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Body

[21:00:00] JAKE TAPPER, CNN HOST, "THE LEAD": That's really the question. I don't think -- I think the groups like Planned Parenthood, NARAL, all those groups, they expect Murkowski and Collins to vote against any Trump nominee.

I think that that is not in the cards. You're really going to have to make a case for them, and they both voted for Neil Gorsuch.

JEFFREY TOOBIN, CNN CHIEF LEGAL ANALYST: Susan Collins has never voted against a Supreme Court nominee of any president. I mean, she -- so it would be extremely out of character for her.

DANA BASH, CNN CHIEF POLITICAL CORRESPONDENT: It would be out of character, but this is obviously different because it's --

ANDERSON COOPER, CNN HOST, "AC360": The first lady just walked into the room. Sorry. Go ahead, Dana.

BASH: It's different because it's a piece of legislation, not a position on the highest court in the land. But they have a sense of responsibility, these two female Republicans who are self-described pro-choice Republicans, on Obamacare, for example, on overturning it on the issue of abortion, making sure that women in their states and across the country had access. So, that was something that they thought carefully about. It's different, I guess, when they're voting on an issue rather than putting somebody up on the court who may or may not hold those beliefs.

COOPER: It's also going to be interesting to see, Jake, tonight how much the president speaks before actually getting to what everyone is gathered here to hear.

TAPPER: Yes, because he loves this moment. Gorsuch, you might remember, during that rocky first half of his first year -- Gorsuch was one of the moments that went off pretty well, whatever you think of him as a judge or as a nominee. That announcement went well compared to so many other things in the first six months of his presidency.

And, look, I mean this is a president who -- we've made it to 9:01, and we still do not know for sure who it is.

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COOPER: And there is the president. Let's listen in.

(APPLAUSE)

DONALD TRUMP, PRESIDENT OF THE UNITED STATES: My fellow Americans, tonight I speak to you from the East Room of the White House regarding one of the most profound responsibilities of the president of the United States, and that is the selection of a Supreme Court justice.

(PRESIDENT TRUMP & JUDGE KAVANAUGH'S SPEECHES)

BRETT KAVANAUGH, SUPREME COURT NOMINEE: Thank you, Mr. President.

(APPLAUSE)

CHRIS CUOMO, CNN HOST: Live from our nation's capital, welcome to PRIME TIME.

A moment that will certainly make history in the United States. We now know President Trump's nominee for the next seat on the Supreme Court vacated by Justice Anthony Kennedy, and it is Brett Kavanaugh.

Let's get right to the analysis. We have some great minds for you.

Let's start with our chief Washington correspondent, of course, host of "THE LEAD" and "STATE OF THE UNION", Jake Tapper.

What's the initial reaction?

TAPPER: Well, I think -- I think you're going to see a lot of statements from senators saying I'm going to take this person seriously, et cetera. But one key statement we've seen from Chuck Schumer of New York says he's going to oppose Brett Kavanaugh's nomination with everything he has. One thing we should point out is that there are two different careers of Brett Kavanaugh. One is the career as a judge. He's been on the D.C. Court of Appeals, and Jeffrey and Joan will talk more about that.

But the other is he's been a political operative working in the worlds of conservative lawyers, conservative operators, and this is where I think it's going to be very contentious in the Senate because more than a decade ago when he was up for his first judgeship, Schumer referred to his nomination, Brett Kavanaugh's nomination, as not just a dash of salt in the partisan wounds, but the whole shaker.

CUOMO: They held it up for, what, three years almost?

TAPPER: Yes, it was -- it was part of that whole deal, the gang of 14. Ultimately he was confirmed. But you have to understand, Dick Durbin, the number two Senate Democrat, referred to him once, Brett Kavanaugh, as the Forrest Gump of conservative politics.

That's not fair to his intellect or his very fine legal mind, but it is fair to the fact that he does crop up throughout Republican politics, especially flash events. For instance, he worked for Ken Starr, and he was behind the scenes pushing for some of the most salacious, invasive in the views of Bill Clinton, questions about Bill Clinton. He represented Elian Gonzalez and the attempt to keep Elian Gonzalez here. He was on the Bush legal team in Bush v. Gore. He was the staff secretary for George W. Bush and was there as well as in the White House counsel's office for some of those events.

[21:05:00] So in addition to all the questions about his rulings he's going to face, he is going to face so many questions about his moments working as a political operative. Now, on the other hand, so did John Roberts. Now, he wasn't quite the same thing. He wasn't the whole shaker of salt as Chuck Schumer said. But he also was a political operative, and he made it through OK.

CUOMO: So, what does Trump and co. know about the process and what they can sell about Kavanaugh that will offset this resistance that we expect from Schumer and the Democrats?

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TAPPER: The fact that they have a majority in the Senate.

CUOMO: Simple as that.

TAPPER: It's as simple as that.

CUOMO: And they don't think that he's somebody who would pull away some of the more vulnerable Republicans, the Collins, the Murkowski.

