



THE WHITE HOUSE
TRANSITION PROJECT
1997—2017

RICE UNIVERSITY'S
BAKER INSTITUTE
FOR PUBLIC POLICY

SMOOTHING THE PEACEFUL TRANSFER OF DEMOCRATIC POWER

Report 2017—51

THE LONGER YOU WAIT, THE LONGER IT TAKES

Substituting Efficiency for Partisan Rancor
in Presidential Appointments*

Heather Ba, Brandon Schneider, and Terry Sullivan
The White House Transition Project

* The authors thank Martha Joynt Kumar for her comments. The authors also appreciate the advice and reactions of Clay Johnson III.

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WHO WE ARE & WHAT WE DO

The White House Transition Project. Established in 1997 to provide information to incoming White House staff members so that they can hit the ground running, The White House Transition Project includes a group of presidency scholars from across the country who participate in writing essays about past transitions and the inner workings of key White House offices. Since its creation, it has assisted campaigns in the 2000, 2004, 2008, 2012, and 2016 presidential election years, and participated in the 2001, 2009 and now the 2017 presidential transitions with the primary goal of streamlining the process and enhancing the understanding of White House operations. WHTP maintains an important, international dimension by consulting with foreign governments and organizations interested in improving governmental transitions.

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Smoothing the Peaceful Transfer of Democratic Power

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EXECUTIVE SUMMARY

In general, the longer an administration takes to nominate someone, the longer it takes the Senate to reach a decision on that nomination. This pattern means that administrations do not fill nearly 30% of all critical positions by the end of the first year in office and nearly 50% of other important positions in government.

For both positions identified as “critical” leadership appointments and “normal” positions, this trend begins midway through the first 100 days and it soars after the policy agenda reaches full force in the Senate.

These patterns in Senate deliberations seem associated with the Senate’s workload rather than increasing polarization.

These results suggest:

1. *A nonpartisan strategy for reform.* Standing-up the government faster would require issuing around 400 nominations during the first 100 days. This strategy should generate a 33% improvement in overall Senate deliberations for appointments.
2. To achieve this efficiency improvement requires four changes:
 - a) Senate committee should hire permanent staff charged with primary responsibilities for confirmations.
 - b) The FBI should increase its vetting staff to make it possible to vet 400 nominations in the first 100 days.

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Smoothing the Peaceful Transfer of Democratic Power

- c) US Office of Government Ethics should increase its auditing staff by 50%.
- d) The Congress should authorize creation of a permanent personnel office similar to the Office of Management and Budget, located in the Executive Office of the President and managed by a staff of three PA positions.

Concentrating on efficiency and capacity would highlight a common interest in an improved process instead of the partisan polarization so common elsewhere in Washington.



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A new administration's appointments represent the key to achieving everything a president wants and everything the electorate has decided. That notion of republican responsibility originates in the founding, where for example, Alexander Hamilton characterized it as "the intimate connection between ...the executive magistrate in office and the stability of the system of administration" (*Federalist* #72). Modern social science research suggests that presidents maximize their influence over policy-making when they lead a coordinated advocacy within their administrations, speaking from many perspectives but with a singular voice.¹ Challenging the new president's appointments, then, often becomes an opposition's first line of resistance. Yet, much of what any new president does involves simply "standing-up" the national government so it can carry out critical, and fundamentally non-partisan, responsibilities. So, making the appointments process too partisan weakens the democratic foundations of the Republic.

This report details the current appointments process, one universally described as "broken." Over the last forty years, nominations have taken longer and longer to get through Senate deliberations. During President Obama's first year, for example, the Senate took three times longer to deliberate on nominees than it did during the Reagan presidency. Of course, the dysfunctional appointments process represents just one on a long list of governance failures that scholars and pundits have attributed to growing partisan polarization, failures that include repeated shut downs, failed budgeting, downgraded bond ratings, financial panics, bungled

¹ See Jeffrey Birnbaum and Alan S. Murray, 1988, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform*, New York: Vintage Books; Matthew Kerbel, 1991, *Beyond Persuasion — Organizational Efficiency and Presidential Power*, Albany: State University of New York Press; and Matthew Beckmann, 2010, *Pushing the President's Agenda: Presidential Leadership in U. S. Lawmaking, 1953-2004*, Cambridge: Cambridge UP.

national security events, increased corruption, and declining public confidence.² Party polarization presents a stark challenge because it not only undermines the processes of governing but it also undermines useful reform strategies. Trying to fix the faltering appointments process, for example, has occupied the attention of the governing community for decades with few real changes.³

The research reported here offers some insight into an alternative strategy for reform, by presenting a detailed analysis of some 3,500 nominations made during the first year of five previous presidential administrations (Presidents Ronald Reagan to Barack Obama).⁴ It demonstrates that during the first 100 days, presidents make numerous nominations that the Senate also approves quickly, regardless of partisan divisions or the nominations involved. After the first 100 days, the average period of Senate deliberations lengthens significantly and continues to lengthen through to the end of the administration's first year in office. Explaining that pattern highlights the Senate's increasing workload over the president's first year. Given this dynamic, then, an imbalance between resources and responsibilities unnecessarily prolongs the appointments process, setting the conditions for delay and predatory opportunism, both effects currently attributed to polarization. Enhancing the ability of both the Senate and the executive branch to exploit this brief but recurring window of opportunity represents the main thrust of the prescriptions advanced in this report: pursue efficiency.⁵

Pursuing efficiencies suggests two reforms. First, during the presidential transition, the president-elect and Senate leadership should coordinate appointments, opening a wider pipeline for confirmations from the transition through the first 100 days. Second, prior to the transition, the government should expand the capacity of three critical agencies supporting the appointments process. Taking these two steps would then allow for "front-loading" critical appointments which would improve operational efficiency and stand-up the American government more quickly. Using our suggestions, we estimate that these two changes would stand-up the government 33% faster than the average over the past five administrations. Best of all, by focusing on concepts like "capacity" and "efficiency," these reforms constrain neither party and possess no clear implications for the balance of political power in Washington yet demonstrate that the US federal government can still function.

²See Thomas Oatley, 2015, *A Political Economy of American Hegemony — Buildups, Booms, and Busts*, New York: Cambridge University Press. Also, see National Commission on Terrorist Attacks on the United States, 2004, *9/11 Commission Report*, <http://govinfo.library.unt.edu/911/report/911Report.pdf>.

