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## The Longer You Wait, the Longer It Takes: Presidential Transition Planning and Appointment Politics

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### ABSTRACT

Contemporary research on presidential appointments tends to focus on the Senate's political climate as a primary cause of its "broken politics." In contrast, we focus on the role the president plays in setting the stage for Senate confirmation of federal appointees. Our 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 Presidentially Appointed and Confirmed by the Senate (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, policies that often have defined the general election. A new president's appointments link the president's ambitions to the operation of the national establishment. Or, as Alexander Hamilton has described it, appointments epitomize "the intimate connection between ... the executive magistrate in office and the stability of the system of administration" [*Federalist* #72]. By filling out the broad numbers of executive vacancies through making nominations, the president puts the new administration's ambitions in motion. But, as Hamilton suggests, an administration's nominees also "stand up" a national government responsible for the competent and reliable delivery of nonpartisan governmental functions during a period of critical national vulnerability, when that new team faces a challenging world for the first time.

Because appointments are critical to governing, clashes over the president's nominations have always animated and troubled the transfer of

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power during American presidential transitions, even from the republic's earliest days. Not surprisingly, then, the landmark Supreme Court case defining the judiciary's constitutional role, *Marbury v. Madison*, evolved from a controversy over filling an appointment during a presidential transition. Today, an administration's nominations still spark partisan controversies over policy, just as they also highlight basic constitutional responsibilities. Nominations also contribute to an administration's reputation with the governing establishment, including their own congressional supporters (20th Century Fund 1996; MacKenzie 2011). So, examining the appointments process illuminates how the institutional climate affects the health of our democratic governance.

In the contemporary period, the federal appointments process seems to reflect little more than a pointless struggle to drag out an inevitable Senate confirmation. Of the nearly 3,400 nominations included in this analysis covering 1980 to 2018, for example, the Senate eventually rejected only one nominee. The Senate, did, however return 450-odd nominees to the different administrations involved using their rule 31, §5 and §6. These returns might seem like "failures," but in half of those cases, the presidents involved immediately re-nominated those returned and then those Senates involved eventually confirmed all of them.<sup>1,2</sup> Presidents, on the other hand, have withdrawn around 25 nominees during the Senate process and another 88 before ever forwarding their credentials to the Senate, possibly reflecting anticipated rejections but more likely responding to newly discovered, disqualifying intelligence.<sup>3</sup> In total, 92% of all those nominees sent to the Senate ended with an eventual confirmation. For the most part, then, nominees have failed only when presidents have decided not to insist on them.

For these reasons almost all research on appointments focuses on Senate delay (McCarty and Razaghian 1999; Nixon 2001; Nixon and Goss 2001; Binder and Maltzman 2002; Shipan and Shannon 2003; Bond et al. 2009; Hollibaugh 2015), even though the two Senate phases in appointments constitute the shortest part of the overall appointments process. In this body of research, the most consistent empirical findings have highlighted the significance of some form of partisan disparity—basically, the contrast between the president's policy ambitions and those of Senate opponents—as the most important force affecting Senate deliberations. This scholarly focus and these empirical findings have paralleled pundits' assessments that appointments boil down to a polarized confrontation. In the end, this tack in research has paralleled the call for action among Senate leaders to alter the Senate's rules, deploying in some cases a "nuclear option" to squelch what they have called "minority obstruction."

Taking as given these empirics about the clash over policy commitments, this paper considers three other aspects linking appointments to

administration, as highlighted by Hamilton. First, it considers the process itself and asks whether events in early stages of the appointments process affect later stages. Second, we highlight the effect of an often-overlooked influence: the role of presidential planning and initiative during the administration's transition. And third, it considers the idea of a "national administration" itself, and whether the duties defined in an executive position would dampen opportunities for challenging a president's nominee.

To examine the effect of these forces on appointment politics, we model data on over 3,400 executive appointments made by Presidents Reagan through Trump. Evidence from our empirical analysis suggests that early events have "downstream," consequences. Presidential planning for and initiative in the appointments process make for a more efficient Senate confirmation process. For example, presidential candidates such as Ronald Reagan and George W. Bush, who initiated their transition planning early, and subsequently identified, vetted, and nominated candidates more quickly, experienced less Senate delay. In our data, nominations submitted to the Senate during a president's first 100 days spent 42 days on average in Senate deliberations while nominations submitted after the first 100 days spent 92 days awaiting confirmation. This often noted "honeymoon" effect, we find, reflects a more lasting effect on appointment politics. We also identify how the executive vetting process produced less delay all the way through the appointments phases.

We suggest that these results reflect the notion that delays in appointments not only result from policy differences but also from senators who use opportunities to pursue bargaining advantages, often advancing an agenda unrelated to the policy commitments of the nominees they block. We conclude that the role of presidential leadership in appointments, especially during the all-important transition period, suggests shifting the frame for understanding appointment politics away from its current focus on obstruction generated by partisan disparities and toward the more common notion of "opportunism" exhibited by senators who use appointments as they use other strategies for leverage in the broader policy-making process.

### **Influences on appointment politics**

Contemporary research has focused on two aspects of appointment politics. Formal theory has concentrated on the bargaining game that occurs between the president and the Senate over nominations, while empirical analyses have assayed the extent to which the Senate's political realities affect overall efficiency. For guidance, researchers have relied on formal models that emphasize appointments politics as unfolding through a sequence of immutable "take it or leave it" propositions from the president (in the

guise of a nominee) and a Senate's invariant response (through disposing of that nominee). Researchers then examine the extent to which the Senate's fixed "facts on the ground" seem to affect this confrontation over policy positions, the president's nominations in response to that confrontation, and the time it takes to arrive through that confrontation to a final disposition.

In this section, we review the existing research on the standard role of partisan disparities in shaping that confrontation, including different measures of disparity like polarization, divided government, agency drift, and partisan "imbalance," as separate descriptors of the differences between senators' policy commitments vis-à-vis each other and the president's nominee. We also review the relevant contributions that theorists have made to thinking about how the sequence of stages in the appointments process might affect the process.

We then propose an alternative perspective on the deliberations surrounding appointments. Our reformulation considers Senate deliberations as part of the broader policy-making process, suggesting that delay results from "opportunism" among senators that does not rest exclusively on the policy commitments presented in nominees nor by each individual's expertise<sup>4</sup> or through the fixed sequencing of deliberations. Instead, we suggest that appointments constitute a part of the process more typically associated with legislative coalition building.

### ***Variations on partisan disparity***

Most theoretical analyses of appointment politics begin with fixed Senate voting blocks that dictate what nominations presidents could offer given those "circumstances." In the words of Ian Ostrander (2016, 1063): "presidents ... anticipate and adapt to the wishes of the Senate" (Hollibaugh and Rothenberg 2018, 299). These theories employ the distance between senators identified as the medians in their respective voting blocks (their "pivots") as a shorthand for the eventual outcomes. Using their policy preferences as guides, senators decide between two potential outcomes of appointments: the likely "agency drift" that would occur without a confirmed leadership and the likely agency outcomes with the president's nominee confirmed. These calculations, in turn, present an optimization problem for the president making nominations given the anticipated delays resulting from those Senate calculations. McCarty and Razaghan (1999) and, recently, Gary Hollibaugh and Lawrence Rothenberg (2018), have presented the best versions of this explanatory tack.