TAPPER: Yes, I don't think that there is anything in the record that will make Collins and Murkowski say he is obviously flagrantly against Roe v. Wade if that is the one thing they're looking for. I do not see anything in his record that would suggest that. In fact there was a ruling he made about abortion and whether or not an undocumented immigrant who was trying to get an abortion -- whether or not the government had to facilitate it. He ruled against her, but he didn't slap it down as strongly as conservatives wanted him to.

CUOMO: Right. So, let's bring in some voices here together. We have Joan Biskupic, who is obviously our Supreme Court analyst and we got Jeffrey Toobin, chief legal correspondent.

So, in that case, it really is the only thing that we have on point with this particular nominee about what could be Roe versus Wade jurisprudence. He was a dissenting opinion in that case, but he did take some time to talk about his dislike for the idea of unfettered access immediately to an undocumented immigrant for an abortion. And yet to Jake's points, what does this look like in terms of confirmation?

TOOBIN: Well, you know, numbers matter. And there is a Republican majority, a small one.

CUOMO: Very small.

TOOBIN: But a Republican majority in the Senate. And the only two votes that appear to be in play, Susan Collins and Lisa Murkowski, have voted for every single judicial appointment that Donald Trump has made, including Neil Gorsuch. So the odds of peeling them off are difficult, but, you know, let's see how the process plays out. I mean, I think the most important witness here in a way is not Brett Kavanaugh. It's Donald Trump because Donald Trump said during the campaign, in the most explicit way, said it to Jake in interviews, said it publicly, said it during the debates with Hillary Clinton, I will appoint pro-life justices who will vote to overturn Roe v. Wade.

CUOMO: Right.

TOOBIN: I think that's what he meant.

(CROSSTALK)

CUOMO: Right. Look, tonight, he said something very different. He talked about Ronald Reagan. He said he had Ed Meese in attendance. And he said, I want to agree --

TAPPER: He said in brief.

CUOMO: I want to agree with Ronald Reagan in saying it's not about their views. They have to set aside personal opinions. He said the exact opposite on the campaign trail.

However, he won't be the one who is getting vetted by the Senate right now. It's going to be Kavanaugh.

How do you think he stands up, Joan?

JOAN BISKUPIC, CNN LEGAL ANALYST: I think he's got a very strong fighting chance for two reasons having to do with his experience. Not just that he has the 12 years on the D.C. Circuit, very distinguished record there --

CUOMO: Right, almost --

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BISKUPIC: -- but no real flashpoints that could sink him.

But I'll tell you what else he has. That experience that Jake talked about, he's been there. He's been behind the scenes.

I think he took a strong hand in his own nomination because he -- remember, this was a man who was identified with George W. Bush in every way. He worked there as staff secretary. He had worked in the White House counsel's office. He married George Bush's personal secretary. He had worked in the George H.W. Bush administration.

Donald Trump had to get over that to pick him.

CUOMO: Well, it obviously took some time. He wasn't on the first two offerings in 2016 in May and September.

BISKUPIC: That's right. But that gets me to my point about what kind of witness he can be for himself. OK. He opened tonight by first saluting the president, saying, you've talked to more people than any other president.

CUOMO: Which he would know. BISKUPIC: We know -- we know that you know presidents and how they do this.

First, he saluted him, but then he quickly pivoted to the Bush White House and also his own independence. And I think that he will -- he will try to be the best witness for himself, of course.

But I have to tell you, remember when Chuck Schumer said that -- Chuck Schumer presided over hearings for him for the D.C. Circuit twice, and both time he said it's going to be awful. I'm sorry your family is going to have to watch this. He got through.

CUOMO: It was a 57-36 vote. It was interesting to hear tonight that he took the time to say many of the clerks I have chosen have been women. He talked about his wife and his kids in a way that reinforced his love and his good feelings about making them strong.

TAPPER: About his mom, his mother, who went to law school --

CUOMO: A prosecutor and a judge.

TAPPER: -- became a prosecutor, became a judge.

CUOMO: Yes.

TAPPER: He did that.

Look, I mean, one of the biggest myths in Washington, D.C. is that judges are not political. Obviously, they're very political both in bad ways and in good ways.

[21:10:00] In good ways, I mean here it what Joan was talking about. He's smart. He knows what he's doing.

In fact, he was the one who recommended to President Bush, President George W. Bush, at least according to Bush in "Decision Points", his autobiography, who recommended that Roberts be the pick. Bush was trying to decide between a number of conservative judges, and he said -- and we said, which one will be the one who will be a leader because, remember, it was for the chief justice seat. And it was Kavanaugh who recommended John Roberts.

And I think that John Roberts is somebody that he has followed his career and modeled himself after. We should also point out that I think Neil Gorsuch was two years ahead of him at Georgetown prep. So, these are swampy selections.

BISKUPIC: Well, and who did he invoke? What justice on the Supreme Court name did he mention? Elena Kagan --

TAPPER: Right.

BISKUPIC: A president Obama appointee.

CUOMO: Right, after thanking and showing respect for Kennedy who he clerked for. You know -- TOOBIN: And don't hold your breath for how often they vote together, but that's OK.

CUOMO: The numbers game. Look, God willing, Senator McCain is healthy enough to come in and vote. If he is not, then you really have a one-vote margin in here.

