He coaches CYO basketball, serves meals to needy families, and having learned from his mom, who was a schoolteacher in D.C., tutors children at local elementary schools."

"There is no one in America more qualified for this position and no one more deserving," the president said.

In his remarks, Kavanaugh, who is a member of Blessed Sacrament Parish, said, "I am part of the vibrant Catholic community in the D.C. area."

"The members of that community disagree about many things, but we are united by the commitment to serve," the nominee said. "Fr. John Ensler is here. Forty years ago I was an altar boy for Father John. These days I help him serve meals to the homeless at Catholic Charities."

Kavanaugh, also said, "The motto of my Jesuit high school was .'Men for others.' I've tried to live that creed." Kavanaugh and Supreme Court Justice Neil Gorsuch, Trump's first appointment to the high court, attended Georgetown Preparatory School, in North Bethesda, Maryland, together. They graduated in 1983 and 1985, respectively.

Kavanaugh, who once clerked for Kennedy, has built a high-profile career tailor-made to please many stalwart conservatives: He helped author the Starr Report of then-President Bill Clinton's affair with Monica Lewinsky, represented Cuban child Elian Gonzalez pro bono to keep him from returning to the island nation, and was a lawyer with the George W. Bush campaign during the Florida recount.

But since being appointed to the District Columbia Circuit of the Court of Appeals, Kavanaugh has also issued rulings that speak directly to hot-button issues among people of faith, such as abortion and religious liberty.

"He's going to move the court to the right of the man who he clerked for," said Micah Schwartzman, a University of Virginia School of Law professor who specializes in religion and the U.S. Constitution. He noted that the most lasting impact of Kavanaugh's appointment may be how it reshuffles the calculus of the court, saying that confirming him will make it "more likely that Chief Justice John Roberts he will be the swing vote."

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Many have noted Kavanaugh's dissent in *Garza* v. *Hargan*, when the court allowed an undocumented teenager who had crossed the border from from Mexico into Texas as an unaccompanied minor to get an abortion while residing at a government-funded shelter. He argued the 2017 ruling was "ultimately based on a constitutional principle as novel as it is wrong: a new right for unlawful immigrant minors in U.S. government detention to obtain immediate abortion on demand."

Kavanaugh also wrote a lengthy dissent in another case when the court declined to take up a case brought by a group of priests who objected to the Obama administration's rules regarding contraceptive coverage.

Some conservative observers, however, felt that his dissent wasn't, well, conservative enough. David French at the National Review argued last week that Kavanaugh erred by purportedly suggesting the government has a compelling interest to provide contraception to a religious organization that opposes it.

"While the government may well deem that contraceptives provide many general benefits (and Kavanaugh outlines those benefits in his opinion), that is not the same thing as holding that those general benefits are sufficiently compelling as applied to the employees of a small religious nonprofit," French wrote.

But in another National Review piece, Justin Walker — assistant professor at the University of Louisville Brandeis Law School and former clerk of both Kennedy and Kavanaugh — argued the D.C. circuit judge is ultimately a "warrior for religious liberty."

Responding to an article in the conservative publication Federalist critical of Kavanaugh, Walker noted that Kavanaugh chaired the Federalist Society's Religious Liberty practice group in the 1990s, offered pro bono work for "cases defending religious freedom," and "represented a synagogue pro bono in a local zoning dispute." The image posted above the article is one of Kavanaugh shaking hands with Pope John Paul II.

"Judge Kavanaugh believes his job is to apply the law objectively, without regard to his personal views," Walker said in an email to Religion News Service. "Part of applying the law objectively includes applying the Constitution. He also understands that our founders believed deeply in religious liberty, and that the Constitution they wrote protects the free exercise of religion."

Kavanaugh also reportedly volunteered his time on a Supreme Court religious liberty case with Kelly Shackelford, president and CEO of First Liberty Institute, and Jay Sekulow, one of Trump's lawyers who has long opposed the portion of the IRS tax code that bars nonprofits from endorsing candidates for office.

A First Liberty Institute representative confirmed to RNS that the 2000 case was *Santa Fe Independent School District* v. *Doe*, where the court ruled that a policy

allowing student-led, student-initiated prayer at high school football games violated the establishment clause of the First Amendment to the U.S. Constitution.

He preserves the current religious ratio on the court. He replaces his fellow Catholic, Kennedy, for whom he clerked. That means, if his nomination is approved, the religious makeup of the court would remain the same. That currently includes five Catholic justices, three Jewish justices and Trump's previous pick, Neil Gorsuch, who was raised Catholic but now attends an Episcopal church.

Editor's note: *This is a developing story. Watch for more reporting from NCR.*

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