

How Right Is He? A Quantitative Analysis of the Ideology of Judge John G. Roberts

by

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Abstract

When President George W. Bush nominated Judge John G. Roberts, Jr. to replace retiring Justice Sandra Day O'Connor in the summer of 2005, court followers immediately began an investigation of Judge Roberts' career as a means of discerning his relative ideology. These reports, however, have not been comprehensive in scope, nor do they provide a basis for comparative analysis. I textually analyzed and coded the 190 published and unpublished cases that have been identified as the sum total of the decisions in which Roberts participated while on the D.C. Court of Appeals, and compare Judge Roberts' decision-making to averages for the U.S. Court of Appeals. I find that Roberts is very conservative in his decision making in criminal justice disputes, and the data suggest that he is exceptionally conservative in civil liberties and rights cases (though the limited numbers of cases in this area restrict the ability to draw any firm conclusions). In labor and economic disputes, however, Judge Roberts has been more liberal than the appellate court average.

When George W. Bush was sworn in as the 43rd president of the United States, it was widely assumed that he would, at some point during his administration, have the opportunity to appoint at least one justice to the U.S. Supreme Court. Much of the retirement speculation centered on the longest-serving member of the high court, Chief Justice William Rehnquist, who was appointed by Richard Nixon in 1971. Many news media and opinion outlets engaged in significant conjecture about possible Bush Supreme Court nominees in the event of a court departure.¹

To the surprise of many, though, Bush was not presented with a Supreme Court vacancy during his first term in office. However, speculation about a possible retirement increased dramatically in 2004 when it was learned that 80-year old Rehnquist had been treated for cancer.² The visibly stricken Chief Justice administered the oath of office in January 2005 to a reelected George W. Bush, and news reporters at the time commented upon Rehnquist's wellbeing and the likelihood that he would step down due to health reasons.³

As it turns out, of course, the conventional wisdom was off the mark. Rehnquist stayed on at the Court while Justice Sandra Day O'Connor surprised many, including some at the White House, in announcing in June 2004 her retirement.^{4,5} Though Bush was not presented with the opportunity to make the strategically and symbolically important selection of a Chief Justice, in many ways O'Connor's departure allowed Bush the opportunity to have an even greater impact on the Court by giving the President the chance to replace a crucial swing vote on the bench. Though O'Connor has generally been conservative in her rulings, her voice has been pivotal in some key civil liberties and rights disputes.⁶ For example, she was a critical vote in cases

¹ See Joan Biskupic, "Next President May Name Up To Three Justices." *USA Today*. September 9, 2000.; Randall Kennedy, "The Bush Court." *The American Prospect*. November 23, 1999.; Mark Joseph, "W.'s Court Picks." *National Review*. December 18, 2000.; Geraldine Sealey, "A Retirement Revolution?" *ABC News.com*. June 21, 2000.; Robert Weiner, "Next President May Have Supreme Impact: George W. Bush's Potential Supreme Court Nominees." *LexisONE (LexisNexis)*. November 6, 2000.

² See Linda Greenhouse and Katherine Q. Seelye, "Rehnquist Fails to Return and Speculation Increases." *The New York Times*. Nov. 2, 2004.

³ See Linda Greenhouse, "The Inauguration: Ailing Chief Justice Makes Good His Promise." *The New York Times*. Jan. 21, 2005. p. A11.

⁴ Despite O'Connor's announcement, speculation about a potential Rehnquist retirement continued apace. The Chief Justice eventually quelled the rumor frenzy by issuing a statement clarifying his intention to continue his service on the bench. See Linda Greenhouse, "Despite Rumors, Rehnquist Has No Plans to Retire Now." *The New York Times*. July 15, 2005. p.A10.

⁵ See Howard Fineman and Debra Rosenberg. "The Holy War Begins." *Newsweek*. July 11, 2005. p. 34.

⁶ See Terry Eastland, "O'Connor Determines Court's Balance." *Dallas Morning News*. Feb. 25, 2002.

involving a number of high-profile and deeply controversial issues, including affirmative action, gay rights, religious displays, and abortion.

O'Connor's resignation thus presents Bush with the opportunity to shift the ideological composition of the Court. One observer noted that O'Connor had throughout her tenure drifted slightly "leftward" over time, making her somewhat of a centrist.⁷ At the same time, however, research has shown that Bush's judicial appointees have been very conservative,^{8,9} and, in particular, his judges are the most conservative in modern presidential history in the area of civil liberties and rights.¹⁰ In sum, O'Connor's retirement presents Bush with a clear opening to change the Supreme Court's jurisprudence on a number of highly salient issues by replacing a moderate conservative with someone who could be a champion of the right.