Do you think that they will hold ranks because everybody keeps saying it's going to be a war, it's going to be a war? But it comes down to numbers. And if they hold ranks, how do they lose?

TOOBIN: Well, they don't lose if they hold ranks. Plus, there are a number of red-state Democrats who will very likely have to take seriously the idea of voting for --

CUOMO: Joe Manchin put out a statement just minutes after this was announced, and he says, I'm going to look at it. I'm going to talk to him. My big issue is pre-existing conditions, health care. It affects a lot of people in West Virginia.

But he is a possible vote yes.

TOOBIN: And three Democrats, Heidi Heitkamp of North Dakota, Joe Donnelly of Indiana, and was it Manchin?

CUOMO: Yes.

TOOBIN: Manchin of West Virginia all voted for Neil Gorsuch. Those are certainly targets of opportunity for Kavanaugh to win.

So, any of those increases the margin of error that they have with the Republicans. So, I mean, he's in good shape.

BISKUPIC: And he voted on the Affordable Care Act.

TAPPER: Right, I was going to say.

BISKUPIC: Yes, he voted in 2011 before it went up to the Supreme Court. And he didn't vote to strike it down. He took on off ramp, kind of, you know, classic Brett Kavanaugh to try to not stir more controversy.

CUOMO: So, what he did, though, it's important for people to know, because now, people are going to start looking. The plus-minus is 300 decisions.

TAPPER: Right.

CUOMO: That's a lot of decisions.

TAPPER: Right.

CUOMO: His 12 years on the D.C. Circuit puts him, I think, about as long as any recent nominee in terms of time on the appellate court.

TOOBIN: Alito was longer, but none of the others. CUOMO: Yes, he was back in the early 2000s.

BISKUPIC: Justice Sotomayor was also longer on lower courts, too.

TOOBIN: Yes.

CUOMO: So he has a lot of decisions. You're going to look at the decisions. This ACA decision that we're talking about, now you have to read the decision because he didn't go after the ACA.

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TAPPER: No.

BISKUPIC: Not at all.

CUOMO: But the way he didn't go after it was by saying, well, this -- the colorable action here is about whether or not it was done right from a legislative perspective, and the bill did technically start in the House. So --

BISKUPIC: Actually, this is slightly different, Chris. This was the anti-injunction act one. Equally boring sounding to our audience, I'm sure.

CUOMO: And what did he do in this one?

BISKUPIC: And the one -- the key one where he didn't reverse the ACA's individual mandate, that's when he said it was because it was premature to have -- to look at it through the anti-injunction --

CUOMO: And then what happened when it got sent up?

BISKUPIC: Then the Supreme Court, through John Roberts flipping his vote to --

CUOMO: Then that was the decision there?

BISKUPIC: Yes, exactly right.

TAPPER: In fact, in his decision -- correct me if I'm wrong, Joan, because you and Jeff know much more about this, and you do, Chris, but I think in his dissent in which he argued that there wasn't standing to even make a decision at that point, he talked about taxes.

BISKUPIC: Yes, he based it on --

(CROSSTALK)

TAPPER: Right? He alluded to taxes.

BISKUPIC: Right.

TAPPER: And whether or not the fines if you didn't buy health care, whether or not that constituted a tax. And some conservatives and some people think it's completely unfair, but some conservatives think that he was providing some form of a roadmap to John Roberts as to how to keep the Affordable Care Act alive. CUOMO: Jake's right because they said that about his dissents in general.

BISKUPIC: Jake is right about what they say, but they are wrong.

CUOMO: Why are they wrong?

BISKUPIC: Well, because John Roberts did not take a page from Brett Kavanaugh when --

TAPPER: But I'm saying he was faulted for it.

BISKUPIC: Yes, right.

[21:15:00] CUOMO: But how do we know that he doesn't exert that kind of influence when they also talk about his dissents and the influence on Scalia, that he would signal from the D.C. circuit to Scalia when you should review one of these cases and that Scalia not only listened but sometimes quoted him?

BISKUPIC: The Supreme Court is always looking at key lower court judges for signals. So, it's not -- it wasn't that big of a deal. But Brett Kavanaugh certainly on environmental issues was always scaling back the EPA.

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TOOBIN: But before we get too far into the weeds when we talk about the environment, let's remember what side Brett Kavanaugh is on in those controversial cases. He is always in these -- not in every case, but in these controversial cases, on the side of industry. He is against the ability of the government to regulate.

I mean this is one of the great -- you know, we talk about abortion, which is obviously a very important part of the conservative agenda at the Supreme Court. But just as important are the cases limiting the power of government to regulate the economy. That's a big part of it, and Kavanaugh, even more than social issues, which tend not to come up a lot in the D.C. Circuit, has been a powerful voice on limiting government's ability to regulate, especially in the environmental area.

TAPPER: Although not different from Justice Kennedy's voice, right? I mean, Justice Kennedy --

BISKUPIC: No. Kennedy was a little more to the center. I would say that Brett Kavanaugh is much more on the -- was much more on the side of industry.

