

Brett Kavanaugh

Brett Michael Kavanaugh (/ˈkəvənə./; born February 12, 1965) is an Associate Justice of the Supreme Court of the United States. He was nominated by President Donald Trump to succeed Anthony Kennedy and took the oath of office on October 6, 2018. He previously served as a United States Circuit Judge of the United States Court of Appeals for the District of Columbia Circuit and as a staff lawyer for various offices of the federal government of the United States.^[3]

Kavanaugh graduated from Yale University *cum laude*, with a degree in American history. After graduating from Yale Law School, he began his career as a law clerk and then a postgraduate fellow working under Judge Ken Starr. After Starr left the D.C. Circuit to take the position as head of the Office of Independent Counsel, Kavanaugh followed and assisted him with various investigations concerning President Bill Clinton, including the drafting of the *Starr Report*, which urged Clinton's impeachment. After the 2000 U.S. presidential election (in which he worked for the George W. Bush campaign in the Florida recount), he joined the administration as White House Staff Secretary and was a central figure in its efforts to identify and confirm judicial nominees.^[4] Kavanaugh was nominated to the U.S. Court of Appeals for the D.C. Circuit by President Bush in 2003. His confirmation hearings were contentious; they stalled for three years over charges of partisanship. He was ultimately confirmed to the D.C. Circuit in May 2006 after a series of negotiations between Democratic and Republican U.S. Senators.^{[5][6][3]} A *Washington Post* analysis found he had the most or second-most conservative voting record on the D.C. Court in every policy area between 2003 and 2018.^[7]

President Trump nominated Kavanaugh to the U.S. Supreme Court on July 9, 2018, to fill the position vacated by retiring Associate Justice Kennedy. Before his nomination, when Kavanaugh's name was on the short list of Supreme Court nominees, Palo Alto University Professor of Psychology Christine Blasey Ford contacted a *Washington Post* tip line with allegations that Kavanaugh had sexually assaulted her in the early 1980s while the two of them were in high school.^{[8][9][10]} Two other women also accused Kavanaugh of sexual misconduct.^{[11][12]} Kavanaugh denied all three allegations. Following a supplemental Republican-controlled Senate Judiciary Committee hearing, Republican committee members stated that all allegations were unsubstantiated. After an additional FBI investigation, the Senate confirmed Kavanaugh's nomination by a vote of 50–48 on October 6, 2018. He was sworn in later in the day.^{[13][14]}

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Brett Kavanaugh



Associate Justice of the Supreme Court of the United States

Incumbent

Assumed office

October 6, 2018

Nominated by Donald Trump

Preceded by Anthony Kennedy

Judge of the United States Court of Appeals for the District of Columbia Circuit

In office

May 30, 2006 – October 6, 2018

Nominated by George W. Bush

Preceded by Laurence Silberman

Succeeded by *Vacant*

White House Staff Secretary

In office

June 6, 2003 – May 30, 2006

President George W. Bush

Preceded by Harriet Miers

Succeeded by Raul F. Yanes

Personal details

Born Brett Michael Kavanaugh February 12, 1965 Washington, D.C.

Political party Republican^[1]

Spouse(s) Ashley Estes (m., 2004)

Children 2^[2]

Education Yale University

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(BA, JD)

Early life and education

Kavanaugh was born on February 12, 1965, in Washington, D.C.,^[2] the son of Martha Gamble (*née* Murphy) and Everett Edward Kavanaugh Jr.^{[15][16]} His father was an attorney and served as the president of the Cosmetic, Toiletry and Fragrance Association for two decades.^[17] His mother was a history teacher at Woodson and McKinley high schools in Washington in the 1960s and 1970s. She later earned a J.D. degree from Washington College of Law in 1978 and served as a Maryland Circuit Court judge from 1995 to 2001 in Montgomery County.^{[18][19]} Kavanaugh is of Irish Catholic descent on both sides with his paternal great-grandfather arriving in the late 1800s from Roscommon in Ireland.^{[20][21]} His maternal Irish lineage goes back to his great-great grandparents settling in New Jersey.^[20]

Kavanaugh was raised in Bethesda, Maryland. As a teenager he attended Georgetown Preparatory School, a Jesuit boys high school, where he was two years senior to future U.S. Supreme Court Justice Neil Gorsuch.^{[22][23]} He was captain of the school's basketball team, and was a wide receiver and comerback for the school's football team.^[24] Kavanaugh was also friends with classmate Mark Judge; both were in the same class with Maryland State Senate member Richard Madaleno.^{[25][26][27][28]} He graduated in 1983.^[29]

After prep school, Kavanaugh attended Yale University, as had his paternal grandfather.^{[30][31]} Several of Kavanaugh's Yale classmates remembered him as a "serious but not showy student" who loved sports, especially basketball.^[32] He unsuccessfully tried out for the Yale Bulldogs men's basketball team, and later played for two years on the junior varsity team instead.^[32] He also wrote articles about basketball and other sports for the Yale Daily News,^[32] and was a member of the fraternity Delta Kappa Epsilon.^{[33][34]} He graduated from Yale in 1987 with a Bachelor of Arts *cum laude* in history.^[32] In October 2018, it was reported that Kavanaugh and Chris Dudley were in a bar fight in September 1985 after Kavanaugh threw ice^{[35][36][37][38]} at a man who looked like Ali Campbell of UB40.^{[39][40]}

Kavanaugh then attended Yale Law School. In his Judiciary Committee testimony, Kavanaugh said he "got into Yale Law School. That's the number-one law school in the country. I had no connections there. I got there by busting my tail in college".^[41] During law school he lived in a group house with future judge James E. Boasberg, and played basketball with professor George L. Priest (sponsor of the school's Federalist Society)^[42] and was a notes editor for the Yale Law Journal. He graduated with a Juris Doctor in 1990.^[43]

Legal career (1990–2006)

