



THE WHITE HOUSE TRANSITION PROJECT

1997—2021

SMOOTHING THE PEACEFUL TRANSFER OF DEMOCRATIC POWER

THE LONGER YOU WAIT, THE LONGER IT TAKES *Presidential Transition Planning & Appointment Politics*

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Executive Summary

This paper reports on research documenting the forces affecting the last forty years of presidential appointments politics. Using the same empirical model, it focuses on how a common set of forces affect each of the separate stages in the appointments process: in the Executive Branch *and* in the Senate. The results on Senate deliberations replicate some parts of previous scholarly models — primarily the role of partisan polarization in lengthening deliberations — while failing to replicate others — results having to do with the importance of the differentials in party sizes.

Hence, the primary analysis reported here puts politics back into appointments politics:

- While polarization plays a role in Senate deliberations, the theoretical justification linking increasing polarization to increasing delay (or partisan “obstructionism”) masks a more complicated story involving opportunism.
- In particular, the empirical evidence supports the notion that early transition planning — especially identifying and preparing for key appointments — speeds deliberations on those appointments in all stages.
- Aggressive presidential initiative in the early days of the administration — both the first 100 days and the first year — speeds deliberations on appointments in all stages.
- Concentration on critical positions in the government speeds deliberations on appointments in the early stages of the appointments process.

These principal findings tell a different story about appointments politics than the story dominating previous research and popular punditry — identifying partisan imbalances and divided government as critical components of appointments. While this research does not dispute most of that diagnosis, it also suggests important other considerations for Senate obstructionism on presidential appointments and, in particular, notes that typically the Senate approves virtually every nominee of every president dating back to the Reagan administration. We conclude that what others see as obstruction directed at the president’s nominees may result instead from Senators using nominees as an opportunity to bargain with their leaders and with the administration over issues typically unrelated to the nominee. Administrations can sidestep this opportunism, we argue and our analysis supports, by planning their transition and their first nominations and by aggressively pursuing a larger number of nominations early on, before the Senate begins to take up policy. Moreover, we propose a series of reforms to build capacity to accomplish this bipartisan appointments strategy.

WHO WE ARE & WHAT WE DO

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 participated in the 2001, 2005, 2009, 2013, 2017, and now the 2021 presidential transitions with the primary goal of streamlining the process and enhancing the understanding of White House operations. WHTP also consults with foreign governments and organizations interested in improving governmental transitions, worldwide.

OTHER BRIEFS IN THIS SERIES

- The “Nuclear Option” has Fizzled...*Again*, The LegBranch.org, blog, January 17, 2020. <http://www.whitehousetransitionproject.org/wp-content/uploads/2020/01/WHTP-TheNuclearOptionFizzles.pdf>
- Why does it Take So Long to Confirm Trump’s Appointments? *The Washington Post, Monkey Cage, Analysis*, April 24, 2019. <http://www.whitehousetransitionproject.org/wp-content/uploads/2020/01/WAPO-Why-Does-it-Take-So-Long-to-Confirm-Trump-2019-04-24.pdf>
- Trump is Setting Records in How Few People He Has Appointed — And How Long They Take To Confirm, *The Washington Post, Monkey Cage, Analysis*, January 18, 2018. <http://www.whitehousetransitionproject.org/wp-content/uploads/2020/01/WAPO-Trump-is-Setting-Records-2018-01-18.pdf>

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Abstract: Contemporary research on presidential appointments focuses on the Senate's political climate as a primary determinant of its "broken politics." That analysis rests on a model that emphasizes fixed factions and political polarization, which relegate the president to a reactive role. An alternative empirical approach suggests that an active president who demonstrates initiative in the transition planning phase of an administration can better control the agenda of the PAS appointment process by jump-starting it before the Senate's policy workload accumulates and legislative politicking takes over. This approach suggests that better transition planning can hasten the overall appointments process.

Presidential appointees carry out the policies of a new national administration. Because those policies often have defined the general election, the new president's appointments link a single individual's election to the operation of the whole national establishment. Or, as Alexander Hamilton described it, appointments represent "the intimate connection between...the executive magistrate in office and the stability of the system of administration" (*Federalist* #72). And while it puts in motion the new administration's partisan ambitions, filling appointments also "stands up" a national government that carries out critical, often a non-partisan system of administration, e. g., on infrastructure, trade, and security.

Because appointments affect both policy and duty in this way, clashes over appointments have always animated and troubled the transfer of power during American presidential transitions, even from the Republic's early days. No surprise, then, that the landmark Supreme Court case defining the judiciary's future, *Marbury v Madison*, evolved from a controversy over filling an appointment during a presidential transition. Today, still, appointments frequently define political controversies in national affairs, whether efforts to reshape court rulings by denying a president's nomination at the end of a term or removal of the national security leadership without nominating successors. The increasingly dysfunctional appointments process not only troubles the Congress and the public at large, but it also transfers that dysfunction to the management to these less-partisan government functions that make up the system of administration (20th Century Fund, 1996; MacKenzie, 2011). Examining the appointments process, then, illuminates how the institutional climate affects the health of our democracy.

Contemporary research on presidential appointments typically analyzes the process in one of two ways. In one, researchers evaluate its executive side, considering how a president might choose between two typical strategies for selecting nominees: professionalism or patronage. These researchers presume presidents recognize a tradeoff between an executive branch managed by nominees with expertise and one managed by loyal devotees (cf. Lewis 2002, 2008, 2009; Hollibaugh, Horton, and Lewis 2015). In a second approach, researchers examine the Senatorial side, mostly analyzing appointments as a

bargaining game between the Senate policy proclivities and the president's ambitions.¹ This second tack has concentrated primarily on the Senate's political climate as the principal determinant of appointments politics, highlighting a special explanatory role for partisan polarization, the '*independent variable of choice*' for explaining political dysfunction of almost any variety. This explanation connects the growing disassociation of partisans from each other with an obstruction empowered by the Senate's super-majoritarian rules. The greater this polarization, that argument goes, the more determined becomes the obstructionists.

Hence, the two approaches seem to differ on the relative influence between presidents and Senate majorities in appointments. While the first tack presumes presidents choose their administrations without Senate interference, most research on Senate deliberations relegates presidents to a diminished role in which, as Nolan McCarty and Rose Razaghian (1999) have described it, "presidents...anticipate and adapt to the wishes of the Senate."² Moreover, both presume that the force of politics in the Senate or in the executive dictate the politics of appointments in the other setting. Hence, little research on the appointments process considers together its two halves — executive selection and Senate approval — holistically. Few have considered, for example, whether one part of the process would affect the others or whether the effects of different variables remain constant across each part of the process, having a general effect on appointments politics.

In this study, we marry the various strands of research on federal appointments while testing those effects across each part of the appointments process. We demonstrate that presidential initiative and early preparations can avert Senate opportunism, thereby shortening executive identification and vetting, Senate committee deliberations, and the Senate's final disposition. We note, for example, that presidents such as George W. Bush and Ronald Reagan, who initiated transition planning early, identified and vetted candidates for federal appointments more quickly and experienced less Senate delay (Figure 1). Furthermore, during the last six presidential administrations, nominations submitted to the Senate during the first 100 days spent 42 days on average in Senate deliberations, while nominations submitted after the first 100 days spent 92 days awaiting confirmation. We demonstrate that these two facts reflect an empirical pattern associated with executive initiative. We conclude that when presidents take up that initiative to plan for their transition to office, and activate plans to identify and vet candidates for federal appointments, they lay the groundwork for an efficient Senate confirmation process. Taking this approach, our paper suggests potential reforms that, without directly addressing the formidable challenge of highly polarized parties, would improve appointments politics by emphasizing the non-partisan necessity for Hamilton's system of administration.

MANAGING APPOINTMENTS POLITICS

To produce a fuller explanation of appointment politics, we begin with contemporary scholarly explanations of appointment politics that concentrate on the conditions of Senate voting blocks. In such explanations, the distance between the Senators who hold the median policy position in these blocks, typically called "pivots," becomes a shorthand summary of appointments politics. McCarty and Razaghian (1999) and, recently, Gary Hollibaugh and Lawrence Rothenberg (2018), have presented the

¹ Earlier research on nominations had concluded the Senate typically deferred to presidential choices (e.g., Cohen 1988; King and Riddlesperger 1991, 1996).

² Hollibaugh and Rothenberg (2018:299) characterize the relationship in terms similar to McCarty/Razaghian's: Rather, knowing senators are less likely to confirm ideologically distant nominees, and that those they do confirm will take more time, presidents should moderate their choices to increase the likelihood of successful and quicker confirmation, offering candidates less ideologically compatible with themselves but closer to the Senate pivot.

See also Cameron 2000.

best versions of this explanatory tack. McCarty and Razaghian explain the lengthening Senate deliberations as resulting from “the super-majoritarianism of the Senate...[which] gives partisan and ideological minorities a strategic opportunity to have an impact on public policy by delaying nominations that would pass on a simple majority vote....” (1999:1125). This explanation also informs Ostrander’s 2015 analysis of contemporary appointments and an earlier Hollibaugh and Rothenberg (2017) study.

The Impact of Partisan Imbalances and Governing Structure

McCarty and Razaghian also suggest that the ideological disparity between Senate parties presents a good estimation of an opposition’s determination to obstruct the president’s nominees. The Senate’s rules, then, provide the mechanism that enables these determined Senators to obstruct appointments successfully. Even as the Senate abandons some of these super-majoritarian decision rules, like the two-thirds cloture rule as applied to nominations,³ the potential for obstruction remains because the Senate relies on other procedures using similar super-majoritarian rules (Smith 2014). In these analyses, the procedures always empower specifically placed Senators, acting as a proxy for the whole institution. When the potential policy views of an administration’s nominees approximate these critical Senator’s positions, then, those nominees find an easy confirmation.

In addition to this principal effect, and consistent with their version of Senate predominance, McCarty and Razaghian suggest that a secondary effect comes into play when the Senate majority opposes the president.⁴ Since it produces a larger number of determined opponents of the president, divided government would magnify obstruction. McCarty and Razaghian also propose that increased polarization will cause greater delay under divided government than under unified government and that divided government will cause greater delay when polarization is high.