CUOMO: Well, he wrote over 100 decisions on administrative law that were often about the ability of the executive to regulate and cabinet overreach, which is, of course, an interest that he shares with Don McGahn in the White House counsel's office.

BISKUPIC: Right, and, Jake, it's the court. It's the court he's on that really gave him that opportunity to develop that much more than --

(CROSSTALK)

CUOMO: But it is also a little bit of selective in terms of his feelings about what you're talking about, Jeffrey, in terms of the government's ability to regulate because on contraception, he had a case where he seemed to be making a different argument, which is that the government did have a compelling interest in regulating contraception. It just didn't work in the case that was in front of him at the time. So, it's about his buckets of interest as well.

Let's get a little reporting on what the fallout and the meaning of this decision to have Brett Kavanaugh, appellate judge from the D.C. Circuit. We've got Jim Acosta at the White House.

How is it playing?

JIM ACOSTA, CNN CHIEF WHITE HOUSE CORRESPONDENT: Yes. Chris, we're just trying to grab a few folks as they were leaving the room here, some of the VIPs on hand for the president's announcement.

Just very briefly caught up with the Attorney General Jeff Sessions. I asked him if he wanted to comment. He said really nothing more than I think he'll be great. And then he was moving along his way. So, somebody we don't get a whole lot of questions to took a quick question from me as he was leaving the room.

Also, we should point out, Sarah Sanders, the White House press secretary, Marc Short, the head of legislative affairs over here at the White House, they were both fielding questions from reporters. Not saying a whole lot from a newsy standpoint. Sarah Sanders did say that they don't anticipate any problems at this point getting Justice Kavanaugh confirmed. That is obviously something that she would say, but she said that we don't think it will take until October, this fall, to get Kavanaugh confirmed.

So, they feel pretty confident about all that. Obviously, this process is going to get started almost immediately. Kavanaugh I'm sure will be on Capitol Hill if not tomorrow, shortly thereafter, meeting with senators.

All we saw in the room, Chris, were Republican senators although they invited --

CUOMO: Right.

ACOSTA: -- a group of Democratic lawmakers over here. None of those Democratic lawmakers said yes.

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And then the other thing we should point out, Senator Mike Lee, whose name came up in the beginning of this process, was not a main contender at the end of the process, said he thinks Kavanaugh will be, quote, terrific.

And so, all in all, this was pretty much a cheering section inside the East Room of the White House. They're pretty high on Brett Kavanaugh.

But as you were saying before you came out to me, obviously this is the test. Can they get somebody who came out with a young family, somebody who promises to judge the Constitution at it's written, but he said also by also respecting American tradition and history and so on. He didn't give a whole lot of tea leaves here in terms of exactly how he'll rule from the bench.

CUOMO: Right.

ACOSTA: But overall, a very positive reception here at the White House and a lot of confidence among top White House officials that Justice Kavanaugh should be confirmed rather easily. And that obviously is something that we'll be seeing in the days and weeks to come, Chris.

CUOMO: Well, with the numbers so tight, easily -- you know, we'll have to see how it plays out. It could be that way, but we'll have to see.

And I don't think you can take any of the nominee speeches from our lifetime, Jim, and take that one paragraph and have a lot of differences. I believe in an independent judiciary. I will have an open mind, case by case basis.

But as we know, that means different things to different people when we get on the court.

Jim, thank you very much.

ACOSTA: I think that's right. You bet.

CUOMO: We have the great debate. Before I get to it, Jake, one thing, a big issue that we didn't talk about yet -- timing.

TAPPER: Yes.

CUOMO: We know what the process is, but Trump said it. Sarah Sanders said it. All the Republicans say speedy, speedy, speedy. It should happen right away.

Any chance that this could be forestalled until the midterms?

TAPPER: I doubt it just because the Republicans control the Senate, but I will say this -- there are a lot of documents to go through when you consider that he worked for George H.W. Bush, Ken Starr, George W. Bush, and that's not even getting into his legal documents. He worked for Elian Gonzalez. He worked for Bush v. Gore.

There are -- I mean, I don't think it's crazy to say there are hundreds of thousands if not millions of pages that the Senate Judiciary Committee is going to have to go over. That said, they want this done, and the majority rules.

CUOMO: And Grassley can make his certain rules in terms of how much paper is needed to be reviewed before they get to the main Senate.

TAPPER: Yes. Ultimately, they'll make that decision. TOOBIN: And they have -- they have already laid out the schedule. They say they want the hearings to begin shortly after Labor Day and to have a vote by the first Monday on October, which happened this year to be October 1st. So, it's going to have to be fast.

But as you point out, Mitch McConnell controls the calendar, and if he has to sit all night to let the Democrats talk, I think that's precisely what he'll do.

CUOMO: Let me make a call on the fly here, why waste all these good minds and limit it to only two?

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So, let's bring in Rick Santorum and Jennifer Granholm, but let's add it to the mix.

You guys don't have to go point for point with each other. We've got a lot of people you can go back and forth with.

So, let's get the perspective from each of you quickly about how much confidence you have in this choice.

Jennifer, first to you from the perspective of the Democrats.