Clerkships and admittance to the bar

Kavanaugh first worked as a law clerk for Judge Walter King Stapleton of the United States Court of Appeals for the Third Circuit.^[42] During Kavanaugh's clerkship, Stapleton wrote the majority opinion in *Planned Parenthood v. Casey*, in which the Third Circuit upheld many of Pennsylvania's abortion restrictions.^[42] George Priest recommended Kavanaugh to Ninth Circuit Judge Alex Kozinski, who was regarded as a feeder judge.^[42] After clerking for Kozinski, Kavanaugh next interviewed for a clerkship with Chief Justice William Rehnquist on the U.S. Supreme Court, but was not offered a clerkship.^[42]

Kavanaugh was admitted to the Maryland Bar in 1990 and the District of Columbia Bar in 1992.^[44]

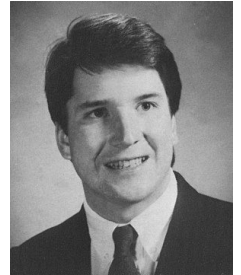
In 1992,^[44] Kavanaugh earned a one-year fellowship with the Solicitor General of the United States, Ken Starr.^[45] He clerked for Supreme Court Justice Anthony Kennedy from 1993–1994,^[44] working alongside fellow high school alumnus Neil Gorsuch and with future-Judge Gary Feinerman.^[22]

Ken Starr associate counsel

After his Supreme Court clerkship, Kavanaugh worked until 1997 for Ken Starr again as an Associate Counsel in the Office of the Independent Counsel, where his colleagues included Rod Rosenstein and Alex Azar.^[46] In that capacity, he reopened an investigation into the 1993 death of Vincent Foster.^{[46][47][48]} After three years, the investigation concluded that Foster had indeed committed suicide. In an opinion editorial, Princeton University history professor Sean Wilentz criticized Kavanaugh for investing federal money and other resources into investigating partisan conspiracy theories surrounding the cause of Foster's death.^[49]

After working in private practice in 1997–1998, he rejoined Starr as an Associate Counselor in 1998.^[50] In *Swidler & Berlin v. United States* (1998), Kavanaugh argued his first and only case before the Supreme Court. Arguing for Starr's office, Kavanaugh asked the court to disregard attorney-client privilege in relation to the investigation of Foster's death.^[51] The court rejected Kavanaugh's arguments by a vote of 6–3.^[52]

Kavanaugh was a principal author of the *Starr Report* to Congress, released in September 1998, on the Bill Clinton–Monica Lewinsky sex scandal; the report argued on broad grounds for Clinton's impeachment.^[46] Kavanaugh had urged Starr to ask Clinton sexually graphic questions,^{[53][54]} and described Clinton as being involved in "a conspiracy to obstruct justice", having "disgraced his office" and "lied to the American people".^{[55][56]} The report provided extensive and explicit descriptions of each of



Kavanaugh as a student at Yale



Kavanaugh with President George W. Bush and other White House staffers. Kavanaugh is second from the left.

the President's sexual encounters with Lewinsky, a level of detail which the authors described as "essential" to the case against Clinton.^[57]

In December 2000, Kavanaugh joined the legal team of George W. Bush, which was trying to stop the ballot recount in Florida.^[58] After Bush became president in January 2001, Kavanaugh was hired as an associate by the White House Counsel, Alberto Gonzales.^[42] There, Kavanaugh worked on the Enron scandal, the successful nomination of Chief Justice John Roberts, and the unsuccessful nomination of Miguel Estrada.^[42] Starting in July 2003, he served as Assistant to the President and White House Staff Secretary,^[45] succeeding Harriet Miers.^[59] In that position he was responsible for coordinating all documents going to and from the president.

Private practice

From 1997 to 1998, Kavanaugh was a partner at the law firm of Kirkland & Ellis. In 1999, Kavanaugh rejoined the law firm of Kirkland & Ellis as a partner.^{[50][45]} While there in 2000, he was *pro bono* counsel of record for relatives of Elián González, a six-year-old rescued Cuban boy. After the boy's mother's death at sea, relatives in the U.S. wanted to keep him from returning to the care of his sole surviving parent, his father in Cuba. Kavanaugh was among a series of lawyers who unsuccessfully sought to stop efforts to repatriate Gonzalez to Cuba.^[60] The district court, Circuit Court and Supreme Court all followed precedent, refusing to block the boy's return to his home.^[61]

While at Kirkland & Ellis, Kavanaugh authored two amicus briefs to the Supreme Court, supporting religious activities and expressions in public places.^[61] The first, in 2000, in Santa Fe Independent School District v. Doe, argued that a student speaker at football games voted for by a majority of students should be treated as private speech in a limited public forum; the second, in Good News Club v. Milford Central School, argued that a Christian Bible instruction program should have the same after-school access to school facilities as other non-curriculum-related student groups.^[62]

Federalist Society

Kavanaugh has been a member of the Federalist Society since 1988.^{[63][64]} In the administration of George W. Bush, he held a key position that involved judicial appointments. Bush judicial nominees who were Federalist Society members included John Roberts and Samuel Alito, both appointed to the Supreme Court, and about half of the judges appointed to the courts of appeals.^[65]

U.S. Circuit Judge (2006–2018)

President George W. Bush nominated Kavanaugh to the United States Court of Appeals for the District of Columbia Circuit on July 25, 2003,^[66] but his nomination stalled in the Senate for nearly three years. Democratic senators accused him of being too partisan, with Senator Dick Durbin calling him the "Forrest Gump of Republican politics".^[67] In 2003, the American Bar Association had rated Kavanaugh as "well qualified" (its highest category), but, after doing dozens more interviews in 2006, downgraded him to "qualified".^[68]

The Senate Judiciary Committee recommended he be confirmed on a 10–8 party-line vote on May 11, 2006,^[69] and he was confirmed by the Senate on May 26 by a vote of 57–36.^{[70][71]} Kavanaugh was sworn in on June 1.^[72] He was the fourth judge nominated to the D.C. Circuit by Bush and confirmed. Kavanaugh began hearing cases on September 11 and had his formal investiture on September 27.^[73]