In this theoretical narrative about the influence of Senate factions, lengthy Senate deliberations result 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 ...” (Hollibaugh and Rothenberg 2017). Even when the Senate abandons some of these rules,<sup>5</sup> other procedures favoring minorities remain, thereby maintaining the potential for obstruction (McCarty and Razaghian 1999; Smith 2014). Assuming an immutability to the Senate’s institutional framework, then, these analyses focus on polarization to account for delayed confirmations—the “independent variable of choice” to explain political dysfunction of almost any variety. The greater the partisan disparities, the more determined the obstructionists, the longer confirmations will take. Empirical research taking this tack has identified four measures of partisan disparity that seem to affect appointments independently of one another:

### ***Partisan polarization***

McCarty and Razaghian argue that the disparity between the Senate’s pivots (a measure of relative “extremism”) presents a good estimation of any opposition’s determination to obstruct (1999, 1128). In these analyses, when the potential policy views of an administration’s nominees approximate the Senate’s pivots, providing no confrontation, then those nominees attain quicker confirmation.

### ***Divided partisan control***

In addition to this principal effect, McCarty and Razaghian suggest that a secondary effect based in partisan disparity comes into play when the Senate majority opposes the president.<sup>6</sup> Since this divided government produces a larger number of determined presidential opponents, it also produces more obstruction.

### ***Partisan imbalance***

A third version of partisan disparity portending delay involves what others have called “partisan imbalance,” the relative size of the two parties. Though the greater the number of the president’s partisans would seem to suggest the easier and quicker the route to confirmation, researchers suggest the degree to which a minority feels beleaguered may also matter: the more outnumbered the president’s opposition, the more delay.

### ***Partisan drift***

Finally, if policy-driven senators can imagine the direction of an executive agency’s policies with a new administration’s leadership at the helm, then they can also imagine what that agency would do if it had no leadership. Hence, Senate opposition would obstruct nominees as long as possible to create such “agency drift.” McCarty and Razaghian (1999, 1129f.) suggest

that, in particular, Republican presidents' nominees suffer more from obstruction by Democrats in this way because the bulk of agency personnel originate with Democratic administrations. Given their origins, then, agency drift would have a particularly partisan tint to it, undermining Republican policy objectives more often.

### *Sequencing and delay*

More recent modifications to this traditional framework have introduced other considerations into the fixed appointments calculus associated with policy confrontations. These include additional characteristics of nominees (see footnote 3), but more relevant to our own analysis here, they also include a range of effects associated with the sequence of the appointments process. None of these extensions alter the basic appointments calculus that relies on confrontation over fixed policy positions. Hence, none of these new approaches alter the basic impact of partisan disparity on delay. However, these analyses suggest that a more proactive role for the president during the earliest stage of the appointments process—executive vetting and identification—might affect subsequent events in the Senate.

Hollibaugh (2015) and Jo (2017) both develop formal models that include a dynamic back and forth between decision-makers, first through the sequencing of the appointments process, moving from the executive to the Senate and then by allowing for random, external events and new information to inform decision-makers about a nominee's expertise. Jinhee Jo (2017) also considers how allowing for back and forth in this way provides for the introduction (at random) of other issues which could affect the number of dimensions involved beyond the single dimension mapping presidents, nominees and pivots, and thereby allow for accommodations with the president leading to the end of obstructive delay.

The calculations in these two analyses suggest a more decisive role for the president in the appointments process. For example, Hollibaugh suggests that the universal need for administrative expertise rationalizes a degree of delay by both the executive and the Senate. Additionally, according to Hollibaugh, as congressional time winds down, the president gains the upper hand in bargaining, which further provides a policy incentive for executive delay. Additionally, Jo notes that high presidential approval rationalizes some Senate delay in hopes of an opportunity for accommodation.

We are compelled by the insight that presidential activities in the early stage of the appointments have a great deal of influence over the Senate confirmations. As Hollibaugh points out, the quality of the candidate pool will likely affect the efficiency of the subsequent stages in the appointments process (Hollibaugh 2015). However, this insight begs the question of what

determines the quality of the candidate pool? We propose that it is presidential initiative during the transition phase of the administration.

### ***Opportunism, planning, and duty***

To explain delay in the appointments process, we adopt a framework that differs from one focused on partisan conflict in that it instead concentrates on and instead concentrates on elements of the process itself. These elements include the influence of one phase on the next, the effect of transition diligence, and the impact of leadership and initiative. We propose that presidents set the stage for appointments politics during their transitions when their planning can ensure a qualified candidate pool and can undermine senators' inclinations to opportunism. Hence, we suggest presidents can affect how senators pursue opportunities for policy leverage beyond simply preempting anticipated obstruction with acquiescence. This intuition about the impact of process on appointments echoes two other elements from Hamilton's "system of administration": an energetic executive and the importance of a diverse policy agenda.

### ***Considering opportunism***

Jo (2017) describes how during the early Obama presidency, Senator Lindsey Graham (R-SC) held up a series of judicial nominations. As it turned out, Senator Graham's opposition had nothing to do with confronting the president's policies reflected in these nominees, nor did it represent trying to ascertain their judicial expertise by forcing more vetting. We know this, Jo concludes, because the obstruction disappeared when Majority Leader Harry Reid (D-NV) offered his personal commitment to fund a port dredging project Senator Graham had a particular fondness for. Senator Graham's delay represented a bargaining ploy to use these nominations as leverage over a pet project—an example of opportunism, not obstruction.<sup>7</sup>

We suspect that the delay modeled in most empirical analyses can reflect as much an attempt to strengthen bargaining advantages as it does to confront policy differences. The introduction of this kind of opportunism, not rooted in the single policy dimension represented by the nominee's potential duties affects how we understand appointment politics. From the theoretical literature on coalitions,<sup>8</sup> for example, we suggest at least two manifestations of this opportunism. First, because the "path" of coalitions and accommodations can respond to leaders' initiative, setting a course on nominations quickly and decisively can minimize Senate opportunism. For example, veterans of many presidential administrations, like James A. Baker III (2000), describe the effect of initiative as "... you don't have people on



the other side attacking you. You're pretty free to name your people, make your choices, set your priorities and your objectives." While many have identified this initiative effect in policy-making and especially during an administration's "hundred days,"<sup>9</sup> we suggest that this effect continues throughout an administration's tenure, possibly dissipating slowly and smoothly over time as senators settle on a reputation for the administration and develop their own reputations *with* that administration (Sullivan and De Marchi 2011), but also potentially replenishing itself as the administration scores policy successes (Sullivan 1991).

Second, while nominees carry policy commitments and a reputation for their expertise, appointments also reflect the inherent characteristics of the particular offices for which the administration has selected them. Each position reflects a place in the system of administration, burdened with varying degrees of responsibilities, some of which, e.g., for security or management, have no partisan dimension and so, we suggest, will draw immediate support at the margins and thereby undermine the potential for opportunistic bargaining. At an extreme, for example, a senator who holds for ransom a whole list of military promotions typically finds that such an attempt at leverage becomes a sudden professional liability because its immediate targets occupy appointments which carry out almost exclusively nonpartisan duties. Adopting such a targeted strategy diminishes a senator's professional reputation among colleagues, those the Senator would need for successful, future accommodations.

These empirical patterns also coincide with the anecdotal experience of presidents and former White House staff who argue that, upon election, the dual obligations of policy and duty hit "like a freight train." This rapid increase in responsibility makes it impossible to develop an appointments strategy while they grapple with transforming their campaigns into a working governing operation.<sup>10</sup> Moreover, the pace of events and growing responsibility for those events transforms their purview from the daily grind of messaging to the weight of global duties, worldwide attention, and scrutiny by both competitors and allies, all which press in on the new team with an enormous pressure that distracts ("duty calls") at the same time that they must stand up their policy commitments through the executive agencies.

