

Selecting a New Supreme Court Justice

The latest development front and center is the same in both federal and state governments: the selection of a new Supreme Court justice. In this week's newsletter we will take a look at the selection of a new justice for the U.S. Supreme Court and then also selecting a new justice on the Iowa Supreme Court. Both will affect the lives of Iowans.

Federal

Last month U.S. Supreme Court Justice Anthony Kennedy announced his decision to retire from the bench after 30 years of service on the Supreme Court. He has been the "swing vote" in the Supreme Court on some high profile decisions, sometimes siding with the 4 liberal justices and sometimes with the 4 conservative justices. Thus he has a mixed record. He has been a strong defender of the First Amendment freedom of speech and religious liberty which has been great, but a poor defender of the right to life for the unborn and a loose adherent to the Constitution, having "discovered" a "right" to same sex marriage in the Constitution.

To replace Justice Kennedy, last week President Trump announced he will nominate Judge Brett M. Kavanaugh to the U.S. Supreme Court. Judge Kavanaugh is a federal appellate judge from the Washington D.C. Court of Appeals.

According to the President, "Throughout legal circles he's (Kavanaugh) considered a judge's judge, one of the sharpest legal minds of our time." Senator Grassley commented, "Judge Kavanaugh is one of the most qualified Supreme Court nominees to come before the Senate. His credentials are well known, and he's served with distinction." Kavanaugh earned his undergraduate degree and his law degree from Yale. He was a law clerk for the retiring Justice Kennedy, and was nominated to the United States District Court of Appeals for the District of Columbia Circuit by President George W. Bush in 2003.

Judge Kavanaugh is considered to be a constitutional conservative jurist, holding to a "strict constructionist" kind of philosophy in interpreting the Constitution. He has expressed strong support for closely adhering to the Constitution and its original intent and embraces a respect for the rule of

law. He has spoken out against “judicial activism” otherwise known as “judges legislating from the bench” and “judges making law instead of interpreting law.”

While it is not clearly known how Judge Kavanaugh will rule on specific issues in any future case, in the opinions he has written so far it appears he strongly supports the 1st Amendment freedom of speech and religious liberty, the 2nd Amendment right to keep and bear arms, and reining in regulatory overreach.

I am hopeful and optimistic that Judge Kavanaugh will be the conservative kind of judge that all indications appear that he is. Unless the hearings prove otherwise, I am supportive of Judge Kavanaugh’s nomination as we have seen President Trump keep his promise to put conservative judges on the federal bench. He did so with Justice Neil Gorsuch on the Supreme Court and has been doing so with dozens of other judges he has also appointed and who have been confirmed.

The process for appointing a new Justice to the Supreme Court is laid out in our Constitution. This process ensures nominees are properly vetted by both the President and the Senate before they are appointed.

According to Article II, Section 2 of the Constitution, the President “... shall nominate, and by and with the advice and consent of the Senate, shall appoint.....Judges of the Supreme Court...” The President can nominate anyone to serve on the Supreme Court; the challenge comes in getting the selected person confirmed by the Senate.

Before a vote by the full Senate is taken, the Senate Judiciary Committee will first consider the nominee. Led by Iowa’s own Senator Chuck Grassley, the Judiciary Committee will investigate the background of Judge Kavanaugh and then hold a public hearing where he will be questioned and his views on various issues will be discussed. Once a public hearing has been held, the entire Judiciary Committee by a simple majority will submit a report to the full Senate with their recommendation. The committee can choose to provide a favorable recommendation, an unfavorable recommendation, or provide no recommendation.

Once the Judiciary Committee issues a report to the Senate, the Senate can consider the nominee. A simple majority of 51 is required to confirm the nominee.

No one can predict how fast the confirmation proceedings will progress. It is hoped Judge Kavanaugh will be confirmed before the Supreme Court begins its new term in October.

State of Iowa

Governor Kim Reynolds will have her first opportunity to appoint a Justice to the Iowa Supreme Court this month to replace retiring Justice Bruce Zager, who has served since 2011. The process for selecting a new Justice to the Iowa Supreme Court differs significantly from the federal process.

When a vacancy opens on the Iowa Supreme Court, the State Nominating Commission is convened. The Commission has 14 members and one chairman. The chairman is the senior member of the Iowa Supreme Court, who is not the Chief Justice, which is Justice David Wiggins. Seven members are selected by the Governor and approved by the Senate. The other seven members are selected by members of the Iowa Bar Association. All 14 members serve staggered six year terms.

The Commission is responsible for evaluating qualified candidates to serve as Supreme Court Justices. Qualified candidates must be a resident of the state of Iowa, a member of the Iowa Bar and must be able to serve one full term in office before reaching the age of 72 (the required retirement age for judges in Iowa). A qualified candidate must submit an application to the Commission. The application asks for extensive background information regarding the applicant's education, career and other qualifications.

The Commission then interviews all of the candidates. According to the Commission, the interview should focus on the candidates experience, legal skills, judicial knowledge, and temperament. Information about each applicant is available on the Supreme Court's website and the Commission welcomes comments from the public regarding candidates.

After the interviews are complete, by a majority vote the Commission decides on which candidates' names should be included on the nominee list sent to the Governor. For each spot open on the Supreme Court the

Governor is given a list of three names chosen by the Commission. She must select one name from the list, and that person becomes the next Supreme Court Justice.

On Tuesday, the Commission selected three nominees for the Governor to consider:

- Judge Susan Christensen is from Harlan and currently serves as a District Court Judge in the Fourth Judicial District.
- Terri Combs is an attorney from West Des Moines with the law firm Faegre, Baker, Daniels LLP.
- Judge Kellyann Lekar is the Chief District Court Judge in the First Judicial District and is from Waterloo.

Governor Reynolds will make her selection within the next 30 days.

Here is something to remember as a new Iowa Supreme Court Justice is selected: we need judicial reform because of the excessive influence of the bar association, a left-leaning group, in the selection of our judges. In addition, the people's influence on the selection of judges through their elected governor is hampered by the unelected bureaucrats in the commission process. This is a topic I have covered in previous newsletters.

Next newsletter I will discuss other court decisions impacting Iowans.

Feel free to contact me with ideas, thoughts, and concerns. I want to hear what you are thinking and will listen to your input. Together we will work to make a difference for the future of Iowa.

Thank you again very much for all your support and for the honor of representing you!

Sincerely,

Sandy