In July 2007, Senators Patrick Leahy and Dick Durbin accused Kavanaugh of lying to the Judiciary Committee when he denied being involved in formulating the Bush administration's detention and interrogation policies. In 2002, Kavanaugh had told other White House lawyers that he believed Supreme Court Justice Anthony Kennedy would not approve of denying legal counsel to prisoners detained as enemy combatants.^{[74][75]} The issue re-emerged in July 2018 after Kavanaugh was nominated to the Supreme Court.^[76]

Notable cases

When Kavanaugh has written an opinion and the case has been considered by the Supreme Court, that court has adopted his position thirteen times while reversing his position only once. These included cases involving environmental regulations, criminal procedure, the separation of powers and extraterritorial jurisdiction in human rights abuse cases.^{[42][77]} He has been regarded as a feeder judge.^[78]

Abortion

Kavanaugh ruled in favor of abortion restrictions in at least one case, Azar v. Garza.^{[79][80][81]} In October 2017, Kavanaugh joined an unsigned divided panel opinion which found that the Office of Refugee Resettlement could temporarily prevent an unaccompanied alien minor in its custody from traveling to obtain an abortion.^[81] Days later, the *en banc* D.C. Circuit reversed that judgment, with Kavanaugh dissenting.^{[81][82]} In his dissent, Kavanaugh criticized the majority for creating "a new right for unlawful immigrant minors in U.S. government detention to obtain immediate abortion on demand".^[83] The girl then obtained an abortion.^[81] In 2018, in a followup petition from the Solicitor General of the United States, the *en banc* D.C. Circuit's judgment was vacated by the U.S. Supreme Court and the girl's claim was ultimately dismissed as moot.^[84] Thus it does not serve as precedent.

Affordable Care Act



President Bush with Kavanaugh, Andy Card, and Condoleezza Rice.



Kavanaugh being sworn in by Justice Anthony Kennedy in 2006

In November 2011, Kavanaugh dissented when the D.C. Circuit upheld the Patient Protection and Affordable Care Act (ACA), arguing that the court lacked jurisdiction in the case.^{[85][86]} In his dissent concerning jurisdiction, he compared the individual mandate to a tax.^[87] After a unanimous panel found that the ACA did not violate the Constitution's Origination Clause in *Sissel v. United States Department of Health & Human Services* (2014), Kavanaugh wrote a lengthy dissent from the denial of rehearing *en banc*.^{[88][89]} In May 2015, Kavanaugh dissented from a decision that denied an *en banc* rehearing of the *Priests for Life v. HHS* ruling in which the panel upheld the ACA's contraceptive mandate accommodations against Priests for Life's Religious Freedom Restoration Act claims.^{[90][91]} In *Zubik v. Burwell* (2016), the Supreme Court vacated the circuit's judgment in a per curiam decision.^[92]

Appointments Clause and separation of powers

In August 2008, Kavanaugh dissented when the circuit found that the Constitution's Appointments Clause did not prevent the Sarbanes–Oxley Act from creating a board whose members were not directly removable by the President.^{[93][94]} In *Free Enterprise Fund v. Public Company Accounting Oversight Board* (2010), the Supreme Court reversed the circuit's judgment by a vote of 5–4.^[95]

In 2015, Kavanaugh found that those directly regulated by the Consumer Financial Protection Bureau (CFPB) could challenge the constitutionality of its design.^{[96][97]} In October 2016, Kavanaugh wrote for a divided panel finding that the CFPB's design was unconstitutional, and made the CFPB Director removable by the President of the United States.^{[98][99]} In January 2018, the *en banc* D.C. Circuit reversed that judgment by a vote of 7–3, over the dissent of Kavanaugh.^{[100][101]}

Environmental regulation

In 2013, Kavanaugh issued an extraordinary writ of mandamus requiring the Nuclear Regulatory Commission to process the license application of the Yucca Mountain nuclear waste repository, over the dissent of Judge Merrick Garland.^{[102][103]} In April 2014, Kavanaugh dissented when the court found that Labor Secretary Tom Perez could issue workplace safety citations against SeaWorld regarding the multiple killings of its workers by Tilikum the orca.^{[104][105]}

After Kavanaugh wrote for a divided panel striking down a Clean Air Act regulation, the Supreme Court reversed by a vote of 6–2 in *EPA v. EME Homer City Generation, L.P.* (2014).^{[106][107]} Kavanaugh dissented from the denial of rehearing *en banc* of a unanimous panel opinion upholding the agency's regulation of greenhouse gas emissions and a fractured Supreme Court reversed by a vote of 5–4 in *Utility Air Regulatory Group v. Environmental Protection Agency* (2014).^{[108][109]} After Judge Kavanaugh dissented from a per curiam decision allowing the agency to disregard cost–benefit analysis, the Supreme Court reversed by a vote of 5–4 in *Michigan v. EPA* (2015).^{[110][111]}

Extraterritorial jurisdiction

In *Doe v. Exxon Mobil Corp.* (2007), Kavanaugh dissented when the circuit court allowed a lawsuit making accusations of ExxonMobil human rights violations in Indonesia to proceed, arguing in his dissent that the claims were not justiciable.^{[112][113]} Kavanaugh dissented again when the circuit court later found that the corporation could be sued under the Alien Tort Statute of 1789.^{[177][114][115]}

First Amendment and free speech

Kavanaugh wrote for unanimous three-judge district courts when they held that the Bipartisan Campaign Reform Act could restrict soft money donations to political parties and could forbid campaign contributions by foreign citizens.^{[116][117]} Those judgments were both summarily affirmed on direct appeal by the Supreme Court.^[118]

In 2014, Kavanaugh concurred in the judgment when the *en banc* D.C. Circuit found that the Free Speech Clause did not forbid the government from requiring meatpackers to include a country of origin label on their products.^{[119][120]} In *United States Telecom Ass'n v. FCC* (2016), Kavanaugh dissented when the *en banc* circuit refused to rehear a rejected challenge to the net neutrality rule, writing, "Congress did not clearly authorize the FCC to issue the net neutrality rule".^{[145][121][122]}