Because planning for this challenging setting needs to begin while the candidate and the campaign work to win the election, the fact that many candidates (e.g., Bill Clinton and John McCain) have seen such planning as presumptuous (Patterson and Pfiffner 2001) and have chosen to delay it until after Election Day produces a measurable variation in planning. By contrast, the best transitions have started early, e.g., those of candidates Reagan and George W. Bush, and have identified a dedicated personnel

director early in the campaign who retained the position after the election. By further contrast, poorly run transitions experienced varying degrees of turnover in this personnel position during the transition or soon after taking office, e.g., those for Presidents Obama and Trump.

This personnel head, along with others on the president's eventual transition team, must identify their personnel challenges once they arrive. Their preparations include 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 and vetting potential nominees consistent with the needs of the new administration's agenda (Johnson 2008; Sullivan 2004; Wellford 2008). Transition planning efforts that start months before the election can also insure that an infrastructure exists to meet the staffing needs of the president's legislative and governing commitments as well as the responsibilities thrust on them by duty and changing circumstances.

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), facilitates a timely confirmation process for those nominees. George W. Bush's ambitious transition planning proved exemplary in this regard. By June 2000, his campaign staff had adopted a series of goals consistent with those 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).

By moving early and decisively on these commitments, presidents pave the way for an efficient Senate approval process for others in two significant ways. First, by initiating the appointments process early, presidents send signals to senators about the administration's commitment and resolve in the bargaining processes about to unfold. Second, by quickly offering qualified nominees, new presidents forewarn potential opportunists to consider carefully the potential downside of any obstruction (Sullivan 1990b). Senators contemplating taking advantage of opportunities would also stake their own reputations on these actions. In these ways, we suggest that the demonstration of presidential initiative reduces likely opportunism. The more competent a leader seems, the less likely opportunism develops and the quicker deliberations in all phases come to an end.

Reputations and their impact on decisions, of course, rest on observability. As the Senate policy workload increases, the leadership's responsibilities for managing that policy process increase dramatically, and consequently, attention to appointments become a less significant part of everyone's landscape. This waning attention makes appointments a growing target for opportunism. Senators will take this opportunity to delay action on nominations to strengthen their bargaining hand in current policy battles wholly unrelated to the nominees or their commitments and expertise. In describing senators' use of holds on nominations, for example, Chase Untermeyer, Bush '41's Director of Presidential Personnel, described these dynamics precisely in terms of opportunism as we have suggested:<sup>11</sup>

[H]olds ... 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 broadscale for all the people coming up for consideration in a particular category including some that are purely ministerial like military promotions ...

Presidents who initiate the appointments process early engage the Senate before these "distractions" in the legislative process arise, before focus wanes, and before direct policy clashes motivate senators to obstruct confirmations while bargaining over those other policies. The waxing of Senate business accounts for the continuous erosion of the presidential advantage most often characterized as a "honeymoon" or "100 days" effect.

Finally, by moving early and decisively filling core government functions, the administration undermines the available opportunities for bargaining over nominations by excluding from that bargaining a range of appointments that heavily weigh in with governing's duties and responsibilities.

### *Empirical expectations*

To summarize, we propose three relevant expectations: that transition planning will carry over from the executive to the Senate phases of the appointment process; that presidential initiative will shorten deliberations in general; and that the weight of nonpartisan duties in a position will shorten deliberations.

*E1. Transition planning shortens deliberations.* The earlier the president-elect begins planning the transition, the shorter the duration of all stages of the appointments process.

*E2. Initiative Matters.* The earlier the president nominates, the shorter the period of Senate deliberations.

*E3. The criticality of positions shortens deliberations.* The more critical an executive position, the quicker the deliberations.

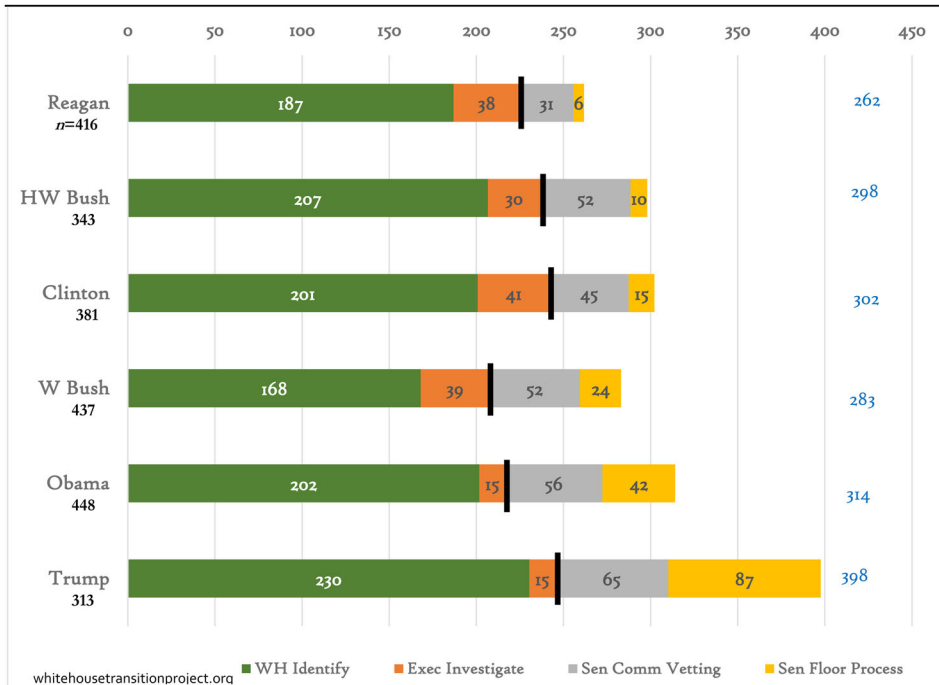
Note that each of these expectations hold constant the Senate's partisan disparities. We do not deny their role in shaping appointment politics. Instead, we only suggest that presidents also play a significant role in determining those politics by shaping elements of the process.

### **Data and empirical analysis**

While the president fills approximately 8,000 positions, only 1,200 carry such responsibilities as to require both a presidential nomination and a Senate confirmation. The latter nominations bear the designation "PAS" (presidential appointed, Senate confirmed).<sup>12</sup> Most presidents come close to filling vacant PAS positions by the end of their second year. Because we have highlighted how an administration stands up the national government, we concentrate on nominations made during those first two years. Of course, presidents as candidates for reelection also anticipate a transition from those that occupy their old administration while waiting for the new term. While that second transition may share some elements with its first, we suggest it differs considerably from their *de novo* transition into office. We also suggest that given the two possible transitions, their first transition *into* office poses the greatest array of challenges in bargaining, reputations, vacancies in the stand up, duties to fulfill, and so on. With these considerations and their incumbent restrictions, our data surveys around 4,000 PAS nominations.

#### ***Occupied positions in the Stand up***

Both *de novo* and reelection transitions share one characteristic—that some PAS positions do not become vacant. Despite the tendency for the president's team to tender their resignations *pro forma* as the administration takes on its second term, in reality most executive positions remain occupied. In a *de novo* transition, on the other hand, almost all of the occupied positions have something in common—like the Director of the FBI, occupied positions result from "fixed" term appointments in the position's organic legislation. Every president has entered office with around 5% of the available PAS positions already occupied. These "occupied" PAS positions pose a challenge and an opportunity 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 of those positions 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



**Figure 1.** Pace of deliberations by phase in the appointments process.

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. To address this possibility, we include a dummy variable for whether an appointment involved an occupied fixed-term position.

