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The big struggle over the Supreme Court lies ahead

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George W. Bush's nomination of US appellate judge John G. Roberts to fill retiring Justice Sandra Day O'Connor's seat on the US Supreme Court is a politically savvy choice that will draw increasing support as the US Senate moves towards a September vote on whether to approve or disapprove Judge Roberts' selection.

Mr Bush's choice is striking because Judge Roberts, age 50, has lived his entire professional life within the elite Washington world of the Court since he was a law clerk in 1980-81 to William Rehnquist, the now-ailing US chief justice. In the ensuing years, Judge Roberts argued 39 cases before the nine-justice Court, a remarkable number, first while representing the US government and then as a private attorney.

Judge Roberts is thus an institutional loyalist as well as a mainstream Republican conservative, and his judicial record will resemble those of Justice O'Connor and Chief Justice Rehnquist, rather than the more activist rightwing agenda of Justices Antonin Scalia and Clarence Thomas. Mr Bush could have selected a more ideological nominee, such as federal judge Edith Jones. But he did not.

Extreme conservatives will take solace in one legal brief Judge Roberts signed as a government lawyer, calling for the overturn of *Roe v Wade*, the landmark 1973 case legalising abortion. They likewise will appreciate that his wife, Jane Sullivan Roberts, also a lawyer, has actively participated in Feminists for Life, an anti-abortion group.

But Judge Roberts will not produce any significant ideological shift on what has been a distinctly moderate though Republican-dominated Court. He may vote to uphold restrictions on abortion that Justice O'Connor would have struck down, but if change occurs, it will be at the margins.

Judge Roberts has sat on the US appeals court in Washington for only two years and his judicial opinions offer no attack points for Democrats who may seek to criticise him.

At confirmation hearings to be held by the Senate's judiciary committee in early September, Democrats are likely to press Judge Roberts to disclose his views on abortion, gay marriage and other issues. US tradition holds that a nominee cannot be asked about cases that may come before the Court, and Judge Roberts will utter soothing generalities while Democratic senators press for more specific answers.

The most extended tussle will concern *Planned Parenthood v Casey*, a 1992 ruling in which Justice O'Connor led the Court to reaffirm *Roe v Wade*. Whether Judge Roberts professes

respect for Casey will most likely determine whether he wins Senate approval by an overwhelming margin, say 80-20, or whether ambivalent Democrats can cite a lack of committal as grounds for voting No, producing perhaps only a 65-35 approval. Judge Roberts is unlikely to signal his views either way in next year's most important upcoming case, in which the Bush administration seeks to overturn the state of Oregon's unique legalisation of doctor-assisted suicide.

Even if Judge Roberts easily joins the Court when it reconvenes in October, the next year will be a decided interregnum. Chief Justice Rehnquist, who will soon turn 81, is undergoing treatment for thyroid cancer. His retirement had been expected before Justice O'Connor's, but while the chief justice now intends to serve through to next June, his departure then or sooner will allow Mr Bush to select another new justice. The president is most likely to name his long-time close friend Alberto Gonzales, now US

attorney-general, to succeed Chief Justice Rehnquist. Mr Gonzales, who would be the first US Hispanic justice, may be less conservative than Chief Justice Rehnquist, just as Judge Roberts is perhaps more conservative than Justice O'Connor. But neither succession will involve a big ideological change. That would not occur until one of the Court's five most liberal or moderate justices - John Paul Stevens, Ruth Bader Ginsburg, David Souter, Stephen Breyer and Anthony Kennedy - leave.

Justice Stevens is 85, but in fine health, and neither he nor any of the other four is expected to retire before mid-2009. Whoever as president selects the first successor to any of those five has a real chance to alter the Court's ideological centre. Until then, partisan battles over John Roberts, and over Chief Justice Rehnquist's replacement, will be for smaller stakes than momentarily loud voices may suggest.

The writer, author of *Liberty and Sexuality*, a history of *Roe v Wade*, writes regularly about the US Supreme Court.