



# What to expect during Kavanaugh's confirmation battle

BY ALLEN MENDENHALL, OPINION CONTRIBUTOR — 07/11/18 03:45 PM EDT  
THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

5 SHARES



## Just In...

**Trump questions how Russia probe can 'proceed' given FBI agent's private comments**

ADMINISTRATION — 12M 6S AGO

**Kavanaugh incurred tens of thousands in credit card debt buying Washington Nationals tickets: report**

ADMINISTRATION — 16M 45S AGO

**Mueller asks court for 100 more blank subpoenas ahead of Manafort trial**

NATIONAL SECURITY  
— 31M 2S AGO

**Flake drops opposition to Trump's judges after tariff vote**



© Getty Images

It's official: [President Trump](#) has nominated Brett Kavanaugh to succeed Justice Anthony Kennedy as an associate justice on the U.S. Supreme Court.

Kavanaugh has served on the District of Columbia Circuit Court since 2006. A graduate of Yale College and Yale Law, he clerked for the man

SENATE — 33M 24S AGO

### Colorado police officer fired for using racial slur rehired after appeal

BLOG BRIEFING ROOM

— 36M 20S AGO

### Trump announces ambassador picks for Somalia, Nicaragua

ADMINISTRATION — 43M 44S AGO

### Lawmakers discuss efforts to boost Latino entrepreneurship

LATINO — 44M 8S AGO

### Trump's relationship with Merkel sinks even lower

DEFENSE — 1H 5M AGO

VIEW ALL

View Latest Opinions &gt;&gt;

Related News by  Outbrain

he's been chosen to replace, as well as for legal legend Alex Kozinski. He twice worked for Ken Starr, first as a fellow in the U.S. Solicitor General's Office and later in the Office of Independent Counsel. He's known in Washington, DC circles and among Republicans and will be difficult to portray as an ideologue or extremist.

Republican presidents have struggled with Supreme Court nominations. Kennedy became a justice only after President Ronald Reagan's failed nomination of Robert Bork, followed by Douglas Ginsburg's admission of past drug use that resulted in his withdrawal from consideration for a seat on the High Court.

Dwight D. Eisenhower nominated some of the most liberal justices in the Court's history, Earl Warren and William J. Brennan. Richard Nixon nominated Justice Harry Blackman, who authored the opinion in *Roe v. Wade* (1973). Gerald Ford nominated John Paul Stevens, who has, in retirement, 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 like *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," not a "penalty."

Kennedy himself has cast votes in seminal cases with the left wing of the Court, and that's what makes the present nomination so momentous. Replacing Antonin Scalia with Neil Gorsuch preserved a conservative voting bloc, with Kennedy serving as the swing vote, whereas Kavanaugh could tip the balance: five conservatives (Roberts, Clarence Thomas, Samuel Alito, Neil Gorsuch, and Kavanaugh) against four liberals (Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan).

Senate Republicans will move 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 has already announced a major ad campaign in states like Indiana and West Virginia, where there are currently important and competitive midterm congressional races ongoing.



Education narrative favoring wealthier...



Putting an end to a new era of school...



Pavlich: The left's tiring hysteria on Kavanaugh



Socialist agenda will prove disastrous for...

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

Six key senators, however, could disrupt the process: [Susan Collins](#) (R-Maine) and [Lisa Murkowski](#) (R-Alaska) — moderates who are generally pro-choice; [Joe Donnelly](#) (D-Ind.) and [Dean Heller](#) (R-Nev.), who are campaigning for reelection in "purple" swing states this fall; Doug Jones (D-Ala.), who must cast conservative votes if he wishes to retain his seat beyond 2021; and [Joe Manchin](#) (D-W.Va.), who is up against the reliably conservative Patrick Morrisey, the former Attorney General of West Virginia, in the 2018 midterm election.

Each of these senators except Jones, who has never voted on a Supreme Court nominee, voted "yea" to confirm Gorsuch. Two Democratic senators in conservative states, [Claire McCaskill](#) of Missouri and [Jon Tester](#) of Montana, voted "nay" on Gorsuch and will likely do so again on Kavanaugh.

Only 12 nominees, historically, have been rejected by the Senate, and just four since the turn of the twentieth century. The odds are thus in Kavanaugh's favor, despite the rancorous political climate and threats of Democratic stonewalling. In 2017, conservatives worried that Gorsuch wouldn't gain support among moderates, but he was confirmed with a 54–45 vote after Democratic senators, mostly for show, attempted and failed to filibuster his nomination.