Fourth Amendment and civil liberties

In November 2010, Kavanaugh dissented from the denial of rehearing *en banc* after the circuit found that attaching a Global Positioning System tracking device to a vehicle violated the Fourth Amendment to the United States Constitution.^{[123][124]} The circuit's judgment was then affirmed by the Supreme Court in *United States v. Jones* (2012).^[125] In February 2016, Kavanaugh dissented when the *en banc* circuit refused to rehear police officers' rejected claims of qualified immunity for arresting partygoers in a vacant house.^{[45][126]} In *District of Columbia v. Wesby* (2018), the Supreme Court unanimously reversed the circuit's judgment.^[127]

In *Klayman v. Obama* (2015), Kavanaugh concurred when the circuit court denied an *en banc* rehearing of its decision to vacate a district court order blocking the National Security Agency's warrantless bulk collection of telephony metadata.^{[128][129]} In his concurrence, Kavanaugh wrote that the metadata collection was not a search, and, even if it were, no reasonable suspicion would be required because of the government's special need to prevent terrorist attacks.^[130]

National security

In April 2009, Kavanaugh wrote a lengthy concurrence when the court found that detainees at the Guantanamo Bay detention camp had no right to advanced notice before being transferred to another country.^{[131][132]} In *Kiyemba v. Obama* (2010), the Supreme Court vacated that judgment while refusing to review the matter.^[133] In June 2010, Kavanaugh wrote a concurrence in judgment when the *en banc* D.C. Circuit found that the Al-Shifa pharmaceutical factory owners could not bring a defamation suit regarding the government's allegations that they were terrorists.^{[134][135]} In October 2012, he wrote for a unanimous court when it found that the Constitution's Ex Post Facto Clause made it unlawful for the government to prosecute Salim Hamdan under the Military Commissions Act of 2006 on charges of providing material support for terrorism.^{[136][137]}



Kavanaugh greeting British Prime Minister Tony Blair.

In August 2010, Kavanaugh wrote a lengthy concurrence when the *en banc* circuit refused to rehear Ghaleb Nassar Al Bihani's rejected claims that the international law of war limits the Authorization for Use of Military Force Against Terrorists.^{[45][138]} In 2014, Kavanaugh concurred in the judgment when the *en banc* circuit found that Ali al-Bahlul could be retroactively convicted of war crimes, provided existing statute already made it a crime "because it does not alter the definition of the crime, the defenses or the punishment".^{[139][140]} In October 2016, Kavanaugh wrote the plurality opinion when the *en banc* circuit found al-Bahlul could be convicted by a military commission even if his offenses are not internationally recognized as war crimes under the law of war.^{[141][142]}

In *Mesha v. Higgenbotham* (2016), Kavanaugh concurred when the divided panel threw out a claim by an American that he had been disappeared by the FBI in a Kenyan black site.^{[143][144]}

Second Amendment and gun ownership

In October 2011, Kavanaugh dissented when the circuit court found that a ban on the sale of semi-automatic rifles was permissible under the Second Amendment. This case followed the landmark Supreme Court ruling in *District of Columbia v. Heller* (2008).^{[145][146]}

Law clerk hiring practices

Twenty-five of Kavanaugh's forty-eight law clerks have been women, and thirteen have been people of color.^[79] A number have been children of other judges and high-profile legal figures, including Clayton Kozinski (son of former federal Judge Alex Kozinski), Porter Wilkinson (daughter of Judge J. Harvie Wilkinson III), Philip Alito (son of Justice Samuel Alito), Sophia Chua-Rubinfeld (daughter of Yale Law Professor Amy Chua), and Emily Chertoff (daughter of former DHS Secretary Michael Chertoff).^{[147][148]}

On September 20, 2018, *The Guardian* reported that two Yale professors had advised female law students at Yale that their physical attractiveness and femininity could play a role in securing a clerkship with Kavanaugh. Chua was reported by unnamed sources as having stated that female applicants should exude a "model-like" femininity and "dress outgoing" in their job interview with Kavanaugh. Responding to the report, Chua denied that Kavanaugh's hiring decisions were affected by female applicants' attractiveness, stating, "Judge Kavanaugh's first and only litmus test in hiring has been excellence."^[149] Jed Rubinfeld reportedly stated that Kavanaugh "hires women with a certain look", although the source stated, Rubinfeld did not say what that look was.^[149] Yale Law School Dean Heather Gerken called the allegations "of enormous concern to me and the school", which she said is investigating the matter.^[150]

Nomination to the Supreme Court of the United States

On July 2, 2018, Kavanaugh was one of four U.S. Court of Appeals judges to receive a personal 45-minute interview by President Donald Trump as a potential replacement for Justice Anthony Kennedy.^[151] On July 9, Trump nominated Kavanaugh for a seat on the Supreme Court.^{[152][153]}

Legal philosophy and approach

A statistical analysis by *The Washington Post* estimated that Kavanaugh was more conservative than Neil Gorsuch and less conservative than Samuel Alito.^[154] Jonathan Turley of George Washington University has stated that among the judges considered by Trump, "Kavanaugh has the most robust view of presidential powers and immunities".^[155] Brian Bennett writing for *Time* magazine cites Kavanaugh's 2009 *Minnesota Law Review* article as defending the privilege of the President to immunity from prosecution during tenure in office.^[155] In a 2017 speech at the American Enterprise Institute about former Chief Justice, William Rehnquist, he praised his opinions in *Roe v. Wade* and *Furman v. Georgia*, where Rehnquist dissented in rulings that overturned the ban against abortion and the statutes which supported the death penalty.^{[156][157]} Another *Washington Post* analysis covering the period 2003–2018 found that Kavanaugh had the most or second-most conservative voting record on the D.C. Court in every policy area.^[7]

During his hearing, Kavanaugh said that he had repeatedly described the four greatest moments in Supreme Court history as being the cases *Brown v. Board of Education*, *Marbury v. Madison*, *Youngstown Steel*, and *United States v. Nixon*, with *Brown* being the single greatest.^[158]