³Paul C. Light, 2007, "Recommendations Forestalled or Forgotten? The National Commission on the Public Service and Presidential Appointments," *Public Administration Review*, 67, 3(May/June):408-17. For a review, see 2012 Report of the National Commission to Reform the Federal Appointments Process, the Aspen Institute. The Presidential Appointment Efficiency and Streamlining Act of 2011 represents a single exception. See footnote 5.

⁴The WHTP database excludes PAS nominations for all uniformed military officers, most ambassadors, most federal attorneys, and all US marshals; all positions deemed to *execute* administration policy. It makes two exceptions to these exclusions: two US Attorneys (Eastern New York and Northern Virginia) which play special roles in terrorism cases and cases of corruption and twenty ambassadorships which play important roles in either security (e.g., NATO, UK), economic policy (e.g., China; EU), or critical diplomatic missions (e.g., Israel).

⁵The Presidential Appointment Efficiency and Streamlining Act of 2011 took this approach, encouraged by the National Commission on Reforming the Federal Appointments Process. See also Office of the Presidency, Working Group on Streamlining Paperwork for Executive Nominations, 2012, *Streamlining Paperwork for Executive Nominations, Report to the President and the Chairs and Ranking Members of the Senate Committee on Homeland Security & Government Affairs and the Senate Committee on Rules & Administration*.

The scholarly research behind this approach originates with Heather Ba, Brandon Schneider, and Terry Sullivan, 2017, *Reassessing the Importance of Polarization and Divided Government in Contemporary Advice and Consent*, manuscript, The White House Transition Project.

THE SLOW STAND-UP OF AMERICAN LEADERSHIP

To document the slow pace of appointments in the modern era,⁶ consider only an administration's most important positions. While the president can play a role in filling around 9,000 positions in the national government, only about 1,100 of those positions are President-appointed and Senate-confirmed or "PAS" positions. PAS positions generally involve managing government responsibilities so important that the organic legislation creating them requires not only that presidents nominate the leadership responsible for that function but that the Senate also confirm the president's appointment.

Following the NCRFAP, we divide PAS positions into three groups based on the urgency of policy matters that fall within a position's purview. The first group involves uniformed military officers, US Marshals, most US Attorneys, and most US Ambassadors. Since these have almost no policy making responsibilities, but instead carry out policies made by others, the analysis excludes them.

The remaining two groups include positions responsible for setting policy or (in the case of some governing boards) overseeing the making of that policy.⁷ A large group of PAS positions (averaging around 860 over the last five administrations) carry out "normal" leadership in the executive branch. These include lower-level presidential appointments in agencies (i.e., assistant secretaries and below) and memberships on many regulatory commissions and boards. The remaining positions (averaging around 200) carry out "critical" governmental responsibilities. These positions have significant policy-making and/or time sensitive responsibilities. For example, critical positions include those which set important economic policies (e.g., governors of the Federal Reserve System) or carrying out primary executive responsibilities (like Director the Office of Management and Budget), national security (e.g., the Secretary of Defense and the

Director of the FBI) or critical international diplomacy (e.g., Ambassador to the European Union). Making appointments to these critical positions, in effect, makes functional the US executive leadership — it *stands-up* the Executive branch.

Table 1 reports the performance of the last five presidential transitions in filling the last two types of PAS appointments, during the first year. Here, "performance" means the number of days it takes the Senate to make a decision after it receives a presidential nomination. Nominees to critical PAS

Table 1. Average Days to Senate Decision, First Year

President	Normal	Critical
Reagan	41.5	19.9
GHW Bush	74.2	44.4
Clinton	64.1	51.4
GW Bush	105.5	49.2
Obama	107.6	72.6

Source: Compiled by Authors

Note: All means statistically significant and different from each other

positions generally attain Senate confirmation more quickly in each administration, and regardless of the array of partisans in the Senate. Over the past forty years, however, the confirmation process for both types of PAS positions has lengthened. By the Obama administration, the average number of days to a Senate decision for a normal position had more than doubled, while the average time to Senate decision for critical leadership positions had more than tripled.

⁶ The "modern presidency" begins with the post-FDR era. Prior to the end of World War II, presidential appointments underwrote a massive patronage system. During his first term in office, for example, FDR made a little more than 125,000 appointments to civilian positions. See Charles Walcott and Karen Hult, 1995, *Governing the White House: From Hoover Through LBJ*, Lawrence, Kansas: University of Kansas Press.

⁷ See Appendix 1.

Table 2 describes the consequences of this lengthening process by presenting stand-up rates for the two types of positions, highlighted (in green). It also reports each administration's success rates in identifying individuals to fill these positions. It further reports these percentages at three points during the first year: the end of the first 100 days, the beginning of the August congressional recess, and the end of the first congressional session.

Table 2. Time Sensitive Positions and Stand-Up Rates (SUR), 1981-2017

President	SUR — % Completed ⁸					SUR — % Completed				
	PAS Critical Leadership Positions					PAS Normal Leadership Positions				
	n		4/29	8/6	12/15	n		4/29	8/6	12/15
Trump	224	Nominated	21	49	63	980	Nominated	6	21	34
		Filled	11	30	31		Filled	3	13	27
Obama	238	Nominated	62	78	89	846	Nominated	35	45	58
		Filled	38	74	72		Filled	26	35	40
W. Bush	213	Nominated	62	80	89	906	Nominated	46	50	58
		Filled	22	65	73		Filled	37	40	46
Clinton	207	Nominated	66	84	92	983	Nominated	28	37	49
		Filled	29	51	64		Filled	15	24	29
H. W. Bush	180	Nominated	52	74	80	855	Nominated	33	43	50
		Filled	37	60	76		Filled	21	33	41
Reagan	153	Nominated	58	72	77	727	Nominated	26	41	57
		Filled	43	67	72		Filled	9	23	30
1981-2009 Averages	198	Nominated	59	76	84	863	Nominated	31	41	52
		Filled	33	62	70		Filled	19	28	35

Source: Compiled by the authors.

Ending the First Year, a Quarter of Critical Positions Remain Empty

By the end of its first year, none of the last five administrations have succeeded in standing-up the executive branch. For example, by the end of the first congressional session, President George W. Bush had nominated a little less than 90% of those critical leadership positions, yet the Senate had confirmed only enough to fill about three-quarters of those positions. The average “stand-up rate” of around 70% has typified the last five transitions. That means more than a quarter of the government's most critical positions remain empty more than a year after the electorate has set the government's course. Even worse, administrations fill far less than half of the other, normal PAS positions by year's end.

