



THE WHITE HOUSE
TRANSITION PROJECT
1997—2017

RICE UNIVERSITY'S
BAKER INSTITUTE
FOR PUBLIC POLICY

SMOOTHING THE PEACEFUL TRANSFER OF DEMOCRATIC POWER

Report 2017—51

THE LONGER YOU WAIT, THE LONGER IT TAKES

Substituting Efficiency for Partisan Rancor
in Presidential Appointments

Terry Sullivan and Brandon Schneider, *the White House Transition Project*

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WHO WE ARE & WHAT WE DO

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

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Smoothing the Peaceful Transfer of Democratic Power

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EXECUTIVE SUMMARY

In general, and for the most important federal positions, the longer an administration takes to nominate someone, the longer it takes the Senate to reach a decision. This pattern means that administrations do not fill nearly 30% of all critical positions by the end of the first year in office. For those positions identified as “time sensitive” appointments, this trend carries before and after the first 100 days and it soars after the policy agenda reaches full force in the Senate.

These results suggest:

1. Standing up the government faster would require issuing around 415 nominations during the first 100 days, with commensurate increases throughout the rest of the first congressional session. This strategy should also generate a 30% improvement in Senate processing times.

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2. In addition to the efficiency improvement, this strategy would also suggest an increase of capacity in four areas:
 - a) All Senate committees should hire permanent confirmation staffs,
 - b) The FBI should increase its vetting staff,
 - c) US Office of Government Ethics should increase its auditing staff by 50% and
 - d) The White House personnel operation (Office of Presidential Personnel and Counsel's Office) should double its size, primarily through creation of an OMB-like permanent personnel operation staffed by professionals but managed by political appointees.

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



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PARTISANSHIP AND APPOINTMENTS

A new administration's appointments represent the key to achieving everything a president wants and everything the electorate has decided. That concept of republican responsibility originates in the founding, where for example, Alexander Hamilton, the constitution's chief advocate for a strong executive, characterized this relationship as "the intimate connection between the duration of the executive magistrate in office and the stability of the system of administration" (*Federalist #72*). Challenging the new president's appointments, therefore, becomes an opposition's first line of resistance. But when that resistance renders the appointments process dysfunctional, the founders' republican governance begins to fail. No wonder, the era of increased partisanship and polarization has also become the era of failed governing (with repeated shut downs, failed budgeting processes, downgrading bond ratings, etc.), in addition to declining public confidence.

For many, the presidential appointments process has become so dysfunctional it has sunk into a quagmire, itself so deep that trying to fix the process has occupied the governing community for decades with little effect.¹ And because of its importance to the constitutional framework, this dysfunction has consequences for the country often repeated in a failure to provide central government services, including basic national security.²

¹ Paul C. Light, 2007, "Recommendations Forestalled or Forgotten? The National Commission on the Public Service and Presidential Appointments," *Public Administration Review*, 67, 3(May/June):408-17. For a review, see 2012 Report of the National Commission to Reform the Federal Appointments Process, the Aspen Institute.

² National Commission on Terrorist Attacks on the United States, 2004, *9/11 Commission Report*, <http://govinfo.library.unt.edu/911/report/911Report.pdf>.

The fact of this failure over time and its resilience in the face of attempts to correct it suggests that abandoning the typical approaches to reform might serve the country better. Instead challenging the partisan nature of appointments and seeking solutions driving at the heart of that conflict, reform should build on the attraction among politicians for bypassing that dysfunction while strengthening common, bipartisan instincts essential to a functioning government. This paper identifies a pattern in the presidential appointments process which seems to suggest such a solution, one focused on efficiency.³

Overview of Two Problems

The partisan back and forth on appointments has masked two troubling but essentially nonpartisan problems: a) the inquiry that nominees must endure has become a morass and b) the lack of capacity for “standing up” the government has magnified and, in some circumstances, facilitated the partisan rancor.