### **Considering appointment phases in sequence**

Our data track nominations through all phases in the appointments process: executive identification and vetting of nominees, Senate committee vetting, and the Senate’s final disposition (whether by vote or by returning the nomination). **Figure 1** illustrates the average amount of time nominations of the past six presidential administrations spent in each phase of the appointments process. The portion of each bar on the far left portrays the executive identification process, which begins on Election Day (when the responsibility for proposing nominations begins) and ends when an administration announces its “intent to nominate” a candidate. These data come from the National Archives, *the Public Papers of the President*, series and, in some instances, reports in *The New York Times* or *The Washington Post*.<sup>13</sup>

The second element illustrates the average duration of executive vetting, conducted primarily by the FBI after the intent to nominate. While the Reagan through George W. Bush administrations typically announced a nomination in advance of FBI vetting, more contemporary administrations frequently have begun vetting candidates before their intent to nominate, canceling those investigations that will not result in a nomination. This practice, adopted typically halfway through the first three months, dramatically shortens the average vetting period for Presidents Obama and Trump. To adjust for this strategy in making comparisons, we have combined the duration of the executive stages in our statistical models to create one executive vetting phase. The black vertical line in the figure divides the executive from the Senate phases.

The third portion of each bar displays the average duration of Senate committee vetting, while the final element denotes the average time to final disposition. The data for these second two stages derive primarily from the appointments tracking published at Congress.gov. The time in committee equals the date of its final report minus the date of reference. The duration of final deliberations equals the date of final confirmation minus the date of committee report.

In some instances, of course, the Senate returns nominations to the administration under its Rule 31 (§5; §6). In our statistical models, we treat those nominations returned in August and at the session's end but then immediately re-nominated as having continued, while we treat nominations returned to the president at the end of Congress or which the administration did not re-nominate earlier as censored.

The figure illustrates the most often noted characterization of the appointments process: deliberations have lengthened over time (the right-hand column).<sup>14</sup> By the end of the Trump administration's first year, for example, the average number of days to fill one position had increased by 52% over President Reagan's experience. In addition, the length of Senate deliberations in the Trump administration has more than quadrupled over Reagan's.

The figure also illustrates a common phenomenon that concentrating on the Senate overlooks: that the greatest delay in appointments takes place on the executive side and not in the Senate. This fact, of course, reflects the importance of executive leadership on executive appointments.<sup>15</sup>

### ***Estimating models***

We model these data with a censored, accelerated failure time Weibull model that includes an ancillary parameter that varies with each president. The ancillary parameter allows the baseline hazard rate to differ across presidents. This allows for the possibility that we have omitted president-

specific or Congress-specific traits or circumstances that may affect the rate at which each institution processes nominations. While the most recent study, Hollibaugh 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. Our data 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.<sup>16</sup>

That transitions might employ different strategies to achieve nominations poses an additional difficulty in modeling appointments data. According to our interviews, the Reagan team focused on filling positions “top to bottom” in agencies critical to his early policy agenda. Other administrations have nominated “horizontally,” filling similar positions across agencies, and then within each, working top-down. Some presidents might allow heads of cabinet agencies to pick the nominees in their agency, linking nominations there to the completion of the top nomination. However, only Cabinet agency appointments (and not regulatory agencies) would display this kind of dependency pattern. Other administrations have allowed an agency head only to propose some alternatives, leaving all the choices to the White House and its overall strategy. We explore several strategies for addressing this challenge, including a shared frailty model, where frailty is shared among agencies. However, our nominations data include nominations to some 130 different agencies or boards. Some agencies received as few as five nominations, while other agencies receive as many as 305, making parameter estimates in shared frailty models very unstable. Thus, we adopt a simpler modeling strategy of using dummy variables to control for nominations to major agencies (defined as agencies which received greater than 90 nominations). We emphasize that the results do not suggest that these various strategy differences constitute a major empirical issue. In our data, only about 5% of nominations over the last forty years have exhibited a nested, dependent pattern within Cabinet agencies.<sup>17</sup>

### ***Dependent variables***

For the analysis reported here, we employ three main dependent variables measuring the duration of each phase in the appointments process for each nominee: executive identification and vetting, time spent in committee vetting, 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 submitted a nomination to the Senate. The duration of committee vetting equals the number of days between the date the committee reported the nominations and the date the administration submitted the nomination. The duration of

**Table 1.** Independent variables in the empirical models.

Type	Specific measure	Definition and sources
Variables of interest	Duration of transition planning ( <i>in 10s</i> )*	The inauguration date minus the date the campaign began planning for its transition. ( <i>Source</i> : Author Interviews).
	<i>Initiative</i> —Days left in Congress ( <i>in 10s</i> )	The number of days remaining before the anticipated end of Congress: when a nomination transferred to the Senate (in the committee model) and when the committee reported the nomination (in the floor model).
	<i>Administration</i> —Critical position	Personnel positions as described in <i>Plum Book</i> and reflecting importance as described as critical to government functions. Higher values indicate more importance ( <i>Source</i> : National Commission on Reforming the Federal Appointments Process 2012)
Partisan disparity	Polarization	The difference in the two party means DW-Nominate scores, first dimension ( <i>Source</i> : McCarty, Poole, and Rosenthal 1997).
	Divided party control?	Whether the president's opposition 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.
Controls	Partisan drift ( <i>Republican president</i> )?	Whether a nomination originates with a Republican administration.
	Occupied fixed-term position?	Personnel positions having a fixed term and occupied as of the inauguration. ( <i>Source</i> : <i>Plum Book</i> , relevant years).
	<i>Opportunism</i> —Presidential approval	Most recent Gallup approval score prior to phase.
	Senate workload ( <i>in 10s</i> )	Numbers of votes taken as recorded in the Senate <i>Journal</i> prior to phase.
	<i>Sequencing</i> —Time in executive vetting	Days from election to transfer of credentials to the Senate.
	Time in committee vetting	Days each nomination spent in committee.
	Female nominee?	The nominee's gender.
Agency variables	A dummy variable for each agency with at least 90 PAS nominations. (Demarcated by founding before or after FDR).	
	Independent regulatory appointment?	Dummy variable indicating PAS nominations to an independent regulatory commission.

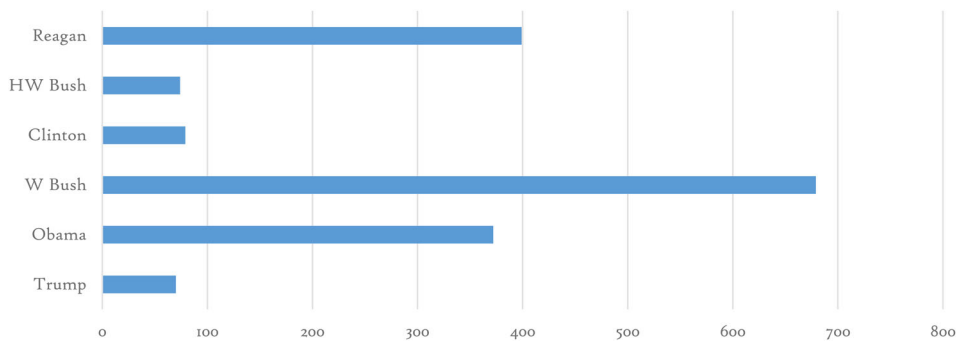
\*Some variables rescaled to make interpretation easier.

final Senate disposition equals the number of days between the disposition (or the date the Senate returned the nomination) and the day the committee of jurisdiction reported the nomination.

