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Roberts Has Solid Conservative Credentials

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WASHINGTON -- John G. Roberts has demonstrated strong backing for Bush administration policies, ruling against Geneva Conventions protections for detainees at Guantanamo Bay and in favor of keeping Vice President Dick Cheney's energy task force records secret.

Roberts' record as a federal appeals court judge is short but clear, and he has a trail of solid conservative credentials dating back to the administration of President Bush's father.

Abortion rights groups say Roberts in a 1991 case tried to overturn Roe v. Wade, the 1973 decision legalizing abortion, during his days as a lawyer in the administration of President George H.W. Bush. Roberts helped write a brief that stated, "We continue to believe that Roe was wrongly decided and should be overruled."

Pressed during his 2003 confirmation hearing for the appeals court for his own views on the matter, Roberts said: "Roe v. Wade is the settled law of the land. ... There's nothing in my personal views that would prevent me from fully and faithfully applying that precedent."

The brief that Roberts helped write in the 1991 case, Rust vs. Sullivan, is "the obvious shot coming out of the box" against the nominee, said University of Chicago law school professor Dennis Hutchinson.

Hutchinson said the obvious defense for helping write the brief is that "I was representing the government and that's what lawyers do represent their clients."

Roberts voted with an unanimous three-member appeals court panel last Friday that put Bush's military tribunals in the war on terror back on track, clearing the way for the Pentagon to resume trials for detainees held at Guantanamo Bay, Cuba.

The protections of the 1949 Geneva Conventions do not apply to al-Qaida and its members, so a former driver for Osama bin Laden does not have a right to its provisions, Judge A. Raymond Randolph said in an opinion joined by Roberts.

Lawyers representing the detainee complained that the ruling in which Roberts joined "is contrary to 200 years of constitutional law."

Roberts issued a dissent in a preliminary decision against the Bush administration's efforts to keep secret records of Cheney's energy task force. Roberts was in the minority when the court voted 5-3 to deny the Bush administration's request for a rehearing. However, the Supreme Court upheld the administration position on a 7-2 vote and the appeals court subsequently implemented the Supreme Court decision with an 8-0 vote.

Roberts is a member of the conservative Federalist Society, which has influenced Bush's judicial picks.

Bush called him "one of best legal minds of his generation."

Roberts is a familiar face at the Supreme Court, where he clerked for then-associate Supreme Court Justice William H. Rehnquist and later argued many cases, both for the government and as

a private lawyer. He was associate counsel to President Reagan from 1982-86 and served as principal deputy solicitor general in the administration of the first President Bush from 1989-93 before returning to private practice.

As a private lawyer, the Buffalo, N.Y., native represented Toyota at the Supreme Court, winning limits on disabled workers' claims.

He also joined in a decision last year to throw out a \$959 million judgment for U.S. prisoners of war who say they were tortured by the Iraqi military during the 1991 Gulf War, ruling that Congress never authorized such lawsuits against foreign governments.

Liberals are unhappy with a number of his decisions, though he has not always stayed on a narrowly conservative path.

At the appeals court, he won hearings for welfare recipients whose benefits had been terminated.

To liberals' dismay, Roberts issued a dissent in a case involving the constitutionality of the Endangered Species Act. The group People for the American Way said Roberts' dissent indicated he may be ready to join the ranks of right-wing conservative judges who seek to severely limit congressional authority to protect the environment.

Supreme Court historian David Garrow of Emory University said that while Roberts is a conservative, he is not in the mold of Justices Antonin Scalia and Clarence Thomas.

"I do not think it moves the court at all," Garrow said.

On the other hand, University of Chicago law professor David A. Strauss thinks Roberts will alarm Democrats because of his reputation as a conservative.

As an example, Strauss pointed to a brief Roberts wrote stating public high schools can include religious ceremonies in their graduation programs, a view the Supreme Court rejected. Roberts authored the brief while working with the solicitor general's office, under Kenneth Starr, on behalf of the first Bush administration.