The average stand-up for the last five administrations leaves 30% of critical positions unfilled and considerably more than three-quarters of normal positions unfilled by the end of the first year.

Well into its tenure, then, the president's team resembles mostly a room of empty chairs.

Like the others, the Trump administration also did not perform well on these two measures. At 31%, the Trump administration secured less than half the average for his predecessors on

⁸ Stand-up rates for critical positions also include a very small number of PAS positions which have fixed terms of service and who at any moment could have an appointment already filling the position and continuing in service for well into the new administration's term. These positions usually occur in regulatory agencies, e.g., the Federal Reserve Governors, but also include positions typically associated with a new government, e.g., the Director, FBI. Typically, this number represents about 15 of the 210 positions at the start of any administration.

critical leadership positions. Recall, that critical positions tend to carry out important Executive duties — e.g., national security — as opposed to fulfilling a partisan agenda. So, the Trump failure to stand-up the government in these critical functions represents a critical deficiency in their transition and first year performance. The Trump record also falls short of the average performance of previous administrations on normal leadership positions. Hence, the Trump experience reflects a failure of both the Executive and Senate; the worst performance in forty years. This failure has occurred in a period of unified government.

Beyond the Slow Senate Deliberations

Typically, scholarly research on presidential nominations focuses on the Senate's confirmation process, partly because researchers have easier access to evidence about Senate deliberations. Yet, as indicated in Table 2, and especially highlighted by the Trump administration experience, the appointments problem also has additional roots in the Executive's performance. Even among the critical positions, for example, administrations never provide a full list of nominations. Estimates by former directors of the Office of Presidential Personnel set the average White House vetting of nominees at twice as long as the average Senate deliberations.⁹

Popular and Scholarly Explanations for the Slow Stand-up

Grumbling about partisanship makes up a large percentage of *presidential* complaints about a slow stand-up. In a tweet typical of these complaints, President Donald Trump focused on the Senate's minority party midway through his first year in office:

Dems are taking forever to approve my people, including Ambassadors. They are nothing but OBSTRUCTIONISTS! Want approvals...¹⁰

A number of scholarly works explaining the slowing process of confirmations have also placed the blame on increasing partisanship.¹¹ Nolan McCarty and Rose Razaghian present a representative summary of these findings (1141):

Our evidence certainly points to a highly politicized process of confirming executive branch nominations. Rather than a process of Senate rubber-stamping or credential certification, we find that politics is an important part of the process. Political conflict induced by divided government and polarization clearly leads to a more drawn out confirmation process.¹²

The results from these studies have identified three separate elements of “polarization” as an explanation. First, they cite the size of the Senate's majority party. Effectively, the minority party has few cards to play unless it faces a majority party operating with a narrow margin. As Senate Majority Leader Lyndon Johnson used to say about the Senate, “in this house, you can get anything you have the votes to get. The real question is how many votes have you got?” The less

⁹ See Clay Johnson, 2008, “Recommendations for an Effective 2008 Transition,” *Public Administration Review*, 68, 3(July/August):624-6.

¹⁰ Quoted by Louis Nelson, “Trump Blames Democrats for Slow Confirmation Process,” *Politico*, June 05, 2017 10:46 EDT. See also Robert Farley, “Who’s to Blame for Slow Confirmations?” *FactChecker.org*, October 23, 2017.

¹¹ Joseph Harris, 1953, *The Advice and Consent of the Senate*, Berkeley: University of California Press; Calvin Mackenzie, 1981, *The Politics of Presidential Appointments*, New York: Free Press; Thomas Hammond and Jeffrey S. Hill, 1993, “Deference or Preference? Explaining Senate Confirmation of Presidential Nominees to Administrative Agencies,” *Journal of Theoretical Politics* 5:23-59.

¹² Nolan McCarty and Rose Razaghian, “Advice and Consent: Senate Responses to Executive Branch Nominations 1885-1996,” *American Journal of Political Science*, 43,4(October):1122-43.

leeway the majority has, the less partisan its treatment of nominations, because Senators cannot afford opportunism.

In addition, scholars highlight as critical the growing disparities between the two parties as measured by their two median members. The farther apart the two parties, the more likely they will treat nominations as a partisan matter as opposed to a matter of government responsibility. Third, researchers point to whether the president faces a partisan majority of the other Congressional party. Divided control lays the foundation for obstruction. Each of these differences (margin, disparity, and divided government) emphasizes a separate partisanship pathway to disruption: a large majority margin suggests a growing attraction for individual opportunism over party unity or “discipline,” a growing disparity suggests a deep policy animosity between Senate parties that spills into assessing the president’s nominations, and divided party leadership suggests a lack of basic coordination between institutional leaders.

An Example of Alternative Leadership

While not contesting whether the partisan threat slows the stand-up process, the empirical results produced here suggest an alternative, institutional process that affects deliberations. As an example of these results, the National Commission for Reforming the Federal Appointments Process, led by former Senate majority leader Bill Frist and former White House chief of staff Mack McLarty, encouraged Senate leaders to focus on reducing the numbers of PAS positions as a way of reducing “unnecessary conflict.” They recommended identifying “normal” PAS positions particularly unsuited to Senate confirmation. In following that recommendation, the Senate Majority and Minority Leaders identified 260 positions that they proposed the Senate would consider unilaterally downgrading from PAS, returning them instead to the President for filling through unilateral action. In effect, the resulting legislation unilaterally (and in a bipartisan agreement) vacated the Senate’s rights to oversee presidential choices on 163 of these positions.¹³

The potential for bipartisan agreement and action, exemplified by this bill, remains one of the bright spots in the Washington landscape. Improving institutional efficiency and capacity by implementing the recommendations made here represent another bipartisan approach to reducing the delayed stand-up.