### **Independent variables**

Table 1 describes the main independent variables, highlighting three groups. The first group summarizes the variables suggested by focusing on opportunism: transition planning or the “priority” of appointments. The second group concentrates on partisan disparity. And the third presents those additional elements suggested as important either in previous, theoretical models or in the theories that have introduced sequencing effects.





**Figure 2.** Length of transition planning for modern presidents.

### *Variables of interest*

This group begins with the length of transition planning undertaken by each campaign illustrated in Figure 2 and based on interviews with key campaign personnel from each presidential team. From these interviews, we have compiled data on the patterns of transition planning, especially those focusing on personnel matters and particularly when that planning began in earnest. The measure used here highlights the time from the inception of election planning prior to the inauguration.

Modern campaigns have presented a range of transition planning efforts which mimic the inverse of patterns in transition planning among the various campaigns. 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."<sup>18</sup> According to Pendleton James, Reagan's principal transition planner, the transition team's plans "were functional the first minute of the first hour" and with respect to appointments based in the organizational experiences of professional head hunters. Following that lead, George W. Bush set his transition planning in motion even further in advance than Reagan. In 1999, then Governor Bush asked Clay Johnson III to "develop a plan for what we should do after we win" (Sullivan 2004, 171). The transition planning team used its early start to create an electronic application process to reduce vetting costs. These processes built a database of applicants and their qualifications that included some 70,000 entries by the end of the transition. The size of the database facilitated large-scale candidate searches. Barack 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 shifted

transition planning to an ill-prepared Republican National Committee and producing the shortest planning process among the past six administrations (Christie 2019; Swan 2020).

Our second variable employs a continuous measure of initiative: the number of days left in the Congress when the president announces a nomination, submits that nomination to Congress, or when a committee clears that nomination (depending on the specific model). This variable substitutes for the typical, dichotomous time measures, like 100-days or first year.

Third, our measure of interest focuses broadly on the system of administration: the inherent importance to an agency and an administration of each PAS position. 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 critical executive responsibilities. To further that recommendation, the Commission produced a catalog of positions and rated their value (1–5) as a critical position.<sup>19</sup> This measure reflects the notion presented here that a class of positions would receive expedited treatment because they have primary responsibilities for nonpartisan, “ministerial” duties of the national government. In our assessment, the measure provides, in the context of national administration, a substantive meaning to the common notion of “low hanging fruit.”

### *Partisan disparity*

Table 1 also describes a range of variables employed to assess the impact of partisan disparity in its different dimensions. These variables include polarization as a measure of relative extremism, divided government, the difference in the size of party coalitions as a measure of minority beleaguered-ness, and the special case of Democratic party agency drift.<sup>20</sup> We modified the measure of party imbalance, 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 or the degree to which the president’s supporters might consider themselves beleaguered by an overbearing majority.

### *Controls*

Eight additional variables derive from other theoretical treatments. For example, Jo (2017) suggests that presidential approval, using the standard Gallup measure, might disincentivize obstruction. Jo suggests then that initial high approval would encourage Senate delay.

Following McCarty and Razaghian, we also assess their measure of opportunism, the Senate's "workload" by using the number of Senate roll-call votes in a month. As with other time-dependent independent variables, we keyed workload in the committee phase model to the date the Senate received a nomination, while in the final disposition phase we base the value on the date the committee reported the nomination.

Two variables assess the impact of a previous phase on deliberations in the next phase. In the committee vetting model, we include a measure of the length of prior executive vetting, and in the final floor model, we include a control variable that measures the time the nomination spent in committee. Holding fixed the span of the remaining congressional session and the degree of executive preparations, the amount of additional time spent in executive vetting should reduce opportunism in the Senate vetting stage while the length of Senate committee vetting should not produce a similar treatment in the floor phase. These expectations result from the complex coalition process at the base of opportunism. In effect, holding executive preparations constant, because committee membership represents a small subset of senators, the bargaining calculations of the remaining senators are essentially independent of opportunism and deliberations centered in the committee.

Ostrander (2016, 1069) suggests that defense related appointments would receive expedited Senate consideration, reflecting the idea that "politics ends at the water's edge," a concept near to our own about positions weighted to nonpartisan duties. And as noted earlier, others suggest that the bulk of new agencies come from Democratic presidencies and so would have large professional staffs committed to Democratic policy preferences. We therefore use dummy variables to control for all major agencies and independent regulatory commissions. We array the agencies by their creation date.<sup>21</sup>

A final variable (Occupied fixed-term appointments) assesses a measurement issue, whether decision-makers treat these appointments differently or if in future analysis they can receive standard treatment and whether to some extent *de novo* and continuation transitions might differ.

## Empirical models

Tables 2 and 3 report the results of our models on the pace of deliberations. These empirical results highlight the stability of coefficients across modeling efforts as well as the benefits of good transition planning, presidential initiative, and the carry-through effect of these executive efforts on the whole of the appointments process.

**Table 2.** Weibull model of deliberations by phases without controls, 1981–2018.

		Effects over phases					
		Senate					
Independent effects		Executive		Vetting		Disposition	
Role	Specific measure	Coeff.	s.e.	Coeff.	s.e.	Coeff.	s.e.
	Constant	6.956*	0.017	5.059*	0.063	2.957*	0.109
Variables of interest	Duration of transition planning (10s)	-0.001*	0.000	-0.001*	0.000	-0.009*	0.002
	Critical (stand up) position	-0.008*	0.004	-0.105*	0.013	-0.010*	0.025
	Days left in Congress (10s)	-0.026*	0.000	-0.016*	0.001	-0.019*	0.002
Summary Statistics:		n = 3,175		n = 3,140		n = 2,902	
		BIC = 897.4		BIC = 9389.8		BIC = 12070.8	

Source: Compiled by authors.