Upon any Supreme Court justice's departure, interest quickly turns to potential replacement candidates, and O'Connor's retirement was no exception.¹¹ Speculation immediately focused on Bush's past statements about his judicial nomination objectives as well as a number of potential candidates.¹² Much of the focus was upon a coterie that included, among others, Attorney General Alberto Gonzales, Judges Harvie Wilkinson and Michael Luttig (both of the Fourth Circuit Court of Appeals), and Edith Brown of the Fifth Circuit Court of Appeals.¹³ As we now know, Bush eventually passed over these oft-mentioned jurists and selected John G. Roberts, a judge on the U.S. Courts of the Appeals for the D.C. Circuit. Roberts was among those who were bandied about as a possible nominee. However, his name did not emerge as often as some others. At least among the attentive public, Roberts was among the lesser known candidates.

⁷ See Evan Thomas and Stuart Taylor, "Queen of the Center." *Newsweek*. July 11, 2005. p. 24.

⁸ See Robert A. Carp, Kenneth L. Manning, and Ronald Stidham, "The Decision-Making Behavior of George W. Bush's Judicial Appointees." 88 *Judicature* 20 (2004).

⁹ For a comprehensive discussion of Bush's judicial nominees, see Sheldon Goldman, Elliot Slotnick, Gerard Gryski, and Sara Schiavoni, "W. Bush's Judiciary: The First Term Record." 88 *Judicature* 244 (2005).; and Rorie Spill Solberg, "Diversity and George W. Bush's Judicial Appointments." 88 *Judicature* 276 (2005).

¹⁰ See Kenneth L. Manning and Robert A. Carp, "The Decision-Making Ideology of George W. Bush's Judicial Appointees: An Update." Paper presented at the 2004 meeting of the American Political Science Association, Chicago, IL. (<http://www.umassd.edu/cas/polisci/apsa2004.pdf>)

¹¹ For more on the selection of Supreme Court nominees, see David Yaloff, *Pursuit of Justices: Presidential Politics and the Selection of Supreme Court Nominees* (University of Chicago Press, 1999).

¹² See David Sanger, "In Reading Bush on Court, Words Don't Always Help." *The New York Times*. July 5, 2005. p. A15.

¹³ See Greg Stohr and Laurence Arnold, "Gonzales, Brown Among Potential Choices to Replace O'Connor." *Bloomberg.com*. July 1, 2005.

(http://www.bloomberg.com/apps/news?pid=email_us&refer=top_world_news&sid=aBk2T7IVS.i0)

With a nominee unveiled, attention immediately focused upon the background and ideology of O'Connor's replacement. Since President Bush announced Robert's nomination on the evening of July 19, 2005, the public has learned much about Judge John G. Roberts Jr.

He is, by many indications, a textbook Supreme Court nominee—someone who, as one observer noted, “represents the Washington establishment.”^{14,15} The son of a steel company executive in Indiana and educated in private school, his childhood was closer to Main Street than Fifth Avenue, but certainly not hardscrabble.¹⁶ Roberts is a Harvard honors graduate and Harvard Law School alumnus. He was managing editor of Harvard Law Review, enjoyed high-profile judicial clerkships, worked in key positions in the Justice Department during the Reagan administration, and he was a partner in a prestigious Washington, D.C. law firm. Roberts left private practice when he was appointed to a position on the Court of Appeals for the D.C. Circuit by George W. Bush in June 2003. A millionaire father of two and devout Catholic, Roberts is married to an attorney and has significant stock holdings in numerous major U.S. corporations.¹⁷

Beyond this personal information, however, much has also been reported about Judge Roberts' professional activities and decision-making that may provide some clues about his judicial philosophy. Following the release of documents from Roberts' work in the Reagan White House, liberal activists were troubled to learn that Roberts once endorsed a memorial service that called attention to “the abortion tragedy.”¹⁸ At the same time some conservatives were heartened to know that in promising to uphold standards of judicial restraint, Roberts noted that a judge's role is limited to deciding cases and it is “not to solve society's problems.”¹⁹ Furthermore, in a high-profile Washington, D.C., case that some felt hinted at a strong pro-law

¹⁴ See R. Jeffrey Smith and Jo Becker, “Record of Accomplishment—And Some Contradictions.” *The Washington Post*. July 20, 2005. p. A1.