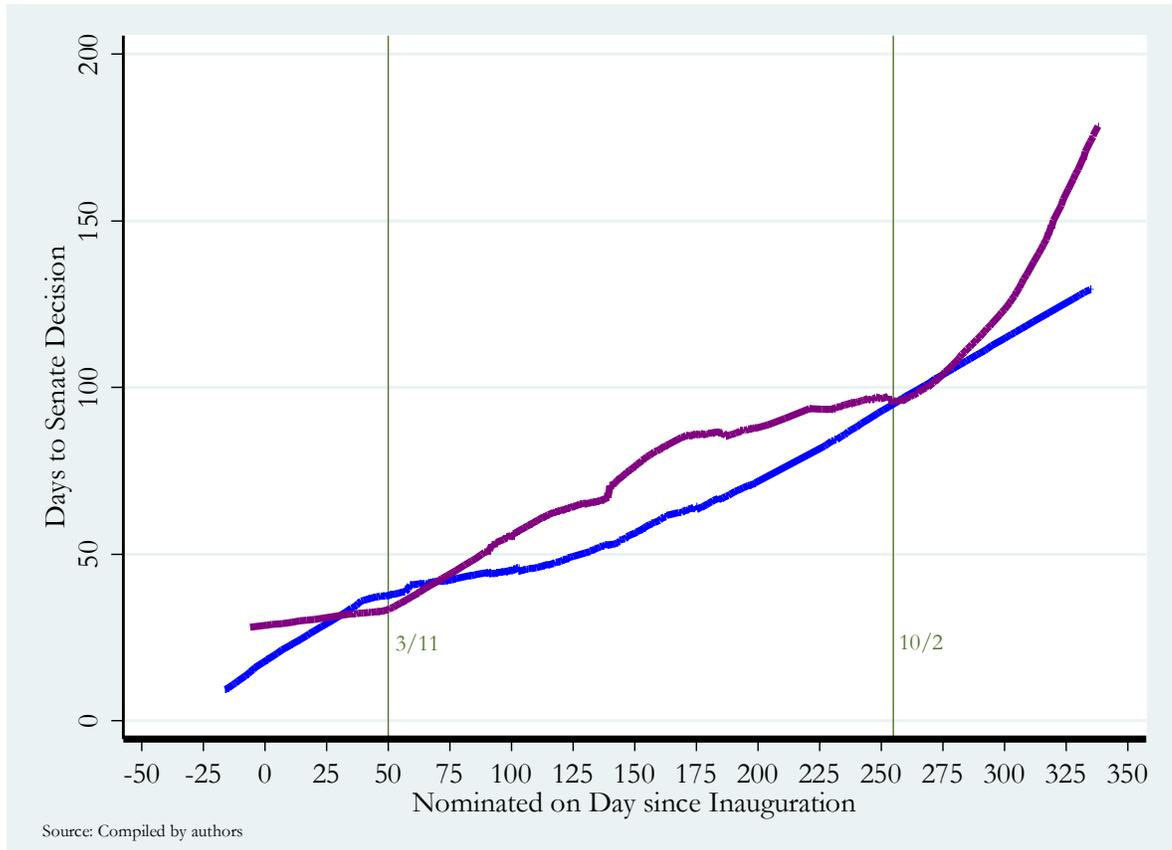
A NEW EVALUATION OF THE APPOINTMENTS QUAGMIRE

Since failing to stand-up the government presents a set of dire consequences common to all administrations, it may also have origins in a common, rather than a partisan, explanation. To assess this possibility, the White House Transition Project utilizes its original dataset tracking more than 3,500 nominations for PAS positions during the first year of the last five administrations. Nominations occur when the Senate receives a nominee’s credentials from the President. Final decisions include confirming or rejecting a nominee as well as “returning the nomination to the President,” considered a rejection of the nomination though the Senate takes

¹³ See footnote 5.

no official position.¹⁴ In these data, the number of days required to complete a nomination ranged in length from 0 through to a maximum around 1,200.¹⁵

Figure 1. Length of Senate Deliberations and Type of Nomination



Two General Effects on Deliberations

Figure 1 illustrates these data. The X-axis records when a new president forwards a nominee’s credentials to the Senate, thus initiating the Senate’s deliberations.¹⁶ The Y-axis reports the length of Senate deliberations measured by the number of days from Senate reception to final disposition. This graph reports the relationship between the date of nomination and length of deliberations for the two sets of PAS positions.¹⁷ The figure illustrates the general trend that the

¹⁴ Nominations can fail under a special Senate rule, Rule XXXI §5-6, which requires the Senate to return nominations to the Executive before the August and the end of session recesses. The Senate can avoid the rule by suspending it through a unanimous consent agreement or through a common agreement between party leaders as to returning only a select set of nominations. Since the president can (and regularly does) re-nominate these individuals when the Senate returns these nomination under the rule, the data considers anyone so re-nominated as having continued in the confirmation process from the initial nomination. Nominations not re-nominated have failed at the date the Senate returns the nomination.

¹⁵ Since the Senate considers itself a continuing body, an administration can re-propose a nominee over several sessions having had the Senate return that nominee (see footnote 14).

¹⁶ Negative numbers constitute nominations of the president-elect.

¹⁷ The summary lines result from a Lowess function, which describes a “locally sensitive” linear relationship between two variables. At any given data point (x,y) , the technique summarizes the linear relationship between two

length of Senate deliberations on nominees increases over the administration's first year.¹⁸ Regardless of the substances of the nominees or the position under consideration, the later a nomination the longer the Senate deliberates.

The longer an administration takes to nominate, the longer the Senate takes to deliberate.

While this relationship between nomination and deliberation applies across the board, the graph also differentiates clear patterns between the two types of nominations. Generally, critical nominations get faster Senate consideration.¹⁹ And, the two lines describing deliberations diverge significantly from one another at two “inflection points,” indicated by vertical lines. While the length of deliberations for both types of nominations begins a climb around March 11th, the midpoint of the first 100 days, the increase for normal nominations appears considerably steeper. At a second inflection point, around the end of the budgeting cycle and the beginning of the federal fiscal year, normal nominations take a second, considerably steeper path. By year's end, deliberations on normal positions nominated near the end of the congressional session take around 50 days longer than deliberations for critical leadership positions nominated at the same time.

By comparison with those for critical leadership positions, nominations for normal PAS positions take a considerably steeper path in lengthening deliberations, overall, and following the end of the congressional budgeting cycle the pace of ever-lengthening deliberations accelerates for normal positions.

Discounting a Surge: The Trends Tell a Different Tale

One possible explanation for lengthening deliberations involves the increasing numbers of PAS positions outpacing the Senate's capacity to process those nominees. As Table 2 documents, the total number of PAS positions has grown since the Reagan administration. President Obama, for example, had responsibility for 1,084 positions, a nearly 25% increase over President Reagan's responsibilities. At the same time, the numbers of Senate committee staffs have not changed. Additionally, the size of the presidential personnel operation has not changed. Over the past forty years and despite the additional responsibilities, neither agent involved in the appointments process has expanded its capacity.

Figure 2 reports something of a test of this potential explanation — the relationship between the average numbers of nominations in a month and the average length of Senate deliberations on those nominations. If increasing nominations slowed the Senate, then the two graphs would follow each other: as nominations increased, so too would the length of deliberations.

