

## Here is what you need to know about Judge Brett Kavanaugh and what you need to do to help him get confirmed.

*Friends, this document has overall information about Judge Brett Kavanaugh, his judicial philosophy, and the action you can take to help get him confirmed.*

*I have drawn this information from many friends, colleagues, and judicial experts, including at the White House, at groups like Liberty Counsel, SBA List, Concerned Women for America, Richard Viguerie, Gary Bauer, Judicial Crisis Network, and many others, as well as from my own research.*

*Let's all spread the word about this excellent nominee and work hard to get him confirmed!*

*Fr. Frank Pavone*

[Click here for the White House Press Release about Judge Kavanaugh's nomination](#)

[Watch here the President's announcement of Judge Kavanaugh as his nominee, and the speech which the Judge gave.](#)

### **Background on Judge Brett Kavanaugh**

#### **Judge Brett M. Kavanaugh – Judge on the U.S. Court of Appeals for the D.C. Circuit**

Male, Age 53. Born: 2/12/65, Washington, D.C. Yale (J.D.) (B.A.)

- 2006 - present, Judge, U.S. Court of Appeals for the D.C. Circuit
- 2003 - 2006, Assistant to the President, Staff Secretary, President George W. Bush
- 2001 - 2003, Assoc. Counsel to President George W. Bush
- 1997 - 1998, 1999 to 2001, Partner, Kirkland & Ellis (private practice in D.C.)
- 1994 - 1997 (1998), Assoc. Counsel, Special Counsel, Ken Starr (Investigation of President Bill Clinton)
- 1993 - 1994, Law Clerk, United States Supreme Court, Justice Anthony Kennedy

- 1992 - 1993, Attorney, Office of United States Solicitor General,
- 1991 - 1992, Law Clerk, U.S. Court of Appeals, 9th Circuit, Judge Alex Kozinski
- 1990 - 1991, Law Clerk, U.S. Court of Appeals, 3rd Circuit, Judge Walter Stapleton

### Overall perspectives

- President Trump has nominated to the Court an extremely well-qualified, strict constructionist judge, in the mold of Neil Gorsuch.
- Americans trust President Trump to make this nomination. **In exit polling after the 2016 election, one in five (21%) Americans said the Supreme Court was their top issue and those voters overwhelmingly supported Donald Trump** (57 percent to 41 percent) who promised to nominate only pro-life Supreme Court justices. This nomination is another promise kept by President Trump and we urge the Senate to immediately confirm.
- To the extent this nomination moves the balance of the court on abortion, it will be toward **a balance that better represents the consensus views of the American people** on this question after decades of debate.<sup>[SEP]</sup>
- No one can predict the future, but we expect that any Justice who respects the Constitution and the legal process recognizes that there is no right to an abortion in the Constitution and that our current policy of legal abortion until birth is extreme.

### Judicial Record

**As Judge Kavanaugh said in his nomination speech, his judicial philosophy has been "straightforward.** A judge must be independent and must interpret the law, not make it." Kavanaugh also stressed he believes in interpreting statutes and the Constitution as they are written, "informed by history and tradition and precedent."

His approach and legal reasoning are no secret, given that he has written some 300 opinions during the time he has served on the DC Circuit Court of Appeals.

Here are some examples of his positions in various decisions:

In *Garza v. Hargan*, Kavanaugh forcefully rejected the ACLU's assertion of a new constitutional right of abortion on-demand for illegal immigrant minors in U.S. custody. Kavanaugh concluded that requiring the Trump Administration to assist the teenage immigrant in getting an abortion would fail to recognize the government's "permissible interest in favoring fetal life, protecting the best interests of a minor, and refraining from facilitating abortion."

As National Review's Justin Walker wrote, Judge Kavanaugh has been a steadfast and fearless supporter of religious liberty for decades. When he was in private practice in the 1990s, he chaired the Federalist Society's Religious Liberty practice group and worked pro bono on cases defending religious freedom. He wrote pro bono amicus briefs defending religious believers in high-profile Supreme Court cases... He advocated for the selection of judges who protect religious liberty.

In *Priests for Life v. HHS*, Kavanaugh refused to apply Obamacare's burdensome HHS abortifacient mandate to religious entities and was later vindicated by the Supreme Court. Kavanaugh wrote that the mandate regulations "substantially burden the religious organizations' exercise of religion because the regulations require the organizations to take an action contrary to their sincere religious beliefs or else pay significant monetary penalties." Judge Kavanaugh's opinion in this case was called "pure perfection" by one of the lawyers challenging the mandate.

In *EME Homer City Generation, L.P. v. EPA (2012)*: "Congress could well decide to alter the statute to permit or require EPA's preferred approach to the good neighbor issue. *Unless and until Congress does so, we must apply and enforce the statute as it's now written.* Our decision today should not be interpreted as a comment on the wisdom or policy merits of EPA's Transport Rule. It is not our job to set environmental policy. Our limited but important role is to independently ensure that the agency stays within the boundaries Congress has set. EPA did not do so here."\*

Likewise, in *United States Telecom Association v. FCC (2017)*: "Here, because Congress never passed net neutrality legislation, the FCC relied on the 1934 Communications Act, as amended in 1996, as its source of authority for the net neutrality rule. *But that Act does not supply clear congressional authorization for the FCC to impose common-carrier regulation on Internet service providers. Therefore, under the Supreme Court's precedents applying the major rules doctrine, the net neutrality rule is unlawful.*"\*