¹⁵ For more on the typical characteristics of judicial nominees, see Robert A. Carp, Ronald Stidham, and Kenneth L. Manning, *Judicial Process in America*, 6th ed. (CQ Press, 2004).

¹⁶ See Neil A. Lewis, “An Ultimate Capital Insider.” *The New York Times*. July 20, 2005.

¹⁷ See “First Read: The Day in Politics by NBC News for NBC News.” MSNBC.com. July 20, 2005.

(<http://www.msnbc.msn.com/id/3626796/>): “Beyond the bio stuff that's everywhere, NBC's Investigative Unit notes that Roberts is a wealthy man, according to his financial disclosure forms. In 2004, he listed his 88 stocks, investments and trusts. He owns millions of dollars in stock, including significant investments in Time Warner, Dell, Intel, Microsoft, Texas Instruments and XMSR. He holds accounts worth between \$500,000 and \$1 million at M&T Bank, and hundreds of thousands of dollars with Fidelity, Schwab and others. Roberts also owns one-eighth of a cottage in Limerick, Ireland.”

¹⁸ See Pauline Jelinek, “Roberts Once Wrote of ‘Abortion Tragedy.’” *The Washington Post*. (washingtonpost.com) Aug. 16, 2005.

¹⁹ See Hope Yen, “Roberts: Judges' Role ‘Not to Solve Society's Problems.’” *The Providence Journal*. Aug. 3, 2005. p. A3.

enforcement position on criminal justice matters, Judge Roberts upheld the constitutionality of the arrest of a 12-year old girl for eating a french fry in a subway station.²⁰

On the other hand, however, social conservatives were somewhat dismayed to learn that while Roberts worked at the law firm Hogan and Hartson, he did pro bono work for a gay rights group which successfully argued the landmark case *Lawrence v. Texas* (539 U.S. 558).²¹ And also to the disappointment of the right, Roberts had backed away from some of his earlier comments supporting the restraining of Supreme Court jurisdiction on matters pertaining to school prayer and abortion.²²

However, while the widely reported accounts of Judge Roberts are useful and informative, they largely constitute anecdotes and isolated instances, and they fail to provide a comprehensive view of Judge Roberts' ideology. These scattered tales, along with Roberts' limited time on the bench, have resulted in the fact that identifying Roberts' overall ideology has been somewhat of a challenge. Thus, we know surprisingly little about a very high profile issue that is likely to have a profound effect upon American politics for many years to come—the possible replacement of Sandra Day O'Connor with John G. Roberts on the U.S. Supreme Court.

As a means of shedding some light on this highly salient question, this study presents an empirical investigation of the ideology of Judge John G. Roberts' decision-making. It does so in a manner that is different in at least two ways from that offered by many of the journalistic accounts that have been provided so far about Judge Roberts.

First, this study seeks to provide a more comprehensive analysis of Judge Robert's ideology by studying a greater number of his decisions and engaging in a quantitative analysis of his voting record. Much attention so far has focused upon majority opinions written by Judge Roberts in a select number of cases. However, like any other judge on a multi-member appellate court, Roberts has cast far many more votes than written opinions. And it is the sum of these votes that ultimately constitutes the ideological pattern of a judge. While investigation of written opinions is an important way by which we may discern a judge's decision-making philosophy, the overall voting record of a judge is most often the means by which political scientists are able to make informed statements about a judge's general ideology.

²⁰ See Martin Weil, "In DC, Roberts Got Taste of National Spotlight." *The Washington Post*. July 20, 2005. p. A12.

²¹ See Richard A. Serrano, "Roberts Donated Help to Gay Rights Case." *The Los Angeles Times*. Aug. 4, 2005. p. A1.

²² See David D. Kirkpatrick, "Conservative Gathering is Mostly Quiet on Nominee." *The New York Times*. Aug. 15, 2005. p. A15.

Secondly, this research attempts to take into consideration an important aspect that many reports have neglected—the extent to which Judge Roberts decision-making is consistent (or, perhaps, inconsistent) with other U.S. courts of appeals jurists. Of course, such comparisons are usually difficult and fraught with methodological peril. However, public law scholars in political science have developed a valuable database of U.S. Courts of Appeals decision-making that may be used as a form of benchmark in evaluating the Judge Roberts’ ideology vis-à-vis other appellate courts jurists. By utilizing this database, I hope to provide some comparative basis for identifying Judge Roberts’ ideology.