Clearly the average length of deliberations actually increases as the average numbers of nominations goes down. Over the first year, the average length of deliberations for each nominee simply increases. Even though the early period of an administration, during the first 100 days, sees the greatest numbers of nominations, the Senate experiences the shortest average length of deliberations. The largest difference between the number of nominations and the average length of Senate deliberation occurs during the window of opportunity in the first 100 days when the Senate extends what would seem like a professional courtesy to the new President and allots

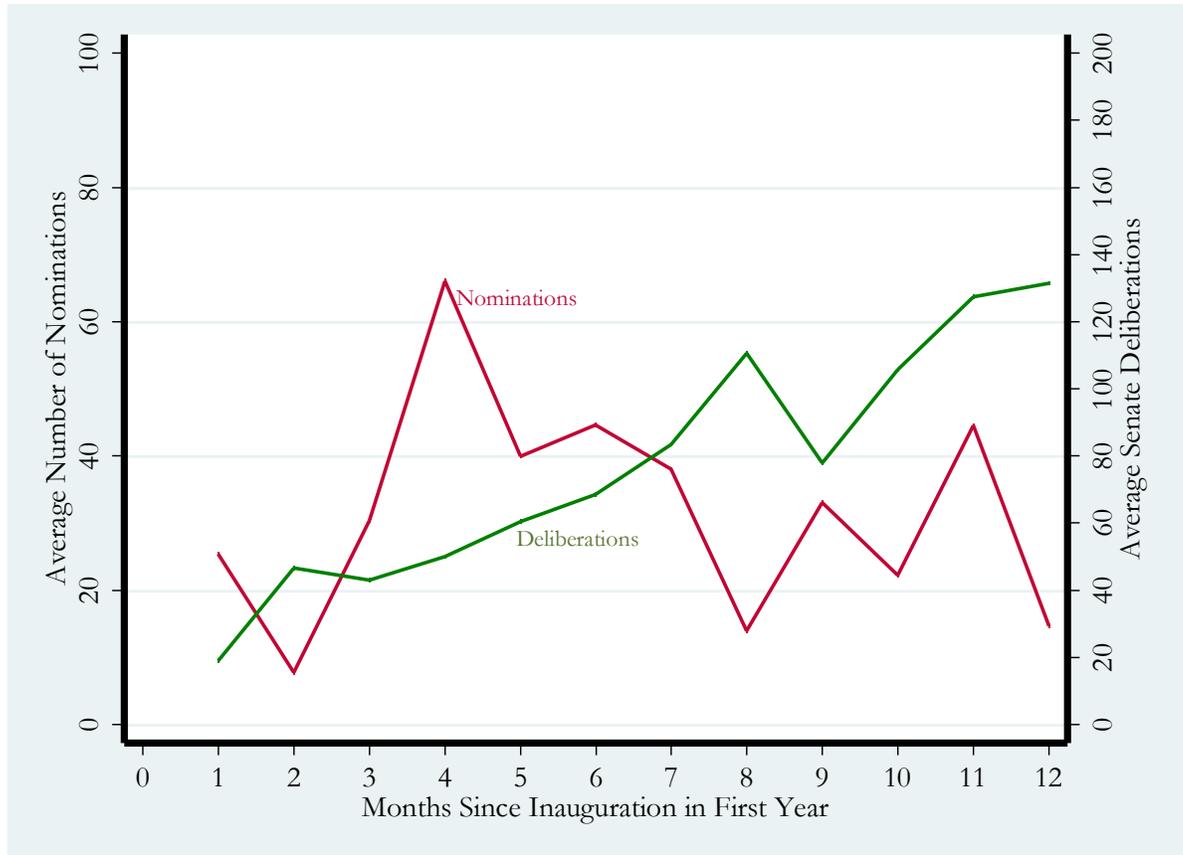
variables, x and y , using that data point along with one-half the data points in the “vicinity.” The function then moves on to the next data point and recalculates. Using this method of presentation produces the more reliable statistics of a linear technique while having the capability to reflect a changing underlying relationship.

¹⁸ Again, the scholarly research behind this approach originates with Heather Ba, Brandon Schneider, and Terry Sullivan, 2017, *Reassessing the Importance of Polarization and Divided Government in Contemporary Advice and Consent*, manuscript, The White House Transition Project.

¹⁹ This fact seems consistent with the possibility of bipartisan strategies.

considerable attention to confirming appointees. Once the President's policy agenda crystallizes and evolves into actual legislation, though, the Senate's attention shifts, and Senate deliberations slow.

Figure 2. Senate Workload: Numbers of Nominations and Deliberations



The Possible Role of Senate Workload

To explain Senate deliberations, studies have considered the impact of election cycles, divided control of Congress, polarization, relations with a Senator's home state, the extremity of the president, the extremity of the Senate majority, the differences between the ideology of presidents and Senate majorities, agencies with ideological perspectives, boards versus other appointments, presidential approval, and media coverage.²⁰