Under the cover of the seemingly endless partisanship in appointments, the agencies responsible for vetting nominees, including the White House and Senate committees, have built their own versions of inquiry independent of one another. The inquiry process resembles the intelligence community before 9/11: agencies pursuing the same objectives, gathering the same information, and refusing to systematically share that information or even take into account the efforts of others so they could preserve their own sense of independence. And, as with the intelligence community, this insistence on placing independence above responsibility has generated a system that fails at its central task. As documented repeatedly, presidential nominees endure a relentless and nonsensical grilling that the Twentieth Century Fund has described as a “maelstrom of complexity.”⁴ Surveys have found that potential nominees regularly underestimated the problems they would face navigating that maelstrom and, having endured it, those nominees most often characterized the experience as “mean-spirited.”⁵ And, as the National Commission to Reform the Federal Appointments Process (hereafter NCRFAP) has demonstrated, feasible improvements — e.g., reducing the redundancy — would ease that burden and thereby lowering this barrier to service.⁶ Some small progress has occurred.⁷ And other reports in the White House Transition Project’s (hereafter, WHTP) series on appointments detail simple solutions to these inquiry problems which improve the process by 30% over the current system without risking any constitutional advantages or purviews — producing efficiency without partisanship.⁸

This particular report in the series focuses on the second critical problem contributing to the presidential appointments quagmire: the institutional incapacities that abet partisanship. It summarizes research identifying new dynamics in the appointments process during an

³ The Presidential Appointment Reform and Streamlining Act of 2011 took this approach, encouraged by the National Commission on Reforming the Federal Appointments Process.

⁴ Twentieth Century Fund, 1996, *Obstacle Course: The Report of the Twentieth Century Fund Task Force on the Presidential Appointment Process*, Washington: Twentieth Century Fund.

⁵ Paul C. Light and Virginia Thomas, 2000, *Posts of Honor: How America’s Corporate and Civic Leaders View Presidential Appointments*, Washington: Brookings Institution.

⁶ See Terry Sullivan, 2009, “Reducing the Adversarial Burden on Nominees — Feasible Strategies for Fixing the Presidential Appointments Process,” *Public Administration Review*, 69, 6 (Nov|Dec): 1124-35.

⁷ The Presidential Appointments Efficiency and Streamlining Act of 2011 required some executive effort aimed at identifying opportunities for more electronic solutions which would reduce redundancy.

⁸ Terry Sullivan, 2016, *Mending the Presidential Appointments Process — Nine Recommendations*, WHTP Reports Series, number 50, Washington: White House Transition Project.

administration's first year. And it details how the lack of capacity has slowed the process of standing up the government while encouraging crippling partisanship.

This report utilizes a new database developed by WHTP that includes more than 5,000 observations from the last six presidential administrations. And it uses a distinction pioneered by the NCRFAP between "time sensitive" and not time sensitive federal appointments. In general, and for both types of positions, the initial results of this research suggest that the longer an administration takes to nominate an individual, especially those in critical positions, the longer it takes the Senate to reach a decision. For time sensitive appointments, this trend runs through the first 100 days and throughout the first year, but it experiences a significant takeoff after the policy agenda fully blooms in the Senate. For non-sensitive appointments the trend levels off after the first 100 days and remains more sedate although it also kicks upwards near the end of the first year.

These research results, in turn, suggest two important conclusions: First, the dramatic slowing of Senate processing on critical positions may not result from purely partisan activity. The appearance of "partisanship" may result less from obstruction and more from the mere imbalance in the Senate between their resources and their responsibilities. In addition, this pattern may itself contribute to the image of a partisan obstruction because the imbalance between capacity and challenges set the conditions for a predatory opportunism: the demands of the policy process making an effective lever out of challenging nominations, especially in pursuing often unrelated personal or political prospects. Second, this result suggests that "front-loading" critical appointments (e.g., developing the capacity to issue a considerably larger number of nominations during the first 100 days) would stand up the American government more quickly while avoiding this purely operational problem with appointments. The model used to assess these patterns estimates a change in capacity in both the White House and Senate should produce a 20% improvement in Senate processing — a small change in capacity would reap a seemingly "catastrophic" deterioration in partisanship.⁹ In addition to this efficiency improvement, this strategy suggests a reasonable first step in substituting concepts like "capacity" and "efficiency" for partisan rancor and polarization. All without any real costs to reformers.