A second version of these two effects identifies what others have called the “partisan imbalance” effect: the difference in the relative size of the two parties provides a good measure of how likely the minority will feel obliged to obstruct to prevent what they see as bad policy. The bigger the difference between the parties, the more likely the commitment to obstruction.

While identifying some important characteristics of Congress that affect appointment politics, such as polarization, these theories also suggest so difficulties. Firstly, the view of Congress as the dominant actor run counter to modern analyses of bargaining between institutions. For example, David Baron and John Ferejohn’s (1989) analysis of bilateral bargaining under complete information models a first-mover advantage for the president that is also applicable and relevant to the dynamics of the federal appointments process.⁵ In bargaining under incomplete information, the president’s advantages would increase. Building on this analysis, Terry Sullivan and Scott De Marchi (2011) suggest presidents have an even stronger hand in bargaining under conditions of incomplete information when they orchestrate legislative coalitions and enforce senatorial reputations. Both of these bargaining theories provide good reasons to expect presidential influence in appointments politics, and these theoretical reasons are bolstered by an important observed empirical pattern across administrations — the Senate’s almost complete record of confirmation of presidential nominees. In addition, this Senate record seems complete, even in cases where the nominee’s political ideology differs substantially from the average

³ A 2013 Senate reform removed the use of super-majoritarian cloture procedure during consideration of nominations except for those to the US Supreme Court. And in 2017, the Republican majority removed that proviso as well.

⁴ McCarty and Razaghian, Hollibaugh and Rothenberg, and others (e.g., Ostrander 2015 and Asmussen 2011) also embrace a number of other influential variables. These include presidential popularity, the jurisdictions of agencies, the degree of decision-making independence nominees will have in their appointed position, the president’s party, and the nominee’s gender. Our online supplemental attempts to replicate results using our data and these additional controls.

⁵ Although originally advertised as a theory of legislative decision-making under complete information, Baron and Ferejohn’s bargaining game also applies to the constitutional struggle between the Senate and a president over appointments. Others employ this interpretation (cf. see McKelvey and Riezman 1992; Baron 1996; McCarty 1997; Banks and Duggan 2000; McCarty 2000a, 2000b; Snyder, *et al* 2005; Banks and Duggan 2006).

ideological preferences of the Senate. Using Bonica's (2014) estimates of political ideology based on campaign contributions, for example, Hollibaugh and Rothenberg's (2017) analysis shows that nominees differ from the Senate average ideology score by up to 2.86, while presidents, never differ from the Senate average by more than 1.55. Thus, while the array of Senate preferences do matter, even measures of disparity suggest presidents have more leeway in whom they appoint than that presumed in those analyses suggesting a reactive president.

Several empirical studies on executive management of federal appointments also seem to confirm that presidents wield substantial influence over appointment politics. For example, Krause and O'Connell (2016) suggest presidents' preferences between the two executive-oriented considerations (about loyalty versus expertise) change over the course of their tenure, apparently without reference to the senatorial coalitions that they eventually face in confirming these nominations. These results seem to confirm Lewis's (2008) and, then, Parsneau's (2013) analyses that Senate partisanship does not seem to alter presidents' decisions over whom to nominate, suggesting a less important role for pivots and, instead, suggesting that presidents seem prepared to set the agenda by selecting candidates they value. The voluminous literature in public administration on how presidents use the appointments process to assert control over the federal bureaucracy, generally, begins from the seemingly well-founded presumption, one consistent with bargaining theories, of a dynamic appointments politics affected by the president's initial actions.⁶ Finally, the pattern of confirmations early in the transition process itself suggests that to the extent that obstruction becomes a factor, it does so only once the policy process itself has begun in the Senate — that Senators do not aim their obstruction at the president but at aim it instead at securing leverage over typically unrelated policy issues.

Presidential Planning and Initiative

Building on this theoretical and empirical literature, we suggest that presidents can realize the full potential of their bargaining advantage and reduce Senate opportunism by setting a course on nominations quickly and decisively. We further conclude that presidents can secure this initiative by investing, as candidates, in early and comprehensive transition planning.⁷ This position seems consistent with the experience of office holders and former White House staff who argue that upon election, the responsibilities of the presidency hit “like a freight train,”⁸ making it impossible to develop strategy while they grapple with transforming their campaigns into a working governing operation.⁹ Planning for this challenge needs to begin while the candidate and the campaign work to win the election, despite the fact that many candidates (e.g., Bill Clinton and John McCain) see such planning as presumptuous (Patterson and Pfiffner 2001).

Transition planning efforts that start months before the election ensure that a human resources infrastructure exists to meet the staffing needs of the president's legislative and governing priorities. Typically, the person who becomes the Director of the Office of Presidential Personnel has also led recruitment preparations during the transition planning (Patterson and Pfiffner 2001). The best transitions, like those of Reagan and George W. Bush, had a dedicated personnel director identified early in the transition and that designee retained the position after the election and into the early White

⁶ Lewis 2011 summarizes this literature, but notable works here include Moe 1985 and Rudalevige 2002.

⁷ Additional presidential leverage results from substantial bargaining advantages demonstrated in Sullivan and De Marchi (2011) using a theoretical approach assuming only incomplete information. These results on bargaining highlight the importance of a presidential reputation for effective coalition building in deterring a range of obstructive behavior.

⁸ Harrison Wellford, White House transition advisor to President-elect Clinton, in an interview with the White House Transition Project in 2000. Others refer to the pressures of learning once elected resemble “trying to drinking water from a fire hose.”

⁹ Listen to how the Clinton team, with the least transition planning, described its experience: “They didn't know who they were going to be working for. They didn't know what they were supposed to be doing and, frankly, they were not even clear on the common agenda for the White House and the administration” (Background interview, White House Transition Project, 2000).

House. By contrast, poorly run transitions, such as those for Clinton and Trump, experienced turnover in this position, either during the transition or soon after taking office. The Director of OPP, along with others on the president's transition team, must identify the overall nature of the personnel challenges that will face the new government, including developing comprehensive lists of vacancies across the government and for each position a list of evaluative criteria informed by the president's priorities. The transition planning team will eventually use these preparations to guide their efforts at identifying potential nominees, and developing a strategy for vetting them, consistent with the needs of the new administration's agenda (Johnson 2008, Sullivan 2004, Wellford 2008).

Proper transition planning enables the president to seize the initiative on appointments even before the inauguration. Announcing most critical cabinet members (e.g. those covering core responsibilities, budget management, and primary policy initiatives) soon after Election Day, and announcing all cabinet selections before inauguration (Wellford 2008, Sullivan 2004:118-57), we suggest, facilitates a timely and successful confirmation process for nominees. George W. Bush's ambitious transition planning proved exemplary in this regard. By June 2000, W. Bush's campaign staff had adopted a series of goals consistent with principles of good transition planning just outlined here. As a result, even despite the election controversy, Bush successfully named his critical and core White House staff a full eleven days earlier than the typical presidential transition, while announcing his core cabinet right on schedule (Sullivan 2004: 132).¹⁰

By moving early and decisively in nominating their administration, presidents pave the way for an efficient Senate approval process in two ways. First, by initiating the appointments process early, the president sends a signal to Senators about their commitment and resolve in the bargaining and coalition processes about to unfold. Quickly offering qualified nominees, new presidents forewarn potential obstructionist to consider carefully the potential downside of their opportunism (Sullivan 1990). In these ways, we suggest, the demonstration of presidential initiative and influence reduces the likelihood of that obstructionism — the more competent the president seems, the less likely obstruction and the quicker deliberations at all stages come to an end. This theoretical position also suggests that the circumstances of Senate coalitions, themselves the potential product of eventual presidential leadership, will matter far less in the executive deliberations and vetting stage than previously described, where the literature considers the president's role as decisively reactive. A president's increasing reputation for competency in the early administration then extends out across the different stages in the process, playing an important and reinforcing role in each subsequent stage.

Second, as the Senate policy workload increases, with its horse-trading and timing of bills, appointments become a part of the landscape of opportunism because senators will delay action on nominations to strengthen their hand in, often unrelated, policy battles. Chase Untermeyer, Director of the White House Office of Presidential Personnel under George H.W. Bush, described these dynamics precisely in terms of opportunism as we have suggested. When describing Senators' use of holds on nominations, used to delay the final Senate approval vote, he characterized the situation as:

...holds, it seems to me, are often used for something totally unrelated to the nominee and they often are there for pure leverage of some kind or another. It's not quite the same thing as say a set of committee chairmen saying I'm not going to hold a hearing on your nominee unless it's my nominee. For one thing, holds have been used broad scale for all the people coming up for consideration in a particular category including some that are purely ministerial like military promotions¹¹

¹⁰ Critical staff include Chief of Staff, National Security Advisor, Direct of OMB, Legislative Affairs, Personnel, Counsel, and Press Secretary. Core staff include critical staff plus the Director of the White House Office of Management and Administration, the Staff Secretary, and the Director of Communications.

¹¹ Chase Untermeyer interview with Martha Joynt Kumar, White House Transition Project (1999): <https://www.archives.gov/files/presidential-libraries/research/transition-interviews/pdf/untermeyer.pdf>

Presidents who initiate the appointments process early engage the Senate before the legislative process heats up and, therefore, before legislative battles motivate senators to obstruct confirmations and also before senators have a policy context in which to use nominations in bargaining.

