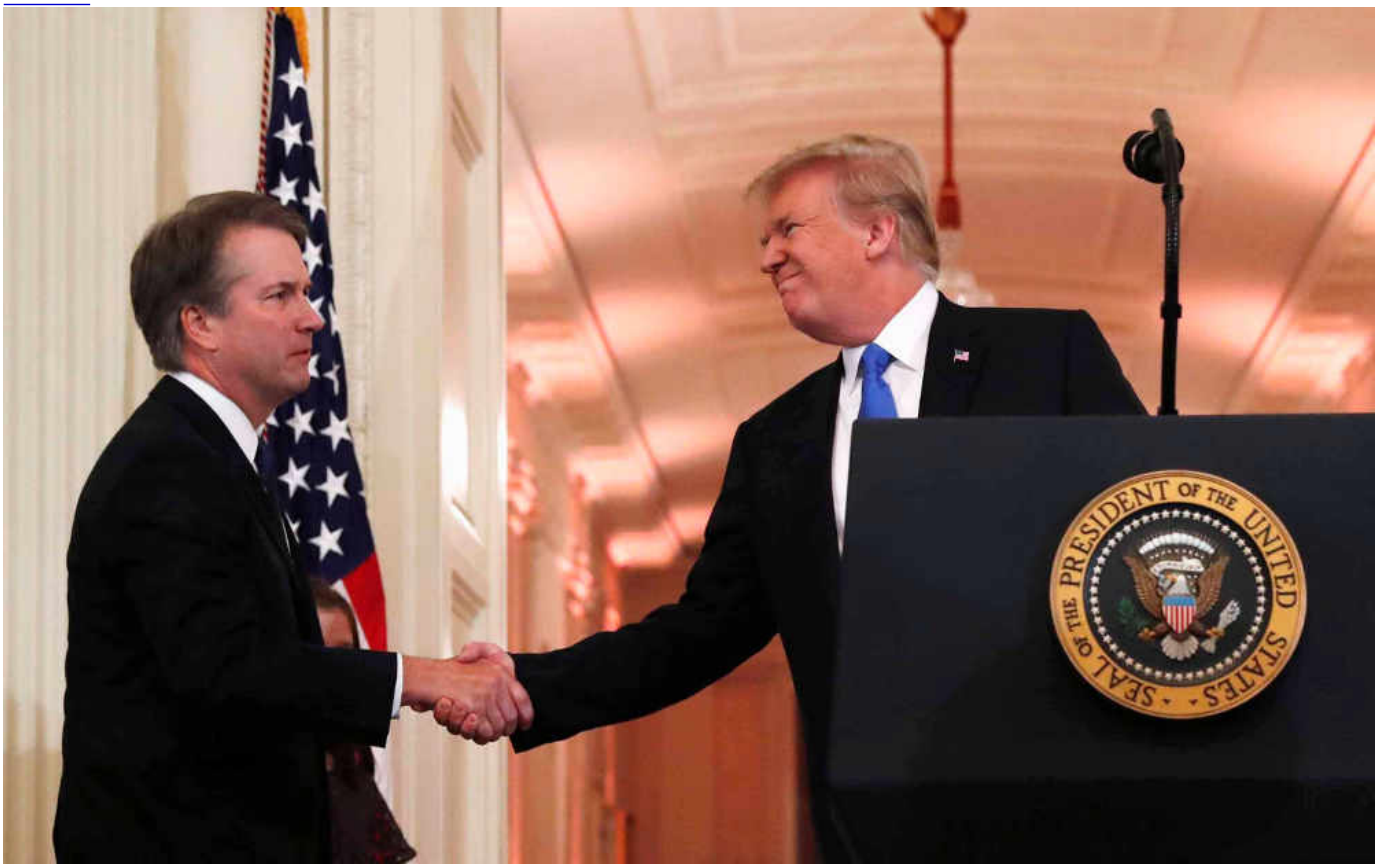
News



U.S. President Donald Trump introduces his Supreme Court nominee Brett Kavanaugh, a Catholic, July 9 at the White House in Washington. (CNS/Leah Millis, Reuters)



by Heidi Schlumpf

View Author Profile

Follow on Twitter at @heidischlumpf

Join the Conversation

Send your thoughts to *Letters to the Editor*. Learn more

July 10, 2018

Share on BlueskyShare on FacebookShare on TwitterEmail to a friendPrint

Immediate reaction to U.S. Supreme Court nominee Brett Kavanaugh tended to fall along ideological lines and focus on *Roe* v. *Wade*, the landmark ruling that legalized abortion. But some Catholic commentators are looking beyond the "culture war" issues and raising concerns about how the Catholic nominee might rule on other "life" issues as well.

"Don't forget that building a culture of life isn't only about one issue," John Gehring, Catholic program director at Faith in Public Life, a national network of justice-focused clergy and religious leaders, tweeted Tuesday, the morning after President Trump announced Kavanaugh as his nominee to the high court.

Gehring said he hopes Kavanaugh, a Catholic, would also support the sanctity of life around issues of poverty, inequality, climate change, racism, guns and treatment of immigrant families in detention.

Stephen Schneck, former director of the Institute for Policy Research and Catholic Studies at the Catholic University of America, said he has "a great deal of concern" about Kavanaugh's record on issues such as health care, union rights, immigration and the environment.

"I hope he reflects on the whole of what's incumbent on us as Catholics in public life," Schneck told NCR.