The Bipartisan Potential

Encouraged by previous government officials, like former Senate majority leader Bill Frist and former White House chief of staff Mack McLarty, by new research on appointments, and by good government groups mobilized by the NCRFAP, the Senate's leaders have recently ushered through Congress a bill to adjust the appointments process by unilaterally reducing the number of appointments the president and Senate must fight over, removing 163 positions from the list requiring Senate confirmation.¹⁰ Getting this legislation through the Congress, unilaterally vacating the Senate's rights to oversee some presidential choices, required a bipartisan leadership. And the Senate partisans provided just that leadership.

Simultaneously, the Obama White House retired its overly complicated version of the White House Personal Data Statement, in favor of using the more sophisticated and the then still secure e-QIP system at the Office of Personnel Management. That decision alone reduced by 40% the burdens of inquiry laid on nominees. Unfortunately, the more recent failure of the e-QIP system

⁹ In bifurcation theory, catastrophic phenomena evidence a sudden shift in behavior arising from small changes in circumstances, leading to sudden and dramatic changes, e.g., how a hillside becomes a landslide.

¹⁰ The draft legislation originally proposed removing 260 positions from PAS and the Senate leadership agreed on 161 positions.

to protect its databases, just one of OPM's problems, has muddied the waters on nominee inquiries. And the then Obama White House and now the Trump White House have consistently refused access to their questions on the e-QIP making difficult an assessment of the real effects of this decision.

But the potential for bipartisan agreement and action remains one of the bright spots in the Washington landscape. Improving institutional efficiency and capacity represent some of the more attractive objectives of both parties and their leaders.

STANDING UP AMERICAN LEADERSHIP

To document the slow pace of appointments in the modern era,¹¹ consider only an administration's most important positions — those that either set direction or that manage a critical constitutional function. While the president can play a role in filling around 9,000 positions in the national government, only about 1,100 of those positions involve responsibilities so important that the organic legislation creating them also required not only that the president's appoint them but also that the Senate confirm that appointment, designated "PAS" positions. Within this narrow subset of these "important" positions, an even more critical group carry out "time sensitive" responsibilities. This much smaller set of around 210 positions either set important policies (e.g., the Chair of the Federal Reserve System) or carry out some primary executive responsibility, involving responsibilities from national security (e.g., the Secretary of Defense and the Director of the FBI) to economic planning to key diplomatic positions (e.g., Ambassador to the European Union). The Appendix has a more detailed description of these time sensitive positions. Filling these key positions, in effect, makes the US executive functional — filling these positions *stands up* the American leadership following an election. By comparison to this time critical group, a second group involves the remaining PAS positions in the executive branch amounting to around 900 positions. The analysis here concentrates on potential differences between these two groups.

Table 1 reports the performance of the last three presidential transitions in identifying and then securing the nominations of individuals to fill these two types of positions. The table reports percentage completion rates for nominating people to fill these positions and stand up rates for obtaining Senate consent (thereby filling) these positions. The table shades these stand up rates in green. It reports stand up rates for both time sensitive (standing up the government) and not time sensitive positions. It further reports these percentages at three points during the first year: the end of the first 100 days, the beginning of the August congressional recess, and the end of the first congressional session.

¹¹ The "modern presidency" begins with the post-FDR era. Prior to the end of World War II, presidential appointments underwrote a massive patronage system. During his first term in office, for example, FDR made a little more than 125,000 appointments to civilian positions. See Charles Walcott and Karen Hult, 1995, *Governing the White House: From Hoover Through LBJ*, Lawrence, Kansas: University of Kansas Press.