[21:20:00] JENNIFER GRANHOLM, CNN SENIOR POLITICAL COMMENTATOR: Yes. I mean, the Democrats have to realize that just because they don't have the majority in the Senate doesn't mean that a majority of Americans don't want to see this person because of the health care issue that you raised. This Affordable Care Act decision that he made in Seven Skies and his criticism of Justice Roberts in the Affordable -- ultimate Affordable Care Act decision are huge tells of where he will be.

When you combine that with the fact that there is a case that is coming out of Texas that is challenging the pre-existing condition -- you know, the requirement to cover people with pre-existing conditions and it's being brought by all these Republican A.G.s, and it's going to end up at the Supreme Court, and the pressure on him to support those Republicans given that he is, as Jake said, a Republican operative, this is a huge health care issue.

CUOMO: OK.

GRANHOLM: And look at the people -- wait, let me say look at the people who will be deciding this. If you look at Joe Manchin, his Affordable -- the number of people who are uninsured in West Virginia have dropped by 62 percent.

CUOMO: He just said it in his own statement, Jennifer. He just said in his own statement, Joe Manchin --

GRANHOLM: Well, that's what I'm just saying.

CUOMO: -- that this matters, pre-existing conditions matters. He has to talk to the man.

GRANHOLM: It's huge. It's huge, and the opioid crisis. CUOMO: But they don't need his vote to get him through. But they don't need his vote to get him through.

GRANHOLM: Well, all I'm saying -- I know, but you guys have been talking about will Democrats cover (ph)? So Democrats have to hold on to it, and people who are citizens out there who care about pre-existing conditions need to knock and call Susan Collins and Murkowski and, you know, I mean, who knows what's going to happen with John McCain.

CUOMO: All right. So --

GRANHOLM: But the bottom line is the Affordable Care Act was held up by those two and John McCain. This can be held up as well if people care about health care.

CUOMO: Well, but also to your point, John Roberts wound up holding it up. You know, he wrote that decision. So let's just vet what you're saying right now with Joan because why waste the resource?

So, the idea that Kavanaugh is a vote to take down the ACA. Fair point?

BISKUPIC: Well, I do think it's a fair point to raise. You know, he side stepped it in 2011. It doesn't mean he'd side step it in the next time.

I don't -- I actually think that Jennifer has a point, that that's a big deal, a very big deal. And given his leanings on things, I think that he could vote against it.

CUOMO: All right.

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BISKUPIC: So I think that should be the kind of thing that's aired as much as possible there.

CUOMO: Yes, Rick, go ahead. To you.

RICK SANTORUM, CNN SENIOR POLITICAL COMMENTATOR: Yes. I mean, first off, he's replacing Justice Kennedy, who voted against Justice Roberts. So the idea this is going to change the balance of the court on Obamacare is just folly, number one. Justice Roberts went with the four liberals on the court. So, this is much ado about nothing.

The reality is Democrats are running away from the affordable care act and they want to abolish it too. So, they want -- they want Medicare for all and single-payer system.

GRANHOLM: Democrats are not running away from the Affordable Care Act.

SANTORUM: Sure they are. Sure they are.

Every Democrat running for president is running for Medicare for all. That's running away from the Affordable Care Act because they don't think it works. GRANHOLM: No, oh my God!

SANTORUM: So, to bring up a scare campaign when you're replacing one judge who voted against the Affordable Care Act for another who might do the same, doesn't change the balance on the court. So get another issue.

There are a lot bigger issues here, but the Democrats' meme in this election is we're going to run on health care. So they're trying to somehow bootstrap this particular case into some sort of, you know, campaign against Kavanaugh. It's not going to work.

GRANHOLM: Rick, what are you going to say? There are all of these Republican attorneys general who are bringing up the pre-existing condition -- the ban on --

(CROSSTALK)

SANTORUM: Right. He replaced the judge that voted against it the last time.

GRANHOLM: Yes, and every one of the Republicans, including John Roberts, could take a look at it again, Rick. I mean, that's the point of having an overwhelmingly Republican Supreme Court.

SANTORUM: But Roberts voted the other way.

GRANHOLM: But Roberts wrote (ph) the other way to one issue, in one issue.

(CROSSTALK)

CUOMO: Roberts wrote it the other way, but things can change, Rick. And you're not giving any credence to what Kavanaugh has done on his own bench. Shouldn't you?

SANTORUM: Well, look, I think if you look at what he's done on his own bench on this issue, he side-stepped the issue. He actually referred to the -- to this as a tax.

(CROSSTALK)

CUOMO: He criticized Roberts' decision. Doesn't that tell you what you need to know?

SANTORUM: Well, but he also -- but he also agreed with Roberts in the sense that he thought this was a tax. So, I mean, he used -- he used, you know, a somewhat arcane measure to dispose of the case.

The bottom line is I don't think this is going to be a particularly effective line because you have Justice Roberts, who seems pretty intent, at least from his rulings, on maintaining the ACA.

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CUOMO: Well, but here's the thing, to bring back out here, the reason that, you know, this issue is a legitimate issue, OK, they'll have political arguments about which side they're on about it. But what Kavanaugh would do with the ACA is a legitimate issue. But here's the problem: unless you can glean it from the two or three cases that have touched on it in the past, we'll never understand it from the nomination process.