Modern campaigns have presented a range of transition planning efforts that could differentially affect initiative on appointments. Some modern presidential campaigns have followed Ronald Reagan's example and established "key teams that did form the backbone of the transition effort well before the election." Reagan's transition teams were "for the most part, [...] well organized, had a pretty good idea of what Reagan's needs were going to be and were ready to go after election night."¹² According to Pendleton James, Reagan's principal transition planner, their plans "were functional the first minute of the first hour. Following that lead, George W. Bush set his transition planning in motion even further in advance than Reagan had when, in 1999, he asked Clay Johnson III to "develop a plan for what we should do after we win" (Sullivan 2004; 171). The transition planning team of George W. Bush used its early start to establish an electronic application process, which built a database of applicants and their qualifications. The database included some 70,000 entries by the end of the transition period and facilitated large-scale candidate searches. Barrack Obama similarly began planning nearly a year before the inauguration. On the other hand, while the Trump campaign established a robust planning effort under former New Jersey governor Chris Christie, the campaign fired that operation immediately after the election and disposed of its entire catalog of preparations. We propose that these differences in presidential leadership across administrations influence deliberations across the different stages in the appointments process even as other "controls," like polarization, play a role.

EMPIRICAL ANALYSIS OF APPOINTMENT POLITICS

To summarize, we propose three general findings as additions to the standard literature: First, that transition planning will shorten both the executive and Senate phases of the appointment process. Second, while we expect that what happens in one stage affects later stages, we propose that early identification of nominees speeds up deliberation in the committee stage and so forth into the floor deliberations. Third, presidential initiative influences early deliberations, so that all stages show a quicker process during the administration's first hundred days:¹³

- E1. *Transition planning shortens executive stage deliberations.* The earlier the president-elect begins planning the transition, the shorter the duration of executive vetting.
- E2. *More efficient executive identification carries forward into the Senate processes: executive vetting speeds up Senate committee approval, which in turn abbreviates the Senate floor vote.* The duration of each stage of the appointments process affects the duration of each subsequent stage.
- E3. *Executive initiative shortens deliberations across both Senate stages.* The earlier an administration begins the Senate appointments process for a nominee, the shorter the deliberations on that nominee.

Our Data

While the president fills approximately 8,000 national positions, only 1,200 carry such responsibilities as to require both a presidential nomination and a Senate confirmation, bearing the

¹² Harrison Wellford interview with Martha Joynt Kumar, White House Transition Project (1999).

¹³ Hypotheses derived from Senate-focused studies appear in the supplemental material, where we replicate these models.

designation “PAS” (presidential appointed, Senate confirmed).¹⁴ Because we have highlighted how an administration stands-up the national government, we concentrate on nominations made during an administration’s first two years.¹⁵ Most presidents come close to filling the vacant PAS positions by the end of their second year and will start their third year making “replacement” decisions. With these restrictions, our data still surveys around 4,000 PAS nominations.

Occupied Positions in the Stand-Up

Some PAS positions, however, do not stand vacant at the beginning of a transition, because these positions, e.g., Director FBI, have “fixed” terms. Every president enters office with around 5% of the available PAS positions already filled in this way. These “occupied” PAS positions pose two challenges for analyzing appointments politics. First, they present a potential empirical difficulty. For example, President Obama entered office with 225 appointments filled, but by the end of his first 100 days, nearly seventy had vacated because of expired terms. For the most part, President Obama tended to consider these positions as already filled. President George W. Bush, on the other hand, immediately (January 26) proposed a nomination for an occupied PAS fixed-term position expiring in July 2001. The Senate confirmed the nominee and the incumbent resigned five months early. Occupied positions, then, may or may not present a data subset that reflects a different “appointments process” than that modeled by previous empirical approaches. Additionally, because of voluntary resignations, presidents may find themselves filling a position twice in the first two years. To address these issues, we include a dummy variable for appointments made to an occupied fixed-terms position and a dummy variable for whether an observation was announced in the second year rather than the first.

Considering Appointment Stages

Our data track nominations through all the stages in the process: executive identification and vetting of nominees before submitting a nomination to the Senate, Senate committee vetting of the nomination, and the Senate’s final disposition (whether by vote or by returning the nomination). Figure 1 summarizes the average amount of time nominations submitted in the first year of the past six presidential administrations spent at each stage of the appointments process. The figure portrays the four distinct phases of the appointments process.

The blue portion of each bar in Figure 1 portrays the executive identification process, which begins the day after election day (when the responsibility for proposing nominations begins) and ends when an administration announces an intention to nominate a candidate for a PAS position. These data come

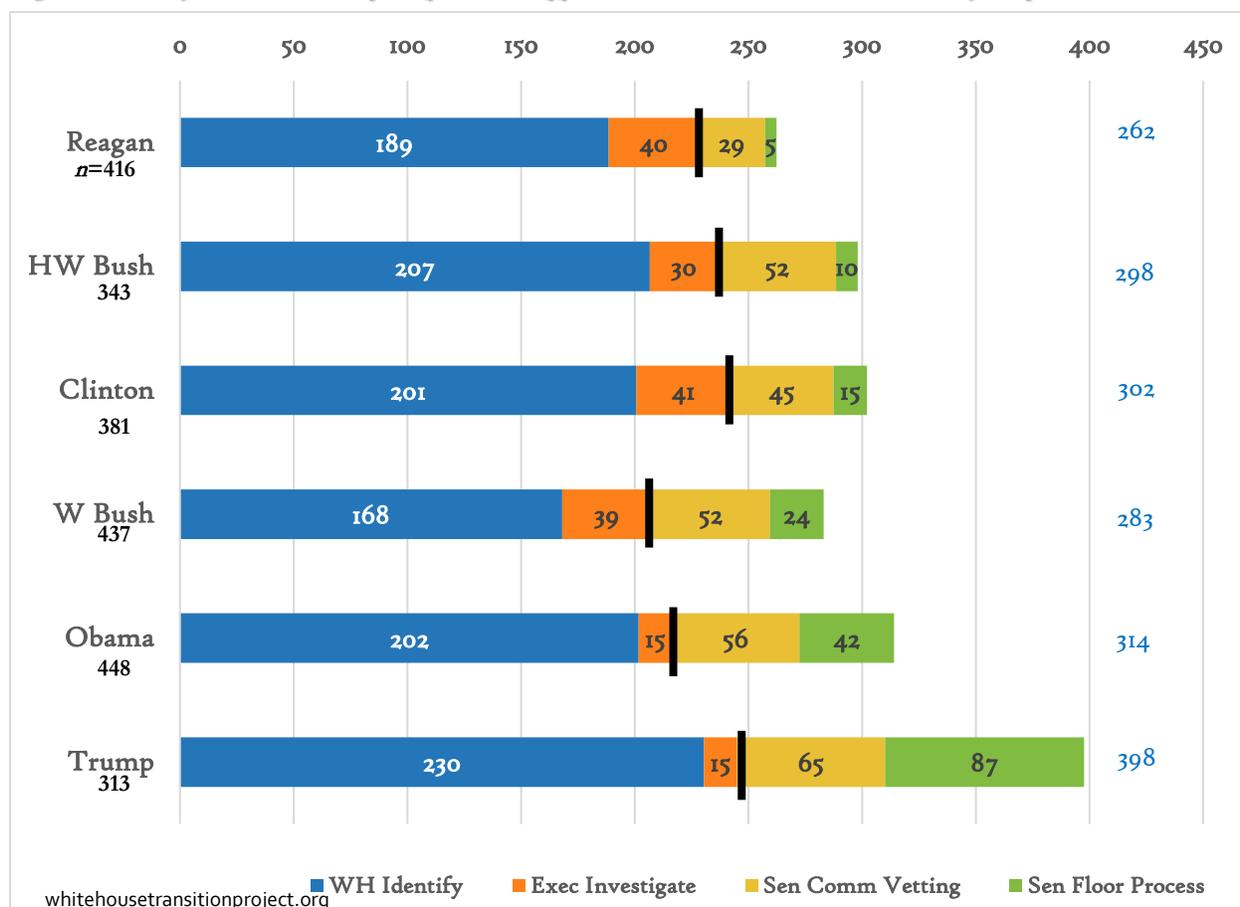
¹⁴ See *The Plum Book* 2016, Appendix 1. While these positions pose a mix of partisan policy and non-partisan administrative responsibilities, we exclude a large number of PAS positions with almost entirely non-partisan (or “ministerial”) responsibilities, including: all military officers, the foreign services, the public health services, and the US Marshal corps. We exclude these positions to maintain continuity with previous work. We also exclude (as purely ministerial) most US Attorneys, most ambassadors, and all judicial appointments except to the Supreme Court. The latter we exclude to match previous work. We retain those primary US Attorneys that investigate political corruption and key ambassadorships, both identified as key by the National Commission on Reform of the Federal Appointments Process.

The actual number of positions varies from administration to administration and one element of that variations involves the Senior Executive Service (SES). Though often tasked with senior management responsibilities, by statute these positions “float” between the permanent civil service and PAS political appointments. Again, by statute, the President may fill by PAS appointment only a percentage of vacancies among the authorized and vacant positions in the SES. Because at any given moment the number of vacancies varies, no fixed number equals the SES positions the president can fill.

¹⁵ The political dynamics of replacing PAS positions when vacancies occur later in an administration may not share some commonalities with the appointments process during the initial stand-up of the national government.

from the National Archives, *Public Papers of the President* series and, in some instances, reports in *The New York Times* or *The Washington Post*.¹⁶

Figure 1. Pace of Deliberations by Steps in the Appointments Process, administration's first year



The orange portion of the bars in Figure 1 illustrates the average duration of executive vetting, conducted primarily by the FBI. It begins with the announcement of the intent to nominate and ends when the administration submits the nomination to Congress. While the Reagan through George W. Bush administrations typically announced a nomination in advance of FBI vetting, more contemporary administrations frequently have, over their tenure, rolled the vetting period into their intent period.¹⁷ Note the dramatically shorter periods for Presidents Obama and Trump. Because of this apparent change in how administrations announce nominations, we combine the duration of these two stages in

¹⁶ If an administration does not publicly announce the intention to nominate a candidate, the date for the intent to nominate equals the same as the date the administration submits the nomination to Congress. In those situations when an administration actually announces its intent to nominate someone after sending those credentials to the Senate, the date for sending credentials becomes the date of intent. Note that in considering occupied fixed-term appointments, we still begin measuring the executive identification stage starting on election day. Since many of these positions become vacant during the first 100 days of an administration and because some holding these positions will resign early, we presume presidents will necessarily consider these positions in the pool of nominations to make.

