



Brett M. Kavanaugh: Selected Primary Material

July 17, 2018

On July 9, 2018, President Trump announced the nomination of Judge Brett M. Kavanaugh of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to fill the impending vacancy on the Supreme Court caused by Justice Kennedy's scheduled retirement on July 31, 2018. This sidebar contains reference information about Judge Kavanaugh, including a biography; a list of publications he authored or co-authored; legislative documentation related to previous nominations; lists of his written opinions; a list of Supreme Court briefs to which he contributed; and additional resources. For initial observations about Judge Kavanaugh's nomination to the Supreme Court, please see CRS Legal Sidebar LSB10168, *President Trump Nominates Judge Brett Kavanaugh: Initial Observations*, by Andrew Nolan.

Biography

Judge Kavanaugh was nominated to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) on January 25, 2006 by George W. Bush to a seat vacated by Judge Laurence H. Silberman. The Senate confirmed Judge Kavanaugh to the seat he currently holds on May 26, 2006. According to the *Almanac of the Federal Judiciary*, at the time he was appointed, he was the youngest federal circuit judge. (He had previously been nominated to the D.C. Circuit on July 25, 2003, and again on February 14, 2005, but received no votes in the Senate either time.)

Judge Kavanaugh graduated *cum laude* from Yale College with a B.A. in 1987 and from Yale Law School with a J.D. in 1990. In 1990, he was a summer associate for Williams & Connolly in Washington, D.C. In 1992, he was a summer associate for Munger Tolles & Olson in Los Angeles, California.

Judge Kavanaugh served as a law clerk to Judge Walter K. Stapleton of the U.S. Court of Appeals for the Third Circuit from 1990 to 1991 and Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit from 1991 to 1992. Judge Kavanaugh also served as a clerk for Associate Justice Anthony M. Kennedy of the Supreme Court of the United States from 1993 to 1994.

Judge Kavanaugh served as an attorney in the Office of the Solicitor at the U.S. Department of Justice from 1992 to 1993. From 1994 to 1997, and in 1998, he served as Associate Counsel in the Office of

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Independent Counsel Kenneth W. Starr. According to the *Almanac of the Federal Judiciary*, in this position:

Kavanaugh was assigned to investigations into the death of former Deputy White House Counsel Vincent W. Foster, Jr. and possible obstruction of justice in the wake of Mr. Foster's death. The publication also states that he was also part of the team that prepared part of Kenneth Starr's 1998 report to Congress which outlined information that potentially constituted grounds for the impeachment of President Clinton.

Judge Kavanaugh was a partner at Kirkland & Ellis from 1997 to 1998 and then again from 1999 to 2001. According to the *Almanac of the Federal Judiciary*, while at the firm:

. . . Kavanaugh represented Governor Jeb Bush in his official capacity against a constitutional challenge to Florida's school choice program as well as the family of Elian Gonzalez's American relatives (pro bono) in their petition for rehearing in the Eleventh Circuit and their petition for certiorari in the Supreme Court.

Judge Kavanaugh served as an Associate Counsel to the President under President George W. Bush from 2001 to 2003, and Senior Associate Counsel to the President in 2003. He was Assistant to the President and Staff Secretary under President George W. Bush from 2003 to 2006. According to the *Almanac of the Federal Judiciary*, "Kavanaugh is the only court of appeals judge in the nation who has prior experience as a member of a president's senior White House staff."

Judge Kavanaugh has taught at Georgetown University Law Center, Harvard Law School, and Yale Law School.

Judge Kavanaugh was born in Washington, D.C. in 1965.

*Source: Composed by CRS from the [Federal Judicial Center's website](#) visited on July 9, 2018, the [U.S. Court of Appeals for the District of Columbia Circuit's website](#) visited on July 9, 2018, the *Almanac of the Federal Judiciary* available through WestlawNext, and committee questionnaires.*

Publications

Books

- Bryan A. Garner ed., *Law of Judicial Precedent* (St. Paul: Thomson West, 2016). Judge Kavanaugh is listed as a co-author.

Law Journal Articles

- Brett M. Kavanaugh, *Defense Presence and Participation: A Procedural Minimum for Batson v. Kentucky Hearings*, 99 YALE L. J. 187 (1989).
 - Brett M. Kavanaugh, *The President and the Independent Counsel*, 86 GEORGETOWN L. J. 2133 (1998).
 - Brett M. Kavanaugh, *Separation of Powers and the Forty-Fourth Presidency and Beyond*, 93 MINN. LAW REV. 1454 (2009).
 - Amanda L. Tyler et al., *A Dialogue with Federal Judges on the Role of History in Interpretation*, 80 GEO. WASH. L. REV. 1889 (2012).
 - Brett M. Kavanaugh, *The Courts and the Administrative State*, 64 CASE W. RES. L. REV. 711 (2014).
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- Brett M. Kavanaugh, *Our Anchor for 225 Years and Counting: The Enduring Significance of the Precise Text of the Constitution*, 89 NOTRE DAME L. REV. 1907 (2014).
- Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118 (2016).
- Brett M. Kavanaugh, *The Judge as Umpire: Ten Principles*, 65 CATH. U. L. REV. 683 (2016).
- Brett M. Kavanaugh, *Two Challenges for the Judge as Umpire: Statutory Ambiguity and Constitutional Exceptions*, 92 NOTRE DAME L. REV. 1907 (2017).
- Brett M. Kavanaugh, *From the Bench: The Constitutional Statesmanship of Chief Justice William Rehnquist*, American Enterprise Institute (2017).

