

Justice Anthony Kennedy announces retirement from Supreme Court

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Supreme Court Justice Anthony Kennedy announced Wednesday that he will retire from the bench on July 31, giving Donald Trump the opportunity to dramatically shift the country's highest court even further to the right for years to come.

The announcement came on the last day of a court term marked by reactionary legal decisions in which the 81-year-old Kennedy, a Reagan appointee, played no small part. These include upholding president Trump's racist travel ban (*Trump v. Hawaii*), eliminating California requirements notifying women of their right to abortion (*NIFLA v. Becerra*) and endorsing the anti-gay bigotry of a business owner in *Masterpiece Cakeshop*.

In 2013, Kennedy joined the right-wing bloc to gut the enforcement mechanism of the 1965 Voting Rights Act in *Shelby County v. Holder*.

At a rally in Fargo, North Dakota Wednesday night, Trump salivated over the prospect of appointing Kennedy's replacement, which will be his second since taking office. In January 2017, he nominated far-right Neil Gorsuch to replace the deceased Antonin Scalia.

Kennedy is a "great man," Trump said, who "felt confident in me to make the right choice and carry on his great legacy." He pledged to appoint a new justice soon, echoing a promise by Senate Majority Leader Mitch McConnell to vote on a new justice before the November midterm election.

In a White House press conference yesterday afternoon, Trump said his nominee would come from a list of 25 reactionary lawyers and lower court judges previously published by the White House as potential appointees to the Supreme Court.

Kennedy, a conservative and corporate ally on almost all legal matters, took more libertarian positions on certain social questions, defending the right to abortion

and advancing the rights of LGBT people in decisions such as *Romer v. Evans* (1996), *Lawrence v. Texas* (2003) and *United States v. Windsor* (2013). He authored the opinion legalizing gay marriage in *Obergefell v. Hodges* (2015).

He was by no means a "liberal" or even "moderate" justice. The fact that he was considered a "swing vote" between the extreme right wing and the somewhat less conservative Democratic wing testifies more to the right-wing character of the court as a whole than to his own politics.

He authored the deeply reactionary opinion in *Citizens United v. FEC* (2010), which allowed unlimited financial campaign contributions in presidential elections by means of so-called Super PACs. Private corporations, as associations of individuals, received for the first time the same free speech protections as ordinary people. In *Bush v. Gore* (2000), he sided with the Republican appointees in halting the Florida recount, handing the election to the loser of the popular vote, George W. Bush.

Whoever Trump nominates, however, will shift the court further to the right by an order of magnitude. The new court will almost certainly produce a majority in favor of overturning *Roe v. Wade*, the 1973 decision granting the right to abortion, and rolling back protections for LGBT people. Even the most basic protections for LGBT people, including the right to gay marriage, are by no means permanently secure.

Under conditions where the government is setting up concentration camps to detain tens of thousands of undocumented immigrants and threatening to dispense with due process for desperate workers caught trying to cross the border without papers, the shift of the court to the far-right virtually guarantees judicial sanction for dictatorial methods directed against the entire working

class.

In 2016, Majority Leader Mitch McConnell and the Republican majority in the Senate successfully blocked the Democrats from confirming Barack Obama's nominee Merrick Garland on the grounds that a new Supreme Court justice should not be installed in an election year. Now that the Republicans are turning the tables, the Democratic Party, in true form, is already giving indications it will roll over and give up without a fight.

Trump can secure his nominee's confirmation by the Senate without any Democratic votes. Even so, several conservative Democrats up for re-election in November may vote for the nominee. Three Democrats—Heidi Heitkamp (North Dakota), Joe Donnelly (Indiana), and Joe Manchin (West Virginia)—voted for Gorsuch last year.

Within hours of the announced resignation, Senator Richard Blumenthal, Democrat of Connecticut, told MSNBC: "The president must appoint a fair-minded and open-minded jurist in the mold of Justice Kennedy, a centrist and moderate who will listen to his colleagues..."

After issuing this whitewash of Kennedy and pathetic appeal to the fascistic Trump, Blumenthal added, "The Senate should do nothing to artificially delay ... consideration of [Trump's] nominee..."

The *New York Times* published an editorial board statement calling for Trump to wait to appoint a new justice until the midterm elections. The statement, titled "With Kennedy Gone, Justice Must Be Won at the Ballot Box," called Kennedy's retirement "crushing" and a "coup de grace" on a "dispiriting" few days of victories for Trump.

Kennedy's retirement "sends a stark message to the tens of millions of Americans who have long turned to the courts for the vindication of many of their most cherished rights and protections: Look somewhere else ... With Justice Kennedy's departure, the court is very likely to lock in an unmoderated, hard-right majority for the rest of most of our lives."

The desperate and depressed tone of the *Times* editorial betrays an awareness that the past week has undermined the Democratic Party's right-wing "opposition" to Trump. Millions of Americans are filled with shame and anger over Trump's tax cuts for the rich, his massive budgets for the military and

police, his attacks on immigrants and, specifically, his policy of separating children from their parents and locking them up in cages. They view the Supreme Court and its decision upholding Trump's travel ban, in which Kennedy joined, with revulsion and contempt.

But the Democrats have fought for the entirety of Trump's presidency to channel opposition to Trump's right-wing policies behind the Democrats' own efforts to cast Trump as an agent of Russia, in an effort to force the White House to adopt a more bellicose policy toward Moscow.

Trump's recent victories in the Supreme Court and his preparations to appoint a fifth far-right Supreme Court justice show once more that opposition to the far-right will not come from within the courts, Congress, the two parties, or any of the official institutions of the political establishment.

The opposition to inequality, war and the attack on immigrants that is mounting in the working class must find its own independent expression through the building of a mass socialist movement.



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