Data and Analysis

I textually analyzed 190 published and unpublished cases selected from Westlaw and LexisNexis.²³ The cases have been identified as the sum total of the decisions in which Roberts participated while on the D.C. Court of Appeals.²⁴ I noted the ideological direction (“liberal” or “conservative”) of Judge Roberts’ vote in each case. I also recorded the type of case, categorizing the cases in one of three widely-used case type areas: criminal justice, civil rights and liberties, and economic activity and labor regulation. In those instances where a case touched upon more than one issue area, the primary policy area was recorded. Forty-five cases that did not reveal a clear liberal/conservative dimension or outcome, as well as those that could not be identified within one of the three broad case type areas, were excluded from analysis.

I utilized established coding methodologies employing contemporary American understandings of ideology in determining judges’ votes in each of the three broad case type categories. For example, in the area of criminal justice, judges’ votes in favor of a criminal defendant were coded as “liberal,” while decisions supporting the state and/or prosecutors were coded as “conservative.” A judge’s decision upholding individual civil liberties protections was coded as liberal, while those that allowed government greater control were recorded as conservative. In the area of civil rights, votes favoring those who alleged that their civil rights had been violated were coded in a liberal fashion, while decisions against these litigants were noted as conservative. Finally, I coded as liberal a judge’s vote in support of a labor union or

²³ Sincere thanks are extended to Cathy O’Neill for her assistance in retrieving the cases.

²⁴ See Kevin Russell, Anisha Dasgupta, and Brian Fletcher, “Roberts’ Place on the Ideological Spectrum of the D.C. Circuit.” *The Supreme Court Nomination Blog* (web page sponsored by Goldstein and Howe, P.C.). July 20, 2005. (http://www.sctnomination.com/blog/archives/2005/07/roberts_place_o_1.html).

government regulator, while a conservative preference was one that favored business or industry. The case coding standards and methodology are well established in the political science literature, and similar coding methodology has been used in comprehensive, highly-regarded studies of U.S. Supreme Court²⁵ and U.S. District Court²⁶ decision-making.

As a point of comparative reference, I evaluated Judge Roberts' ideology relative to that of the average of U.S. Court of Appeals decision-making in the three major case type categories. This data was obtained from the United States Courts of Appeals Database archived at the Inter-University Consortium for Political and Social Research at the University of Michigan.²⁷ I calculated the percentage of liberal and conservative votes on three judge panels sampled in the Court of Appeals Database and utilized the same three-issue area typology as that of the Judge Roberts' decisions.

	John Roberts % (n)	Ct. of Appeals Average %	Difference
Liberal Decisions	32.2%	41.1%	-8.9%
Conservative Decisions	67.1%	58.9%	+8.2%

$\alpha = 1.31$

Let us now turn to an analysis of the data. As reported in table 1, John Roberts has cast a conservative vote in 67.1% of the cases reviewed during his tenure on the Court of Appeals for the D.C. Circuit. This compares to a conservatism rate of 58.9% for all judges on the U.S. courts

²⁵ See Harold Spaeth, *United States Supreme Court Database, 1953-1997*. Ann Arbor, MI: Inter-University Consortium for Political and Social Research.; and Jeffrey Segal and Harold Spaeth, *The Supreme Court and the Attitudinal Model* (Cambridge University Press, 1993).

²⁶ See C. K. Rowland and Robert A. Carp, *Politics and Judgment in Federal District Courts* (University of Kansas Press, 1996).

²⁷ For more on this data, see Ashlyn Kuersten and Donald Songer, *Decisions on the U.S. Courts of Appeals* (Garland Publishing, 2000).

of appeals. We can see, therefore, that Judge Roberts has exhibited behavior that is more conservative than average. Table 1 also reports a cross-product (or “odds”) ratio (α) of 1.31, indicating that Judge Roberts was approximately 30% more likely than the average appellate court judge to hand down a conservative decision.

The odds ratio is a powerful yet simple descriptive measure of the relationship between two variables. Specifically, it is a measure of the relative probability of respondents from each independent variable category being placed in a single dependent variable category. The odds ratio complements the data presented in table 1 by providing us information about the likelihood of a liberal or conservative decision by Judge Roberts compared to the appellate court average.

