

Trump's Pick of Kavanaugh: 'Conservatives Should Trust, but Verify'

President Trump kept another promise when he nominated Judge Brett M. Kavanaugh to fill the Supreme Court seat being vacated by Justice Anthony Kennedy. Trump's supporters will appreciate that Kavanaugh's name was on a list of candidates from which he pledged to draw his nominees.

Kavanaugh has a reputation for being an "originalist" and "textualist" when it comes to interpreting the Constitution and statutes. This might seem like the obvious way for members of the Supreme Court to conduct themselves. It should be; but has not been that way for a while.

"Progressives" reject the Founding Fathers' belief that the Constitution has both a formal amendment process and a fixed and objective meaning. Instead, they argue that the Constitution is a "living and breathing" document capable of vast malleability. In this view, the Supreme Court is regarded as a super-legislature that enacts the political preferences that the Left desires. Yet, it does so without involving the messy and risky political process that risks defeat at the hands of ordinary citizens. And, better yet, the Supreme Court's interpretation of the Constitution cannot be overridden by Congress.

Most famously, the Supreme Court invented a constitutional "right to abortion" that has had to be enforced by each state as dictated by the court for the past 45 years. Tens of millions of unborn babies have been killed.

Similarly, a slim 5-4 majority mandated same-sex marriage in all 50 states even though over 30 states had explicitly rejected this concept since the late 1990s. The federal courts

were used to impose gay marriage on America.

From both decisions, followed many assaults on religious freedom in the past ten years as federal and state governments attempted to compel the provision of abortifacient contraceptives and tacit recognition of same-sex marriage by Christian business owners and nonprofit organizations. In his final years on the court, Justice Kennedy joined majorities that protected the right of religious conscience in the abortion and same-sex marriage areas. However, those decisions hang by a thread.

It was for this reason that President Trump laid out his plans for judicial selection so publicly during the election. Serious constitutionalists reviewed the candidates to be placed on the list, so there would be no surprises.

Judge Kavanaugh is not exactly a roll of the dice. He has spent over 12 years as a judge on the U.S. Court of Appeals for the District of Columbia Circuit where he has written on a wide array of subjects of great complexity.

In the judicial firmament, men and women of this stripe lie light-years from the political activists the left would have President Trump appoint. Wisely, he has resisted that temptation twice with his nominations of Neil Gorsuch last year and now Brett Kavanaugh.

Evangelical Christian voters, more than 80 percent of whom voted for President Trump, stated clearly that a major reason for their doing so was the Supreme Court. In order to build the trust of voters, Mr. Trump created his list of candidates who could be vetted publicly. The president has lived up to that requirement.

Now, his supporters will get to hear all about Kavanaugh and determine whether his opinions align with their firmly held beliefs. Critics on the right have pointed out that while Kavanaugh is undoubtedly brilliant and conservative, he seems

to be something of a judicial politician. That may make Trump supporters uneasy. They don't want a court that turns back 100 years of infidelity to the Constitution in nanometers. One senses sometimes that the current chief justice swore his oath to Supreme Court precedent—not the original Constitution.

If Kavanaugh reveals himself in his confirmation hearings to be someone in that mold, the Trump base will not look fondly on providing a companion for Chief Justice Roberts. For the time being we have to trust President Trump's judgment—which has been excellent in so many areas.

But, as Ronald Reagan instructed: Trust, but verify. {eoa}

Tony Perkins *is president of Family Research Council.*