

“A BITTER ‘ROW’ OVER ROE” SUPREME BATTLE AHEAD

98-0, 97-0, 96-3, 87-9, 68-31, 78-22. No, these are neither temperatures on your thermometer, nor lopsided basketball scores. Rather, they are the Senate confirmation votes for Supreme Court nominees in more recent history, in order: **Antonin Scalia, Anthony Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor and John Roberts**. As you can see, no vote was even close and two were unanimous. My, how things have changed! In more recent years, the votes have gotten closer, and yet even then, the votes were bi-partisan. With President Trump’s selection for a Supreme Court vacancy, people were already lining up before the pick had been announced to assure their constituents (donors?) of their opposition. Certainly, there have been nominees rejected by the Senate in the past 50 years, but not too many. Only **three nominees** have been **rejected** on a Senate vote since the Herbert Hoover administration.

Yes, there have been additional candidates who have withdrawn when various problems surfaced during the confirmation process. The last candidate to be approved by voice vote happened as recently as 1965. So, why have things changed? In reality, our country has been bitterly divided ever since one Supreme Court decision, namely the 1973 decision of *Roe v. Wade*. All the evidence points to this being the most divisive court decision in a century. Those who support abortion rights have been quick to jump on the principle of *stare decisis*, the legal term for precedent, in short, meaning the “decision stands.” This is the principle that law should be certain and predictable, instructing courts to uphold their prior decisions.

If that principle were absolute, the infamous decision rendered on March 6, 1857 in *Dred Scott v. Sanford* could never be superseded. But of course, it was. In a 7-2 decision, Chief Justice Roger Taney wrote that the framers of the Constitution believed that African Americans “had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold and treated as an ordinary article of merchandise and traffic, whenever profit could be made by it.” By virtue of the 13th (slavery and involuntary servitude 1865) and 14th (equal protection under the law- 1868) amendments to the U.S. Constitution, the Dred Scott decision was nullified. You and I pay federal income taxes by virtue of the 16th amendment, my grandmother cast her first vote because of the 19th amendment. All those Supreme Court decisions were nullified by amendments that people wholeheartedly embrace today– well, perhaps except the one about Federal income tax! That one might gain some traction someday for a fresh look.

But the vitriol with which D.C. Circuit Appeals **Judge Brett Kavanaugh** was greeted by abortion rights advocates was as utterly predictable as it was telling. It is telling about how bitterly divided our country has become during the past generation, with little end in sight. When I tuned in for the announcement, whom did I see? I saw a cheerful family man, a product of Georgetown (Jesuit) Prep, Yale (both for undergraduate studies and Law School), an experienced and respected jurist with impeccable credentials. In his free time, he serves as the basketball coach for his daughter’s parochial school team, parish lector and volunteer at Catholic Charities in Washington DC. Still, New York Senator Chuck Schumer immediately chimed in– “President Trump with the nomination of Judge Kavanaugh has fulfilled two of his campaign promises -- first to undo women’s reproductive freedom and second to undo the ACA (Affordable Care Act).” Schumer vowed to “oppose him with everything I’ve got.”

It all comes down to *Roe v. Wade*, doesn’t it? Though it is a long, long way to Tipperary with respect to dismantling *Roe v. Wade*, abortion rights advocates are sending the S.O.S. loudly and clearly. **Cardinal Daniel DiNardo**, President of the USCCB issued a strong statement in the name of the Conference, noting that “we have grave concerns about the confirmation process which is being grossly distorted by efforts to subject judicial nominees to a litmus test of support for *Roe*, as though nominees who oppose the purposeful taking of innocent human life are somehow unfit for judicial office in the United States.” Decades of polling reveals that most Americans oppose *Roe*’s policy of unlimited abortion; a growing number of state legislatures are passing laws to provide as much protection from abortion as possible under *Roe*; the vast majority of physicians and hospitals (religious and secular) refusing to participate in abortions.

The Supreme Court exists as a separate but equal branch of government. My fervent hope in the weeks ahead is that senators truly seek to ascertain Kavanaugh's judicial philosophy and how his writings reflect the neutrality one would expect from a Justice. The Constitution affords a president the right to nominate a justice, while the Senate's proper role is to advise and consent— not pre-judging, but truly listening and evaluating based upon the person's record and qualifications.

- Talk about heroes! I watched **in sheer wonder and awe** the news emanating from **Mae Sai, Thailand**, of the rescue efforts for the 12 members of the **Wild Boars soccer team** and their coach, trapped 2.5 miles into an underground cave. The rescue effort literally involved hundreds of experts and dozens of highly trained divers, each of whom risked their lives, and a masterfully planned rescue spread out over days. The boys will be quarantined to ensure their health and safety, likely in case of *Histoplasmosis*, also known as “cave disease.” It is an infection caused by breathing in spores of a fungus often found in bird and bat droppings.
- I'll be honest— I abhor the thought of encountering a bat. Years ago, I attended a wedding reception at the **Wabasha Street Caves** and could not wait to leave. I invoked the **Council of Trullo** (962 A.D.) wherein Canon XXIV indicates “if any clergyman be called to a marriage, as soon as the games begin let him rise up and go out.” Translation— after dinner when the dancing begins, I'm outta there!
- Pope Francis met in **Bari, Italy** with Eastern Catholic and Orthodox bishops and patriarchs to pray for peace and for the region's beleaguered Christians. Bari is a nexus between East and West, as it is the home of the relics of St. Nicolas, a beloved saint revered by East and West. Once on a whim, I caught a cheap flight from Rome to visit Bari, where I was rewarded with the best seafood platter I have ever tasted (for only 10 €) and a rich time of prayer at the tomb of St. Nicholas. The southern port city in Puglia is a real treasure.
- **National Geographic** has done a nice piece on the “keeper of the keys” at the Vatican Museum. Each morning at 5:30 a.m., without fail, **Gianni Crea** is privileged to open the doors throughout the museums. For those who like trivia, he is the head *clavigero*, (from the Latin *clavis* for key) and with his team of ten clavigeri (five a.m. and five p.m.), opens 300 doors each day across a 4.6-mile route.

Sincerely in Christ,

Fr. John L. Ubel,
Rector