(CROSSTALK)

TOOBIN: Ever since Robert Bork in 1987, nominees --

CUOMO: Who was too honest.

TOOBIN: Well, exactly. Nominees, you know, they asked Robert Bork tough questions about his views, and he answered them, a mistake that no subsequent nominee has made. And they -- and so we can anticipate the pleasant stonewall --

CUOMO: Right.

TOOBIN: -- that every subsequent nominee has given.

So, basically, we're going to have to listen to partisans from both sides extrapolate from Roberts -- from Kavanaugh's record.

TAPPER: What these confirmation hearings have ended up being are little speeches about how great the nominee is or the senators' concerns about the nominee, and the nominee not saying anything.

CUOMO: Right.

TAPPER: The nominee -- I think John Roberts' favorite technique was just to say -- to basically cite case law that was relevant and just wear out the clock.

CUOMO: Because he knew the senators up there weren't going to know half the cases. They'd have to consult with everybody behind them.

TAPPER: Brett Kavanaugh has appeared before the senate. He has been asked his views on Roe v. Wade. He has, just to give an example that a lot of people are talking about these days, he has said that he respects precedent and he would not give his personal opinion. We're going to see that again.

CUOMO: Yes, they always say the same thing.

Now, Rick, here's another thing for you to contend with in defending the choice. Now, President Trump, this guy was not on his early list, OK? He wasn't on the May or September 2016 lists, and the speculation was it was because he was too much of an insider, too close to Bush, whatever. Who knows what it was? He's there now. He's his nominee now.

But this man has spent a lot of his life pushing the position -- Brett Kavanaugh I'm talking about -- that presidents should not be bothered with litigation, that they should not be subject to litigation. And that is an awfully coincidental position for him to hold given what President Trump could be heading into politically. Yes or no?

[21:25:00]

SANTORUM: Well, yes, but I mean if you look at the other side, he also worked for Ken Starr and drafted impeachment resolutions that said if you lie to the American public, you should be impeached.

CUOMO: If you lie under oath to the American public.

TOOBIN: No, he said to the public --

CUOMO: I'm saying that's what wound up being the difference materially.

SANTORUM: No, but I understand that. But Kavanaugh -- I mean, that's something I suspect the Democrats are going to have a lot of fun with.

CUOMO: They'll have fun with it, but obviously Trump has gotten over it because he picked him, right?

SANTORUM: Well, I agree.

CUOMO: So, I think what must have mattered more to him is that this is a jurist who doesn't believe in a president being exposed to a lot of legal pressure.

SANTORUM: I think that's a general perception within the legal community, that the president of the United States should not be -- you know, should not be subject to indictment. The way to deal with the president of the United States, if there's any kind of illegal activity, is to impeach him. That's how the Constitution deals with it.

And so, I don't think there's a whole lot of lawyers out there of the caliber that we're talking about who believe that we should have the judiciary, you know, bringing the president into court. I don't think that's a good idea and that's not --

CUOMO: Well, let's see. Jennifer Granholm, how big a deal for you will it be that Kavanaugh has written and ruled that presidents shouldn't be distracted by investigations and lawsuits?

GRANHOLM: It's more than that. It's more than distractions.

He has said that presidents should not be indicted. Presidents should not even be under investigation if the president doesn't agree to it. In that Seven Skies decision, in the dissent for the Affordable Care Act decision that he was overruled in on the D.C. Circuit, he was talking about how a president should just be able to interpret the Constitution in the way that he sees fit. It's like as though he is writing the script for a president being above the law.

If this person is going to sit on the Supreme Court when anything related to the Mueller investigation comes before the Supreme Court, if that happens, then I would hope that senators will be asking whether he will recuse himself given what he has said about the power of the executive and the unfettered power of the executive.

CUOMO: What do you think about that, Joan?

(CROSSTALK)

[21:30:00]SANTORUM: He's not above the law.

CUOMO: Rick, hold on a second.

SANTORUM: He's subject to the Congress. That's not above the law.

CUOMO: I know. I get what your opinion is. I get what your opinion is about it. I'm just saying given what Kavanaugh has said, let's get some context on what that would mean. The idea that Granholm was saying that maybe he'd have to recuse himself, we've almost never seen that.

BISKUPIC: No, I don't think he's going to have to recuse himself, but I do want to make a point about his general attitude toward executive prerogatives, executive power, very strong in those areas, not just when it comes to things like what we would expect with the Mueller investigation, but just the president's power, for example, to challenge the consumer financial -- CFPB. He said --

TAPPER: Which he thinks is unconstitutional.

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BISKUPIC: Yes. He was in dissent when the D.C. circuit upheld it, saying that, you know, these kinds of agencies are like a fourth branch of government starting to steal power. And so, he's very strong in that area. But one thing I just want to make sure we say on the record.

CUOMO: Please.

BISKUPIC: I don't think we can judge what John Roberts is going to do in any subsequent health care cases by what he did the first time around.