Interpretation of the odds ratio is fairly straightforward. If Roberts’ ideology was the same as the average for the appellate courts, the probability would be equal for a conservative decision. Thus, an odds ratio (α) of 1.0 indicates equal odds of an event occurring. Departures from 1.0 in either direction indicate increasing likelihood of variable difference. In this instance, values of the odds ratio below 1.0 indicate increasing conservatism compared to the average for the Courts of Appeals, while values above 1.0 reveal a tendency toward liberal behavior. In addition to its straightforward interpretation, use of the odds ratio is also beneficial since its value is not a function of sample size. Thus, the odds ratio offers a simple yet powerful descriptive measure useful for this exercise.

Though the overall data suggest that Judge Roberts is somewhat more conservative compared to other appellate court jurists, they do not give us much indication about Judge Roberts’ decision-making patterns in different types of cases. As seen in table 2, when we control for case type, some interesting trends emerge. In the area of criminal justice, Judge Roberts ruled against criminal defendants 86.4% of the time versus an average appellate court conservatism rate of 79.2%. Though numerically this may not seem a particularly significant difference, in fact, as seen in the odds ratio of 1.66, the data indicate that Roberts was 1.66 times as likely as the average judge to hand down a conservative decision in criminal justice disputes.

The difference appears starker in the area of civil liberties and rights, though an important note of caution is necessary here. Given Judge Roberts’ relatively short tenure on the D.C. Court of Appeals, along with the nature of the D.C. Court’s workload, the Supreme Court nominee has been involved as a judge in a fairly small number of civil liberties and rights decisions. Consequently, we are unable to make statistically valid comparisons between Judge

Roberts and the Court of Appeals average in this case type area. That said, the limited data available suggest that Judge Roberts is very conservative in this issue area, deciding 84.6% of the sampled cases in a conservative fashion. The appellate court average conservatism rate in this case area, conversely, is 58.8%. Again, however, this result must be taken with a statistical grain of salt given the small number of cases involved.²⁸ At this point, the data suggest that Judge Roberts is quite a bit more conservative than the average appellate court jurist in civil liberties and rights cases, but the results are simply too tenuous to draw any firm conclusions.

TABLE 2: PERCENTAGE LIBERAL AND CONSERVATIVE DECISIONS BY JUDGE JOHN ROBERTS IN THREE CASE TYPES

	<i>Criminal Justice</i> %	<i>Civil Rights & Liberties*</i> %	<i>Economic Activity & Labor Regulation</i> %
Liberal	13.6% (6)	15.4% (2)	55.7% (39)
Conservative	86.4% (38)	84.6% (11)	44.3% (49)
<i>U.S. Ct. of Appeals Average Percentage Conservative Votes</i>	79.2%	58.8%	48.3%
Odds ratio (α)	$\alpha = 1.66$	$\alpha = 3.85$	$\alpha = .85$

n's reported in parentheses.

* The number of civil liberties and rights cases by Roberts is too low to make statistically valid comparisons. Data are presented for reference purposes.

²⁸ In statistics the *Central Limit Theorem* dictates that as a sample size becomes larger, it will tend to approximate the normal distribution of the universe from which the sample is drawn. Though valid sample sizes vary depending on a number of factors, as a very rough rule judicial politics scholars generally seek sample sizes of 30 or greater before attempting to make statistically valid comparisons.

On the other hand, we see a rather different decision-making pattern by Judge Roberts in labor and economic cases. The evidence suggests that Judge Roberts is more liberal than the appellate court average when it comes to matters pertaining to government regulation and labor issues. Roberts voted for a conservative outcome in only 44.3% of these cases, compared to an average of 48.3%. The odds ratio indicates that Judge Roberts was approximately 15% less likely than the typical appellate court jurist to decide a labor and economic case in a conservative direction.

Discussion

How conservative is Judge John G. Roberts, Jr.? That has been the question on the minds of numerous court watchers following George W. Bush's nomination of the appellate court judge to replace retiring Supreme Court Justice Sandra Day O'Connor, and it has been the basis for the inquiry of this analysis.

An overall comparison of Judge Roberts' decision making indicates that he is somewhat more conservative than the average appellate court judge, though not dramatically so. However, a general level analysis does not take into account the rather sharp differences in Judge Roberts' decision-making in different policy areas. It is clear that Roberts has exhibited distinctly conservative voting in criminal justice matters, siding with prosecutors in the vast majority of cases. In civil liberties and rights cases I was unable to engage in a reliable comparison of Judge Roberts's votes due to a small sample size, but a cursory review suggests that Judge Roberts has been very conservative in these cases as well. At the same time, however, Judge Roberts has confounded conservatives by siding with labor interests and government regulators a majority of time.