**Table 3.** Weibull model of deliberations by phases with control variables, 1981–2018.

		Executive					
Vetting Role	Disposition Measure	Coeff.	s.e.	Coeff.	s.e.	Coeff.	s.e.
	Constant	7.187*	0.055	12.476*	1.834	-5.024*	0.441
Variables of interest	Duration of transition (10s)	-0.008*	0.000	-0.021*	0.004	-0.038*	0.003
	Critical (stand up) position	-0.003	0.002	-0.103*	0.013	-0.061*	0.023
	Days left in Congress (10s)	-0.028*	0.000	-0.148*	0.027	-0.019*	0.002
Partisan disparity	Difference in party means (10ths)	-0.045*	0.004	0.307*	0.019	0.787*	0.034
	Divided party control	-0.462*	0.025	-0.629*	0.107	-0.303	0.223
	Party imbalance (10ths)	4.686*	0.189	10.118*	1.906	10.223*	1.622
Modeling elements	Partisan drift (Republican president?)	0.557*	0.025	1.434*	0.253	1.929*	0.203
	Occupied fixed-term position?	0.006	0.019	-0.107	0.092	-0.181	0.158
	Senate workload	0.001*	0.000	0.004*	0.001	-0.000	0.002
Control variables before FDR-after	Presidential approval	-0.001	0.001	-0.002	0.003	0.018*	0.004
	Time in executive vetting	-	-	-0.013*	0.003	-	-
	Time in committee vetting	-	-	-	-	0.006*	0.001
Control variables before FDR-after	Female nominee?	0.031*	0.008	-0.065	0.039	0.013	0.072
	Independent regulatory?	0.039*	0.011	-0.182*	0.054	0.425*	0.102
	Dpt of state?	-0.011	0.013	-0.408*	0.064	0.147	0.114
	Dpt of defense?	0.002	0.012	-0.551*	0.065	0.054	0.117
	Dpt of the treasury?	-0.043*	0.017	-0.047	0.089	0.758*	0.157
	Dpt of the interior?	-0.037	0.020	-0.626*	0.101	0.602*	0.183
	Dpt of agriculture?	0.060*	0.018	-0.063	0.083	0.519*	0.149
	Dpt of justice?	-0.001	0.017	-0.198*	0.082	0.188	0.147
	Dpt of commerce?	0.052*	0.021	-0.240*	0.102	0.107	0.181
	Dpt of labor?	0.107*	0.021	0.015	0.085	0.965*	0.162
	Dpt of health & human services?	-0.020	0.019	-0.024	0.095	0.025	0.170
	Dpt of education?	-0.016	0.019	-0.280*	0.098	-0.491*	0.169
	National endowment for arts?	0.014	0.051	-0.535*	0.258	-0.790	0.452
	Dpt of transportation?	-0.025	0.019	-0.333*	0.099	0.389*	0.176
	Dpt of energy?	-0.011	0.017	-0.578*	0.088	0.654*	0.168
Summary statistics		n = 3,075		n = 3,074		n = 2,900	
		BIC = -528.7		BIC = 8899.6		BIC = 11333.9	

Source: Compiled by author.

**General results on core expectations**

The data support all three empirical expectations. More transition planning clearly speeds up deliberations in all phases of the process, as suggested. In addition, critical positions suffer significantly less opportunism than do others, suggesting the common recognition of administrative responsibilities, in all phases of the process. And, presidential initiative leads to the

shorter deliberations in all phases. When considered in conjunction with a fuller model, these results seem stable.

### ***Results across appointment phases***

#### ***Appointment politics in the executive phase***

Beginning with the executive phase, the length of transition planning has a negative and statistically significant effect in both the basic and control models. In the control model, for example, the results suggest that increasing the length of transition planning from Trump's 70 days to George W Bush's 540 days, decreases the duration of executive vetting by over 135 days.

The level of a position presents an effect seemingly consistent with what we anticipated. For example, more critical positions get treated more urgently as they move through the executive phase. Presidents tend to appoint the highest priority nominees about 10 days sooner than the lowest priority nominees, however the coefficient on this variable is significant only in the base model.

Presidential initiative performed as expected. For every 10 days the president doesn't wait to announce a nominee, the overall duration of the executive process shortens by 8 days.

#### ***Appointment politics in the Senate's committee phase***

The two models for the Senate phases offer the opportunity to assess whether planning, duty, and initiative matter beyond the executive phase. The length of planning variable has a statistically significant and negative coefficient in both the basic and the fuller models of committee deliberations. These results suggest first that transition planning shortens the duration of Senate committee vetting. Based on the results of the control model, increasing the length of transition planning from Trump's 70 days to George W Bush's 540 days decreases the duration of Senate committee vetting by 47 days, on average. Complementing this effect, taking the initiative on nominations, e.g., during the "first one hundred days," results in shorter committee deliberations, in this case, 81 days shorter than for nominations submitted in the last 100 days of Congress. Since good transition planning shortens executive vetting and facilitates a larger number of nominations being submitted to Congress earlier, this effect compounds the effect of good transition planning. Moreover, the longer the administration takes to vet a nominee, another measure of planning, the more quickly the Senate committee reports a nominee. All of these results present strong evidence that initiative undermines opportunism. In addition, the more critical the responsibilities of a position, the more quickly the Senate committee considers the nominee for that position.

### ***Appointment politics in the Senate's disposition phase***

Again, the coefficient on transition planning performs as expected in the Senate disposition phase. Increasing the length of transition planning from Trump's 70 days to George W Bush's 540 days decreases the wait for a final floor disposition by 23 days. Presidential initiative, again, has a significant effect, shortening the duration of the Senate disposition and one which seems to have a continuous influence on deliberations. For example, when committees report nominations during the first 100 days, itself a reflection of proper transition planning, those nominations also get an additional boost, proceeding 16 days more quickly through the final floor vote than nominations reported during the last 100 days of a Congress.

And again, the more critical the responsibilities of a position, the more quickly the Senate disposes of the nominee for that position.

### ***The impact of partisan disparities***

Although not the central focus here, the empirical results also illuminate the role of partisan disparities on appointment politics, holding constant the impact of opportunism, planning, initiative, and duty. Just two variables associated with partisan disparities attain a consistently signed and statistically significant coefficient in all three phases: the relative size of the president's Senate support (the measure of a beleaguered minority) and partisan agency drift.

### ***Partisan polarization across each phase***

While it returns statistically significant coefficients in all three phases, the effect of polarization appears inconsistent. Consistent with the orthodox modeling, growing polarization consistently prolongs Senate deliberations. A one standard deviation increase in polarization lengthens the Senate committee stage by about 15 days and prolongs the waiting period for a floor vote by four days. But inconsistent with the expectations that polarization generates anticipated reactions, presidents spend less time identifying and vetting nominees in polarized political environments, raising questions about whether and how presidents react to or anticipate the Senate's "on-the-ground" situation. The evidence seems to suggest that presidents facing a polarized Senate do not *anticipate* those challenges but instead appear to defy them.

### ***Divided government***

As a form of disparity, divided partisan control does not perform as expected. While its sign does remain consistent across phases, the effect counters polarization and imbalance early on (in the executive and

committee phases) while having no effect at all in the Senate's disposition phase. Divided control appears to lengthen executive vetting by nearly 160 days, perhaps contravening the effect of polarization so that presidents *anticipate* more opposition to their nominees. On the other hand, divided control shortens committee processing and recommendation by 36 days. But in the floor phase, where one would expect the most obvious obstruction, divided control does not generate significant delay despite the fact that the majority opposition has all the procedural means for delay at their beckoning. These results suggest that overlooking the phases involved in appointments politics may have hidden some important characteristics of that process.

### ***The beleaguered opposition***

The partisan imbalance variable, describing the relative numbers of the president's partisans, performed in the expected way: the larger the relative size of the president's Senate supporters, suggesting a more and more beleaguered minority, the longer the president takes to identify and vet candidates (confronting the challenges in potential delay), and the longer the Senate takes to report nominations from committee and to give them a final floor vote (realizing that potential). An increase of one standard deviation in the size of the president's party relative to the opposition lengthens both the committee and the disposition phases by 49 days each.

### ***Partisan drift for Democratic agencies***

The partisan version of agency drift, focused on Republican nominations, presents some interesting interpretations given our focus on presidential initiative. Recall that the basic, standard expectation suggests when presidents nominate heads of agencies with different commitments than that agency's staff and its congressional supporters, then delay allows the agency to continue on its previous policy track, thereby drifting away from the president's commitments. Our empirical model presents two opportunities to assay this effect. First, the model presents an opportunity to assess whether Republican agency nominations in general should report coefficients for this sort of partisan disparity, first in the executive phase showing quicker deliberations, and then in the Senate showing more delay, as opponents try to prolong the more favorable agency drift. Second, agencies created in the post-FDR and Great Society eras (staffed with committed Democratic partisans) should show this agency drift effect.