¹⁷ We suggest that early on, an administration wants to appear “in motion” so they announce intent longer before they complete the official vetting period and over their first year, they tradeoff the need to appear in motion for more caution in announcing nominations they will eventually have to withdraw. The last few administrations have come to this tradeoff point more quickly than earlier administrations.

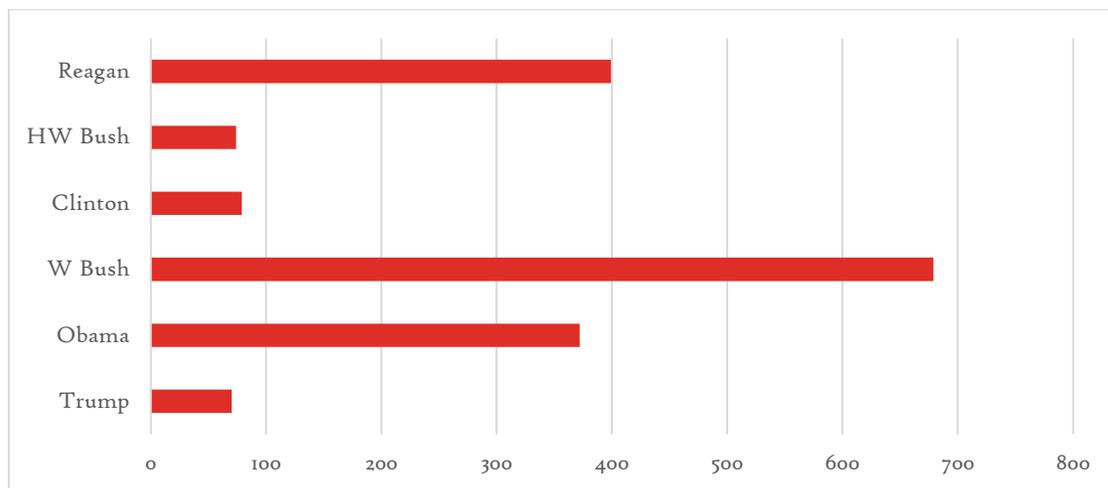
our statistical models to create one executive portion. The black vertical line in the figure divides the executive from Senate stages.

The gold portion of each bar displays the average duration of Senate committee vetting, while the green bar denotes the average nominations await a final disposition on the Senate floor. The data for these second two stages derive from the appointments tracking published at Congress.gov. The time in committee equals the date of final report to the Senate minus the date of reference. The duration of final deliberations poses something of a challenge, as some nominations never receive a committee report or a final deliberation. Instead, the Senate returns these to the administration under its Rule 31(§5; §6).¹⁸ In our statistical models, we treat nominations returned to the president at the end of Congress as censored. We track nominations returned in August and consider them to continue when presidents re-nominate those.

The figure illustrates well the main puzzle in the appointments process and some of the patterns here suggest that transition planning could influence outcomes. The main puzzle remains why deliberations have generally lengthened over time (the right-hand column). The average pace of deliberations overall have increased substantially over the past four decades. By the end of the Trump administration's first year, the average number of days to fill one position had increased by 52% over President Reagan's experience. The pace of Senate deliberations in the Trump administration have more than quadrupled over Reagan's.

The overall pattern illustrated in Figure 1 also mimics (in reverse) patterns in transition planning among the various campaigns. Based on interviews conducted by the White House Transition Project with key campaign personnel from each presidential team, we have compiled data on the patterns of transition planning, especially those focusing on personnel matters. Figure 2 illustrates the amount of time each campaign spent in this early transition planning for personnel. The Reagan and W. Bush campaigns invested considerable time on such planning and their appointments complete the process more efficiently than other administrations. In contrast, Trump's decision to first commission a transition plan and then to dump those plans four days after the election has produced the shortest process of any of the past six administrations (Ba *et al* 2018; Christie 2019).

Figure 2. Length of Transition Planning for Modern Presidents



Source: White House Transition Project, various interviews

¹⁸ This rule requires the return of any nomination not dealt with before any Senate recess that might extend longer than 30 days. All of the administrations in this data renominated nominees returned before the Senate August recess and we consider those nominations as having continued. We take the same position on nominations returned at the end of the session but renominated automatically.

Estimating Models

We model these data with a shared frailty survival-time model. This technique approximates the time in deliberations necessary to reach a conclusion. Since even obstruction invariably succumbs, the probability that each institution associated with each stage disposes of a nomination increases with time, until the Senate adjourns ending the Congress and “censoring” the data. Hence, the hazard rate should increase, or the expected time until a decision should decrease, every day during deliberations. These facts suggest an accelerated failure time, Weibull model with monotone hazard rates that either increase or decrease exponentially with time.

While the most recent study, Hollinbaugh and Rothenberg (2018), employs a split-population model, we do not track whether the nominations in our data fail during the whole of an administration, placing what we consider unwarranted emphasis on the president’s persistence on these instances of Senate obstruction.¹⁹ The data here only track whether or not the Senate confirms the nomination during the administration’s first Congress. Thus, using a censored Weibull model constitutes an appropriate choice.

Unlike previous studies, the analysis here utilizes a *shared frailty*, accelerated failure time model, which helps to address potential non-independence among observations within each administration/Congress and federal agency.²⁰ This treatment addresses for the first time a serious empirical complication in analyzing appointments politics. Administrations seem to employ a range of nomination strategies. President Reagan, for example, focused on filling first positions “top to bottom” in agencies critical to his early policy agenda. Others seem to appoint “horizontally,” filling positions throughout the government, sometimes top-down, but often nominating where they can place available bodies. In addition, the Twentieth Century Fund’s report on the appointments process (1996:53f) highlighted a range of strategies focused on who has input into nominations rather than exclusively on what the nomination involved. For example, some presidents might allow heads of cabinet agencies to pick the nominees in their agency. In this case, each “down agency” or “nested” nomination would depend upon completing nominations in the rank above it. Other administrations might allow the Secretary only to propose some alternatives, leaving all the choices to the White House and its strategy. Using a shared frailty model that assumes that similar confirmation rates within administrations and within agencies helps to address these complexities.

¹⁹ Note that, in effect, such presidential persistence despite so many signals of Senate disapproval, itself, suggests that presidents do not simply react to Senate conditions but instead utilize a number of executive advantages. This treatment of these extended appointments disputes, also, poses some empirical problems which we detail later in the section on modeling.

²⁰ Shared frailty models include a random intercept for panels or clusters of observations. A shared frailty model differs from the traditional, mixed or hierarchical models with a random intercept in that the shared frailty model assumes a Gaussian distribution, while the hierarchical model assumes a normal distribution. We consider the possibility that frailty is shared among *both* administration and agency, mimicking the common wisdom that presidents appoint secretaries first, who then participate in managing the appointment of their subordinates.

And while this interaction might constitute a serious estimation issue, several considerations suggest it has not in this case. First, generally, only Cabinet line agency would display this kind of dependency pattern, because PAS positions in non-cabinet agencies (e.g., the FAA) do not have a strong hierarchical pattern. Second, agencies, like the FTC, that some suspect have governors who would resign to allow a new president of their party to make new appointments (the Bush 43 example earlier), do not, in fact, exhibit a consistent pattern of such behavior. And third, among Cabinet agencies, only about 5% over the last forty years have exhibited such a nested, dependent pattern. Even when restricting the potential for nested agency nominations to those below the Secretary’s rank, few appointments reflect this nested pattern. These results suggest that our estimation approach seems reasonable (as do those of others who have not considered this problem) and that transitions employ a variety of strategies (almost at random) for the sequencing of filling positions.

Dependent Variables in Stages

For the analysis reported here, we employ three main dependent variables measuring the duration of each stage in the appointments process: executive identification and vetting, time spent in committee, and time leading to the final Senate disposition. The duration of executive identification and vetting equals the number of days between the date of the Presidential election and the date the President submits a nomination to the Senate.²¹ The duration of committee vetting equals the number of days between the date the committee reports the nominations and the date the administration submitted the nomination. The duration of final Senate disposition equals the number of days between the disposition (or the date the Senate returns the nomination) and the day the committee of jurisdiction reported the nomination.

Independent Variables

Table 1 describes the main independent variables. The first group summarizes the variables of interest in this analysis, those about initiative, beginning with a measure of the length of transition planning undertaken by the campaign (summarized in Figure 2) and its impact from one stage to the next. In addition, both of the Senate stage models employ a dichotomous variable representing nominations offered or processed during the administration's "first 100 days."²²

Substantive Controls. Table 1 also describes a range of control variables employed to assess the impact of planning and initiative with later models.²³ These controls include most of the variables operationalized in previous studies (especially McCarty and Razaghian and Ostrander 2015), including polarization, the balance in Senate party structure, unified government, workload, and so on. We follow McCarty and Razaghian by using the number of Senate roll-call votes in a month to reflect the pace of the Senate workload. In the committee stage model, we key the time-dependent control variables (e.g., workload) to the date the Senate received a nomination, while in the final disposition we base the value of the variables on the date the committee reports the nomination.

We modify a measure of party balance, correcting McCarty and Razaghian's measure, by making it "directional" and pointing it to the president's party. Our measure compares the proportion of the Senate held by the President's party minus the proportion held by the opposition party.

The online appendix provides a more detailed summary of hypotheses related to some of these control variables common to the standard explanation and a replication of their analysis using our data. The appendix also includes robustness. Because prior studies have not crafted their hypotheses regarding for their variables across the three stages of the appointments process, these control variables may not affect all three stages. In each of our models, we report any statistically significant control variables.

One control derives from an interest in the transition process but does not focus specifically on initiative or transition planning. It rests instead on the common recognition highlighted in the introduction that an administration has many non-partisan responsibilities in the core of its Article II duties. We suggest that these ministerial responsibilities incline against potential opportunism. Hence, we expect these positions will experience shortened deliberations.

²¹ Of the 4,300 cases used in the analysis, less than 5% involved nominations for positions already filled on inauguration day. Regardless, presidents need to prepare for nominating those with fixed term positions and often can fill a position, asking the incumbent to resign. In effect, then, presidents have virtually the full range of PAS positions to recruit.