According to the Judicial Common Space scores, a score based on the ideology scores of the home state senators and president who nominated the judge to the federal bench, Clarence Thomas is the only justice more conservative than Kavanaugh. According to this metric, Kavanaugh's confirmation would mean the composition of the court would shift to the right.^[159] Had Merrick Garland been confirmed, Stephen Breyer would have become the median swing vote when Justice Kennedy retired. However, since Scalia was replaced by another conservative (Gorsuch), it is expected that Chief Justice John Roberts will become the median swing vote on the Supreme Court if Kavanaugh is confirmed.^[160]

Senate Judiciary Committee public hearings

The Senate Judiciary Committee scheduled three or four days of public hearings on Kavanaugh's nomination, commencing on September 4, 2018. The hearings were at the onset delayed with objections from the Democratic members, concerning the absence of records during the nominee's time in the George W. Bush administration, prior to his service as a federal circuit court judge. The Democrats also complained that 42,000 pages of documents had been received at the 11th hour, the night before the first day of hearings.^[161] Repeated statements from the Republicans included the assertion that the volume of documents available on this nominee equaled that of the previous five nominees for the court; the Democrats, whose opposition has been unanimously declared, responded with their repeated contention that only 15% of demanded documents



Kavanaugh and his family with President Donald Trump on July 9, 2018



Kavanaugh being sworn in to succeed Anthony Kennedy as an Associate Justice on October 8, 2018

about the nominee had been obtained. Numerous motions by the Democrats to adjourn or suspend the hearings were ruled to be out of order by Chairman Chuck Grassley, who argued that Judge Kavanaugh had written over 300 legal opinions available for review. The first day's session closed after statements from each senator and the nominee, with question and answer periods to begin the following day.^[162]

During the first round of questions from senators on September 5, 2018, Kavanaugh held to his earlier stated position that he would not express an opinion on matters which might come before the court. He thus refused to promise to recuse himself from any case, including any that might involve President Trump. He also declined to comment on coverage of pre-existing healthcare conditions, semiautomatic rifle possession, the precedent of *Roe v. Wade*, or the President's power to issue a self-pardon. The nominee was given the opportunity, and expounded at length upon various Constitutional amendments, *stare decisis*, and the President's power to dismiss federal employees. As in the prior session, there were frequent outbursts of protest in the audience, requiring security intervention and removal, as well as repeated procedural objections from Democrats.^[163]

The Committee's third day of hearings began with furor over release of emails of Kavanaugh relating to a concern about potential racial profiling in security screenings. The day continued with Kavanaugh's attempts to articulate his jurisprudence, including refusing direct questions to opine on matters that he characterized as hypothetical.^[164] Senator Chris Coons had tendered Kavanaugh written questions about any knowledge of inappropriate behavior on the part of Judge Alex Kozinski, for whom he had clerked, including his circulations of sexually explicit emails via his "Easy Rider Gag List". According to *The Intercept*, though Coons had asked him to review his emails from the judge, Kavanaugh's responses were vague, and did not address the senator's direct inquiry.^[165] A fourth day of hearings featured witnesses speaking in favor or opposed to his nomination.

The Committee released a 2003 email in which Kavanaugh said, "I am not sure that all legal scholars refer to [*Roe v. Wade*] as the settled law of the land at the Supreme Court level since Court can always overrule its precedent, and three current Justices on the Court would do so."^[166] Kavanaugh stressed that he was commenting on the views of legal scholars at the time, not his own views, and noted that the case had been reaffirmed on a number of occasions since the time of the statement.^[167] Sen. Susan Collins, a key but undeclared vote in the confirmation, indicated the statement did not contradict Kavanaugh's personal assurance to her that *Roe* is settled law.^[168] Kavanaugh noted that *Planned Parenthood v. Casey* (1992), which reaffirmed *Roe v. Wade*, was "precedent on precedent". According to Kavanaugh, *Casey* is a key decision about when the Court's precedent may be overturned.^[169]

On September 27, the Committee held an additional day of public hearings to discuss allegations that Kavanaugh engaged in sexual misconduct while in high school. The only witnesses were Kavanaugh and Christine Blasey Ford, who had accused him.^[170] Republican members of the committee did not question Ford directly; questioning on their behalf was done by Rachel Mitchell, a career prosecutor from Maricopa County, Arizona.^[171] Her questioning of Kavanaugh was cut short by Grassley, after which the Republican members of the committee questioned him themselves.^{[172][173]} Alternating with their questions, Democratic members of the committee questioned Ford and Kavanaugh themselves.^[174] Ford repeated and expanded upon her earlier allegations, saying that Kavanaugh and Judge, both "visibly drunk", had locked her into a bedroom, where Kavanaugh groped her and tried to take off her clothes while Judge watched. She said she "believed he was going to rape me" and feared for her life when he held his hand over her mouth. In his opening statement, Kavanaugh claimed the accusations were a "political hit" by left-wing activists and Democrats, saying he faced retaliation "on behalf of the Clintons" for his work on the Starr Report against Bill Clinton.^{[175][176][177]} In response to his testimony, more than 2400 law professors signed a letter saying that the Senate should not confirm him because "he did not display the impartiality and judicial temperament requisite to sit on the highest court of our land."^[178]

At the conclusion of the hearing the Republican leadership of the committee indicated that they planned to hold a committee vote on the nomination the next day, September 28, with a procedural vote on the Senate floor on September 29.^[179] On September 28, the committee voted along party lines to advance the nomination to the full Senate; Senator Jeff Flake's vote in support was conditioned on the vote in the full Senate being delayed for a week to allow investigation of the current claims by the FBI. Later, Senators Joe Manchin and Lisa Murkowski also said they would not vote to confirm without an FBI investigation.^[180] On this request from the Judiciary Committee, Trump ordered a "supplemental investigation to update Judge Kavanaugh's file", to be limited in scope and completed within one week.^[181] The report was transmitted to the White House on October 3 and from there to the Senate on October 4, where Senators were permitted one at a time to review the report in secrecy. Majority Leader McConnell said the Senate would vote on the confirmation on October 6.^[182] Democrats criticized the FBI investigation as incomplete, a "farce", a "sham" and "a horrific cover-up" that omitted key witnesses at the White House's direction.^{[183][184]}