TOOBIN: Can I just offer the fact that Joan is just completing a biography of Joan Roberts, so she's in a position to know better than any of us about that.

BISKUPIC: So it will be a fresh case, and Justice Kennedy's vote might have made a difference. Now it will be Brett Kavanaugh's.

CUOMO: All right. So, let's do this. Let's take a quick break. Let's take a look. Everybody can check their social media and see how this is playing and we'll see what the big issues are that are popping up early on.

Brett Kavanaugh is the president's nominee for Supreme Court. Will he pass the test with the Senate? We'll see.

The big questions ahead. Stay with CNN.

[21:35:00] CUOMO: All right. Big news for this country, maybe for decades to come. We now know who the president wants as the next Supreme Court justice to fill the seat vacated by Anthony Kennedy.

And it will be a man named Brett Kavanaugh. He spent many years, a decade plus, on the D.C. Circuit Court, 300 cases he's written. So, there's a lot to go through. And he has extensive political history.

So, let's get some personal perspective. We got Luke McCloud with us right now. He's a former clerk for the newly announced Supreme Court nominee.

Good to have you, sir. What can you tell us about your old boss?

LUKE MCCLOUD, FORMER CLERK TO JUDGE KAVANAUGH: Well, thanks for having me, Chris.

And I can tell you, I think that the president has made an excellent choice with Judge Kavanaugh. He's extremely well-qualified. Has a record, as you said, of over 300 decisions in some of the most complicated areas of the law that federal courts face. And across those decisions, he's earned the respect of a wide variety of folks in the legal industry, judges across the political spectrum.

I think another thing that folks should know about Judge Kavanaugh is he is just a great guy. Maybe, you know, even better -- he's a great judge, but he's an excellent person. He's very involved in his community -- whether it's serving meals with Catholic Charities or coaching his daughter's little league teams or just being a mentor to young lawyers like myself.

CUOMO: So, there are going to be a lot of questions that people have about the judge going forward. We know that's the process.

Let me ask you a couple things that you would have a take on, having worked with him closely. One of the big concerns is that these men and women, when they get on the Supreme Court, never really lose their partisan stripes. What do you know about Kavanaugh, especially given his extensive partisan history, not that it's good or bad, but what makes you feel confident that when he gets on that bench, he's not a Republican on the bench?

MCCLOUD: Well, Chris, I'm confident because having worked with Judge Kavanaugh day in, day out for over a year, I know that he's very independent and very fair minded. He's never going to prejudge an issue based on who the parties to the case are.

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He has certain core commitments that he applies in every case. Those commitments have led him to roll for a lot of different parties, whether they're criminal defendants or corporations. And I think in every case that comes before him on the court, he's going to take a hard look at the facts of that case, what the law says, and try very hard to come up with the best answer as he sees the law.

CUOMO: You ever hear him talk about being on the Supreme Court? MCCLOUD: No, no, I didn't. That's -- I don't think this is something that he planned for or expected. He really is just a very down to earth guy.

You know, when we're outside of chambers, it's not the law we talk about. It's the Nationals, how they're doing in the baseball season or other sports. Or, you know, just TV shows or books that he's reading.

So, you know, he's not I think this sort of person that's been planning for this day for all his life. He really is just a regular kind of guy.

CUOMO: All right. Hey, Luke, I appreciate you being on with us. Thanks for the perspective.

MCCLOUD: Thank you very much.

TOOBIN: Can I just make -- we're talking about personal points.

CUOMO: Yes.

TOOBIN: Think about two people who watch tonight. Brett Kavanaugh is a judge on the D.C. Circuit. You know who the chief judge of the D.C. Circuit is? It's Merrick Garland. How do you think he feels today?

I mean, Merrick Garland is a class act. He's moved on with his life. But, you know, the idea that he never got the moment that Kavanaugh is going to get. I mean, he got the moment of being announced, but he never got -- the other person is -

[21:40:00]

CUOMO: Trump's sister.

(LAUGHTER)

TOOBIN: Well, Trump's sister, whose advice was not taken.

But Hillary Clinton. I mean, Brett Kavanaugh made his name by investigating not just the Starr -- you know, not just Whitewater but the Monica Lewinsky part, the sexual details.

CUOMO: The tawdry, sordid, deep and dark stuff.

TOOBIN: His -- you know, making his name for himself got him on the trajectory that he is today. And Hillary Clinton has to watch yet another Supreme Court nomination that she thought she was going to get.

CUOMO: Right, but look --

BISKUPIC: Can I just add one more name?

CUOMO: Go ahead. BISKUPIC: And that's Thomas Hardiman. Last year, remember he was the runner-up. This year, they kept talking about his star rising. And, obviously, he's not -- he's not the choice.

So, it just seems like he was kind of hung out a little bit. I mean, I felt like Brett Kavanaugh always had the inside track, but a lot of the reporting that the White House was suggesting --

CUOMO: Well, it's also -- look, it's also insight into the fact that just because the president says he's into something doesn't mean it's the way it's going to go. He said he liked his personal story. That that was the reporting given to him.

TAPPER: About Hardiman.

CUOMO: Right. Even though I don't know why.

BISKUPIC: Yes.