²² Note, McCarty and Razaghian use 90 days as a measure of initiative.

²³ Some variables required scaling adjustments to accommodate comparability. For example, the measure for polarization (D-Nominate) and party imbalance range from 0.0 to 1.0. Rescaling these variables permits more reasonable comparisons with other variables by generating a change closer to one standard-deviation in the independent variable.

Table 1. Independent Variables in the Empirical Models

Type	Measure	Definition and Sources
<i>Variables of Interest (Presidential Planning and Initiative)</i>	Duration of the Previous Stage	For the committee stage models, the number of days the nominations spent in the executive vetting and identification stage. For the disposition stage models, the number of days the nomination spent in committee vetting.
	Duration of Transition Planning (<i>in 10s</i>)	The inauguration date minus the date the campaign began planning for its transition. (Source: White House Transition Project interviews.)
	Initiative During First 100 Days?	Does the intent to nominate (or nomination itself or committee report or final vote) come in the first hundred days?
<i>Empirical Modeling Control Variables</i>	Occupied Fixed-term Position?	Personnel positions identified in the <i>Plum Book</i> as having a fixed term and occupied as the inauguration. (Testing for a different appointments process.)
	Announced in the First Year	Personnel positions the president announced an intent to nominate in the first year. (Testing for a different appointments process.)
<i>Substantive Control Variables</i>	Critical (<i>Stand-up</i>) Positions	Personnel positions as described in <i>Plum Book</i> and reflecting importance as described as critical to government functions. Higher values indicate more importance (Source: National Commission on Reforming the Federal Appointments Process, 2012)
	Polarization	The difference in the two parties' mean DWNominate scores, first dimension (Source: McCarty, Poole, and Rosenthal 1997).
	Senate-Executive Unified Party Control?	Whether the President's party has the Senate majority.
	Senate Party Imbalance (<i>in 10ths</i>)	The difference between the proportions of the Senate held by the majority and by the minority parties with the President's party as the positive value.
	Senate Workload (<i>in 10s</i>)	Numbers of votes taken as recorded in the <i>Senate Journal</i> .
	Republican President?	A Republican administration or not.
	Presidential Approval Rating	Monthly Gallup public approval
	Female Nominee?	The nominee's gender.
Independent Regulatory Appointment?	Dummy variable indicating PAS nominations to an independent regulatory commission.	

The variable used here derives from the National Commission on Reform of the Federal Appointments Process (2009-2012) which encouraged administrations and the Senate to recognize appointments that perform these critical executive responsibilities and that these nominations should get special attention. We employ their catalog of these positions, so that the smaller the value (1-5) the more critical the position. This approach substitutes for the typical control for “level” which relies on the government personnel system designation (EX) and the levels associated with that system. While that system attempts to cover positions across the government and to rate them on their responsibilities, it does not apply to a range of policy positions, while the system we employ here covers all PAS positions.

Empirical Models

Table 2 and Table 3 report the results of our models on the pace of deliberations across all three stages of the appointments process. Table 2 reports the basic models while Table 3 reports the models including controls. These empirical results highlight the benefit of good transition planning, presidential initiative, and the carry-through effect of these executive efforts on the whole of the appointments process.

Appointment Politics in the Executive Stage. Beginning with the executive stage, the length of transition planning has a negative and statistically significant effect in both the basic and control models. In both settings, then, planning shortens the time it takes to go from president-elect to setting out an administration team. In the control model, for example, the results suggest that increasing the length of transition planning from Trump’s 70 days to GW Bush’s 540 days, decreases the duration of executive vetting by approximately 18 days.

As noted earlier, the empirical results also can help determine whether fixed-term positions constitute a separate empirical class of positions by considering whether these positions get treated the same as other positions. On average, presidents make nominations to fixed-term positions 45 days more slowly, suggesting, firstly, that presidents-elect pay less attention to these occupied positions and that eventual presidents focus instead on standing up those parts of the government unoccupied. The performance of this special control lends some support to the expectation that fixed-term positions do not present a special empirical process, instead just one presidents do not have to address early.

Appointment Politics in the Committee Stage. The two Senate stages offer the opportunity to assess whether planning and initiative matter and whether these executive functions have a carryover into the other stages. The length of planning variable has a statistically significant, negative coefficient only in the control model of the committee deliberations. However, the coefficients on the duration of the previous stage and the first-hundred days variable carry the expected negative and statistically significant coefficients in both the basic and control models. These results suggest that transition planning shortens the duration of Senate committee vetting, enabling the president to submit more nominees to the Senate earlier. This pattern would effectively define the president’s honeymoon period and further define when the Senate focuses on appointments rather than on policy. Based on the results of the control model, a one standard deviation decrease in the length of executive vetting and identification decreases the duration of Senate committee vetting by approximately six days. Nominations submitted during the first one hundred days result in committee deliberations 17 days shorter than for those submitted after this period. So, increasing the length of transition planning from Trump’s 70 days to GW Bush’s 540 days decreases the duration of Senate committee vetting by 8 days, on average, a 12% improvement.

Table 2. Weibull Models of Deliberations by Stages without Controls, 1981-2018

Type	Stages of Deliberations>> Measure	Executive Search and Vetting		Senate Committee Vetting		Full Senate Disposition	
		Coeff.	s.e.	Coeff.	s.e.	Coeff.	s.e.
	Constant	6.36 *	0.02	3.86*	.08	1.37*	0.15
<i>Variables of Interest</i> (<i>Presidential Planning</i> and <i>Initiative</i>)	Duration of Transition Planning (in 10s)	-0.002*	0.0005	-0.001	0.002	-0.009*	0.0045
	Previous Stage	—	—	0.001*	0.0001	0.010*	0.001
	Initiative During the First 100 Days?	—	—	-0.520*	0.05	-0.478*	0.09
<i>Empirical Modeling</i> <i>Control Variables</i>	Occupied Fixed-term Position?	0.16*	0.04	—	—	—	—
	Announced in the First Year	-0.71*	0.002	—	—	—	—
<i>Summary Statistics:</i>		n=3,175		n=3,140		n=3,041	
		$\rho=2.79$ (0.05)		$\rho=1.23$ (0.02)		$\rho=0.73$ (0.01)	
		BIC=3714.53		BIC=8854.46		BIC=11261.26	

Table 3. Weibull Models of Deliberations by Stages with Control Variables, 1981-2018

Type	Stages of Deliberations>> Measure	Executive Search and Vetting		Senate Committee Vetting		Senate Floor Disposition	
		Coeff.	s.e.	Coeff.	s.e.	Coeff.	s.e.
	Constant	6.72*	0.063	1.490*	0.250	-3.830*	0.420
<i>Variables of Interest</i> (<i>Presidential Planning and Initiative</i>)	Duration of Transition Planning (<i>in 10s</i>)	-0.001*	0.0006	-0.004*	0.002	-0.017*	0.004
	Previous Stage	—	—	0.0007*	0.0001	0.009*	0.0008
	Initiative During the First 100 Days?	—	—	-0.440*	0.048	-0.489*	0.090
<i>Empirical Modeling</i> <i>Control Variables</i>	Occupied (Day 1) Fixed-term Position? Announced in First Year?	0.136*	0.036	—	—	—	—
		-0.700*	0.015	—	—	—	—
<i>Substantive</i> <i>Control Variables</i>	Critical (<i>Stand Up</i>) Positions (Base=Highest)						
	<i>Priority=High</i>	0.050	.040	-0.017	0.090	—	—
	<i>Priority=Medium</i>	-0.120*	.030	-0.200*	0.090	—	—
	<i>Priority=Low</i>	0.013	.030	0.185*	0.068	—	—
	<i>Priority=Lowest</i>	0.150	.020	0.350*	0.050	—	—
	Polarization (<i>in 10ths</i>)	—	—	0.300*	0.030	0.790*	0.060
	Unified Party Control	-0.310*	0.032	—	—	0.236*	0.120
	Senate Party Imbalance (<i>in 10ths</i>)	—	—	—	—	—	—
	Senate Workload (<i>in 10s</i>)	—	—	—	—	—	—
	Republican President?	—	—	0.230*	0.070	—	—
	Presidential Approval Rating	-0.005*	0.0009	—	—	—	—
Female Nominee?	—	—	—	—	—	—	
Independent Regulatory Appointment?	—	—	—	—	—	—	
	<i>Summary Statistics:</i>		n=3,144 ρ= 3.05 (0.06) BIC= 3365.54	n=3,140 ρ=1.25 (0.02) BIC= 8735.41		n=2,948 ρ= 0.735 (0.01) BIC= 11008	

Appointment Politics in the Senate's Final Disposition Stage. All three variables measuring the effect of transition planning and initiative performed as expected. For example, increasing the length of transition planning from Trump's 70 days to GW Bush's 540 days decreases the wait for a final floor disposition by 8 days. The coefficient on the previous stage suggests that a one standard deviation decrease in Senate committee processing also reduces the wait for a final floor vote by nearly six days. When committees report nominations during the first one hundred days of an administration, itself a result of proper transition planning, those nominations also get an additional boost, proceeding four days more quickly through the final floor vote.

By contrast, and somewhat surprisingly, not a single control variable attains a statistically significant coefficient in all three stages. For example, partisan polarization fails to affect executive vetting altogether, suggesting that presidents do not seem to react to the Senate's "on-the-ground" situation as suggested by the orthodox analysis of appointments. In addition, several controls based on previous research never attain significance in any of the three stages – the imbalance between Senate parties, workload, the nominee's gender, and the independent regulatory agency dummy. These results suggest that overlooking the stages involved in appointments politics may have hidden some important characteristics of that process.²⁴

While not affecting all stages, polarization, the stand-up priority of a position, and unified party control do play a role in two of the three stages. Consistent with existing literature and our own expectations, however, polarization does lengthen both the duration of Senate committee vetting, and the waiting period for a final floor vote. A one standard deviation increase in polarization lengthens the Senate committee stage by about 13 days, and prolongs the waiting period for a floor vote by eight days. Presidents and Senate leaders have to work against polarization to rationalize the appointments process. As suggested above, planning and initiative provide some of the tools these leaders have to overcome polarization.