Although he is hopeful that a pro-life justice like Kavanaugh might make some "progress against the problem of abortion in the United States," Schneck added, "As Catholics, we can't just look at these things narrowly from the perspective of abortion."

Related: Trump names religious liberty 'warrior' Brett Kavanaugh to high court

The pro-life organization Democrats for Life is cautiously optimistic about Kavanaugh's nomination, given his previous decisions that would seem to support limits, if not a complete overturning, of *Roe* v. *Wade*.

"But we're also pro-life for the whole life," said Democrats for Life's executive director, Kristen Day, citing affordable health care, paid maternity leave and

opposition to the death penalty as other important issues.

"We want to encourage pro-life legislators to really examine [Kavanaugh's] record, look at his philosophy and give him a fair and careful look," Day said.

Labor leaders expressed concern about what some see as pro-business bias in the judge's record. "With his nomination of Judge Kavanaugh, President Trump has doubled down on his rhetoric and policies that tilt our country further towards billionaires and greedy corporate CEOs, and away from all working people, whether they are white, black or brown," Mary Kay Henry, international president of the Service Employees International Union and a Catholic, said in a statement.

Kavanaugh, who has served on the D.C. Circuit Court since 2006, has said his judicial philosophy is one known as "originalism" or "textualism" that emphasizes interpreting, not making laws.

"A judge must interpret statutes as written, and a judge must interpret the Constitution as written, informed by history and tradition and precedent," Kavanaugh said in his remarks after Trump's announcement July 9.

But some say originalism is too rigid and doesn't take into account contemporary contexts or cultural and other changes. "It's a more old-fashioned way of looking at things," said Leslie Griffin, a law professor at the University of Nevada at Las Vegas. "For example, I don't want an originalist view of women."

Griffin, who has written on the law and religion, ascribes to the more dynamic "living constitutionalism" philosophy. If Kavanagh is confirmed, she believes the Supreme Court will become more conservative, even as the current court has tended to favor "institutions over individuals" this term.

Kavanaugh's judicial conservatism often overlaps a great deal with the agenda of social conservatives, including on the issue of religious liberty, said Kathleen Brady, a legal scholar at the Center for the Study of Law and Religion at Emory University in Atlanta, who is an expert on religious liberty.

And, as a practicing Catholic, Kavanaugh has the advantage of having a "religious sensibility" that would help him see the "religious problem" in cases that involve religious liberty disputes, she said.

"The bottom line is that he is a very good choice for people concerned about religious liberty," she said.



Brett Kavanaugh, smiles July 9 after President Trump named him his Supreme Court nominee. (CNS/Leah Millis, Reuters)

Those who oppose abortion tend to favor "originalists," too. Fr. Frank Pavone, the controversial head of Priests for Life, praised Kavanaugh, whom he said would bring "humility" to the court by not "inventing rights ... such as the right to kill a child."

Pavone said he had "great confidence" in Kavanaugh's nomination, in a commentary during a Facebook live video after Trump's announcement. "So many of us worked so hard to elect President Trump," he said. "This was the issue that motivated so

many people to come out and vote for him."

Kavanaugh brought up his own religious faith in his remarks, noting that he attended a Jesuit high school whose motto was "Men for others," coaches CYO basketball at his daughters' Catholic school and volunteers at a Catholic Charities soup kitchen. Kavanaugh is reportedly a lector at Blessed Sacrament Parish in Chevy Chase, Maryland.

"I am part of the vibrant Catholic community in the D.C. area," he said. "The members of that community disagree about many things, but we are united by a commitment to serve."

Unlike Amy Coney Barrett, another Catholic on Trump's shortlist of potential Supreme Court nominees, who belongs to a charismatic religious group that has been criticized for being authoritarian and secretive, Kavanaugh's Catholicism may be less controversial.

Advertisement

"He looks more like most Catholics," said Boston College Law School Professor M. Cathleen Kaveny. "His main issues are not culture war issues. His main issues are economic."

Kaveny said she finds hope in Kavanaugh's background and training that suggest he might be dialogical and less ideological.

"But he is a very conservative judge who has a certain way of interpreting the law," she told NCR. "My guess is he'll be very conservative on the business questions and somewhat conservative on the social questions."

Since Catholics are not monolithic, some will be happy with Kavanaugh, while others have serious concerns.

"But for those who pretty consistently embrace the communitarian approach of Catholic social teaching and Pope Francis' opposition to the throwaway culture, there is most often dissatisfaction with the current state of the Court and the prospect of new justices who will increase its polarization and politicization," Robert Christian, editor of Millennial, an online Catholic journal and blog, said in an email interview

with NCR.

Richard Garnett of the University of Notre Dame Law School hopes the confirmation process for Kavanaugh is fair.

"Senators shouldn't have a special suspicion of Catholic nominees," he said, referring to questions about Barrett's faith during her confirmation to a lower court.

"Obviously the country is divided," Garnett said. "What I'd like to see is that the discussion about the nominee could be about their actual record and qualifications, and avoid the temptation to engage in innuendo and personal attack for political purposes. Maybe Catholics could lead the way on this."

[Heidi Schlumpf is NCR national correspondent. Her email address is hschlumpf@ncronline.org. Follow her on Twitter @HeidiSchlumpf.]

A version of this story appeared in the **July 27-Aug 9, 2018** print issue under the headline: Kavanaugh is pro-life, but is he 'whole life'?.