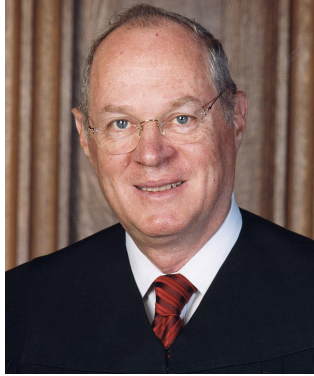


Supreme Court Justice Anthony Kennedy has announced he will retire. He notified President Trump in a letter written on June 27, 2018. In the letter, he told Mr. Trump that effective July 31, he would end “regular active status as an Associate Justice of the Supreme Court, while continuing to serve in a senior status.”



Kennedy called it the “highest of honors to serve on this Court,” and he expressed his “profound gratitude for having had the privilege to seek in each case how best to know, interpret, and defend the Constitution and the laws that must always conform to its mandates and promises.”

### The “Swing Vote”

Kennedy was nominated in 1987 by President Reagan to the court. Though a Republican president appointed him, Kennedy, a California native, also has a strong libertarian streak, and he was often the swing vote on the court. A swing vote is a vote that has a decisive influence on the result of a Supreme Court decision (or another type of election).

### Key Decisions from Kennedy

For three decades on a divided Supreme Court, Justice Anthony Kennedy was often the vote that determined the fate of monumental cases. Kennedy’s judicial philosophy -- which has been described at times as “impenetrable” -- meant the justice sometimes sided with conservatives on the court, and other times with liberals. Frequently, he surprised fellow justices and politicians on his decision and explanation. Here are some of the critical cases that came down to Kennedy’s vote:

- **Gay marriage: *Obergefell v. Hodges*, 2015**  
Kennedy was in the 5-4 majority that decided in June 2015 the Constitution that guarantees the right to same-sex marriage. The decision invalidated all existing bans on same-sex marriage across the country and solidified the rights of individuals in all 50 states to wed. It was Kennedy who authored the majority opinion.
- **Abortion: *Planned Parenthood v. Casey*, 1992**  
In *Planned Parenthood v. Casey*, the court was poised to overturn the essence of *Roe v. Wade* -- but Kennedy sided with the plurality who deemed the state is generally banned from

prohibiting most abortions. He decided to affirm the “essential holding,” aka the basic principle, of *Roe v. Wade*.

- **Affirmative action: *Fisher v. Univ. of Texas*, 2016**  
For the first time in his career, Kennedy sided in favor of affirmative action in a 2016 case in which the Court rejected a challenge to a race-conscious admissions program at the University of Texas at Austin. The 4-3 decision, in which Kennedy sided with the majority, determined that such a program is legal under the equal protection clause of the 14th Amendment. The country’s highest court upheld the decision of Fifth Circuit court.

### Filling the Vacancy

As we know, the president appoints a high number of officials in the executive branch as well as justices in the judicial branch. This will be the second opportunity that President Trump has to reshape the highest court in the land fundamentally. In April 2017, President Trump selected Neil Gorsuch to replace Antonin Scalia after his unexpected death.

Per U.S. Constitution (Article II, Section 2, Clause 2) states that the president “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the Supreme Court.”

Each federal judge holds office for life and may be removed only by impeachment. There are no expressed qualifications for federal judges in the Constitution. Some former Justices have had no previous judicial experience including eight chief justices. However, all have had experience in public service. Among the remaining members of the current Court, all have had previous judicial experience.

### Operating with 8 Justices and 1 Vacancy

If a vacancy exists, the Supreme Court still conducts its usual business of ruling on disputes from the lower courts. The battle over the nominated justice along with the needed Senate confirmation hearings may cause the Supreme Court to operate with eight justices. Of the remaining eight judges, four were appointed by Republican presidents, four by Democratic presidents. And they usually vote that way on divided cases. That raises the specter of many 4-4 ties. What happens then? The high court’s ruling is rendered almost meaningless; it leaves the most recent decision intact, usually from a federal appeals court or a top state court. There is no new, national precedent created by the nation’s highest court.

## Nominee Brett Kavanaugh

President Trump nominated Judge Brett M. Kavanaugh (age 53) to fill Justice Anthony M. Kennedy's seat on the Supreme Court, setting up an epic confirmation battle and potentially giving the court a more conservative tilt for a generation.