83 ethics complaints were brought against Kavanaugh regarding his conduct during his U.S. Supreme Court confirmation hearings. Chief Justice John Roberts appointed a special federal panel of judges to investigate the complaints. In December 2018, the judicial panel dismissed all 83 ethics complaints, concluding that while the complaints "are serious," there is no existing authority that allows lower court judges to investigate or discipline Supreme Court justices.^[185]

Senate action

On October 5, the Senate voted 51–49 to invoke cloture, advancing the nomination to a final floor vote expected on October 6. This was enabled through the application of the so-called "nuclear option", or a simple majority vote, rather than the historical three-fifths supermajority in place before April 2017.^[186] The vote was along party lines, with the exception of Democrat Joe Manchin voting yes and Republican Lisa Murkowski voting no.^{[187][188]}

On October 6, the Senate confirmed Kavanaugh to the Supreme Court with a 50–48 vote.^[189] One senator, Steve Daines (R), who supported the nomination, was absent during the vote due to his attendance at the wedding of his daughter that day, and Murkowski voted "present" despite her opposition, so that their two votes would be cancelled out and the balance of the vote would be retained – a rarely used traditional courtesy known as a "pair between senators".^[190] All Republicans except Daines and Murkowski voted to approve the nomination, and all Democrats voted in opposition, except Joe Manchin who voted to approve the nomination.^[191] Kavanaugh's confirmation margin of only two votes is the closest successful confirmation vote of a Supreme Court nominee since Stanley Matthews' 24–23 confirmation in 1881.^[192]

Swearing-in

Kavanaugh was sworn in as the 114th Justice of the Supreme Court on the evening of October 6, 2018.^[193] The Constitutional Oath was administered by Chief Justice Roberts and the Judicial Oath was administered by retired Associate Justice Kennedy, whom Kavanaugh succeeded on the Court.^[194] On October 8, 2018, President Trump ceremonially swore-in Kavanaugh.^{[195][196]} Upon his ascension to the court, Kavanaugh became the first Supreme Court justice to hire an all-female team of law clerks.^{[197][198]}

On the U.S. Supreme Court (2018–present)

Reproductive health care and Medicaid law

In December of 2018, Justice Kavanaugh and Chief Justice Roberts joined the court's four more liberal justices by declining to hear cases brought by the states of Louisiana and Kansas, which sought to block women from choosing to receive Medicaid-funded medical care from Planned Parenthood clinics. Two lower appeals courts had ruled that the federal law creating Medicaid protects patients' rights to choose any provider which is "qualified to perform" the needed services.^[199] Because the votes of at least four justices are required to bring a case before the Supreme Court, the rejection of the appeal from the two states allows the lower court injunctions (as well as other rulings about the subject from other courts that may have been overturned based on a decision either way by the court) to stand.^[200]

Sexual assault allegations

Christine Blasey Ford

In early July 2018, when Kavanaugh's name was on a shortlist of nominees for the Supreme Court, Christine Blasey Ford, a psychology professor at Palo Alto University, contacted a Washington Post tipline and her local congresswoman Anna Eshoo (D-California) with allegations that Kavanaugh had sexually assaulted her in high school.^{[9][201]} On July 30, 2018, Ford wrote U.S. Senator Dianne Feinstein to inform her of her sexual assault accusation against Kavanaugh.^[202] Ford requested that her allegation be kept confidential.^[203] Following a September 12 report in *The Intercept*,^{[9][201][204]} Senator Dianne Feinstein (D-California) confirmed a complaint had been made against Kavanaugh by a woman who had requested not to be identified. Feinstein stated that the woman accused Kavanaugh of trying to force himself on her while physically restraining her when they were both in high school.^{[205][206]} On the same day, Feinstein stated she had forwarded the allegation to federal authorities.^{[207][208]}

On September 16, Ford said Kavanaugh had sexually assaulted her when she was 15 and he was 17.^{[209][210]} Ford stated that in the early 1980s, Kavanaugh and Mark Judge, one of Kavanaugh's friends from Georgetown Prep School, corralled her in a bedroom at a house party in Maryland and turned up the music that was playing in the room. According to Ford, Kavanaugh pinned her to the bed, groped her, ground against her, tried to pull off her clothes, and covered her mouth with his hand when she tried to scream.^[211] Ford said she was afraid Kavanaugh might inadvertently kill her during the attack,^[212] and believed he was going to rape her.^[213] Ford stated that she escaped when Judge jumped on the bed, knocking them all to the floor.^{[209][214]}

Kavanaugh issued the following statement through the White House: "I categorically and unequivocally deny this allegation. I did not do this back in high school or at any time."^{[208][207]} Republicans criticized the decision to withhold "a vague, anonymous accusation for months" before releasing it on the "eve of [Kavanaugh's] confirmation" as an attempt to delay the Kavanaugh confirmation hearings.^{[215][216]} Kavanaugh released a statement on the evening before Ford's and Kavanaugh's scheduled testimony before the Senate Judicial Committee, that due to the serious nature of the allegations, both he and Ford deserved to be heard. He also stated, "I am innocent of this charge."^[217]

The Washington Post reported that it had reviewed a portion of the therapist's notes from a 2012 couples therapy session involving Ford and her husband that relate to the alleged event and its psychological effects upon her. In 2012, Ford and her husband were going through a major renovation of their home in which she insisted on having a second front door and which her husband could not understand.^{[218][219]} The therapist's notes, parts of which were released on September 16, 2018, state that Ford was assaulted by four students "from an elitist boys' school" (Ford stated the therapist was in error and there were only two boys in the room with her^[220]), who eventually became "highly respected and high-ranking members of society in Washington", and do not name Kavanaugh. Ford's husband recalled that in the couples therapy session, while talking about the attack, she "used Kavanaugh's last name". Notes from another session a year later show that Ford had previously described a "rape attempt" while in her "late teens". In her testimony to the Senate Judiciary Committee, Ford said she could not remember whether she gave the therapist's notes to *The Washington Post* or merely summarized them for the reporter.^{[221][222]}