Opinion, Editorials, and Letters

- Brett M. Kavanaugh, *First Let Congress Do Its Job*, WASHINGTON POST, Feb. 26, 1999.
- *What a Difference a Year Makes: Experts Draw Lessons, for Our Politics and Our Culture, from the Impeachment and Acquittal of William Jefferson Clinton*, AMERICAN SPECTATOR, Apr. 1999. (Available from the CRS authors to congressional clients by request.)
- Brett M. Kavanaugh, *We All Supported Kenneth Starr*, WASHINGTON POST, July 1, 1999. (Available from the CRS authors to congressional clients by request.)
- Brett M. Kavanaugh, *Starr Report*, NEW YORK TIMES, Aug. 1, 1999. (Available from the CRS authors to congressional clients by request.)
- Robert J. Bittman and Brett M. Kavanaugh, *Indictment of an Ex-President?*, WASHINGTON POST, Aug. 31, 1999. (Available from the CRS authors to congressional clients by request.)
- Brett M. Kavanaugh, *Are Hawaiians Indians? The Justice Department Thinks So*, WALL STREET JOURNAL, Sept. 27, 1999. (Available from the CRS authors to congressional clients by request.)
- Robert J. Bittman, Brett M. Kavanaugh, and Solomon J. Wisenberg, *To Us, Starr Is an American Hero*, WASHINGTON POST, Nov. 15, 1999.

Source: Compiled by CRS from the *Almanac of the Federal Judiciary* available through WestlawNext, HeinOnline, LexisNexis and WestlawNext news database searches, and committee hearing records.

Legislative Documentation

Hearings

- *Confirmation Hearings on the Nomination of Brett Kavanaugh To Be Circuit Judge for the D.C. Circuit: Hearing Before the S. Comm. on the Judiciary*, 108th Cong.
- *Confirmation Hearings on the Nomination of Brett Kavanaugh To Be Circuit Judge for the D.C. Circuit: Hearing Before the S. Comm. on the Judiciary*, 109th Cong.

Congressional Record

- Nominations, [152 Cong. Rec. S143](#) (Jan. 25, 2006).
- Executive Reports of Committees, [152 Cong. Rec. S4468](#) (May 11, 2006).
- Executive Session to Consider Nominations, [152 Cong. Rec. S5303](#) (May 26, 2006).
- Confirmations, [152 Cong. Rec. S5400](#) (May 26, 2006).

Opinions

Please note, these lists represent opinions where Judge Kavanaugh is credited as the author of the opinion. He joined numerous *per curiam* opinions where authors were not credited.

- [Citation List of Opinions](#) (with links to the full-text of the opinion)
- [Citation List of Concurring Opinions](#) (with links to the full-text of the opinion)
- [Citation List of Dissenting Opinions](#) (with links to the full-text of the opinion)

Supreme Court Briefs

The following briefs are available from the authors to congressional clients upon request. Please note, Judge Kavanaugh was not the sole author of these briefs:

- Brief of Amicus Curiae General Motors Corporation in Support of Respondent, *Lewis v. Brunswick Corp.*, [523 U.S. 1113 \(1998\)](#) (No. 97-288). (The brief is available from the CRS authors to congressional clients by request.)
- Brief Amicus Curiae for the Center for Equal Opportunity, New York Civil Rights Coalition, Carl Cohen, and Abigail Thernstrom in Support of Petitioner, *Rice v. Cayetano*, [528 U.S. 495 \(2000\)](#) (No. 98-818). (The brief is available from the CRS authors to congressional clients by request.)
- Brief of Amici Curiae Congressman Steve Largent and Congressman J.C. Watts in Support of Petitioner, *Santa Fe Indep. Sch. Dist. v. Doe*, [530 U.S. 290 \(2000\)](#) (No. 99-62). (The brief is available from the CRS authors to congressional clients by request.)
- Brief of Amicus Curiae Sally Campbell in Support of Petitioners, *Good News Club v. Milford Cent. Sch.*, [533 U.S. 98 \(2001\)](#) (No. 99-2036). (The brief is available from the CRS authors to congressional clients by request.)

News Coverage and Statements

White House

- Press Release, [President Donald J. Trump Announces Intent to Nominate Judge Brett M. Kavanaugh to the Supreme Court of the United States](#) (July 9, 2018).

Additional Resources

Law Library of Congress, [Brett M. Kavanaugh](#) (July 10, 2018).

Law Library of Congress, [Supreme Court Nominations](#) (July 10, 2018).

The authors would like to thank the Law Library of Congress for their collaboration on this compilation.

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