Those concerned with the erosion of the Second Amendment can also take heart from Judge Kavanaugh's staunch opinion in *Heller v. District of Columbia (2011)*: "Semi-automatic rifles, like semi-automatic handguns, have not traditionally been banned and are in common use by law-abiding citizens for self-defense in the home, hunting, and other lawful uses. Moreover, semiautomatic handguns are used in connection with violent crimes far more than semi-automatic rifles are. *It follows from Heller's protection of semi-automatic handguns that semi-automatic rifles are also constitutionally protected and that D.C.'s ban on them is unconstitutional.*"\*

### **The Confirmation Battle and Roe vs. Wade**

- The status quo in America is legal abortion on demand until the moment of birth. In *Roe v Wade* and *Doe v Bolton*, **7 unelected Justices struck down all state laws protecting unborn children** and established legal abortion on demand, up until the moment of birth. Laws are not meant to be created by courts, that is the job of state legislatures which,

following a mandate from the people, have passed hundreds of pro-life bills in recent years.

- According to a May 2018 [Gallup poll](#) less than a third (29 percent) of Americans embrace the “legal under all circumstances” abortion law we have now. The overwhelming majority of Americans (68 percent) want abortion to be illegal in some or all circumstances.
- Because of *Roe* and subsequent Supreme Court abortion cases, the U.S. is only one of seven countries to allow elective abortion of babies at five months and beyond, when the baby can feel pain and many can even survive outside the womb.
- How we treat unborn children isn’t settled in the hearts and minds of the American people, otherwise states would not have passed hundreds of pro-life laws designed to protect the unborn, especially in recent years.
- Under a reshaped court, the most likely outcome would be to restore power to legislate to the states.
- As it currently stands, about a third of the states are legally positioned to strengthen protections for unborn children if no longer blockaded by *Roe*.
- A third are also either already legally prepared to keep abortion on-demand, independent of *Roe* (California, Maryland, etc.), or the makeup of the state government is such that abortion will almost certainly remain virtually unlimited as it is now (aka blue states like New York, New Jersey, etc.)
- In the remaining third there is likely to be a vigorous debate – previously impeded by *Roe* – to find consensus about how to protect unborn children and advance women.
- As Megan McArdle put it in a recent *WaPo* opinion piece: “Debating the difficult decisions regarding gestational age and circumstances would force people to confront the hard questions that abortion entails.” It is our belief that **the more people discuss and learn about the reality of what abortion really is**, they will be persuaded to choose life.
- Reaching democratic consensus is what this nation is all about, and it’s what distinguishes us from abortion activists who **pretend to have broad support** but depend on unelected judges to impose radical policy on the entire nation.

### **The Senators who may make the difference**

- The Senate is far more divided and partisan about Supreme Court confirmations in our day than it has ever been. The only vote that was more divided in the Senate for a Supreme Court Confirmation than the most recent one of Justice Gorsuch, who was confirmed by a 54-45 margin, was Justice Clarence Thomas, confirmed in 1991 by a 52-48 margin. Compare this to the 1993 vote to confirm Ruth Bader Ginsburg, appointed by President Clinton. Everyone knew she would be a liberal vote on the Court, yet she was confirmed by a margin of 96-3.
- The deciding votes for the Kavanaugh confirmation will be **Senators like Joe Donnelly, Joe Manchin, and Bob Casey – Democrat Senators who call themselves pro-life**. If

every self-avowed pro-life Senator votes in line with their professed values, the success of this nominee would be assured.

- The question is whether Senators like Joe Donnelly and Joe Manchin will stand with this President and their constituents who elected him in 2016 by a wide margin (**42% in WV, 19% in IN**), or whether they will stand with a radical lobby who will accept no limits of any kind on abortion.

The ten Democrat Senators who are running for re-election in states where the voters elected President Trump should be particularly hesitant to oppose the positions of the President in the interim, including his nominee for the Supreme Court.

These Senators are

**Claire McCaskill** of Missouri,  
**Jon Tester** of Montana,  
**Bill Nelson** in Florida,  
**Heidi Heitkamp** of North Dakota,  
**Sherrod Brown** in Ohio  
**Tammy Baldwin** in  
Wisconsin **Debbie**  
**Stabenow** in Michigan, **Joe**  
**Donnelly** in Indiana,  
**Joe Manchin** from West Virginia,  
**Robert Casey** in Pennsylvania.

A recent Tarrance poll of the voters in Florida, Indiana, Missouri, North Dakota and West Virginia found that a majority of voters in each state think their Senator should vote to confirm Donald Trump's appointment to the Supreme Court:

“As you may know, Justice Kennedy recently retired from the Supreme Court. The President will appoint a replacement and the U.S. Senate will vote on that person. Do you think Senator [Nelson, Donnelly, McCaskill, Heitkamp, or Manchin: depending on the state] should vote to confirm President Trump's appointment to the Supreme Court?” Here are the results:

*Senator Confirm Trump's Appointment? – By State*

Florida (Sen. Nelson) 56% yes to 44% no  
Indiana (Sen. Donnelly) 56% yes to 44% no  
Missouri (Sen. McCaskill) 57% yes to 43% no  
North Dakota (Sen. Heitkamp) 68% yes to 32% no  
West Virginia (Sen. Manchin) 59% yes to 41% no

Residents of those states should publicly challenge these Senators to confirm Judge Kavanaugh to the Supreme Court.