Table 1. Time Sensitive Positions and Stand-Up Rates (SUR), 1993-2009

President	<i>Stand Up Rates¹²</i>									
	Time Sensitive PAS Positions					Not Time Sensitive PAS Positions				
	Number	SUR	4/29	8/6	12/15	Number	SUR	4/29	8/6	12/15
Trump	213	Nominated	23%	58%	—	980	Nominated	7%	21%	—
		Filled	12%	31%	—		Filled	3%	13%	—
Obama	238	Nominated	61%	76%	87%	846	Nominated	39%	51%	67%
		Filled	33%	67%	72%		Filled	28%	39%	46%
GW Bush	213	Nominated	57%	74%	82%	906	Nominated	50%	60%	73%
		Filled	22%	60%	67%		Filled	39%	44%	54%
Clinton	207	Nominated	63%	78%	85%	983	Nominated	39%	49%	64%
		Filled	27%	37%	45%		Filled	25%	34%	41%

Source: Compiled by author

¹² Stand-up rates for time sensitive positions also include a very small number of PAS positions which have fixed terms of service and who at any moment could have an appointment already filling the position and continuing in service for well into the new administration’s term. These positions usually occur in regulatory agencies, e.g., the Federal Reserve Governors, but also include positions typically associated with a new government, e.g., the Director, FBI. Typically, this number represents about 15 of the 210 positions at the start of any administration.

After the First Year, a Third of Critical Positions Remain Empty

Clearly, if successfully “standing up” the government implies filling nearly all the time sensitive positions, then none of the last three administrations have succeeded in that task.¹³ And, barring an extraordinary turn around in the final few months of the first year, the Trump administration will also fall far short of this goal as well. By the end of the first congressional session, President Clinton, for example, had nominated a little more than 85% of these critical positions, yet the Senate had only confirmed enough to fill about 45% of those positions. This “stand up rate” of around 70%, more or less, has typified the last two transitions, with an average for the past three at around 61%. That means more than a third of the government’s most critical positions remain empty more than a year after the electorate has set the government’s course.

And this inability to stand up the government does not result from a lack of attention to these critical positions. By comparison, the confirmation rates for the not time sensitive positions hovered around 45% for the past three administrations, slightly more than 25% lower than the rate for time sensitive positions.

And while stand up rates capture only one element of the lengthening process and do not directly measure partisanship, leaving empty the president’s “bench” in the executive among critical positions constitutes a serious flaw in democratic rule. Social science research on the subject of presidential influence confirms the argument made by the constitutional founders that the success of a presidential agenda depends in great part on mustering a singular voice for the president’s position among an administration’s many advocates.¹⁴ Lacking those other supportive and coordinated voices means not only forgoing democratic promise but also making the country more vulnerable to a host of potential crises.¹⁵