Ford also took a polygraph test which was paid for by Ford's attorneys and administered by a former FBI agent.^[223] The test concluded she was being truthful when she said a statement summarizing her allegations was accurate.^{[212][224]} The Senate Judiciary Committee released a letter on September 14 in which 65 women signatories who stated they had known Kavanaugh "for more than 35 years" asserted that during the time they had known him, Kavanaugh had "behaved honorably and treated women with respect".^[225] Twenty-four women who attended the Holton-Arms School along with Ford sent a letter to Congress expressing support for her.^[226] Over 1,000 alumnae of Holton-Arms School signed a letter stating that Ford's accusation was "all too consistent with stories we heard and lived" while attending the school;^[227] some of the alumnae delivered the letter personally to Senator Shelley Moore Capito, Republican from West Virginia, who is herself an alumna of the school.^[228]

The Senate Judiciary Committee invited both Kavanaugh and Ford to provide testimony about the allegation on September 24. Kavanaugh agreed to testify on September 24.^[229] Ford requested that the Federal Bureau of Investigation investigate the matter first, but Senate Judiciary Committee Chair Chuck Grassley declined the request, and gave Ford a deadline of September 21 to inform the Committee whether she intended to testify. Grassley added that Ford was welcome to appear before the Committee either privately or publicly.^[230] On September 20, Ford's attorney opened negotiations with the Committee to reschedule the hearing under "terms that are fair and which ensure her safety".^[231] A bipartisan panel from the Judiciary Committee and Ford's representatives agreed to a hearing after September 24.^[232]

President Trump commented on the initial sexual assault allegation against Brett Kavanaugh for the first time on September 17, saying, "Judge Kavanaugh is one of the finest people that I've ever known. He's an outstanding intellect, an outstanding judge, respected by everybody. Never had even a little blemish on his record. The FBI has, I think, gone through a process six times with him over the years, where he went to higher and higher positions. He is somebody very special."^[233] On September 20, at a

rally in Las Vegas, Trump again strongly endorsed Kavanaugh, stating, "Brett Kavanaugh is one of the finest human beings you will ever have the privilege of knowing or meeting." Trump also addressed the Democrats' demand for an FBI probe by asking why the FBI was not notified of the alleged attack 36 years ago.^[234] Trump later responded on Twitter to Ford's claims, arguing that Ford would have informed law enforcement of the incident at the time if it had truly taken place. Trump wrote that Ford's statement was an "assault" made by "radical left wing politicians" intended to undermine his presidency.^{[235][236]}

Ford stated that Leland Ingham Keyser, a lifelong friend, was present at the party where the alleged assault took place. On September 22, Keyser stated through her attorney that she did not know Kavanaugh and had no memory of the party nor sexual assault. The attorney did confirm that Keyser was a friend of Ford's,^[237] and Keyser told *The Washington Post* that she believed Ford's assertions.^{[238][239]}

On October 4, the White House announced that it had found no corroboration of Ford's allegations after reviewing the FBI's latest probe into Kavanaugh's past.^[240] Her attorneys tweeted that "Those directing the FBI investigation were not interested in seeking the truth."^[241]

Between September 10 and 16, 2018, Kavanaugh had the highest opposition (42%) of any of the eleven Supreme Court nominees Gallup has polled about since Robert Bork in 1987.^{[242][243]} A *YouGov/The Economist* poll on September 23–25 found 55% of Republicans thought he should be confirmed even if the allegations of sexual assault were true, compared to 28% of the whole sample and 13% of Democrats.^[244]

Deborah Ramirez

Ronan Farrow and Jane Mayer of *The New Yorker* published a piece with an additional sexual assault allegation against Kavanaugh on September 23. Deborah Ramirez, who attended Yale University with Kavanaugh, alleged Kavanaugh exposed himself to her and thrust his penis against her face after they had both been drinking at a college party during the 1983–1984 academic year. Kavanaugh said, "This alleged event from 35 years ago did not happen."^[245] *The New York Times* interviewed several dozen of her classmates in an attempt to corroborate her story, and could find no firsthand witnesses to the alleged assault, but several classmates recalled that they had heard about it in the subsequent days and believed Ramirez.^[246] According to the *New York Times*, "Ramirez herself told the press and friends that, initially, she was not absolutely certain it was Kavanaugh who assaulted her, but after corresponding with friends who had secondhand knowledge of the incident, and taking time to refresh her recollection, stated that she was certain Kavanaugh was her assailant."^[247]

Julie Swetnick

Michael Avenatti, the lawyer representing Stormy Daniels in her suit against Donald Trump, stated in a tweet on September 23 that he represented a woman who had "credible information" regarding Brett Kavanaugh and Mark Judge. Avenatti asserted that his client would be willing to testify before the Senate Judiciary Committee.^{[248][249][250]} On September 26, Avenatti revealed the woman to be Julie Swetnick, a former government employee, who declared in a sworn statement that she went to high school parties involving Judge and Kavanaugh and that it was common at such parties for boys to prey on girls, sometimes by spiking or drugging the drinks so that the girls could not resist.^{[251][252]} Kavanaugh described her allegations as "ridiculous" and the allegation as a whole, made by Avenatti, a "farce".^[12] *The Wall Street Journal* reported that it had contacted "dozens" of her former classmates and colleagues, but failed to reach anyone with knowledge of her allegations and that none of her friends have come forward publicly to support her claims.^[253] Senate Judiciary Committee chairman Chuck Grassley referred both Swetnick and Avenatti to the Justice Department for criminal investigation regarding claims that the two engaged in "conspiracy, false statements and obstruction of Congress."^[254]

