

WHAT TO WATCH: Kavanaugh's Confirmation Hearing

Going into this week's hearings, we can expect to hear [a lot of vague coded language](#) about "precedent" and "settled law." But Kavanaugh's own words, his supporters, and even his judicial record makes it clear where he stands -- he does not believe that women have the constitutional right to access safe, legal abortion, and would tip the balance of the court away from that fundamental right.

Here are the three things to watch:

1. **What Kavanaugh says is important -- but what he doesn't say (especially when it comes to *Roe v. Wade*) is even more telling.**
2. **Kavanaugh's record does tell a clear story: he does not believe in the constitutional right to access abortion, and has ruled to limit access to abortion and even birth control.**
3. **This isn't theoretical -- there are more than a dozen abortion cases that are one step away from the Supreme court, meaning if confirmed, Kavanaugh would be weighing in on these issues in the next 1-3 years.**

1. What Kavanaugh says is important -- but what he doesn't say (especially when it comes to *Roe v. Wade*) is even more telling.

What does "respecting precedent" actually mean?

Spoiler alert: not much. When it comes to Supreme Court nominees' confirmation hearings, history shows "respecting precedent" is basically the political version of "I'm not going to answer how I'll rule on that case because the American people won't like what I have to say."

When Judge Kavanaugh speaks to the Senate, we expect to hear a lot of this kind of vague language and euphemisms. Senators will ask him about whether he will uphold *Roe v. Wade* and Americans constitutional right to safe and legal abortion, and he'll deter them with broad language about respecting precedent. During past Senate hearings, we've heard nominees answer critical questions about Americans most fundamental freedoms by making vague statements about "respecting precedent", "stare decisis," and "settled law" -- only to turn around and rule in ways that ignored "precedent" and would have eviscerated Americans basic rights, had those Justices been in the majority.

Exhibit A: Samuel Alito promised that he "would respect legal precedent on abortion rights and put his personal views aside."

Exhibit B: John Roberts assured the Senate Judiciary Committee during his nomination hearing that he believed judges must "be bound down by rules and precedents."

Closing Argument: Yet both justices voted to uphold a federal ban on so-called partial birth-abortion -- taking a stance that Justice Ruth Bader Ginsburg described as "alarming" and as bucking existing precedent.

Furthermore, both Roberts and Alito also voted against protecting women's access to abortion in the 2016 case *Whole Woman's Health v. Hellerstedt*. Though they were in the minority, they both would have allowed Texas to impose medically-unnecessary restrictions in order to close almost all of the abortion providers in the state (Going from 40 to only seven or eight).

In case you still don't get it, both Roberts and Alito also voted to uphold bans on marriage equality -- despite that these rights flow from the same line of cases as *Roe v. Wade*.

One last thing, any discussion of a "Ginsburg rule" in reference to ducking questions about *Roe* is false-- Justice Ginsburg [affirmatively declared the right to safe, legal abortion in her confirmation hearing](#): "The argument was it's her right to decide either way, her right to decide whether or not to bear a child. . . But you asked me about my thinking about equal protection versus individual autonomy, and my answer to

you is it's both. This is something central to a woman's life, to her dignity. It's a decision that she must make for herself. And when Government controls that decision for her, she's being treated as less than a fully adult human responsible for her own choices."

2. Kavanaugh's record does tell a clear story: he does not believe in the constitutional right to access abortion, and has ruled to limit access to abortion and even birth control.

Kavanaugh's record says it all: he would vote to cause irreparable damage to women's health and lives. Just last year, he blocked a lower court's order requiring the Government to allow an undocumented woman entering the United States to have an abortion. Kavanaugh would have allowed the Government to delay the young woman's abortion by more than one month, pushing her into the second trimester. When this order was overturned by the full D.C. Circuit Court of Appeals, Kavanaugh said that court had created a "new right for unlawful immigrant minors in U.S. Government detention to obtain immediate abortion." *Garza v. Hargan*, 874 F.3d 735 (D.C. Cir. 2017). **And he's just as bad on birth control:** Kavanaugh ruled against the birth control benefit and believes that employers have the right to deny their employees health insurance coverage for birth control.

In a speech [given just last year to the American Enterprise Institute](#) Kavanaugh praises Justice Rehnquist's *Roe v. Wade* dissent. In the speech, Kavanaugh refers to *Roe* as a "[freewheeling judicial creation of unenumerated rights](#)" and "[social policy.](#)" Meaning, Kavanaugh doesn't believe that the freedom of women to make decisions about their own bodies without infringement from the government is protected by the fourteenth amendment. This frame would also extend to a whole line of cases that hold that the Constitution protects an individual's liberty to make personal decisions about their bodies and relationship. This includes *Griswold* (accessing contraception regardless of marriage) and *Obergefell* (marriage regardless of sex.)

Kavanaugh is no moderate. We know how Kavanaugh would overrule *Roe v. Wade* because Trump told us he will only appoint biased justices who would, in his words, "automatically" overturn *Roe v. Wade*. Anti-abortion groups who have the goal of overturning *Roe v. Wade* have praised the choice of Kavanaugh. SBA List called him an "[outstanding choice.](#)" Texas Right to Life called him the "[beginning of the end](#)" for *Roe v. Wade*. The extreme, and often violent anti-abortion group Operation Rescue [came out in support](#) of Kavanaugh. One of Kavanaugh's former clerks even [stated](#) that "no court of appeals judge in the nation has a stronger more consistent record" than Kavanaugh on "enforcing restrictions on abortion." Kavanaugh also endorsed the idea that the Constitution only protects those rights that go back to before society evolved to recognize basic freedoms like the right to access birth control, LGBTQ rights and the right to access safe, legal abortion.

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The Supreme Court will undoubtedly be asked to rule in a pivotal case on abortion, as well as other reproductive rights, in the next year. The right for women in America to access abortion and other basic health care is on the line.

Without question, this nomination will determine the balance of the court and the future of people's reproductive rights in this country for generations to come. **In fact, there are already [13 cases on abortion](#) that are only one step away from the Supreme Court.** This includes:

- A law in Kentucky that would effectively ban abortion by shutting down the one health center in the state that provides safe, legal abortion. This would force women to travel out-of-state to access an abortion, if they can at all.

- A law in Arkansas that would ban medication abortion entirely and leave only one health center in the state that provides safe, legal abortion. This means women in areas like Fayetteville would be forced to drive
- Missouri continues to enforce similar laws that make abortion nearly inaccessible for countless women.
- A policy of Health and Human Services under the Trump-Pence administration prevents young, undocumented women in the custody of Scott Lloyd and the Office of Refugee Resettlement from accessing safe, legal abortion-- regardless of if the pregnancy resulted from rape.