AN EXPLANATION FOR THE APPOINTMENTS QUAGMIRE

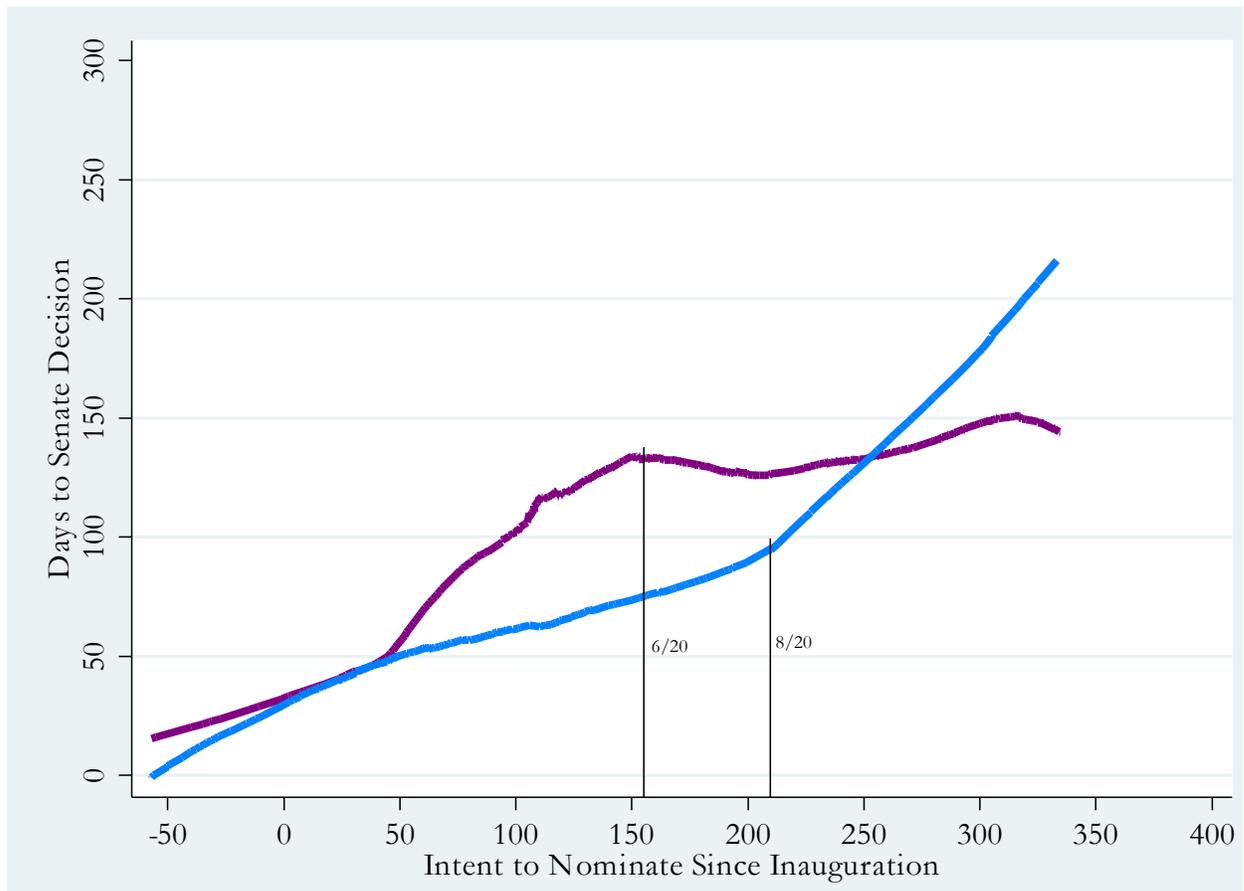
Since failing to stand up the government presents a set of dire consequences common to all administrations, might the explanation for this calamity also have an origins in a common rather than a partisan explanation? To assess that possibility, at least in a preliminary way, the White House Transition Project has built a dataset tracking more than 2,600 nominations for PAS positions¹⁶ during the first year of the last three administrations, Presidents Clinton through Obama.

¹³ Preliminary data from the George HW Bush, Reagan, and Carter administrations suggest the same pattern.

¹⁴ See Jeffrey Birnbaum and Alan S. Murray, 1988, *Showdown at Gucci Gulch: Lawmakers, Lobbyists, and the Unlikely Triumph of Tax Reform*, New York: Vintage Books; Matthew Kerbel, 1991, *Beyond Persuasion — Organizational Efficiency and Presidential Power*, Albany: State University of New York Press; and Matthew Beckmann, 2010, *Pushing the President’s Agenda: Presidential Leadership in U. S. Lawmaking, 1953-2004*, Cambridge: Cambridge UP.

¹⁵ See Steven Rattner’s 2011, *Overhaul: An Insider’s Account of the Obama Administration’s Emergency Rescue of the Auto Industry*, New York: Houghton Mifflin Harcourt Publishing.

¹⁶ The WHTP database excludes nominations for most ambassadors, most federal attorneys, and all US marshals, positions deemed to *execute* administration policy. It makes two exceptions to these exclusions: two US Attorneys (Southern New York and Northern Virginia) which play special roles in terrorism cases and cases of corruption and twenty ambassadors who play important roles in either security (e.g., NATO), economic policy (e.g., China; EEU), or critical diplomatic missions (e.g., Israel). Where the intent to nominate went unannounced, the date the Senate received a nomination substitutes.