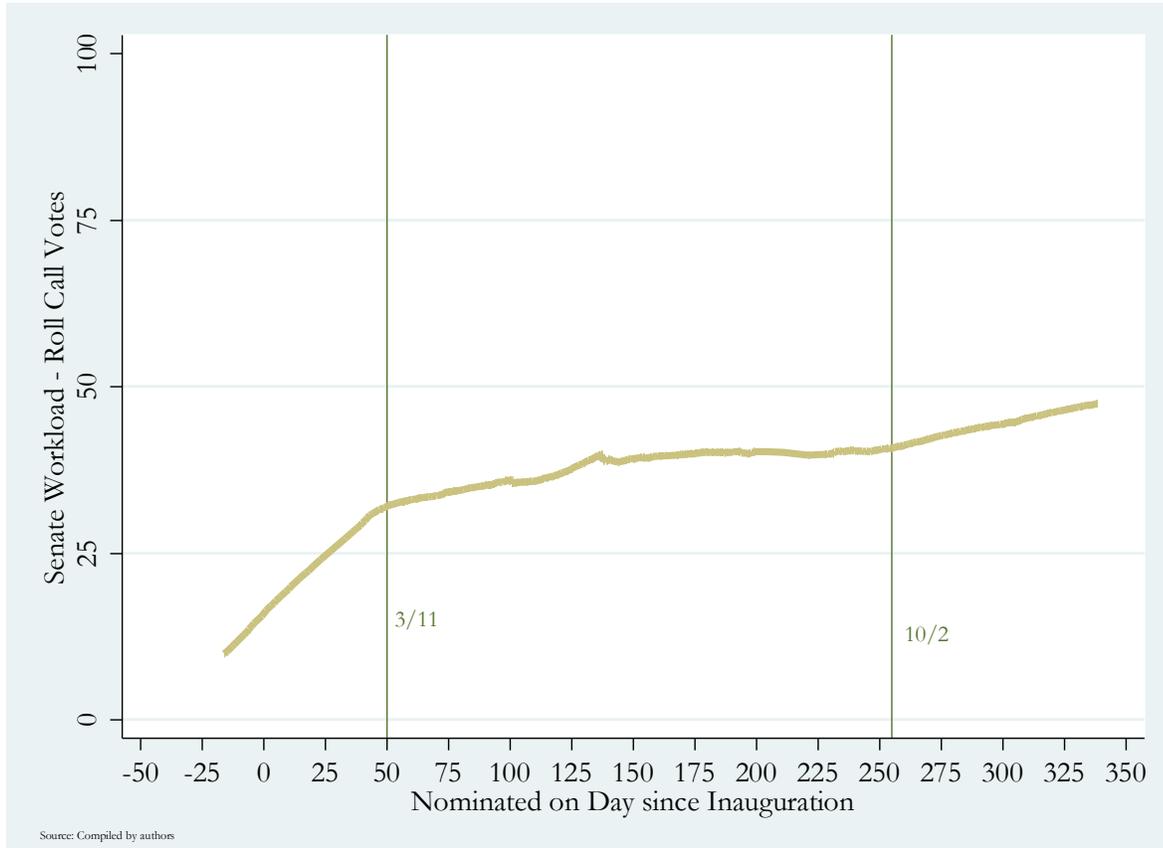
This paper explores an additional explanation; one that emphasizes how nominations interact with Senate business. In the Senate, for example, only two committees (Foreign Affairs and Judiciary) have staffs with permanent and exclusive responsibility for vetting nominations. The remaining committee staffs must squeeze confirmation duties into their policy responsibilities. Party leadership as well does not regularly have staff dedicated to and experienced in managing

²⁰Cf. Ian Ostrander, 2013, *Winning the Waiting Game: Senatorial Delay in Executive Nominations*, August, unpublished Ph.D. dissertation Washington University in St. Louis; Roger E. Hartley and Lisa M. Holmes, 2002, "The Increasing Senate Scrutiny of Lower Federal Court Nominees," *Political Science Quarterly*, 117:259-67; Jon R. Bond, Richard Fleisher and Glen S. Krutz, 2009, "Malign Neglect: Evidence that Delay Has Become the Primary Method of Defeating Presidential Appointments," *Congress and the Presidency*, 36:226-32.

Committee recommendations on nominations. On most committees and among the leaderships, then, processing nominations presents an additional burden, something they do in the “spare time.”

As the policy process both in the Senate and in the administration begins to move into its normal season of committee hearings and bill consideration, the additional burden of nominations becomes more and more onerous. The end of the budgeting cycle presents additional delays as the two policy institutions move to clear their agendas of unfinished policy items before the end of the Senate session.

Figure 3. Senate Workload: Policy Voting by Date of Nomination



To support this hypothesis, Figure 3 illustrates one of several measures of Senate workload, a Lowess model of the numbers of important roll-call votes. The figure also includes the two inflection points from the earlier Figure 1 to track the patterns of increasing delays. Recall, those two inflection points marked the dates when Senate deliberations seemed to dramatically lengthen. From the figure, it seems that these inflection points also seem to identify periods when the Senate’s workload begins to alter dramatically. Hence, this explanation about workload and deliberations seems consistent with the available evidence.

REPLACING POLARIZATION

Pundits and other observers, supported by scholarly research, generally describe the appointments process as hopelessly mired in polarized partisan politics. To these analysts the facts

suggest only a single, tactical response: presidents must find ways to accommodate the situation, identifying nominees that would make confirmation a foregone conclusion. These studies suggest that presidents and the Senate leaderships adjust to the polarization rather than find a new leadership strategy. Because presidents wield the bargaining power found in “going first,” they need only find a candidate suitable to the reigning congressional majorities and leadership.

Inside the Senate, the majority party has made several attempts to adjust their deliberations process. For example, in 2013 the Democratic majority reduced the amount of debate available after cloture from 30 hours to 8 hours.²¹ They applied a sunset provision to that reform, closing it down in 2014. In addition, in the same year, invoking what became known as the “nuclear option,” the majority exempted from the filibuster rule all presidential nominations except Supreme Court posts.²²

The notion that these reforms targeted polarization and its purported role in lengthening Senate deliberations suggests something about such reform efforts and why they fail so often. As indicated in the extensive modeling of the appendix, the application of the “nuclear option” to nominations had the opposite intended effect — it actually lengthened deliberations when analysis accounts for the independent effects of other possible influences. One possible interpretation of why such reforms fail or generate the opposite reaction merely concludes that these reforms have such effects because the reform relies on a mistaken causality.

Instead, reform should sidestep polarization, focusing on a series of steps that would improve the system’s efficiency without jeopardizing partisan positions. In effect, these proposed alterations and the appointments process, based in efficiency, could make it easy for Democrats and Republicans to find common ground. Reforms that shorten the stand-up process would, at the same time, undermine partisanship without directly addressing it.

In the past five administrations, the average number of nominations put forward before the August recess has amounted to around 400 nominees. If, as proposed here, an administration merely introduced early those same nominations before the end of the 100 days, then this “front-loading” strategy would improve the stand-up rate for the next administration by around 33% (see appendix 3). Again, nothing changes about the partisan response to the administration’s nominations, yet the change alters the system’s efficiency and that alone reduces the appearance of polarization by minimizing opportunism.

Operational Support for Securing Efficiencies

Standing-up the government faster, of course, presents some operational challenges. This section suggests four changes that would underwrite this proposed reform:

1. Establishing permanent, confirmation staffs on Senate policy committees.

As noted earlier, most Senate committees do not hire permanent staff specifically for processing confirmations, though every committee has a significant and on-going confirmation responsibility.

2. Increase authorization for the FBI to hire more temporary investigators.

²¹ Elizabeth Rybicki, *Changes to Senate Procedures in the 113th Congress Affecting the Operation of Cloture*, CRS Report for Congress, R42996.

