

Court choices: Roe and Republican strategy

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President Bush has had two chances to install on the Supreme Court a hard-core conservative pledged to overturn *Roe v. Wade* at the first opportunity. On each occasion he has decided not to go there. In the case of John Roberts, he picked a moderate conservative known primarily as a lawyer's lawyer, not for his ideological purity. In the case of Harriet Miers, he picked a woman with little public record at all, known mostly for her loyalty to him.

The religious right was prepared to turn President Bush's Supreme Court appointment into an Armageddon-like battle over abortion, a moral showdown between the forces of good and evil. With one of their own in the White House and antiabortion Republicans in control of the Senate, success on this key issue seemed at hand. No wonder many on the religious right are unhappy with what Bush has delivered, and unplaced by assurances that Miers attends a conservative evangelical church.

What happened? Bush's choices may simply reflect the moderating nature of democratic government. Since the Constitution gives the Senate a chance to weigh in on court appointments, a president has an incentive to edge toward the middle with his nominations if he wants to avoid a nasty fight. The founders of the nation might observe that their system is working.

One suspects also that Bush—along with Karl Rove, the master political strategist—is just not all that committed to overturning *Roe*, despite his antiabortion rhetoric. Bush has frequently said he has not made opposition to *Roe* a litmus test for judges. He once suggested that the country is not ready for the overturning of *Roe*, and during the 2000 campaign he remarked that if a woman is raped and is considering an abortion, the decision should be “up to her.”

Republican strategists realize that actually dismantling *Roe*—as opposed to merely talking about “the culture of life”—would likely create a serious political liability for

the party. It might satisfy a part of its political base, but that base is a distinct minority. The strategists know that attacks on “abortion on demand” resonate on the campaign trail, but they are not eager to defend a system in which women have no right to choose.

A survey released last month by the Pew Research Center indicates that most Americans think abortion is the most important issue to come before the Supreme Court. It also reveals that by a more than two-to-one margin (65 percent to 29 percent) they oppose completely overturning *Roe*. Though many people say they want more restrictions on abortion, only 9 percent want to see it banned altogether. Those numbers have not changed significantly in 15 years. Doubtless those numbers are familiar to Karl Rove.