The highlights of Judge Kavanaugh's career include being a federal appeals court judge, former aide to President George W. Bush, former clerk to the retiring Anthony Kennedy, and onetime investigator of President Bill Clinton. He has a conservative record and deep ties among the Republican legal groups that have advanced conservatives for the federal bench.

Majority Leader McConnell declared that the Senate "will vote to confirm Justice Kennedy's successor this fall." It will be difficult for Democrats to block Kavanaugh since Republicans control the Senate. For Kavanaugh to be confirmed to the Supreme Court, he must get 51 votes in the U.S. Senate, a simple majority of the 100 senators.

## The Confirmation Battle Begins

The Supreme Court is the ultimate check on the president and Congress. Republicans are looking to quickly fill the vacancy with Kavanaugh. GOP leaders will want Kavanaugh to deliver on a conservative agenda. With Judge Kavanaugh being relatively young it will give him plenty of time to influence the court.

Democrats argue that the new justice nomination should be put on hold until after the November mid-term elections. The Democrats are citing Senate GOP leader Mitch McConnell's successful block of President Barack Obama's nominee to the court, Merrick Garland, in 2016. Republicans argued the seat should be left open because it was a presidential election year. Either way, Kavanaugh must undergo a vetting process by the Senate Judiciary Committee that could take days or weeks.

## Average Time to Approve New Justices

The current members of the court faced an average of 67 days (including Anthony Kennedy):

Current Justice	President Who Nominated	Days from submission to final vote
Neil Gorsuch	Trump	66
Elena Kagan	Obama	87
Sonia Sotomayor	Obama	66
Samuel Alito, Jr.	G.W. Bush	82
John Roberts, Jr.	G.W. Bush	23
Stephen Breyer	Clinton	73
Ruth Bader Ginsburg	Clinton	42
Clarence Thomas	G.H. Bush	99
Anthony Kennedy	Reagan	65

The vacant seat is critical to the future of a closely divided court. Each party will want to choose their candidate. President Trump will have leverage as the Republican Party controls Congress and has strong incentives to support their values and beliefs.

Anthony Kennedy had an interesting confirmation. When Justice Lewis Powell retired from the court in June 1987, it took President Ronald Reagan three tries to confirm a nominee, mostly due to the Senate's rejection of Robert Bork. It wasn't until Kennedy was confirmed in February 1988 that the court returned to having nine justices, a gap of more than seven months.

The longest vacancy on the Supreme Court was 27 months between the Tyler and Polk administrations before the Civil War. Tyler, derided as "His Accidency," because he was the first vice president elevated to the White House, also holds the distinction of a record eight nominees rejected or withdrawn.

## Conclusion

The Supreme Court consists of nine Justices, each with their views and beliefs which may align with the Democratic (liberal) or Republican (conservative) parties. As we have studied, federal courts are often called the "guardians of the Constitution" because their rulings protect rights and liberties guaranteed by the Constitution. Through fair and impartial judgments, the Supreme Court Justices interpret and apply the law to resolve disputes.

## REVIEW QUESTIONS

**TRUE OR FALSE?** Write a **T** or **F** in the space provided.

- \_\_\_ 1. If there are only eight justices, the Supreme Court will temporarily suspend and no rulings will take place.
- \_\_\_ 2. The Supreme Court Justices are considered "guardians of the Constitution."
- \_\_\_ 3. The current justices get to vote on who will fill a vacancy.
- \_\_\_ 4. Article 2 of the U.S. Constitution describes the president's role in nominating a Supreme Court Justice.
- \_\_\_ 5. Supreme Court nominees always have previous judicial experience.
- \_\_\_ 6. Justices are obligated to rule according to the ideology of the president who appointed them.
- \_\_\_ 7. After the president announces a nominee, it is presented to the voters to confirm.
- \_\_\_ 8. Justice Kennedy had the most conservative beliefs of any judge on the Supreme Court.
- \_\_\_ 9. There is still a judge on the Supreme Court that was nominated by G.H. Bush.
- \_\_\_ 10. The longest vacancy on the Supreme Court was six years.

**Answers:** 1-F, 2-T, 3-F, 4-T, 5-F, 6-F, 7-F, 8-F, 9-T, 10-F