²² Jeremy Peters, “In Landmark Vote, Senate Limits Use of the Filibuster,” *The New York Times*, 21 November 2013. Russell Berman, “How Democrats Paved the Way for the Confirmation of Trump’s Cabinet,” *The Atlantic*, 20 January 2017.

No one knows the number of retired FBI agents called into temporary service for investigating nominees. The agency has a limited number of those qualified for such temporary service. Some have called for the Office of Personnel Management to take over vetting of presidential nominees, but OPM has had significant difficulties in the recent past suggesting its inability to handle the complexities of presidential appointees.

3. Increase authorization for the US Office of Government Ethics to hire more auditing staff.

According to internal estimates, its current staffing levels afford US OGE enough staff to process 400 nominees by the August recess (an average 50 nominations per month). That figure falls shy of what the Obama White House accomplished or the increases proposed here. To handle the front-loading proposed here, the US OGE would need to increase its processing by 50% to around 75 nominations per month.²³

4. Authorize the creation of an Office of Presidential Personnel Management, including a permanent professional support staff and managed by three presidential appointees (PA).

In the past three administrations, the Office of Presidential Personnel has relied initially on a relatively small group of permanent staff (averaging around 8)²⁴ and a much larger group of detailees and volunteers to process nominees. In addition, decisions made during the transition often severely limit the capacity of the personnel operation so that it becomes doubly handicapped.²⁵

Both the Office of Presidential Personnel and the White House Counsel's Office would benefit from the additional support from an operation much like the Office of Management and Budget which bolsters the president's capacity to perform budgetary functions. A new, permanent Office of Presidential Personnel Management would present a new administration with a highly experienced professional staff managed by a smaller group of presidential appointees. Based on the estimates of previous directors from the Office of Presidential Personnel, the staff necessary to handle 400 nominations prior to the 100 days would amount to around 10 staff with another 12 executive assistants and clerks. A group of three presidential appointees (PA) would head this staff. Such an office would provide a permanent capacity to meet the challenges of speeding up nominations and facilitate their relationship with the Senate. Such an office would also reduce considerably the time it takes for a new administration to vet and prepare its nominations.

IN THE FACE OF PARTISAN OPPOSITION

This report tells a simple story: nominations (especially those for critical policy-making positions) get the full attention of all involved only during the early period of an administration's first year. The new president's initial nominations take front and center and, in that environment,

²³ The increased average throughput would assume that to reach the proposed goal of 400 nominations by the end of the first 100 days would require some coordination during the transition period to make considerably more nominations in that period.

²⁴ This number includes assistants to the president, special assistants to the president, and associate directors.

²⁵ The early Bush White House, for example, modeled its staffing requirements on the outgoing Clinton White House personnel operations which had very little in the way of appointments to fill. By comparison, the Bush team entered the White House with some 190,000 resumes of job seekers to process.

the Senate generally acquiesces quickly and without opportunistic resistance.²⁶ The data analyzed here suggest that Senators, regardless of party, extend to the President some level of professional courtesy during the administrations' transition to office and hold a common appreciation that many appointed positions primarily invoke the responsibility of preserving national health and safety invested in the Chief Executive. To tie up these nominations threatens more than just the electoral viability of the national candidate occupying the presidency. Instead, it enfeebles the federal government, undermines national defense, and enervates the exercise of American power in the international arena.

As the president's policy agenda moves to the fore and becomes the primary topic of consideration, however, nominations take a back seat in both the White House and the Senate. Neither institution has the staffing to both evaluate candidates and promote its policies. In this new environment, due consideration by the Senate lengthens, essentially considering nominations in its spare time. Opportunistic Senators also employ these languishing nominations as bargaining chips, adding to the increasingly prolonged processing times and further complicating Senate deliberations. That opposition may appear partisan but much of it originates in simple operational realities. The failure to find a solution for these ever-increasing deliberations and the resultant increasingly slow stand-up represents a national tragedy and not simply a partisan failure.

On the other hand, taking these facts into consideration to design a reform effort represents a unique opportunity for the legislative and executive branches to demonstrate a capacity to act and to improve national, democratic governance. They need not eliminate today's partisan rancor to reform the broken appointments process. Four reforms, none inherently partisan, provide a foundation for a better appointments process that will enable future government leaders to quickly fulfill their responsibility to staff the essential government agencies, before partisanship can take hold.

²⁶ This acquiescence does not imply that the Senate has forgone its responsibilities but the initial transition period generally supports instincts to bipartisan cooperation, the Senate leadership often has undergone a shakeup in response to an electoral defeat, and the new President has certain leeway. In addition, savvy presidents anticipate opposition to some potential nominations and choose in some instances to forego those confrontations in favor of others.

APPENDICES

1. The Basics of Federal Appointments

Federal appointments covered in this study require presidential nomination and Senate confirmation (positions require presidential appointment but Senate “advice and consent”). These “PAS positions” come in four basic varieties.²⁷

- 1) Justices and Federal Judges. These nominees populate the federal judiciary, the third branch of government. The federal judiciary has its own personnel system, designated “FE.”
- 2) Core Agencies. These nominees manage the federal agencies that make up the president’s cabinet and deliver the basic services of national government. These include the Departments of Defense, State, Transportation, etc. Appointees in these agencies carry personnel titles like “Assistant Secretary. . . .” and personnel ranks in order from EX I through EX V. This core group also includes appointees in the White House and the Executive Office of the President with Senate confirmable positions, e.g., Director of the Office of Management and Budget. EOP and White House appointees with these positions also have EX I through EX V ratings. Heads of these agencies (e.g., Secretary of Interior) always carry EX I rankings.
- 3) Independent Agencies. These nominees manage the “independent” regulatory functions of the federal government, like the Securities and Exchange Commission, or provide other important and somewhat coordinating functions, e.g., the National Intelligence Directorate, the Federal Reserve System, and the Central Intelligence Agency. Appointees in these agencies also carry personnel ranks EX I through EX V, although typically heads of these agencies start at EX II rankings.
- 4) Corporation Boards and Special Commissions. These nominees manage those organizations providing orderly advice and coordination of non-core governmental activities, e.g., the Tennessee Valley Authority, the Marine Mammal Commission. Many of these nominees receive little or no compensation for their activities. Some receive reimbursements. Many carry personnel ratings like OT, WC, and AD.

2. The Broader, Weibull Model Results

The simple story proposed here, involving the interactions of time, agenda, and capacity, passes over a potentially more complex reality revealed in considerably more detailed statistical analyses. Other scholars have considered a range of potential influences over Senate deliberations (e.g., numbers of the president’s Senate partisans, the ideological nature of nominees). Forthcoming research in this series will also employ more complex statistical analyses.²⁸ The analysis presented in this report, however, reflects the findings of these more complex analyses.