CUOMO: Because it's not Trump's personal story. So, I don't why it resonates.

(CROSSTALK)

TAPPER: -- out from his bootstraps --

CUOMO: Oh, I get hwy his story is impressive. I don't know why it resonated with Trump when it has nothing to do with his own personal story.

(LAUGHTER)

CUOMO: But also, he has said women. I really want to pick a woman.

There's so many qualified female jurists, you know, and -- well, one that they thought they had a chance, although it would have been arguably premature with Coney Barrett. You know, she got on. She'd never been in a lower court. She's on the circuit for about a year now.

She was like at home in South Bend. He could have picked a woman if it was that important to him. But he chose not to.

[21:45:00]TAPPER: Yes, one that I thought for --

CUOMO: But this is the establishment's choice, you know that, right?

TAPPER: Of course.

CUOMO: This guy Kavanaugh checks the boxes for them.

TAPPER: He's the George W. Bush.

CUOMO: Right.

TAPPER: That was thought to be the strike against him -- CUOMO: Right.

TAPPER: -- that he was so close with the Bushes. Jeb Bush supported him, George W. Bush supported him. I'm sure George H.W. Bush, given that he worked for him as well in the solicitor general's office.

One of the great conundrums about Donald Trump is the fact that there's part of him that likes to disrupt and throw a wrench into the works. And for that reason, I thought for a while that Judge Barrett might get the nod just because it would have been -- the base would have been so happy with the pick, and it would have upset Mitch McConnell who said it would have been tough to get her through a Senate confirmation fight.

But there's also part of President Trump, and this is not going to shock anybody, that really loves to be accepted and loves to be embraced by the elite, however much he leads a charge. He likes it when the U.S. Senate likes him. He likes it when Mitch McConnell likes him. He likes when the establishment accepts him.

That's part of him he doesn't talk about much, but it's one of the reasons why he rails against "The New York Times" and then calls Maggie Haberman and dishes to her, because he wants to be accepted by the people in power.

And so, there are these two sides of him. And with his Supreme Court picks, we see him going with what the establishment wants him to do.

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CUOMO: And maybe more so than anywhere else. I mean, Jake's point couldn't be more right, if you think about it. With Gorsuch, by all indications, they said to him, this is the way to go and really, this is what we want.

And maybe this is a case where Trump knows what he doesn't know. He's like, I don't understand the law. I don't understand what makes these people different or the same. They're telling me this is the way to go. I'll do it.

And he was clearly told that about Brett Kavanaugh.

TOOBIN: And let's look at what Neil Gorsuch has done in his year on the Supreme Court. What he has done is not vote with Samuel Alito all the time, not vote with John Roberts all the time, but vote with Clarence Thomas all the time.

He has turned out to be even more conservative than Antonin Scalia. I mean, he has been a home run for the evangelical base for the Federalist Society.

CUOMO: The man who talked about stare decisis like it had been handed out of the burning bush.

TOOBIN: So, if you don't think the Federalist Society knows what they're getting, just look at what they've gotten so far.

CUOMO: And who they're dictating. Let me get final words from everybody. Let me start with Granholm and Santorum.

Jennifer, how big a battle is this one for the Democrats? Is this nominee the hill to die on?

GRANHOLM: It is a huge -- it is a huge battle, and it is a battle that we must wage.

We didn't talk, you and I, about the Roe versus Wade issue. It is clear he would not be on the list but for his decision or his agreement that Roe v. Wade should be overturned. In fact, he gave a big speech at the Heritage Foundation which actually praised Rehnquist's dissent in Roe versus Wade. There is no question he would overturn it.

And I think Jeff Toobin a week ago or so said there would be 20 states immediately who, if that happened, would see abortion as illegal. There are 33 states right now controlled in the House and Senate by Republicans, 32 states and 33 Republican governors.

CUOMO: All right.

GRANHOLM: I'm just saying I think it's much bigger than what people realize, and there has to be mobilization. People have to express how they feel about this.

CUOMO: All right. Rick, a quick final word from you.

[[21:50:00] SANTORUM: Well, I think that Donald Trump said he was going to energize the base with this pick. I don't think he did that. I think a lot of the folks in the base really were sort of turned off to Brett Kavanaugh for the same reasons you heard discuss a few minutes ago.

I mean, he is -- you know, he is from Washington. He is the establishment pick. He is the Bush pick. He is someone -- I mean, just -- his father was a judge. His mother was a judge.

I mean, it just -- it just seems like Trump in this case just bowed to the elite in Washington. I think that's going to rub a lot of people the wrong way. I don't think it's going to be a game changer, but I think it's not a "yes, let's go get them" kind of moment for Trump.

CUOMO: All right. Thanks to you. I got to leave it there. I'm out of time. I owe Joan Biskupic a final thought.

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We're not done yet, though. You can join us at midnight Eastern. If you really want to, you can come back then. That will be 9:00 p.m. Pacific --

BISKUPIC: You can have that.

CUOMO: -- for a special edition of CUOMO PRIME TIME.

Right now, it's "CNN TONIGHT." Don Lemon will pick it up right now. Don, a night that will make history in this country.

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