

Kavanaugh once lobbied for judge now handling ethics complaints against him

[Stephanie Kirchgaessner](#)

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Revelation raises concerns about politicization of the supreme court and whether Trump nominee will face disciplinary action

Supreme court justice [Brett Kavanaugh](#) once lobbied in support of a controversial judge who is now tasked with reviewing more than a dozen ethics complaints filed against him during his own confirmation process.

Emails sent to the Senate judiciary committee and obtained by the Guardian show that beginning in 2001, Kavanaugh was involved in a high-stakes campaign to ensure that [Timothy Tymkovich](#), another staunch conservative and a former Colorado solicitor general, would secure a lifetime appointment as a federal judge.

Kavanaugh, who was [confirmed to the supreme court](#) this month, worked on the judicial campaign in his role as a senior staff member for President George W Bush. Tymkovich was confirmed in 2003, after a long delay in the Senate. He is now [chief judge](#) on the 10th circuit court of appeals, in Colorado.

The revelation could create new concerns about the politicization of the supreme court and cast doubt on whether Kavanaugh will face any formal disciplinary action over his [fiery and emotional testimony](#) before the Senate judiciary committee earlier this month.

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Critics, including [hundreds of law professors](#), legal experts and senators, have said that Kavanaugh's performance, in which he lashed out at Democrats over allegations he committed sexual assault, lacked judicial temperament. Kavanaugh fiercely denied the sexual assault allegations.

The chief justice of the supreme court, John Roberts, asked Tymkovich to examine more than a dozen judicial ethics complaints filed against Kavanaugh while he was technically still a circuit court judge. The complaints were not sent to Tymkovich until after Kavanaugh was confirmed to sit on the supreme court, where judges are in effect immune to disciplinary action by lower-court justices and are meant to police their own actions.

The complaints are not public but [according to the Washington Post](#) they allege Kavanaugh lied under oath and that his behaviour before the Senate was ill-suited for a judge.

Some legal [experts](#) have questioned whether it was appropriate for Roberts to wait until after Kavanaugh was confirmed to send the ethics complaints for review. But there has been little scrutiny of the man Roberts chose to conduct the review and his past relationship with Kavanaugh.

According to activists and legislative aides who were involved in the Tymkovich nomination battle, the judge was one of several controversial nominations to the federal court when he was chosen by Bush in 2001.

John Roberts and Kavanaugh and Tymkovich are all in the same professional circle

Resistance against the nomination was rooted in Tymkovich's views on gay rights, recalled [Kristine Lucius](#), who was then working for Democratic Vermont senator Patrick Leahy and is now executive vice-president for policy at the Leadership Conference, a civil rights group.

"John Roberts and Kavanaugh and Tymkovich are all in the same professional circle," she said. "They are all tied to the Bush administration and these are all men who certainly knew each other and now are in very powerful positions on the bench."

They also share a conservative judicial ideology.

Kavanaugh's role in helping Tymkovich navigate difficult political terrain might not be common knowledge, but he admitted it in sworn public testimony in 2004.

Kavanaugh was questioned by senators following his own elevation to the DC circuit court of appeals. In response to questions from Dick Durbin, the Democratic senator from Illinois, Kavanaugh said he "participated in the meetings of a judicial selection committee that was responsible for making recommendations to the president".

Tymkovich was among those discussed, according to Kavanaugh's testimony.

Emails obtained by the Guardian, which were sent to the judicial committee during Kavanaugh's confirmation process, show the Tymkovich nomination was one of several he was watching closely and that Kavanaugh helped plan a lobbying effort in newspapers in support of Tymkovich.

Lucius said that instead of going out of his way to choose a judge who did not have any ties to Kavanaugh, such as one nominated by Bill Clinton or Barack Obama, Roberts had added to the perception that the nine supreme court justices are above the law.

Any other chief judge in any other circuit would have demonstrated more impartiality and less conflict

That perception was ingrained in her, she said, in 2004, when Vice-President Dick Cheney was [revealed](#) to have gone duck hunting in Louisiana with supreme court justice Antonin Scalia. Scalia later [declined to recuse himself](#) from a case involving Cheney.

“When I think of judicial ethics, I think of that moment with Scalia as an ‘emperors have no clothes’ moment, and the realization that there were no ethics rules that apply to those judges,” Lucius said.

Tymkovich has himself been named in the press as a contender for a supreme court nomination, raising more questions about whether he would take any action against Kavanaugh, a sitting member of the court nominated by Donald Trump.

[Leslie Proll](#), a civil rights lawyer who worked on judicial appointments when Tymkovich’s nomination was pending and now advises the National Association for the Advancement of Colored People on judicial nominations, said Roberts’ efforts would not inspire public confidence in the judicial process.

“This is the wrong judge at the wrong time,” she said. “Any other chief judge in any other circuit would have demonstrated more impartiality and less conflict. Appearance of bias is important in the law and this fails the test.”

An attempt to ask Tymkovich if he had a conflict of interest in the case was unsuccessful. A court clerk for the 10th circuit said the judge would not accept any questions from the press.