For reference, Table 3 reports the results of a standard Weibull regression model that includes these variables employed in prior academic research on appointments along with measures of workload, Senate reforms, and the two types of appointments. Along with a range of important conclusions, the results presented in this table support the bivariate relationships we have detailed in this report (cf. Ba, Schneider, and Sullivan 2018, *op cit*).

The table reports results on our primary research focus considering the timing of nominations during the new administration’s first year (called *Day Nominated Since Inauguration*) and its impact on the length of Senate deliberations. A second variable (*Normal Leadership Appointments*) captures the difference between normal and critical leadership positions graphed out in Figure 1.

²⁷ For more detail on these appointments and positions, see the following joint publication: US Office of Personnel Management and (alternating) US Senate, Committee on Homeland Security and Government Affairs or US House, Committee on Oversight and Government Reform, *US Government Policy and Supporting Positions*, (published after election day on various presidential election years); see particularly its Legend and Appendix 1. While used most often as a basic summary of the presidential appointments universe, *Policy and Supporting Positions*, does not cover all of the positions that require presidential nomination and Senate advice and consent. For example, a number of commissions, e.g., on the US Holocaust Museum and Hopi-Navajo Resettlement, do not always get listed and the details for these appointments require examination of the US Code and their organic legislation.

²⁸ Cf. Heather Ba, Brandon Schneider, and Terry Sullivan, 2017, Reassessing the Importance of Polarization and Divided Government in Contemporary Advice and Consent, manuscript, The White House Transition Project.

Table 3. Weibull Regression Model of Senate Deliberations

<i>Variable Type</i>	<i>Actual Variable Employed</i>	<i>Effect on Duration</i>
<i>Nomination Process</i>	Day Nominated Since Inauguration	.0048* (.0003)
	Normal Leadership Appointment	.2646* (.0437)
<i>Senate Rules Reform</i>	Removing Nominations from the Filibuster (the “nuclear option”)	.2841* (.1171)
<i>Senate Committee Capacity</i>	Committee Staff Size	.0048* (.0007)
<i>Senate Workload</i>	Number of Roll Call Votes per Month	.0039* (.0015)
	Days in Session per Month	-.0181* (.0066)
<i>Partisan Polarization</i>	How Narrow a Majority	-.1650 (.2663)
	Disparity between Party Means	2.6807* (.7207)
	President of the Majority?	-.8182 (.5271)
	Distance between Party Means • Majority President	.7663 (.8097)
<i>Model Baseline Effect</i>		2.1156* (.4772)

Source: Ba, Schneider, and Sullivan, *op. cit.*

Notes: N=2,125, Standard Errors in Parentheses Significance: * P < .05

The analysis also includes variables describing the Senate processes related to deliberations. These include assessing rule reforms designed to facilitate deliberations without partisan-inspired delays (*Removing Nominations from the Filibuster*) and the Senate’s staff capacity for considering nominations (*Committee Staff Size*). Two additional variables loosely describe the general workload imposed on the Senate by “the agenda” (*Number of Roll Call Votes* and *Days in Session*).

Primary Results. An asterisk denotes an effect acknowledged as reliably different from zero, i.e., as having a *genuine* influence on the length of deliberations. A positive effect means that an increase in the value of that variable *increases* the duration of Senate deliberations, while a negative effect decreases the duration.

Four effects stand out in the results. First, when considered along with measures of Senate capacity or workload and the pace of an administration’s nominations, polarization produces fewer discernible results than earlier thought. Whether the president’s party also holds the congressional majority, for example, does not have an impact on deliberations. Nor does the size

of the majority party's margin. Hence, versions of partisan competition so keen to most descriptions of polarization do not have the presumed effects. Second, the group of variables that surveys the potential effects associated with Senate workload and its capacity for vetting nominees have provided mixed results. Only two of the three variables included suggested important effects on Senate deliberations.

Third, a number of variables describing the Senate's processes had an effect on deliberations, two had particularly surprising effects. Note that adding additional days to the Senate work schedule, presumably increasing its capacity to consider legislation, has the effect of reducing the length of Senate deliberations. That result confirms the argument made earlier that work on legislation has an inverse relationship with deliberations on nominations. In addition, removing nominations from the scope of the filibuster rules had a significant effect, but an unintended effect, lengthening the deliberations process rather than shortening it. As noted earlier, this empirical result suggests that lengthening deliberations do not have a basis in polarization and that rule reforms aimed at that cause just as likely will backfire and lengthen the process as shorten the deliberations process as intended.

Fourth, the analysis provides supporting evidence suggesting the importance of focusing on critical leadership positions and the earlier period in the new administrations tenure. On the latter, the substantive interpretation of the coefficient suggests that for every additional month into an administration that the President delays an appointment, the Senate processing time increases by about a day, on average.²⁹

3. *Securing Efficiencies through "Front-loading" Nominations*

Calculations for estimating efficiencies in the appointments process derive from Table 4 which reports average deliberation rates for the two types of nominations over four time periods during an administration's first year. The table replicates the general trend of lengthening deliberations over the first year, along with the general differences between the two types of leadership positions.

Table 4. Senate Deliberation Rates, First Year

Type of Nominations	Nomination Period	Average Senate Deliberations	Average Number of Nominations
Critical Leadership	to 100 Days	36.9	97.2
	to MidJune	52.8	17.8
	to MidAugust	62.9	14.8
	to First Year End	113.5	17.6
Normal Leadership	to 100 Days	51.0	92.4
	to MidJune	77.9	38.0
	to MidAugust	94.6	40.8
	to First Year End	126.6	68.2

Source: Compiled by authors.

²⁹ Weibull models do not have a direct interpretation from the reported effects. Instead, the coefficients produced by the model require additional computations to generate proper interpretations.

It also reports the average number of nominations proposed in each period over the administration's first year in office and the types of positions. This second information plays a critical role in assessing the impact of focusing on a nomination process that emphasizes the first few days of an administration and front-loads a large number of nominations during that early period.

The estimates for the efficiency impact merely attributes to all of the nominations made on average the deliberations typically found during the first 100 days of an administration. The five-administration average deliberations across the whole first year in office equals 67.9 days. Improving those deliberations to the average for the first year would generate an overall average equaling 45.6 days instead. That reduction would equal a 32.8% improvement in deliberation times.