The sign on unified party control changes between the different stages. Unified control appears to shorten the executive vetting stage by nearly 100 days, perhaps because presidents anticipate less opposition to their nominees. Surprisingly, however, unified control lengthens the final floor vote on each nomination by two days on average. The intricate politics of the system of holds used by senators in bargaining over policy provisions may have affected outcomes, even when this bargaining involves members of the president's own party.

Finally, the president and Senate committee members hasten consideration of nominees to higher priority positions. Presidents fill the lowest priority positions 46 days later than highest priority positions. However, they fill mid-level appointments the fastest. Senate committees take 15 days longer to vet the lowest priority positions than the highest priority positions, however, they process nominees to the high and medium priority positions faster than nominees to the highest priority positions. The trend may arise because more than the most senior agency heads, their "deputy agency heads" carry a stronger bipartisan functionality resulting in a quicker turn around in the process.

The Consistency of Impact Across the Stages. E_2 suggests that efficiency in each stage will be passed on to subsequent stages. In the model presented here, the coefficient on the variable for the previous stage suggests that just such a ripple effect takes place: the longer the previous stage took, the longer the next stage takes. In effect, if the president takes a long time to nominate someone, that nomination then takes progressively longer in each stage, as well.

Some limitations. We note a couple of limitations here. First, the data cover six modern presidents so, of course, these results might not generalize to earlier periods. Additionally, we are limited in our ability to sort out multiple president-specific causal factors, if any. Finally, our study does not and cannot resolve a potential endogeneity between the polarization and presidential planning. We presume such effect does not exist because presidential transition planning remains far from an institutional

²⁴ With one exception; the modeling of the president-agency shared frailty attribute might have prevented the focus on independent regulatory agencies from attaining significance.

norm. Since not all candidates embrace systematic planning, we find it difficult to imagine that they factor in the degree of political polarization when composing their transition plans. Moreover, a survey of the interviews with transition planners that we used to establish the basis for our planning measure uncovered no discussion by the interviewees that rested on the anticipated level of Senate polarization or even a discussion of Senate conditions in general. These interview experiences coincide with the lack of a significant coefficient on polarization in the executive stages.

LESSONS ON IMPROVING APPOINTMENTS POLITICS

To date, political science research has treated the struggle between the executive and legislative branches as disassociated from the conduct of presidential appointments and the system of governance that they facilitate. The most advanced theories in political science have minimized the president's role in forming coalitions, concentrating too much on the Senate's deliberative processes, its reified parties, and its most dramatic procedures. This despite the fact that the president's role in appointments have made some of the most important constitutional history and have animated a good deal of current affairs. This focus, however, dovetails with the orthodox opinion of pundits and other observers who bemoan appointments politics as a kind of canary in the mine — slowly slipping away, hopelessly mired, with no escape.

In addition, these theories and the accompanying punditry suggest an important implication for understanding governing — based on their findings, presidents must relinquish a role in appointments and merely identify nominees that would make confirmation a foregone conclusion. This conclusion, — built into the emphasis on static bargaining theories with complete information — flies in the face of the fact that presidential nominations have received universal approval and the significant and apparent empirical variations among presidential behaviors and transition strategies. So, either all presidents have become automatons of the Senate or presidents have some levers of influence at their disposal.

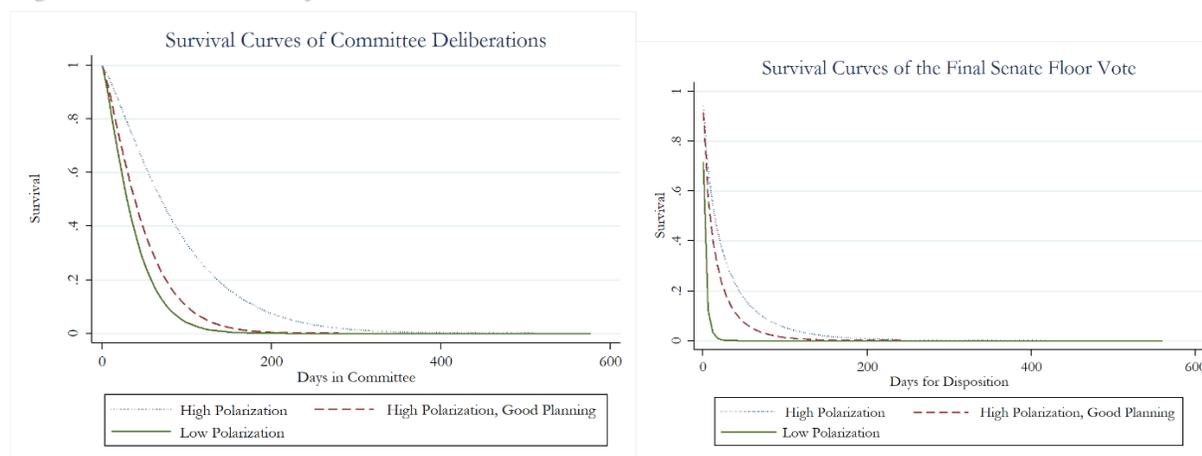
Moreover, inside the Senate, efforts by the majority party designed to undermine the power of obstruction and polarization do not seem to have made a dent in the problem. For example, in 2013 the Democratic majority reduced the amount of debate available after cloture from 30 hours to 8 hours (Rybicki 2018) while reducing the majority necessary to invoke cloture. 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 (Peters 2017; Berman 2017). While keeping the cloture reform in place, the Senate applied a sunset provision to the debate limit, ending that reform in 2014.

The change in using the filibuster on nominations remains in effect and has expanded now to all nominations in the executive and judiciary. After historically low numbers of nominations and appointments, the Republican Senate majority began to re-invoke these debate limits (Carney 2017, 2018; Editorial Board, *WSJ* 2018), which will likely have little effect in shortening deliberations or accelerating executive vetting. Contemporary assessments still rate the appointments process a disaster and, as Figure 1 illustrated, delayed deliberations remain. Our analysis reported here suggests that continued attempts to ameliorate conditions in a polarized Senate might easily continue to have no effect on appointment politics.

On the other hand, the results reported here not only confirm an important and independent role for the president in appointments, these results also suggest some critical implications for the health of appointments politics. The level of transition planning undertaken by a new administration shortens the amount of time required to identify and vet appointees. These actions, in turn, lead to expedited consideration in both the Senate stages. Collectively, our results suggest that presidential initiative can substantially mitigate the effect of polarization. At its highest observed level (see Figure 3), our results

suggest that polarization can lengthen Senate committee deliberations by about 40 days and the final floor vote by 20 days. But if a president plans properly, and submits a nomination in the first hundred days, and it proceeds to a floor vote in that same period, the president can mitigate most of the increase to the committee deliberations and about half of the increase in the final floor vote waiting period caused by high levels of political polarization. Overall, good transition planning has the potential to reduce obstruction in appointments politics by half.

Figure 3. Survival Curves from Senate Models



Our research, then, implies that instead of relinquishing control of appointments and considering this a lost cause, presidents can lead both by actions and by reform. And even the practice of governing seems to support this tack. At the same time the majority experimented with the “nuclear option,” a bi-partisan Senate leadership passed into law in 2012, The Presidential Appointments Efficiency and Streamlining Act (PL 112-166). The law returned to the President exclusive purview over the appointment of 160 positions, moving those from PAS to PA status. In bi-partisan agreement, the Senate leadership voluntarily gave up influence over these positions, in our analysis, eliminating their use by opportunists. In exchange, the Senate required the Executive to undertake a range of improvements in executive vetting and transition preparations. These steps, we suggest, do not make sense unless everyone can agree on a non-partisan stake in reducing opportunism and in improving executive planning and presidential initiative for the sake of smoothing appointments politics.

The research here suggests further steps would take unique advantage of the impact of the variables we have highlighted. These additional steps, we suggest, would target capacity, coordination, initiative, and planning during the campaign and produce a more aggressive transition period. Based in the results we have produced here, we can conclude that all of these suggested changes would enable presidential administrations to stand themselves up faster, especially when the president leads a Senate majority. The greater priority the president gives to appointments before the legislative process gets underway, the more readily the Senate will respond and acquiesce more quickly.

Our research suggests reforms that could target capacity in both executive and legislative branches, to carry through on planning, initiative, and coordination. In addition to improving and shortening deliberations by limiting opportunism, these reforms would do so without directly jeopardizing partisan positions while making it easier for Senators to find common ground. In the end, then, our research and reforms would lead to a diminished role for polarization without having to address it directly.

One measure of these changes would stand out — in the past five administrations, the average number of nominations put forward before the first August congressional recess has amounted to around 302 nominees. If a new administration plans more intensely for the appointments process during the campaign and the transition, we suggest, a new administration and a prepared Senate could

introduce these numbers of nominations before the end of the first 100 days and the stand-up rate would improve by about 33 percent. Again, nothing changes about the partisan response to the administration's nominations, yet this one change in initiative and the pace of appointments would alter the system's efficiency and reduce opportunism.

Standing-up the government in this way, of course, would present some *a priori* operational challenges. Primarily, the Senate may push back against having to process many more nominations in the first 100 days. Five changes would aim to increase the Senate and executive branch capacity to handle the increased load:

- a) Establish permanent confirmation staffs on every Senate authorization committee.
- b) Increase authorization for the Executive to hire more temporary investigators and to publish earlier the full listing of vacant presidential positions.
- c) Increase authorization for the US Office of Government Ethics to hire more auditing staff.
- d) Require the Senate to expand its outreach to the national presidential campaigns prior to the election.
- e) Authorize the creation of an Office of Presidential Personnel Management, including a permanent professional support staff managed by three presidential appointees (PA) and one Director (PAS).

