

Justice Kavanaugh Sees ‘Concrete Steps’ Ahead to Address Supreme Court Ethics

All nine justices want their ‘respect for the institution to be shared by the American people,’ Kavanaugh tells conference

*By Jess Bravin
Wall Street Journal*

CLEVELAND—Justice Brett Kavanaugh said Thursday he was optimistic that the Supreme Court would soon act to address ethics controversies that have dogged the court in recent months, with the aim of bolstering public confidence in the institution.

“We are continuing to work on those issues and I’m hopeful that there will be some concrete steps taken soon,” Kavanaugh told a conference of judges and lawyers meeting here. All nine justices “respect the institution and want that respect for the institution to be shared by the American people,” he said. “To the extent we can increase confidence, we’re working on that.”

Kavanaugh didn’t detail steps under review, but the court has been [weighing adoption of its first ever code of conduct](#) that would hold justices to standards beyond the legal minimum. Lawmakers and legal ethicists have long called for the justices to follow the example of lower federal courts, which already are bound by a code of conduct.

A code based on the lower-court standards was drafted by the Supreme Court’s legal counsel, people familiar with the matter say, and several members of the court have indicated they are open to putting some version in place. In July, Justice Elena Kagan told a judicial conference in Oregon that the court could head off a conflict with Congress, where the Senate Judiciary Committee in July passed legislation tightening ethics rules for the court, by adopting such a code on its own.

Kavanaugh said he understood that public confidence was essential for an institution that, by its nature, is bound to make decisions opposed by significant numbers of Americans.

“Respect for our system, which we all believe in, depends on the losing party still respecting the process,” Kavanaugh said. “Naturally, some decisions are going to be disagreed with by a large number of people.”

News reports this year have called into question the conduct of several justices, including Clarence Thomas, who for years has accepted luxury vacations from and had other undisclosed dealings with Texas real-estate magnate Harlan Crow and other billionaires active in the conservative movement.

Last week, when Thomas's mandatory financial-disclosure forms were released, the justice's private attorney issued a statement saying [Thomas had complied with ethics rules](#) and that suggestions to the contrary were "based on malicious and sloppy reporting and attacks from partisans who disagree with his jurisprudence and want to drive him and others off the Court."

Kavanaugh spoke at the judicial conference for the Sixth Circuit, encompassing Kentucky, Michigan, Ohio and Tennessee, which he oversees for the Supreme Court.

As is typical for judges, Kavanaugh didn't discuss cases pending before the court when it returns Oct. 2 from its summer recess. While the current docket lacks the kind of hot-button issues that marked recent terms, when the [court rescinded federal abortion rights](#) and [ended affirmative action](#) in college admissions, the justices have several cases that could alter the contours of federal power.

Faced with congressional gridlock, President Biden and his recent predecessors have aggressively employed their executive and regulatory powers to advance their agendas. The court's conservatives, skeptical of federal regulatory powers that have grown since the New Deal era, have limited the Biden administration's use of emergency measures to respond to the Covid-19 pandemic and found the [Environmental Protection Agency exceeded its authority](#) to combat greenhouse gases under the Clean Air Act and protect wetlands under the Clean Water Act.

"You can't get things through Congress, then you push the envelope in the executive branch to do as much as you can and hope to God the courts will uphold it," said Kavanaugh, who was a White House aide to former President George W. Bush. "I saw that process. It's well motivated but you recognize the incentive structure in the executive branch."

Kavanaugh is the closest the current Supreme Court has to a swing vote; he and Chief Justice John Roberts are frequently aligned and most often in the majority. While in 2022 Kavanaugh voted with four other conservatives to overrule *Roe v. Wade*, in June, he joined Roberts and the three liberal justices to [reaffirm Voting Rights Act precedents](#) that prohibit drawing congressional maps that dilute minority political power. That decision upheld a lower-court decision requiring Alabama to remake its congressional map so that Black voters could elect a preferred candidate in two of its seven districts, rather than just one.

In July, the Republican-controlled Alabama Legislature redrew its maps but failed to include the second Black opportunity district, prompting the lower court to order a special master to redraw the maps to comply with its decision. The state attorney general, Republican Steve Marshall, said this week he would again appeal to the Supreme Court; the state's hopes to maintain six white-controlled districts may rest with Kavanaugh, who in a concurring opinion in June said the court hadn't decided whether race-based redistricting should continue indefinitely.