The nominees of Republican presidents do spend 73 days longer in committee and 29 days longer awaiting a floor decision. So, these effects suggest that the significant alterations in policy direction that Republican nominees

represent in our dataset produce a determined opposition allowing for agency drift. On the other hand, these same Republican presidents take a whopping 161 days longer to identify and vet nominees, which in our analysis suggests that those presidents have generated some of the subsequent delay when they squander initiative.

In addition, the agency by agency coefficients show a more complex picture. For those agencies with roots stretching back to the beginning of the twentieth century and before (some dating to the founding), delay occurs significantly more often. Among these much older agencies, six of the thirteen significant coefficients suggest delay in deliberations while among the post-FDR agencies only one of six significant coefficients suggested agency drift oriented delay. Hence, the empirical modeling produces only mixed results with respect to the logic of agency drift.

### ***Other variables and controls***

#### ***Fixed-term positions***

The performance of fixed-term positions lends some insight into how appointments might differ in *de novo* transitions and continuation transitions, a difference not directly addressed here. Initially, fixed-term positions do not seem to constitute a separate empirical class of positions. On average, presidents make nominations to occupied, fixed-term positions 8 days more slowly, suggesting, firstly, that presidents-elect often pay less attention to these occupied positions and focus instead on standing up those parts of the government literally unoccupied. However, the insignificant coefficient on this variable provides some support for our expectation that occupied, fixed-term positions do not necessarily present a special empirical process. Just as often, presidents fill these positions during their first year before they become vacant.

#### ***Senate workload***

Senate workload as a signal about Senate opportunism preformed as expected, particularly in the executive phase as the administration looked for a favorable opportunity in which to nominate a candidate. In the committee vetting phase, senators would pivot to policy as the workload increased. After delay in committee vetting, though, the general workload did not seem to offer an additional opportunity for delay.

#### ***Independent regulatory agencies***

Independent regulatory agencies invoke a specific problem in assessing agency drift. While direction of drift might seem obvious, the organic



structure of the agency would not necessarily facilitate easy policy transformation with new appointments. This uncertainty about what would happen under the condition of agency drift and appointments appears to a different degree in each phase. Independent agencies experience significantly more delay in the executive and in floor deliberations. Both the pattern of significant delay in the executive and floor deliberations probably reflect the complexities of managing the agency's policy purview given its organic unresponsiveness. On the other hand, Senate committees respond more quickly to the complexity of their deliberations about these appointments because committees have more expertise to bring to bear in assessing the nominees and how they might affect policy. These two patterns, again, reflect Hollibaugh's argument that presidents and senators have rational basis to delay—it removes uncertainty where such uncertainty undermines their decision-making.

### *Gender*

While it would seem probable and likely that female candidates would face increased scrutiny in the Senate, especially given prior evidence to this effect, the gender variable is inconsistently signed across stages. The coefficient on the gender dummy variable is significant in the executive stage model, but the sign suggests that presidents are appointing female nominees more quickly, not less.

### **Lessons for appointment politics**

To date, political science research has placed too much emphasis on the Senate's deliberative processes, its reified parties, their extremism, and the most dramatic Senate procedures, all elements of confrontational politics, while deemphasizing the potential role of the president as a leader and the impact of preparation and competence on process. This focus on Senate confrontation has occurred despite the fact that the president's role in appointments has made some of the most important constitutional history and has animated a good deal of current affairs, especially as a new administration stands itself up. That focus on confrontation, however, does dovetail with the orthodox opinion of pundits and other observers who bemoan appointments politics as a kind of canary in the mine of our national affairs—hopelessly mired in tribalism with no apparent means of escape. Yet, our results both suggest another direction for theory and analysis, and some opportunities for using that research to promote a better functioning system of administration.

### ***The implications for theory and analysis***

Our analysis suggests that continued attempts to improve efficiency by changing Senate rules might easily continue to have no effect on appointment politics because those reforms assume polarization has become the central problem in appointments. But the Senate does not only represent a set of fixed partisan factions dictating federal appointments. Instead, or maybe in addition, political leadership and the system of administration also affect that process as they do in making policy coalitions.

On that score, the results reported here confirm an important, general role for the president as the head of the administration but also as a leader in shaping Senate coalitions. All of the measures related to presidential leadership dramatically shorten Senate reactions, and consistently do so across all phases of the process. By comparison, only party imbalance and agency drift for Republican presidents demonstrate an impact across all phases.

These empirical results also suggest something about the direction of theory, suggesting that understanding appointments as a process should concentrate on policy-making and less on confrontation. The empirical results about impact across phases suggest that the empirical patterns in one phase shape the next phase at least as much as anticipated reactions in the final phase would set the stage for all prior phases. Executive deliberations drive the shortening of Senate deliberations while deliberations in the Senate vetting stage set the patterns of deliberations for the final Senate phase. Well-prepared presidents, with plans and initiative, supply a leadership that can hasten the appointments process, even in the presence of severe partisan disparities. Instances of *apparent* obstruction, then, might represent instances where better executive vetting could have occurred and didn't or where accommodations have failed and shouldn't have. At the least, the evidence here suggests that prepared presidents can bend Senate realities at least as much as those realities would generate presidential reaction or determine delay.

We note a couple of limitations here. First, since the data cover modern presidents, these results might not generalize to earlier periods, before the Congress had created the modern regime of ethics standards. Additionally, the data limit our ability to sort out multiple president-specific causal factors, if any exist. Second, we consciously focus on those critical first two years of each administration so we cannot fully speak to some issues, e.g., whether appointments during or after reelection campaigns differ and if appointment politics vary after an administration's primary agenda has traversed the Senate. Our approach excludes these questions in favor of concentrating on the challenges in standing up a system of administration. Those challenges have produced some landmarks of American history.

Finally, our study cannot resolve the technical issue of a potential endogeneity between the polarization and presidential planning. We presume

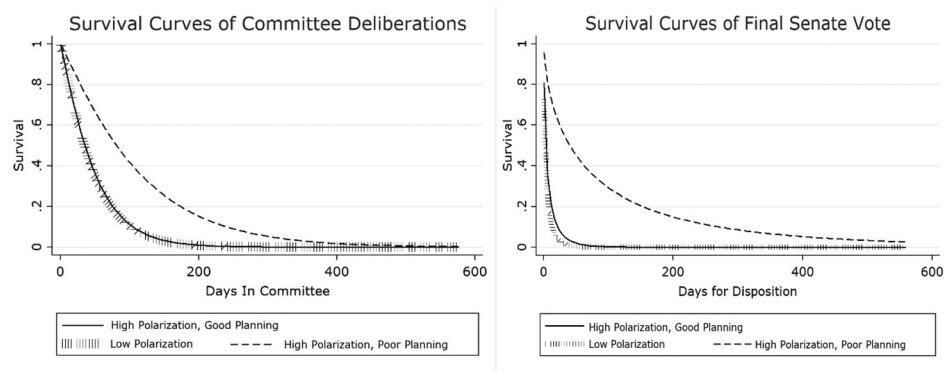
such an effect does not exist because presidential transition planning remains far from an institutional norm. Since not all candidates embrace systematic planning, we find it difficult to imagine that they would factor in the degree of political polarization when composing their transition plans. Moreover, a survey of the interviews with transition planners that we used to establish the basis for our planning measure uncovered literally no discussion by the interviewees on the anticipated level of Senate polarization or even a discussion of how they would have navigated Senate conditions in general. The mixed results on the influence of partisan disparity during executive deliberations support this notion that such considerations do not typically play a role in planning.