The failure to find a solution for the wrangling and the lengthening deliberations on presidential appointments and the resultant increasingly slow government stand-up represents a national tragedy, and not simply a partisan failure. As Hamilton implied, to tie up presidential nominations threatens more than just the electoral viability of the national candidate occupying the presidency. It also enfeebles the national government, undermines its economy and its defenses, and enervates the exercise of American power and leadership in the international arena. Designing reforms to take into consideration the role of presidential initiative and institutional capacity represents a unique opportunity for the legislative and executive branches to demonstrate a capacity to act and to improve national governance. They need not eliminate today's partisan rancor to reform the broken appointments process. Identifying these reforms, none inherently partisan, also represents a unique opportunity for scholarship to develop useful knowledge in the conduct of understanding appointments politics.

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SUPPLEMENTAL INFORMATION

This document places our research within the framework of a replication of the empirical analysis in McCarty and Razaghian (1999), Ostrander(2015), and Hollibaugh and Rothenberg(2018), using our data, but including their variables. We also adopt their model specification for the regression analysis. We do, however, estimate these models across all three stages of the appointments process to provide a set of robustness models for the main models presented in the paper.²⁵ The next section discusses the hypotheses presented by these author.²⁶ The models presented in this section attempt to answer the following questions:

1. Using our new data, can we produce similar results to those highlighted in the current literature?
2. Does analyzing the separate stages uncover the same kind of detail as noted in the main paper?
3. Do variables reflecting a strong role for the president, in planning and initiative, perform as expected within the empirical framework of the orthodox model?

Robustness Models of Obstruction

Principal Hypotheses about Partisan Imbalances and Governing Structure. McCarty and Razaghian (1999) suggests four primary hypotheses about the pace of Senate deliberations: (H1a) partisan polarization increases Senate processing times, (H1b) divided government increases Senate processing times, (H1c) polarization further slows Senate processing times under divided government and (H1d) a larger imbalance between the relative size of the Senate parties will also delay deliberations.

The Rank and Policy in Positions. In addition, McCarty and Razaghian (1999) make two claims related to the type of positions under consideration. First, because lower level positions have less control over policy formation, fewer Senators will pay attention to nominations associated with these positions. Since Senators who wish to challenge the administration's nominees will remain more determined than those Senators who support the President and try to prevent obstruction, then any hierarchy of positions will also describe a pattern of increasing obstruction and, hence, delay:

H2a. Determined Obstruction Distributed Across the Range of Positions. Using the hierarchy inherent in the PAS system²⁷ as a stand-in for a position's decreasing importance, it suggests an increasing unwillingness of supporters to resist obstruction for those nominations. So, a variable describing the range of positions carries a significant and positive sign on the length of deliberations.

This particular hypothesis differs from the one we present earlier as a substantive control. McCarty and Razaghian rely on distinctions between positions recorded in their ranks with the "pay plan" for each agency, as reported in the *Plum Book*. Using the PAS-EX system as a measure of a position's priority provides a consistent read on those positions, e.g., an Assistant Secretary has a lower rank than an Under Secretary in every agency and the head of a regulatory agency (e.g., the FED) often compares with those in the cabinet agencies. The PAS-EX system, however, does not apply to all executive

²⁵ See references in Ba, Schneider, and Sullivan 2018, Presidential Leadership and Initiative in Appointments Politics, manuscript, the White House Transition Project.

²⁶ The relevant citations for CDT: McCubbins and Schwartz 1984 and Calvert, Moran, and Weingast 1987.

²⁷ The PAS personnel system describes positions within the system in a hierarchy. Secretaries of cabinet agencies carry a designation in this system as "EX I," deputy cabinet secretaries carry a designation as "EX II" along with the heads of critical regulatory boards, e.g., the Federal System, and so on through to boards and other positions which have no executive branch and policy-making responsibilities, e.g., foreign service positions and judges.

agencies, so using that descriptor of “level” as a variable introduces a systematic bias into the results by eliminating whole classes of nominations, amounting to about 15% of all nominations.

Our critical stand-up variable, by contrast, compares the bi-partisan responsibilities of every PAS position with respect to the central responsibilities of the government. In some cases, an Assistant Secretary in one agency (say Defense) may rank higher than an Under Secretary in another (say Education) or an agency outside the EX personnel system. Our variable covers all nominations.

Ostrander (2015) and McCarty, and (Razaghian 1999) also suggest that an agency’s policy jurisdiction could impact deliberations. While McCarty and Razaghian emphasize the degree to which those policy responsibilities define differences between the parties, Ostrander emphasizes a presidential interest in “seeking greater control over a bureaucratic agency” and controlling the number of positions at the top of an agency. McCarty and Razaghian emphasize the significance of social welfare, labor, and education as partisan agencies while other agencies clearly carry the primary, non-partisan duties of the nation, e.g., infrastructure, defense, and foreign policy, with agriculture and treasury somewhere in the middle as a potential baseline:²⁸

H2b. Obstruction Distributed Across Agency Policy Agendas. Agencies primarily engaged in policy that defines partisan cleavages will receive longer deliberations. Appointees to social welfare (Labor, Housing, Health, and Veterans Affairs) agencies, Justice, and Labor will experience longer deliberations than those to the Treasury, Agriculture, Infrastructure (Energy, Interior, and Transportation) agencies, defense and foreign policy.

Ostrander makes two significant predictions. First, because independent regulatory commissions (IRCs) typically do not allow for acting agency heads to rise up from the career ranks as they do in cabinet-line agencies, delays in these agencies have a larger impact on policy change. Hence, IRCs become a favorite target of obstruction.

H3a. Independent Regulatory Commissions. Nominations to IRCs generally experience greater obstruction.

Second, reflecting the non-partisan or “stand up” value in national security, Ostrander predicts fewer delays for defense nominations.

H3b. Defense Stand-up Exemption. Nominations to the Defense Department experience less obstruction.

While we recognize the very real possibility of agency effects, policy agendas may differ substantially from president to president. Thus, we utilize a more straightforward measure to evaluate the presence of agency effects, which is dummy variables for individual cabinet agencies. We also employ a dummy variable for nominations to independent regulatory commissions.

The New Deal Legacy. Because Democrats created a large number of federal agencies during the post-War period (covered by their data), McCarty and Razaghian also hypothesize that Republican administrations would more likely propose appointments bent on dismantling or undermining the policies in those agencies’ purviews. In response, Democratic opponents — whether in the majority or minority — would more often obstruct these nominations with more vigor, resulting in generally slower Senate deliberations during Republican presidential administrations.

H3c. Slower Republican Deliberations. Appointments made by Republican presidents should experience longer Senate deliberations than those made by Democratic presidents.

Nominee Ideology. Hollibaugh and Rothenberg (2018) conduct the most recent analysis of presidential appointments, and advance a set of hypotheses consistent with the CDT framework. However, rather than rely on a measure of party polarization as an indication of ideological divide between the Senate and the president, Hollibaugh and Rothenberg use a person-specific measure of ideology based on campaign finance records to operationalize the ideological divide. They also account for ideological bias embedded in government agencies. Instead of operationalizing the Senate’s party using relative party size, as McCarty and Razaghian and we do, they examine the extent of ideological

²⁸ Of course, some policies, like trade and hence “commerce” and “treasury” would present a baseline.

alignment between the president and the Senate via average ideal point scores sourced from Bonica's (2014) component analysis of campaign finance records. They further improve upon this analysis by considering the ideological alignment of the nominee and the agency. Our attempts to replicate these findings resulted in a substantially smaller dataset. We found only 700 observations, for example, with the same first and last name. Additionally, there were no matching observations under Presidents Reagan or Trump. We conclude on these terms that replicating their analysis without data does not have much utility, and so do not include their variables in our robustness tables.

Other Controls. Lastly, a number of other effects appear elsewhere in the empirical literature on appointments though the orthodox models do not describe any clear logic to these expectations. For example, Ostrander (2015) argues that the Senate yields to a popular president and has shorter deliberations for "earlier" nominations (see also McCarty/Razaghian), although he makes no clear argument as to why that would happen among determined opponents. Similarly, some suggest no important connection with the "age of an administration," although Ostrander (2015) raises such a potential effect.

H3d. Presidential Approval Effect. As the president's public approval rises, the pace of deliberations shortens.

H3e. Early Administration Stand-up. Senate deliberations shorten in the early stages (first 90 days) of an administration.

Asmussen (2011) suggests the importance of minority nominations to cross-cut obstructionism on some positions. Ostrander 2015 reconfigures this argument to focus on gender.

H3f. Female Nominations Obstructed More.

Though some have raised the possibility that the Senate's legislative "workload" would affect the pace of deliberations, congressional dominance theory makes no clear claim about its effect since it would not deter determined opponents, nor undermine the empowerment of Senate procedures. We also suggest that nominations begin to take a secondary role once the president's agenda moves out into the mainstream and the Senate begins to swing into policy deliberations.

H3g. Senate Workload effect.

A Replication Analysis

Table A-1 reports a replication of the McCarty and Razaghian model using their specifications and an accelerated time Weibull model without shared frailty. In the table, we present four models: a replication of their approach, concentrating only on the whole Senate deliberations, and separate models of the three appointments stages. This replication differs from the McCarty and Razaghian in one specification. A few nominations persist across more than one Congress, when the Senate returns a nomination at the end of Congress and the president immediately re-nominates that individual. McCarty and Razaghian calculate the duration of Senate deliberations as the date the Senate confirms the nomination minus the date when it received the original nomination. Each observation that persists across multiple congresses gets treated as one nomination, but the corresponding values that measure Senate characteristics would differ for the Senate that received the nomination in one Congress and the Senate that eventually confirmed that nomination. To maintain a model specification as similar to McCarty and Razaghian as possible but avoid this measurement issue, we simply use a dummy variable to denote which observations remain under consideration when the Senate ends, and we use the Senate end date to calculate the duration of the Senate phase.²⁹

²⁹ This approach taken in the replication is in lieu of the censoring approach taken when estimating the models presented in Table 3 in the main text.