Teaching and scholarship

Kavanaugh taught full-term courses on Separation of Powers at Harvard Law School from 2008 to 2015, on the Supreme Court at Harvard Law School between 2014 and 2018, on National Security and Foreign Relations Law at Yale Law School in 2011, and on Constitutional Interpretation at Georgetown University Law Center in 2007. Kavanaugh has also been named the Samuel Williston Lecturer on Law at Harvard Law School since 2009.^[255] Kavanaugh was hired as a visiting professor by Elena Kagan, who was then the dean of Harvard Law School in 2008. According to *The Boston Globe*, he was generous with his time and accessible, and quickly became a student favorite. He would often dine in Cambridge with students and offer references and career advice.^{[256][257]} Kavanaugh received high evaluations from his students, including J. D. Vance.^[258] Following allegations of sexual misconduct during his Supreme Court confirmation process, Harvard Law School graduates petitioned the university to rescind Kavanaugh's position as a lecturer. Shortly after, Kavanaugh voluntarily withdrew from teaching at Harvard for the 2019 winter semester.^[259]

In 2009, Kavanaugh wrote an article for the *Minnesota Law Review* in which he argued that Congress should exempt U.S. presidents from civil lawsuits while in office^[260] because, among other things, such lawsuits could be "time-consuming and distracting" for the president and would thus "ill serve the public interest, especially in times of financial or national security crisis."^[261] Kavanaugh argued that if a president "does something dastardly," that president may be impeached by the House of Representatives, convicted by the Senate, and then criminally prosecuted after leaving office.^[260] He asserted that the U.S. would have been better off if President Clinton could have "focused on Osama bin Laden without being distracted by the Paula Jones sexual harassment case and its criminal investigation offshoots."^[260] This article garnered attention in 2018 when Kavanaugh was nominated to the Supreme Court by President Donald Trump, whose 2016 presidential campaign is the subject of an ongoing federal probe by Special Counsel Robert Mueller.^[261]

When reviewing a book on statutory interpretation by Second Circuit Chief Judge Robert Katzmann, Kavanaugh observed that judges often cannot agree on a statute if its text is ambiguous.^[262] To remedy this, Kavanaugh encouraged judges to first seek the "best reading" of the statute, through "interpreting the words of the statute" as well as the context of the statute as a whole, and only then apply other interpretive techniques that may justify an interpretation that differs from the "best meaning" such as constitutional avoidance, legislative history, and Chevron deference.^[262]

Personal life

Kavanaugh and Ashley Estes, the personal secretary to President George W. Bush,^[263] were married in 2004 and have two daughters. They live in Chevy Chase Section Five, Maryland.^[42]

Kavanaugh ran the Boston Marathon in 2010 and 2015.^[264] His bibs represented nonqualifying numbers, assigned for a charity or a "guest" rather than an age-based time qualifier.^[265] He also has completed many shorter races, from 5 km to 10 miles.^{[266][267]}

Kavanaugh is a Catholic^[263] and serves as a regular lector at his Washington, D.C., church, the Shrine of the Most Blessed Sacrament. He has helped serve meals to the homeless as part of church programs, and has tutored at the Washington Jesuit Academy, a Catholic private school in the District of Columbia.^{[263][268]}

At his May 2006 confirmation hearing to be circuit judge for The District of Columbia Circuit, he stated that he was a registered Republican.^[269]

In 2018, Kavanaugh's reported salary was \$220,600 as a federal judge and \$27,000 as a lecturer at Harvard Law School.^[270]



The Kavanaugh family with George W. Bush

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See also

- Donald Trump Supreme Court candidates
- George W. Bush Supreme Court candidates
- List of law clerks of the Supreme Court of the United States

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Further reading

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- Congressional Research Service Report R45293, "Judge Brett M. Kavanaugh: His Jurisprudence and Potential Impact on the Supreme Court" (<https://fas.org/sgp/crs/misc/R45293.pdf>), Coordinated by Andrew Nolan and Caitlain Devereaux Lewis (2018)

External links

- Brett Kavanaugh (<https://www.fjc.gov/node/1392406>) at the *Biographical Directory of Federal Judges*, a public domain publication of the Federal Judicial Center.
- Appearances (<https://www.c-span.org/person/?brettkavanaugh>) on C-SPAN
- Selected Resources on Brett M. Kavanaugh (<https://www.loc.gov/law/find/kavanaugh.php>) from the Law Library of Congress
- Biography (<https://georgewbush-whitehouse.archives.gov/infocus/judicialnominees/kavanaugh.html>) from the Bush White House
- Resumé (<https://web.archive.org/web/20060112175839/http://www.usdoj.gov/olp/kavanaughresume.htm>) from the Justice Department's Office of Legal Policy
- Contributor profile (<https://fedsoc.org/contributors/brett-kavanaugh>) from the Federalist Society

- Brett Kavanaugh Attorney Work Files (<https://www.archives.gov/research/investigations/kavanaugh>) for Independent Counsel Kenneth W. Starr from the National Archives and Records Administration
- Records on Brett M. Kavanaugh (<https://www.georgewbushlibrary.smu.edu/Research/Digital-Library/BrettMKavanaughRecords>) from the George W. Bush Presidential Center
- Nomination documents (<https://www.judiciary.senate.gov/nominations/supreme/pn2259-115>) from the United States Senate Committee on the Judiciary
- "Judge Brett Kavanaugh & Professor Christine Blasey Ford Testify" (<https://www.c-span.org/video/?451895-1/judge-kavanaugh-professor-blasey-ford-testify-sexual-assault-allegations>). C-SPAN. Retrieved September 27, 2018.
- Report on Investigation (<https://www.judiciary.senate.gov/imo/media/doc/2018-11-02%20Kavanaugh%20Report.pdf>) by the Senate Judiciary Committee

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Legal offices		
Preceded by Laurence Silberman	Judge of the United States Court of Appeals for the District of Columbia Circuit 2006–2018	Vacant
Preceded by Anthony Kennedy	Associate Justice of the Supreme Court of the United States 2018–present	Incumbent
Current U.S. order of precedence (ceremonial)		
Preceded by Neil Gorsuch <i>as Associate Justice of the Supreme Court</i>	Order of Precedence of the United States <i>as Associate Justice of the Supreme Court</i>	Succeeded by Senior Chief Justices of the Supreme Court None living Succeeded by Otherwise John Paul Stevens <i>as Senior Associate Justice of the Supreme Court</i>

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