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a Better Future Now”

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Obama’s Fight to Confirm Judges

The next major showdown in Washington may not be over how best to reduce the deficit or involve another Obama cabinet appointment. Look for sparks to fly over the president’s constitutional prerogative to nominate federal judges and the Senate’s responsibility to either confirm or reject those nominees.

The latest manifestation of this is President Obama’s decision to fill three vacancies on the U.S. Court of Appeals for the District of Columbia Circuit, a frequent stepping stone to the Supreme Court. The president said he is merely fulfilling his constitutional responsibility as president, but Republicans are accusing him of “packing the court.”

Clearly, the courts are anything but packed. In fact, more than 10 percent of all judgeships are unfilled. There are 87 vacancies, up from the 55 when Obama first took office.

To fully appreciate the significance of this standoff, it is important to remember that in their effort to radically shift the nation to the right over the past two decades, Republicans have gone all out to control the federal judiciary by placing young, arch conservatives on the bench.

According to a March 5 report by the Alliance for Justice titled, “The State of the Judiciary: Judicial Selection At the Beginning of President Obama’s Second Term,” Republican appointees still control the federal judiciary.

However, the study found, “Since the end of the Bush Administration, the percentage of Republican-appointed circuit judges

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George E. Curry



dropped from 61.3% to 51.2%, and the percentage of Republican-appointed district court judges dropped from 58.6% to 53.6%.”

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Political affiliation isn’t the only thing that is changing.

“President Obama’s nominees have been the most diverse in terms of race and gender in American history,” according to the report. “Forty-one percent of his appointees have been women and 36% have been people of color, a far higher percentage than any of his predecessors.”

Bill Clinton had the second-best record, with 29 percent of his appointees women and 24 percent people of color.

Obama’s record would have been even more impressive had he made nominations at the same pace of his immediate predecessors.

The Congressional Research Service (CRS) issued a report on

May 2, titled, “President Obama’s First Term U.S. Circuit and District Court Nominations: An Analysis and Comparison with Presidents Since Reagan.”

It noted, “President Obama is the only one of the five most recent Presidents for whom, during his first term, both the average and median waiting time from nomination to confirmation for circuit and district court nominees was greater than half a calendar year (i.e., more than 182 days).”

There is plenty of blame to go

around for such a slow confirmation pace, beginning with Obama. “... Of the 81 circuit or district court vacancies that existed at the end of President Obama’s first term, 50 (or 61.7%) were vacancies for which, as of January 19, 2013, the President had not selected a nominee,” the CRS study found.

And even when Obama did submit names, the study found, his confirmation rate was lower than most of his immediate predecessors.

“Among the first five Presidents during their first terms... President G.H.W. Bush had the greatest number of circuit court nominees confirmed, 42. President Reagan had the greatest percentage of circuit nominees confirmed during his first term (86.8%). In contrast, President Obama had the second-lowest percentage of circuit court nominees confirmed (71.4%) and is tied with President Clinton for having the lowest number of circuit nominees confirmed, 30.”

There was a similar pattern with district court nominees, with Obama having the second-lowest number and percentage confirmed.

Although Obama has done an impressive job appointing nominees who reflect racial and gender diversity, he has not done as well with professional diversity, according to the report by the Alliance for Justice. While Obama has appointed 99 ex-prosecutors, he has nominated only 33 former public defenders and 16 former academics.

A professionally diverse judiciary better reflects the range of legal and societal experiences that judges bring to the bench,” the report observed. “A judiciary heavily slanted toward former corporate attorneys and prosecutors lack the perspective of lawyers who have represented clients in criminal defense, consumer and environmental protection, personal injury, and other public interest fields.”

Unlike Republicans, Obama has tended to nominate older candidates to the bench, averaging 51.3 years old. That’s typically 2-5 years older than Republican appointees. And that could come back to haunt Democrats in the future.

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Is ‘Big Brother’ Racially Biased?

When George Orwell wrote the novel 1984, he envisioned a character, real or imagined “Big Brother” who was a know-all, see-all, omnipotent and elusive presence that intruded into lives because he could. Those who knew about “him” were told that they did not exist, but in many ways, Big Brother may not have existed, either. The omnipotence had taken on a life of its own.

Orwell’s book was a book ahead of its time. At a different time, his book could have been dismissed as psychedelic fantasy. Today, he is just a step behind the reality in which we live. Verizon is sharing telephone records. The Department of Justice is monitoring journalists, and the IRS is playing games with those who seek non-profit status. People pulled over for a minor traffic violation will have to submit fingerprints to find out if they have broken other laws. Big Brother is alive and well in too many layers of our lives,

Meanwhile, market researchers are segmenting populations by zip code and consumer patterns. They can tell you what percentage of Whites, African Americans or Latinos live in a certain zip code. They can tell you what you earn, what you are worth, and how many of your neighbors have criminal records. The zip code data drives marketers. Does it also



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drive law enforcement?

A recent study indicated that African Americans are between 2 and 6 percent more likely to be arrested for marijuana violations than Whites. I guess it is easier to arrest from a corner than from a

country club. The rate of arrests for marijuana possession is 716 per 100,000 for African Americans, compared to 192 per 100,000 for Whites. The disparity is much higher in some counties.

Does this mean that African Americans are breaking more laws, or that law enforcement officers are targeting some zip codes or communities more regularly? It

Differences in marijuana arrests raise real questions about the many ways that data may be used to discriminate

Brother can drive police to investigate the least and the left out, those who are most vulnerable, while deciding to allow others to slink behind their space of class and privilege. Big Brother can play bang for buck games that make it more profitable to arrest those with few resources in the hood instead of those with home-based protection.

Data collection seems to be a

race-neutral process. While data collection is an input, arrests are an output. Between input and output there is the opportunity for racial bias to show up. If White folk and Black folk take an equal token, why are Black folk more likely to be arrested? Are zip codes driving public safety officers to one place and deterring them from another?

Differences in marijuana arrests raise real questions about the many ways that data may be used to discriminate. Instead of structural racism, intrinsic racism, and other forms of racism, we now have a data-based racism that is only logical when we ask how data is collected. Simply put, the zip code data leads people to discriminate, if only because they are being led to single out a certain population.

In other words you can be a non-racial racist. You can let the data, warped though it may be, lead you to biased conclusions. Data-based racism is as corrosive as emotion-based racism. Big Brother’s racial biases is nothing more than par for the course.

Julianne Malveaux is a Washington, D.C.-based economist and writer. She is President Emerita of Bennett College for Women in Greensboro, N.C.