Table A-4. Weibull Model Replicating McCarty/Razaghian Analysis of Senate Deliberations, using data from 1981-2018 and including planning and initiative variables

Variable Type	H*	Type of Deliberations>> Measure	Senate Total Deliberations		Executive Search and Vetting		Senate Committee Vetting		Senate Floor Disposition		
			Coef.	s.e.	Coef.	s.e.	Coef.	s.e.	Coef.	s.e.	
		Constant	2.941*	0.481	6.071*	0.197	3.831*	0.489	-7.231*	0.882	
		Censoring Treatment	-0.938*	0.058			-0.936*	0.068	-2.003*	0.159	
Variables of Interest	E1	Duration of Transition Planning (<i>in 10s</i>)	-0.010*	0.002	-0.004*	0.001	-0.004*	0.002	-0.039*	0.003	
	E2	Previous Stage	-0.000	0.000			0.907*	0.200	0.004*	0.001	
	E3,H3e	During the First 90 Days?	-0.549*	0.049	0.680*	0.284	-0.560*	0.050	-0.515*	0.103	
Special Controls		Occupied (Day 1) Fixed-term Position?			0.056	0.034					
Substantive Controls	H1a	Polarization (<i>in 10ths</i>)	0.310*	0.065	-0.177*	0.029	0.136*	0.066	1.427*	0.119	
	H1b	Divided Party Control	0.689	0.479	-0.108*	0.028	1.095*	0.485	-5.084*	0.845	
	H1c	Divided Control•Polarization	-0.000	0.067	0.876*	0.016	-0.080	0.068	0.768*	0.120	
	H1d	Senate Party Imbalance (<i>in 10ths</i>)	4.805*	0.678	-0.010*	0.001	2.564*	0.692	7.820*	1.384	
	H2a	Critical (<i>Stand-up</i>) Positions	Defense Department?	0.080*	0.012	-0.000	0.000	0.091*	0.012	0.006	0.021
			Commerce Department?	-0.272*	0.055	-0.083*	0.023	-0.318*	0.056	-0.109	0.098
			Interior Department?	0.070	0.072	-0.091*	0.031	0.021	0.074	-0.001	0.128
	H2b	Agriculture Department?	Interior Department?	-0.250*	0.091	-0.115*	0.039	-0.368*	0.093	0.263	0.163
			Justice Department?	-0.294*	0.091	-0.060	0.039	-0.145	0.093	-0.108	0.163
	H2b	Labor Department?	Justice Department?	0.234*	0.071	-0.019	0.030	0.107	0.072	0.308*	0.131
			Labor Department?	0.126	0.074	0.015	0.031	0.014	0.075	0.561*	0.136
	H3a	Independent Regulatory Appointment?	0.009	0.044	0.033	0.019	-0.042	0.045	0.088	0.080	
	H3c	Republican President?	0.677*	0.092	0.036	0.037	0.361*	0.094	1.315*	0.177	
	H3d	Presidential Approval Rating	-0.004	0.002	0.025*	0.005	-0.004	0.002	0.016*	0.004	
H3f	Female nominee?	0.061	0.036	0.026	0.015	0.039	0.036	0.103	0.065		
H3g	Senate Workload	0.004*	0.001	0.033	0.019	0.005*	0.001	0.005*	0.002		
<i>Summary Statistics</i>			n=3,041		n=3,141		n=3,074		n=2,886		
			p=1.212(0.017)		p=2.815(0.038)		p=1.182(0.016)		p=0.685(0.009)		
			BIC=8458.452		BIC=3298.754		BIC=8806.920		BIC=10999.260		

The Impact of Partisan Imbalances and Governing Structures

Our results differ somewhat from the main results of McCarty and Razaghan's analysis, and mirror those reported in Table 3 in the main paper. These results seem particularly interesting when considering the impact of various forms of partisan imbalance (polarization and party imbalance) and their potential interaction with the Senate's governing structure.

The Interaction of Polarization and Divided Government. We expected polarization to increase obstruction at all stages, and under both divided and unified government (but more so under divided government). However, in the total Senate duration model, polarization only lengthens deliberations under the unified government. In the total Senate duration model, a one standard deviation increase in polarization lengthens the process by 21 days under unified government. Meanwhile, unified party control reduces the length of committee deliberations only at high levels of polarization. It slightly increases the length of deliberations at low levels of polarization (by about a day).

In the executive stage, increasing polarization *shortens* executive deliberations under unified government and lengthens them under divided government. A one standard deviation increase in polarization under unified government shortens the executive stage by 21 days, while under divided government this same unit increase lengthens the stage by 36 days. At higher levels of polarization, unified party control reduces the length of executive deliberations and at a greater rate than the similar effect under divided government. In this stage, obstructive behavior seems connected more to the "direction" of the Senate majority. Presidential opponents seem more determined not when obstruction becomes their only option (when genuinely in the minority), but rather when they manage all the policy levers while in opposition to the president. This result is a bit counterintuitive. One could conjecture that this effect might be attributable to president anticipating the Senate opposition's reaction and therefore speeding up their own efforts to prevent unnecessary delay. However, in this case, the sign on the coefficient of polarization under divided government should also be negative.

In the Senate committee stage, polarization lengthens processing times but divided government does not worsen the effect of polarization. In the Senate committee stage model, a one standard deviation increase in polarization lengthens the process by 7 days under divided government, and 9 days under unified government. Again this is surprising, as polarization should worsen obstruction under divided government. Unified party control reduces the length of committee deliberations and has a relatively consistent effect across levels of polarization (by about 30 days).

In the Senate floor model, polarization lengthens deliberations, and does so more under divided government. But divided government under very low levels of polarization actually shortens Senate processing times. In the Senate disposition stage model, a one standard deviation increase in polarization lengthens the process by 5.5 days under divided government, and 10.5 days under unified government. Again, this effect is surprising. Unified party control reduces the length of committee deliberations only at high levels of polarization. It slightly increases the length of deliberations at low levels of polarization, by about a day.

These results confirm the findings from our main models that the effect of polarization and divided government may not be as straightforward across the different stages of the Senate process as early research on Senate appointment politics suggests.

Consistent with these mixed results on standard party focused variables, the impact of partisan imbalance — how large a Senate proportion the president has — produced decidedly mixed empirical results, as well. It only achieves the expected effect in the executive stage model. In the other phases, the size of partisan imbalance only increases obstruction. In the total Senate deliberations model, a one standard deviation increase in the size of the Presidents party (approximately 9 Senators) *lengthens* Senate deliberations by approximately 13 days.

This reaction may reflect an obstructive strategy as suggested by most theories focused on Senate reaction. Instead and as those involved in the process have noted, such a response more likely reflects the need for a beleaguered minority to utilize every bargaining opportunity they have to gain some

influence over the legislative process on matters unrelated to the nomination in front of them. The evidence certainly supports the idea that an increasingly stronger presidential majority leads to increased opportunism with respect to nominations. Appointment politics clearly exhibits an executive dimension.

The Impact of Standard Controls on Obstruction

Most of the standard controls and those variables associated with ancillary hypotheses (H₂*-H₃*) performed with the same kind of inconsistency across the appointments stages. For example, the range of agency differences represented in hypothesis H₂b, ranging across agencies from least partisan (Defense) to most likely partisan (Labor), followed the pattern of obstruction only somewhat in the standard Senate model, but did not present any consistent pattern when assessed in each stage. For example, Labor and Justice, the most partisan agencies, only had an effect on deliberations at the final stage and elsewhere showed no distinguishable difference. Similarly, Defense nominations, the least partisan, only reduced obstruction in the executive and committee stages but not on the floor. Not a single agency dummy variable is consistently signed and statistically significant across the stages, whether it is an independent regulatory commission or cabinet agency.

In addition, those variables for ancillary hypotheses (H₃*) followed suit, either presenting no statistically significant effect (H₃a, H₃f) or only affecting some stages of the deliberations. Some of these variables produced results contrary to the hypothesis. For example, the impact of presidential approval (H₃d) suggested that popular presidents' nominations took longer both in selecting them and in considering them on the floor. An increasing Senate policy workload did seem to slow deliberations, a result consistent with the staffing patterns in Senate committees, consistent with our first recommendation to separate confirmation responsibilities from policy responsibilities on Senate committee staffs. The Senate's workload appears to increase the length of the Senate stages of the model, a result that differs from our main models. In the total Senate deliberations model, a one standard deviation increase in the number of roll call votes (18) in the month a nomination is referred to the Senate, lengthens the Senate deliberations by 5 days. However, the fact that this variable is not significant in our main models suggests that the shared frailty specification may change the results of this variable.

The Impact of Transition Planning

The use of this alternative specification actually strengthened our main substantive effects. In this version of the executive stage model, increasing the length of transition planning from Trump's 70 days to GW Bush's 540 days decreases the length of executive identification and vetting by approximately 40 days. Additionally, this effect equals 9 days in the committee stage, and a whopping 23 days for the disposition stage. In total, then, and using estimates on the strongest effects of polarization and divided government, planning itself would more than compensate for these troubles. In addition, the coefficient on the 90-days dummy variable suggests that when nominations begin each of the three stages in the first 90 days of an administration, the nomination completes the committee stage 21 more quickly, and floor deliberations 5 days more quickly. And, these improvements redound to the next stage as well. In the Senate committee stage model, the coefficient on the length of the executive suggests that for a one standard deviation *increase* in the length of executive vetting, the Senate committee also takes about 2 days longer on average to vet the nominee. In the Senate floor vote model, the coefficient on the length of the committee vetting variable, in turn, then suggests that for a one standard deviation increase in the length of committee vetting, the full Senate also takes about 3.5 days longer on average to vote on the nominee. Hence, the longer it takes in one stage, the longer it takes in every subsequent stage.

In effect, then, the analysis here and in the main paper support the notion that Hamilton proposed — the competency of the elected candidate becomes a lynchpin in the character of the administration

of the government's responsibilities. Presidents-to-be, as candidates, have a responsibility for the whole of the governance they lead and other participants in the system have a similar responsibility to see that responsibility manifest. This shared responsibility, when faithfully pursued, hastens the stand-up of the national capacity for self-governance and makes for a smoother transfer of the power, from which the entire Republic benefits.