

Who is US Supreme Court nominee Brett Kavanaugh, and where does he stand on abortion?

Written by Kumuda Simpson, Lecturer in International Relations, La Trobe University

Justice Anthony Kennedy's retirement from the US Supreme Court has given President Donald Trump the opportunity to nominate a second justice in the span of 18 months, and in doing so, shape the decisions of the court for decades to come.

The court is the highest in the country and serves as one of the three fundamental pillars in the US political system, alongside the executive and legislative branches. This separation of powers, enshrined in the US Constitution, has long been regarded as one of the strengths of the US political system. But as American politics has turned increasingly partisan in recent years, the Supreme Court has become an [unfortunate flashpoint](#) of the ideological battles between left and right.

With nine sitting justices, the court has often been split 5-4, at times favouring an [strict, literal approach to constitutional interpretation](#), at others swinging back towards a pragmatist approach.

Read more: [Is the Supreme Court's legitimacy undermined in a polarized age?](#)

As some of the most contentious political, economic and social debates in the US, such as gun control, gay marriage and abortion, are fought within the highest legal institution in the country, the [ideological balance of power](#) on the court matters greatly. The justice holding the swing vote, who has been Kennedy in recent years, carries enormous power to shape the laws of the country for generations.

Trump's nominee, Brett Kavanaugh, has an [impeccable legal background](#), and yet has come in for fierce criticism from both Republicans and Democrats.

Opposition on both sides of the aisle

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For Democrats, Kavanaugh is regarded as too partisan, having worked on some of the most controversial legal cases in recent US politics. This includes his role as part of independent counsel [Kenneth Starr's investigations](#) into former President Bill Clinton, which culminated in the [Starr report](#) to Congress arguing that Clinton should be impeached for lying about the nature of his relationship with Monica Lewinsky.

Kavanaugh was also part of George W. Bush's legal team in the Supreme Court case over the disputed presidential election result between [Bush and Al Gore](#) in Florida in 2000. The decision in that case resulted in Bush winning the presidency, and Kavanaugh went on to work for him in the White House.

For Republican critics, however, Kavanaugh's record on abortion and [health care](#) is viewed as not being conservative enough.

Abortion is the issue that will garner the most attention in the upcoming confirmation battle in Congress and mobilise both the left and the right. The right to get an abortion is protected for women under the 1973 Supreme Court decision in *Roe v. Wade*, which [ruled that](#) :

For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgement of the pregnant woman's attending physician.

Yet this right has been steadily [undermined and eroded](#) over the past 45 years as conservatives opposed to *Roe v. Wade* have used a variety of legal tools to limit women's access to abortion providers.

Thin record on abortion

Kavanaugh's record on abortion in [both public statements and legal decisions](#) appears careful, emphasising legal precedent over calls to change the law.

[This has drawn intense criticism from some conservatives](#)

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When asked about abortion in his 2006 confirmation hearings to be appointed to the Court of Appeals for the District of Columbia Circuit, Kavanaugh stated, [“I would follow Roe v. Wade faithfully and fully … It’s been reaffirmed many times”](#);

For some Republicans, his judicial restraint is seen as being too similar to Supreme Court Chief Justice John Roberts, who has [come under criticism](#) for not being a reliably conservative vote.

Conservatives see this Supreme Court pick by Trump as an opportunity to [radically reshape the ideological outlook of the court for generations](#), a chance they fear would be wasted on someone regarded as too centrist on key issues.

For the time being, it appears Democrats are [gearing up for a confirmation fight](#), perhaps intending to delay any decision on Kennedy’s successor until after the mid-term elections in November, when they have a chance to wrest back some control over Congress and the future direction of the court.

Read more: [Supreme Court polarization is not inevitable — just look at Europe](#)

Senate Democratic Leader Charles Schumer has already signalled his intention to fight Kavanaugh’s nomination, [saying](#): “I will oppose Judge Kavanaugh’s nomination with everything I have, and I hope a bipartisan majority will do the same. The stakes are simply too high for anything less.”

Kumuda Simpson does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

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