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KAVANUAGH NOMINATION HIGHLIGHTS IMPORTANCE OF SUPREME COURT PICKS

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By [Allen Mendenhall](#)

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The Kavanaugh hearings illustrate the importance of good legal jurisprudence for any Supreme Court nominee, as well as the partisan politics at play in the U.S. Senate. Kavanaugh has served on the District of Columbia Circuit Court since 2006. A graduate of Yale College and the Yale Law School, he clerked for the man he's been chosen to replace, as well as for legal legend Alex Kozinski.

Kavanaugh worked for Ken Starr, first as a fellow in the U.S. Solicitor General's Office and later in the Office of Independent Counsel. Kavanaugh is well-known in Washington, DC circles and among Republicans, and it has proven very difficult for his opponents to portray him as an ideologue or extremist.

Importance of Good Nominations

Republican presidents have historically struggled with Supreme Court nominations, with the Court often moving further to the left under GOP presidents. Kennedy became a justice only after President Ronald Reagan's failed nomination of Judge Robert Bork and Douglas Ginsburg's withdrawal from consideration after admitting to past drug use.

Dwight D. Eisenhower nominated two of the most liberal justices in the Court's history, Earl Warren and William J. Brennan. Richard Nixon nominated Justice Harry Blackman, who wrote the opinion in *Roe v. Wade* (1973). Gerald Ford nominated John Paul Stevens, who consistently voted with the Courts liberal wing and, in retirement, has advocated repealing the Second Amendment.

George H. W. Bush nominated David Souter, and George W. Bush's selection of John Roberts, seemingly impeccable at the time, has disappointed many conservatives in light of cases such as *National Federation of Independent Business v. Sebelius* (2012), which alleged, among other things, that Obamacare's individual mandate to purchase health insurance was a tax and not a penalty even though the law and its proponents explicitly characterized it as the latter.

Kennedy has cast votes with the left wing of the Court in seminal cases, and that's what makes the current nomination so momentous. Replacing Antonin Scalia with Neil Gorsuch simply preserved a conservative voting bloc, with Kennedy continuing to serve as the swing vote. Kavanaugh could tip the balance, with five conservatives— Samuel Alito, Neil Gorsuch, Kavanaugh, Roberts, and Clarence Thomas—outnumbering liberals Ruth Bader Ginsburg, Stephen Breyer, Elena Kagan, and Sonia Sotomayor.

Moving Fast

Senate Republicans have moved quickly on Kavanaugh's nomination in hopes of making him a sitting justice by October, when the Supreme Court's next term commences, and before the 2018 midterm elections take place.

Judicial Crisis Network, a nonprofit "social welfare organization," is running a major multimedia ad campaign in favor of confirmation, in states with important and competitive midterm congressional races, such as Indiana and West Virginia.

Timing Is Everything

Gorsuch was nominated on January 30, 2017, confirmed by the Senate on April 7, 2017, and took office on April 17, 2017. Two months and 17 days passed from when he was nominated to when he took office. If Kavanaugh's confirmation spans the same duration, he will take office on September 23, 2018, meeting the Republicans' desired deadline.

Six key U.S. Senators, however, could disrupt the process. Pro-abortion Sens. Susan Collins (R-ME) and Lisa Murkowski (R-AK) could impede a quick decision. Sens. Joe Donnelly (D-IN) and Dean Heller (R-NV), campaigning for reelection in swing states this fall, could attempt to delay confirmation. On the other hand, recently elected Sen. Doug Jones (D-AL) must cast conservative votes if he wants to represent Alabama beyond 2021, and he is therefore considered a wildcard. Sen. Joe Manchin (D-WV) is another key player, engaged in a competitive fight for reelection against Republican candidate Patrick Morrisey, a former state Attorney General who openly supports the Kavanaugh nomination in an increasingly conservative state.

Except for Jones, each of these senators voted to confirm Gorsuch. Two Democratic Party senators in Republican-leaning states, Claire McCaskill (D-MO) and Jon Tester (D-MT), voted nay on Gorsuch and will likely do so again on Kavanaugh.

Rejections Extremely Rare

Despite the volatile political climate and the opposition party's threatened stonewalling, the odds favor Kavanaugh. The Senate has rejected only 12 Supreme Court nominees in its entire history, with just four having occurred in the last 118 years.

Conservatives worried in 2017 Gorsuch wouldn't obtain enough support among moderates, but he was confirmed by a fairly comfortable 54-45 vote. Democratic Party Senators attempted and failed to filibuster his nomination, mostly to maintain appearances.

Contentious debates over Kavanaugh's record are ongoing, but the biggest battles over the judiciary are yet to come.

Breyer celebrated his 80th birthday in August, and Ginsburg is 85. One or both might retire during Trump's first term.

If they don't, the nature and role of the Supreme Court may be an important issue in the 2020 presidential election.

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