

Is Justice Kennedy Next?

The likelihood that President Donald Trump is going to be appointing another Supreme Court justice is practically a given, just based on the ages and lengths of service of the current court members.

The real question is when will it happen?

According to a report Wednesday by The Daily Caller, the Trump administration would like to make that happen sooner than later. The report suggests the White House has been quietly encouraging Associate Justice Anthony Kennedy to retire.

The report states:

The most clear indication came late Monday. The New York Times' Adam Liptak, citing administration sources, reports the White House has identified Judge Brett Kavanaugh of the U.S. Court of Appeals for the D.C. Circuit and Judge Raymond Kethledge of the 6th U.S. Circuit Court of Appeals, as the front-runners for the next appointment to the high court. Both men clerked for Kennedy early in their careers, and are widely respected as serious and sober jurists. As such, the purpose of the leak is plainly to reassure an "embarrassingly dramatic" Kennedy, no doubt brooding over his retirement through comparisons to the greatest archetypes of literature.

The administration has also placed former Kennedy clerks in prominent posts throughout the U.S. Department of Justice. The president has named Rachel Brand associate attorney general and Steven Andrew Engel assistant attorney general, both alums on Kennedy's chambers.

Judge Neil Gorsuch's nomination tracks this strategy. In the first place, Gorsuch himself was also a Kennedy clerk, and—if confirmed—will become the first justice to serve

concurrently with a justice for whom he clerked. The pick should be encouraging to Kennedy in a second regard. Though Trump has selected a deeply conservative judge to succeed the late Justice Antonin Scalia, he has also selected a serious scholar whose disciplined jurisprudence has won the respect of left-wing legal commentators and scholars.

Kennedy is the longest-serving member of the current Supreme Court with 10,580 days on the high court, which makes him the 17th-longest serving jurist on the court. He's served nearly four years longer than the next-longest serving justice on the high court, Clarence Thomas.

As for his potential replacements:

- Kavanaugh is a graduate of Yale and an appointee of President George W. Bush. Democrats fought over his nomination for three years before confirming him on a 57-36 vote. Like the justice he might replace, he is a bit of a moderate, deciding against the Clean Air Act but also deciding in favor of ObamaCare. Most of his opinions, however, were reversed by the Supreme Court prior to Associate Justice Antonin Scalia's death, suggesting he might be slightly more conservative than Kennedy.
- Kethledge is a graduate of the University of Michigan, which would break the Ivy League grip on the high court if he were nominated, and he, too, was nominated by President George W. Bush. Democrats stalled out his nomination for two years, spanning two different Congresses, before a deal was worked out with the White House. Among his many notable cases, which suggest a conservative approach, was his involvement in the targeting lawsuits against the IRS. {eoa}