What are we to make of these results? In some ways, they are consistent with previous work on George W. Bush's judicial nominees which found an emphasis upon social-issue conservatism and less conservative decision-making in labor and economic matters.²⁹ In recent years, it has been hot-button issues in the areas of civil liberties and rights that have been most politically polarizing and attracted the greatest amount of attention from partisans on both sides of the aisle. Judge Roberts' decision-making track record in this area is scant, however. The

²⁹ See Carp, Manning, and Stidham (2004).

limited data that are available suggest that his approach to these cases has been very conservative.

Issues pertaining to criminal justice have not been as salient. Neither political party has put forward any major recent federal proposal to “beef up” law enforcement, nor have there been any significant attempts to alter the criminal justice system to afford increased protections to criminal defendants. With crime rates in a long-term decline, the political record suggests that a remarkable level of pro-law enforcement agreement has been reached in this issue area, and Judge Roberts’ decision-making behavior appears to reflect this.

Some may find Judge Roberts’ votes in labor and economic cases surprising, but in many ways his decisions are not particularly startling given the overall priorities of the W. Bush administration. Despite some rhetoric to the contrary, the Bush administration has generally not made scaling back the regulatory state or limiting labor union power a top priority. During Bush’s tenure federal expenditures have increased dramatically, bureaucracy has grown in size, and the scope and depth of government regulations has not been curtailed to any large degree. When Bush had yet to name a successor to O’Connor, business interests expressed hopes that the next nominee would take a more friendly posture to their priorities.³⁰ The data identified here suggest that this is not the case and that Bush’s nominee may be, as at least one observer predicted, a “setback” for business.³¹

The question remains whether Democrats will attempt to stop Robert’s nomination. Their efforts to do so have been hindered, at least so far, on four fronts. First, Roberts’s sterling credentials and “well-qualified” ABA rating make it very difficult for his opponents to brand him as unqualified or unfit to serve.³² Secondly, the nominee is widely regarded as very personable and likeable, even among his ideological opponents. Roberts has also avoided making controversial public statements, lectures, and/or writings that could call attention to his ideological predispositions. Finally, Judge Roberts’ relatively brief tenure on the bench provides a limited record that may form the basis for analysis. He is, consequently, a nominee that Democrats have found difficult to assail and this has meant that the battle over Justice

³⁰ See Lorraine Woellert, “Full Court Press: Business Looks for a New Ally on a Bench that Isn’t Always Friendly.” *BusinessWeek* July 18, 2005.

³¹ See Greg Stohr, “Businesses May Face High-Court Setback as Bush Weighs Vacancy.” Bloomberg.com. July 5, 2005. (<http://www.bloomberg.com/apps/news?pid=10000103&sid=asVFW8LdsHWI&refer=us>)

³² See “American Bar Association Rates Roberts ‘Well-Qualified’” *The Providence Journal*. Aug. 18, 2005. p. A12.

O'Connor's replacement has not been as bitter and intense as some initially predicted, at least so far.

However, in many ways the President enters the Supreme Court battle in a weakened position. In late summer 2005, just as the Roberts confirmation hearings were about to begin, the president's approval ratings hit an all-time low.³³ The ongoing war in Iraq has seen mounting costs in terms of lives, money, and Bush's public support. Bush's signature domestic policy proposal—a major reshaping of Social Security—has failed to receive broad support and appears to be on political “life support.”³⁴ Soaring oil prices are putting a pinch on drivers' pocketbooks while also posing a significant threat to the economy. And though Bush enjoys a Republican majority in the Senate to oversee the nomination process, Congress' approval numbers are at dismally low levels. Of course, all these problems are occurring against a backdrop that Bush, like all second-term presidents, will probably soon face “lame duck” status.

As a result of the dynamics on both sides of the political aisle, the jury is still out on the Roberts nomination. Though it has been reported that Democrats may not put up much of a fight against Bush' pick,³⁵ this confirmation battle is still one worth watching.

³³ See Richard Morin and Dan Balz, “President's Poll Rating Falls to a New Low.” *The Washington Post*. Aug. 31, 2005. p. A6.

³⁴ See Nina J. Easton, “Many of Bush's Allies Retreating on Private Accounts.” *The Boston Globe*. April 29, 2005.

³⁵ See Mike Allen and Dana Milbank, “Roberts Unlikely to Face Big Fight.” *The Washington Post*. Aug. 16, 2005. p. A1.