### ***Facilitating leadership in appointments***

These empirical results, however, do suggest that some reforms, those aimed at supporting presidential capacity for standing up the government more quickly, could dramatically improve appointments politics while also undermining the impact of partisan disparities. As a simple example and as noted earlier, the initial Trump campaign planning effort set a pace to resemble the Obama preparations, but at the last minute the president-elect's staff threw out those plans lock, stock and barrel, producing an extremely truncated preparation. By a year and a half into the Trump term, the average Reagan performance with completing nominations and standing up the government had already "lapped" the Trump record and, by September 2018, the records of Presidents Clinton and Obama stood poised to do the same. The evidence here suggests that just having spent more time preparing its transition plans would have saved the Trump nominees an average of 205 days. And that pattern of halting performance continues through to the end of the Trump presidency. While anecdotal, these observations suggest that early operational practices define later performance on appointments. If true, and confirmed by further analysis, this effect would only highlight more the critical nature of early performance, making the transition an even bigger challenge than it already has become.

### ***The impact on party disparity***

Collectively, our results suggest that presidential initiative substantially can mitigate the effects of partisan disparities. At its highest observed level (see [Figure 3](#)), our results suggest that polarization lengthens Senate committee deliberations by about 57 days and the final floor vote by 25 days. When a president plans properly, and submits a nomination early, and it proceeds to a floor vote early, the president can mitigate most of this increase caused by these high levels of partisan disparity.



**Figure 3.** Survival curves from senate models.

The combined effects of improved presidential initiative, its carry-over effect into the next phase, and a concentration on filling critical positions reverses the effects of partisan disparity in these early critical years of an administration. Might a tamping down of partisanship in these early years, when reputations jell and accommodations with the new administration solidify, set the stage for an appointment politics reflecting less the force of disparity and more the necessities of governing? This possibility seems worth further scholarly consideration.

### *Improving capacity*

The research results here suggest additional, bipartisan reforms could actually improve the process rather than simply reduce the numbers of points of confrontation. Reforms aimed at improving the appointments process and integrating it better into the legislative process would improve and shorten deliberations, limiting opportunism. Such reforms would do so without directly jeopardizing or raising partisan positions. In the end, our research suggests these reforms would lead to a diminished role for partisanship without having to address it directly.

In the past five administrations, the average number of nominations put forward before the first August congressional recess has amounted to around 302. 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, given the advantages in quicker Senate confirmation, that change would improve the stand up rate 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.

The failure to find a solution for the lengthening deliberations on presidential appointments and the resultant slow government stand up is a national tragedy. As Hamilton implied, to tie up presidential nominations threatens more than just the commitments of the national candidate occupying the presidency. It also enfeebles the national government in meeting both its everyday responsibilities and in facing crises; it undermines the economy and defenses; and it enervates the exercise of American power and leadership in the international arena. Enacting reforms that 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 despite pervasive partisan rancor that undermines the system of national administration.

## Notes

1. An examination of another 3,500 nominations from 1885 through 1996, reported in McCarty and Razaghian (1999), found that only four nominees had failed Senate confirmation and presidents had withdrawn another 55. Hence, inclusion of returned nominees overestimates the numbers of effectively defeated nominations. Moreover, no earlier analytics have included those nominees that presidents have announced but then never submitted to the Senate. Other researchers using different datasets also have concluded the Senate typically deferred to presidential choices (e.g., Cohen 1988; King and Riddlesperger 1991, 1996).
2. Senate Rule 31 (previously Rule 38), requires the return of any nomination not dealt with prior to any recess that might extend beyond 30 days.
3. See Clay Johnson's (2008) comments about the consequences of candidates who don't appreciate just how much scrutiny they will undergo.
4. Besides considering nominees as a "model" of policy commitment, nominees can also model other characteristics. Hollibaugh (2015) introduces expertise. Other characteristics independent of commitment or expertise would include "fidelity," "affinity," or "reliability," the degree to which a nominee would make decisions under delegation and uncertainty that mirrors the principal's decisionmaking under identical circumstances (Williamson 1970; Aghion and Tirole 1997).
5. See Ba et al. (2020) for an analysis of how using the so-called "nuclear option" has affected judicial nominations. See the online [appendix](#) for how the nuclear option affects executive appointments.
6. McCarty and Razaghian, Hollibaugh and Rothenberg, and others (e.g., Asmussen 2011; Ostrander 2016) employ several other variables. Our online supplemental attempts to replicate their results using our data.
7. See Sullivan (1990a) for the theoretical basis on which Senator Graham may have used nominations he actually supported to bluff his way to obtaining accommodations.
8. The standard literature on the complexity of coalitions includes (Black 1958), includes Arrow (1954), Oppenheimer (1975), Schofield (1983), and Schwartz (1986).
9. For an operationalization, McCarty and Razaghian (1999) set this dissipation effect at 90 days.
10. 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” [“On Background” interview with Clinton White House insider, White House Transition Project, 2000).

11. Chase Untermeyer White House Transition Project interview with Martha Joynt Kumar, 1999: <https://www.archives.gov/files/presidential-libraries/research/transition-interviews/pdf/untermeyer.pdf>.
12. See *Plum Book* (2016), Appendix 1. While all these positions pose a mix of partisan policy and nonpartisan administrative responsibilities, we have excluded some PAS positions, including: military officers, the foreign service, the public health service, US Marshal service, most US Attorneys, most ambassadors, and all judicial appointments except to the Supreme Court. We retain those primary US Attorneys that investigate political corruption and some key ambassadorships, both identified as key by the National Commission on Reform of the Federal Appointments Process. The actual number of vacant positions varies from administration to administration partly because of the variation in Senior Executive Service (SES) positions that by statute, the president may fill with a percentage of PAS nominations.  
 Judicial appointments present a special class of appointment politics. While they follow the same path as other PAS appointments, lifetime tenure for Article III courts means that regardless of where in the tenure of a president or where in the Senate’s schedule, the judiciary has a very large contingent of occupied positions that do not present any opportunity for appointments.
13. If an administration does not publicly announce its intention to nominate a candidate, the date for the intent to nominate equals the same date the administration submits the nomination to Congress.
14. Differences in totals result from rounding.
15. Massie et al. (2004) also note this pattern in their assessment of judicial nominations. See also Ba et al. (2020).
16. We also considered using a multistate Weibull model, which simultaneously models multiple interrelated phases of a process. These models have the most use when the units of observation do not pass through the same phases consecutively, a requirement that our data violate. They also assume the same independent variables across all phases, which we find an inappropriate assumption for these data.
17. This result may suggest that while administration staff recall adopting a nomination strategy, they apparently do not carry it out.
18. Harrison Wellford interview with Martha Joynt Kumar, White House Transition Project, 1999.
19. This measure substitutes for “level” used in some other studies, which relies on the government personnel system designation (EX) and the levels within *that* system. That measure excludes a range of position not under the EX personnel system, in particular SES positions.
20. We explored Bonica’s (2014) political ideology variable to control for the ideological stance of nominees, following Hollibaugh and Rothenberg (2018). However, upon merging the data with our own, we found that this ideology measure exists for only about 25% of nominees, making it less useful in estimates.
21. Though created in 1947, the Department of Defense consolidated a range of “war” related agencies created during the founding period.

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