

US Senate Elevates Right-wing Judge Brett Kavanaugh to Supreme Court

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The US Senate on Saturday confirmed Brett Kavanaugh as associate justice of the Supreme Court in a near-party-line vote of 50 to 48. Kavanaugh was sworn in only a few hours later by Chief Justice John Roberts in a private ceremony with no press in attendance.

Kavanaugh will take his seat on the high court when it resumes work Monday, shifting the nine-member body even further to the right. With his elevation, there is a solid bloc of five extreme right justices—Roberts, Kavanaugh, Clarence Thomas, Samuel Alito and Neil Gorsuch, President Donald Trump’s first nominee. All five were named by Republican presidents.

The four-member minority of conservative-to-moderate liberals consists of Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor and Elena Kagan, all named by Democratic presidents. For the first time in modern US history, there will be no “swing” justice who oscillates to some extent between the two main factions.

The seat now occupied by Kavanaugh was held from 1971 to 1987 by Lewis Powell, a conservative pro-business jurist who voted with the majority in *Roe v. Wade*. It was then held from 1989 to 2018 by Anthony Kennedy, another pro-business conservative who wrote several key gay rights decisions and supported abortion rights. Kavanaugh, equally right-wing on corporate interests and police powers, is an ultra-conservative Catholic who upholds Church doctrine on both abortion and gay rights.

Besides being predisposed to provide the fifth vote to reverse the *Roe v. Wade* decision and the *Obergefell* decision on gay marriage, Kavanaugh compiled a far-right record as an appeals court judge on such issues as police violence, government spying on the American people, executive authority versus the legislative and judicial branches, and democratic rights in general.

In one of his most notorious opinions, he backed the efforts of the Trump administration to deny an abortion to an undocumented teenager being held by the immigration authorities. The young girl, who had been raped, was able to obtain an abortion only because Kavanaugh was in the minority on a three-judge appeals court panel, and the young woman terminated her pregnancy before the Supreme Court overturned the lower court ruling.

Kavanaugh is a rabid Republican Party loyalist going back to his days as a top attorney in the Kenneth Starr investigation, which witch-hunted President Bill Clinton for a consensual sexual relationship and laid the basis for his impeachment by the Republican-controlled House of Representatives. Clinton was subsequently acquitted in a Senate trial.

The future Supreme Court justice joined another right-wing legal hit squad that was more successful—the team of lawyers who successfully appealed to the US Supreme Court to block the counting of votes in Florida after the 2000 presidential election, handing the state’s electoral votes and the presidency to Republican George W. Bush, who had lost the popular vote.

Kavanaugh was rewarded with a top job in the Bush White House, where he played a role in the drafting of legal permission for the CIA to torture detainees at secret overseas prisons, including Guantanamo Bay. Bush later nominated him to the US Circuit Court of Appeals for the District of Columbia, the second-highest federal court, which he joined in 2006.

The margin of Kavanaugh’s confirmation, 50-48, was the narrowest for any Supreme Court justice in 137 years. Four of the five members of the right-wing bloc on the court have the four lowest total votes for Senate confirmation in modern history: Kavanaugh with 50, the bare minimum, Thomas with 52, Gorsuch with 54 and Alito with 58.

Until a procedural vote on Friday, the announced Senate votes on Kavanaugh were evenly split, 48 to 48, with four publicly undecided senators: Democrat Joe Manchin of West Virginia and Republicans Susan Collins of Maine, Jeff Flake of Arizona and Lisa Murkowski of Alaska.

They split 3-1 on the procedural vote, to limit debate on the nomination, which passed 51-49. The same lineup would have been in effect in Saturday’s confirmation vote, but the lone Republican opponent, Murkowski, abstained to offset the absence of a pro-Kavanaugh Republican, Steve Daines, producing the 50-48 result.

While Manchin did not make his intentions public until the procedural vote, he had conveyed his decision to support Kavanaugh to the Senate leadership and the White House on Thursday, according to a report in *Politico*. Flake had earlier sent a similar signal, while remaining publicly “undecided.” This means that well before the procedural vote and Collin’s much-publicized decision to vote for confirmation, the Democrat Manchin had made certain that Kavanaugh would receive at least the 50 votes he needed. Vice President Mike Pence would have broken a 50-50 tie by voting in favor of Kavanaugh, but that in the end proved unnecessary.

The final Senate debate confirmed the completely right-wing character of the Democratic Party’s nominal opposition to Kavanaugh, as senator after senator decried the nomination on the grounds of unproven sexual assault allegations against the judge, while remaining virtually silent on his ultra-right record as a political operative and jurist. Perhaps the low point came at 4 a.m. Saturday morning, when Democrat Jeff Merkley of Oregon devoted two hours to reading out the testimonies of more than 30 rape and sexual assault victims, none of them victims of Kavanaugh.

The Democrats’ single-minded focus on the unproven sexual assault allegations allowed Republican senators to posture as defenders of democratic principles such as the presumption of innocence, even though they regularly trample on them when it comes to immigrants, refugees, victims of police violence or anyone caught up in the dragnet of the US “war on terror.”

Senate Majority Leader Mitch McConnell pontificated about the presumption of innocence in his speech on the Senate floor urging confirmation of Kavanaugh. At the same time, he boasted of the long-term effects of the court-packing being carried out under the Trump

administration, putting right-wing judges in a position to flout popular opinion for decades to come. He described the two Supreme Court justices and 26 federal appeals court judges nominated by Trump and confirmed by the Senate as “the most important contribution we have made to the country that will last the longest.”

The leading pro-Democratic Party newspaper, the *New York Times*, suggested in its editorial that it would have readily backed a justice just as right-wing as Kavanaugh, if only without the sexual assault allegations, declaring regretfully, “while Mr. Trump had plenty of qualified, highly conservative lawyers to pick among, he chose to insist on Judge Kavanaugh.”

The *Times* then went on to lament that the conflict over Kavanaugh had weakened the Supreme Court as an institution. The editors warned:

“The Court has had a majority of Republican-appointed justices for nearly half a century, of course, and its credibility has endured, despite controversial decisions like *Bush v. Gore*, which handed the White House to a Republican president. But the elevation of Judge Kavanaugh represents something new.”

This is a concern shared by both capitalist parties. Longtime ultra-right pundit William Bennett—secretary of education in the Reagan administration—compared the current divisions in the United States to those in the period leading up to the Civil War. He told the *Washington Post*, “This is the second most divided time in our history, and I’m worried about the legitimacy of the court.”

What concerns spokesmen of all factions of the US ruling elite is that the Supreme Court is one of the pillars of class rule in the United States, long the bastion of the defense of property, wealth and the power of the military-intelligence apparatus against popular opposition. Like all the other institutions of bourgeois rule, it has been deeply discredited, not merely by the current political mudslinging over Kavanaugh, but by decades of reactionary, anti-democratic and thoroughly politicized decision-making, as in the notorious *Bush v. Gore* decision in 2000.

Their concern is that the working class increasingly regards the Supreme Court, like Congress, the presidency, Wall Street and the corporations as a whole, as illegitimate and anti-democratic, part of a political and economic system rigged to protect the interests of the super-rich.

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