In the following weeks we'll be immersed in contentious, constructive debates over Kavanaugh's extensive record, but it could be that the biggest battles over the judiciary are yet to come. The two oldest justices on the Supreme Court are Breyer, who turns 80 next month, and Ginsburg, who is 85. Either could retire during Trump's first term. If they don't, the Supreme Court will become the hottest political issue going into the 2020 presidential election — and many elections to come.

*[Allen Mendenhall](#) is associate dean at the Faulkner University Thomas Goode Jones School of Law and executive director of the nonprofit [Blackstone & Burke Center for Law & Liberty](#).*

TAGS [CLAIRE MCCASKILL](#) [LISA MURKOWSKI](#) [SUSAN COLLINS](#) [JOE DONNELLY](#) [DONALD TRUMP](#)  
[DEAN HELLER](#) [JOE MANCHIN](#) [JON TESTER](#) [ALLEN MENDENHALL](#) [BRETT KAVANAUGH](#)  
[ANTHONY KENNEDY](#) [SUPREME COURT](#)

f SHARE
🐦 TWEET
G+ PLUS ONE
➦



# White House: Kelly looked away after Trump's attack on Germany because he was disappointed in breakfast

BY [AVERY ANAPOL](#) - 07/11/18 04:32 PM EDT

## Just In...

**Mueller asks court for 100 more blank subpoenas ahead of Manafort trial**

[NATIONAL SECURITY](#) — 2M 8S AGO

**Flake drops opposition to Trump's judges after tariff votes**

[SENATE](#) — 4M 30S AGO

**Cop fired for using racial slur rehired after appeal**

[BLOG BRIEFING ROOM](#)  
— 7M 26S AGO

**Trump announces ambassador picks for Somalia, Nicaragua**

**10,651** SHARES

f SHARE
🐦 TWEET
G+ PLUS ONE
➦



ADMINISTRATION — 14M 50S AGO

### Lawmakers discuss efforts to boost Latino entrepreneurship

LATINO — 15M 14S AGO

### Trump's relationship with Merkel sinks even lower

DEFENSE — 36M 44S AGO

### GOP lawmaker bought multi-million dollar yacht on the same day he voted for GOP tax bill

HOUSE — 38M 13S AGO

### Foreign investment in US drops 32% in 2017

FINANCE — 42M 30S AGO

VIEW ALL

Related News by  Outbrain

NYT: Trump told Putin some of his own aides...

The White House on Wednesday acknowledged that Chief of Staff [John Kelly](#) was "displeased" in a video taken earlier in the day, but said it was not over [President Trump's](#) public criticism of Germany.

According to the White House, Kelly was not happy with his meal.

Trump at a NATO summit breakfast on Wednesday said that Germany is "captive to Russia" over a gas pipeline deal.

"If you look at it, Germany is a captive of Russia because they supply," the president said. "They got rid of their coal plants. They got rid of their nuclear. They're getting so much of the oil and gas from Russia. I think it's something that NATO has to look at. I think it's very inappropriate."

Video from the breakfast shows Kelly and other senior officials appearing to react to the comment. Kelly pursed his lips and looked away from the president.

Facial expression experts who [analyzed the video for The Washington Post](#) said Kelly's body language signaled irritation and displeasure, but not "hardcore anger."

But White House press secretary Sarah Huckabee Sanders offered an explanation for Kelly's reaction to the Post.

"[Kelly] was displeased because he was expecting a full breakfast and there were only pastries and cheese," Huckabee Sanders said.

It is not clear in the video what the officials were eating.

A spokeswoman for the U.S. mission to NATO did not immediately respond to the Post's request for comment.

Trump's [comments about Germany](#) drew immediate backlash from German Chancellor Angela Merkel, as well as lawmakers in the U.S. Merkel [said she remembered](#) a childhood in Germany when the country was actually "captive of Russia." Trump and Merkel [met later in the day](#) and reportedly discussed the deal for a pipeline that would bring gas from Russia to Germany's Baltic coast.

The NATO summit comes just days before Trump is scheduled to meet one-on-one with Russian President Vladimir Putin in Helsinki.

TAGS DONALD TRUMP JOHN KELLY GERMANY NATO BREAKFAST



Trump blasts 'fake' NYT story on US opposition...



Santorum rips Trump Supreme Court pick:...



Trump's longtime driver sues for thousands of...

Buttons for social media sharing: Facebook (SHARE), Twitter (TWEET), Google+ (PLUS ONE), and a share icon.



THE HILL 1625 K STREET, NW SUITE 900 WASHINGTON DC 20006 | 202-628-8500 TEL | 202-628-8503 FAX  
THE CONTENTS OF THIS SITE ARE ©2018 CAPITOL HILL PUBLISHING CORP., A SUBSIDIARY OF NEWS COMMUNICATIONS, INC.