

As Senate Judiciary Committee hearings begin

# Democrats posture over Trump Supreme Court nominee

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The Senate Judiciary Committee began hearings Tuesday on the nomination of Judge Brett Kavanaugh to the US Supreme Court, the second nomination by President Donald Trump to fill a seat on the high court. The panel is scheduled to take testimony on the nomination over four days, but given the disruptions that accompanied the first day, the hearings could drag on longer.

Kavanaugh did not even deliver his “opening” statement until nearly eight hours had passed, with the rest of the time absorbed by the statements of Republican and Democratic members of the Judiciary Committee, interruptions by protesters, and wrangling between Chairman Charles Grassley and the Democratic minority over a series of procedural challenges to even taking up the nomination.

At least 70 people were dragged out of the hearing and arrested by Capitol Police after they began shouting, usually in ones and twos, during statements by Republican senators in support of the Kavanaugh nomination. Most of the protesters were opposed to Kavanaugh’s right-wing Catholic views on abortion and gay rights, and his long record supporting corporations against workers.

The Trump nominee would replace retiring Justice Anthony Kennedy, the so-called “swing vote” on the court because he occasionally broke with the five-member right-wing majority to side with the court’s four liberals, although less and less frequently. Kavanaugh’s judicial record suggests no such tendency: he would be a solid vote against the separation of church and state, to overturn *Roe v. Wade* and the Supreme Court decision legalizing gay marriage, as well as siding with business against

government regulation and workers’ rights.

Democratic senators began posturing as intransigent opponents of Kavanaugh as soon as the hearing opened. Senator Kamala Harris of California, one of several potential 2020 presidential candidates on the panel, interrupted Chairman Charles Grassley as he opened the hearing, demanding a delay to allow senators to review 42,000 pages of new documents released the night before, dealing with Kavanaugh’s six years in the Bush White House.

Kavanaugh served as an associate general counsel and then as staff secretary, a powerful position in control of the flow of documents to the Oval Office, from 2001 to 2006, before he was confirmed to a seat on the Court of Appeals for the District of Columbia, the second-highest US court and a traditional launching pad for Supreme Court justices.

During confirmation hearings in 2006, Kavanaugh flatly denied any role in the Bush White House deliberations on torture, during which Bush authorized the CIA to torture detainees at secret “black site” prisons in Thailand, Eastern Europe and elsewhere. The newly released documents could shed light on whether Kavanaugh lied at his previous confirmation hearing, as some Democrats claim.

More generally, they would shed light on Kavanaugh’s political views, which he has sought to conceal, as nearly every Supreme Court nominee has done since the defeat of Robert Bork in 1987, who expressed his own ultra-right views too openly, both in the press and at his confirmation hearing.

The Trump White House has barred the release of another 100,000 pages of documents relating to Kavanaugh’s tenure in the Bush administration,

claiming executive privilege, even though there is no legal basis for one administration retroactively claiming privilege on behalf of another. No such privilege was claimed for previous White House officials nominated to the high court, including John Roberts, nominated by Bush, and Elena Kagan, nominated by Obama.

The ranking Democrat on the committee, Senator Dianne Feinstein of California, said, “Ninety-three percent of the records from Kavanaugh’s tenure in the White House as counsel and staff secretary have not been provided to the Senate and 96 percent are hidden to the public.” She added, “We go to these hearings under protest.”

Such protests, however, will do nothing at all to stop the nomination of Kavanaugh, who at this point is assured of the votes of all 51 Senate Republicans, with a half dozen or more Democrats prepared to confirm, mainly those running for re-election in states carried by Trump in 2016, including Montana, Missouri, West Virginia and North Dakota.

Arizona’s Republican Governor Douglas Ducey locked down the last Republican vote by naming former Senator Jon Kyl to replace the late John McCain for the remainder of his term, through 2020. Kyl, who retired in 2012, has been back in Washington for the past few weeks, working as the chief lobbyist for Kavanaugh’s confirmation. He will now be able to cast a vote for confirmation on the Senate floor.

The two-faced character of the Democratic Party posturing on Kavanaugh was demonstrated most clearly by Senator Richard Durbin of Illinois, the minority whip (deputy leader), and a member of the Judiciary Committee. He rebuked one Republican who described the protests as “mob rule,” declaring that it was instead “the noise of democracy.” He added, “This is what happens in a free country when people can stand up and speak and not be jailed, imprisoned, tortured, or killed because of it.”

He went on to declare that the protests were the product of widespread fear of “authoritarian forces threatening our democracy,” and that Trump’s nomination of Kavanaugh was part of that trend. “It is that president, who has decided you are his man,” he said. “You are the person he wants on the Supreme Court. You are his personal choice.”

But Durbin offered no means to oppose Kavanaugh except an appeal to the nominee himself to urge the

postponement of his own confirmation hearing until all White House documents relevant to his nomination were made public. This ludicrous suggestion encapsulates the impotence of the Democrats, who are unwilling to engage in the type of political and procedural warfare that Republican senators would engage in readily if the roles were reversed.

The posturing at the Judiciary Committee is for the sole purpose of giving the Democrats a “left” cover for the 2018 election campaign, while Trump and the Republicans are allowed to push the Supreme Court even further to the right.

*The author also recommends:*

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