

Kavanaugh and the Supreme Court

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Emma Kilheeny discusses the last-minute hiatus in the nomination by President Trump of Brett Kavanaugh to the US Supreme Court

On 17 September 2018 Republican senators agreed to delay the confirmation of President Trump's Supreme Court nominee, Brett Kavanaugh, which had been scheduled to take place 3 days later.

Why the delay?

Professor Christine Blasey Ford has accused Kavanaugh of sexually assaulting her more than 30 years ago when they were at high school. Ford made her allegations in a letter to her congressman over the summer, and then undertook a lie detector test for the FBI in August, which confirmed that she was being truthful.

Kavanaugh has denied the accusation, but further claims were then made that he had lied to the Senate committee about his knowledge of sexual misbehaviour by a fellow judge who had mentored him. On 23 September another woman, Deborah Ramirez, came

forward with more accusations of sexual misconduct against Kavanaugh, this time when he was at university in the 1980s. Julie Swetnick has also accused Kavanaugh of being present at a house party in 1982 where she says she was the victim of a gang rape.

Why did Republicans agree to the delay?

Kellyanne Conway, who managed Donald Trump's presidential campaign in 2016, stated: 'This woman [Ford] should not be insulted and she should not be ignored.' Dianne Feinstein (D-CA, the ranking Democrat on the Senate Judiciary Committee) and fellow committee member Jeff Flake (R-AZ) urged a delay in the vote until the committee hears from Ford.

Senators Bob Corker (R-TN), Susan Collins (R-ME) and Lisa Murkowski (R-AK) agreed to the delay too. Corker's views cannot be ignored: he was the only Republican senator to vote against the Tax Cuts and Jobs Act in December 2017. Nor can the views of Murkowski and Collins, who both voted against the American Health Care Act in July 2017, which led to the legislation being defeated. As the Republicans only have a single-vote majority on the Senate Judiciary

Committee, which they control 11 to 10, they cannot afford to lose any Republican support.

Republicans would also face a potential backlash from female voters if they pressed ahead with the nomination. In 1991, the Senate confirmation of Justice Clarence Thomas in spite of allegations of sexual misconduct was one of the factors that led to the election of numerous female candidates in the 1992 Congressional elections.

President Trump has accused 'radical left-wing politicians' of seeking to 'destroy and delay' his confirmation. However, despite questioning why it took Ford so long to come forward, Trump said: 'We want to go through a full process and hear everybody out.'

What happens next?

Kavanaugh was questioned during 4 days of hearings at the Senate Judiciary Committee in September. The committee was originally due to vote on the nomination on Thursday 20 September, followed by a full Senate vote later in the month, but this will now have to be delayed.

The Republican chairman of the committee, Chuck Grassley, has stated that Professor Ford deserves to be heard. However, he has criticised both the Democrats and Ford's lawyer for not bringing the allegations to the committee earlier. Ford agreed to testify against Kavanaugh, and she appeared before the Senate committee on 27 September. Kavanaugh was also re-questioned about his drinking and behaviour while at high school and college.

The allegations may mean that Trump is unable to get Kavanaugh appointed to the Court before November's midterm elections. If Trump withdraws the nomination, or if Kavanaugh stands down, any new nominee would have to wait until after the midterm elections to be confirmed. If the Republicans lose their majority in the Senate in November, the delay could cost Trump his choice of justice.

Despite the Senate Majority leader Mitch McConnell declaring that the Senate will 'plough right through' and confirm Kavanaugh, whether he is confirmed by

the Senate remains to be seen. Kavanaugh has become the least popular Supreme Court nominee in history. The committee was due to vote on Kavanaugh's appointment on 28 September, followed by a full Senate vote the following week.

Why would Kavanaugh's appointment be significant?

Kavanaugh is seeking to replace Justice Anthony Kennedy, who had assumed the position of swing justice on the Court. His appointment would undoubtedly shift the Court in a more conservative direction.

Questions

- 1 Senate Majority Whip John Cornyn stated that 'every single Democratic senator had finalised their position even before Kavanaugh's hearing'. To what extent has the judicial nomination process become dominated by partisanship rather than scrutiny in recent years?
- 2 Look at landmark rulings made by the Supreme Court in recent years. To what extent would the outcome have been different if Kavanaugh had replaced Kennedy on the Court for those rulings?

Weblinks to follow up

Watch Brett Kavanaugh's hearing by the Senate Judiciary Committee disrupted by protests in which over 70 people were arrested:
www.youtube.com/watch?v=IH1VWpGszSM

Find out why Dianne Feinstein waited to inform the FBI about Professor Ford's allegation:
<https://edition.cnn.com/2018/09/17/politics/dianne-feinstein-brett-kavanaugh-allegations/index.html>

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