Figure 1. Length of Senate Consideration by Date of Nomination

Source: White House Transition Project and compiled by authors

Data and Analytic Technique

Figure 1 illustrates these data. The X-axis records when the president-elect or new president announced an intent to nominate. The Y-axis records the length of time from when the Senate received the nomination to when the Senate reached a final decision. Final decisions include confirming or rejecting a nominee as well as “returning the nomination to the President,” considered a rejection of the nomination though the Senate takes no official position. Since in the latter decision the Senate holds a nomination through to the end of the Congress and returns it, without action, the range in length to Senate decision runs from 0 through to a maximum around 700.

To summarize the data’s basic structure, this graph reports a Lowess regression line for the two different sets of appointments. A Lowess function describes a “locally sensitive” linear relationship between the two variables: date the president announced his intent to nominate and time to Senate decision. At any given data point, the technique summarizes the linear relationship between X and Y-axes using that data point along with one-half the data points in the “vicinity.” The function then moves on to the next data point and recalculates the relationship. In the end, the technique produces the more reliable statistics of a linear statistical technique while having the capability to reflect a changing underlying relationship, in this case during the president’s first year.

The blue line reports presidential nominations to “time sensitive” positions. The purple line summarizes presidential nominations deemed “not time sensitive.”

Generally, Delay Leads to Vulnerability

Across administrations, the patterns to Senate decisions do not differ significantly. As a general trend, the length of Senate deliberations on nominees increase over each first year.¹⁷ The longer an administration takes to nominate someone, the longer the Senate takes to deliberate on that confirmation. This general pattern appears regardless of the rank or the time sensitivity of the appointment or the administration involved or the partisan majorities. This result and its apparent non-partisan nature, suggests that the more any administration moves its critical nominations to earlier in the first year, the more quickly it will get those nominations through the confirmation process.

Larger Effect for Time Sensitive Positions

While this relationship between nomination and confirmation applies across the board, the graph also differentiates patterns between the two types of nominations. Both types of nominations also experience a significant divergence from one another around an “inflection point,” around June 20th. For not time sensitive positions, the lengthening confirmation period levels off dramatically after this inflection point and stays fairly flat at around 120 days in deliberations for the remainder of the first congressional session. For time sensitive positions, however, this June inflection point marks the beginning of a continuing increase in Senate deliberations and an increasing pace over time. In addition, following the August congressional recess, time sensitive nominations experience a second very dramatic increase in deliberation times, with an inflection point around August 20th and around September 10th, deliberations for time sensitive positions actually outstrip deliberations for not sensitive positions ending the year around 60 days longer than average deliberations for not sensitive positions.

Potential Reasons for Lengthening Confirmations

While political science and pundits (not to mention administrations) offer a number of reasons for the lengthening confirmation process, no one has considered the Senate work load as a potential culprit.¹⁸ And certainly every commentator can rally a set of specific, anecdotal evidence for the most common reasons — especially partisan competition. Together, these two patterns to explanation focus on intractable partisanship as the reason for such common delay, a reasoning and a cause that proposes no clear solution.

The more “operational” explanation posed here focuses on when a critical nomination interacts with Senate business and capacity. And since the time required to identify and vet a potential administration nominee involves the administration’s resources for processing

¹⁷ See the further discussion on broader and untested relationships.

¹⁸ Studies have considered the election cycle, divided control of Congress, polarization, relations with home state Senators, extremity of the president, extremity of the Senate majority, agencies with ideological perspectives, boards versus other appointments, presidential approval, media coverage, and presidential popularity. Cf. Ian Ostrander, 2013, *Winning the Waiting Game: Senatorial Delay in Executive Nominations*, August, unpublished Ph.D. dissertation Washington University in St. Louis; Roger E. Hartley and Lisa M. Holmes, 2002, “The Increasing Senate Scrutiny of Lower Federal Court Nominees,” *Political Science Quarterly*, 117:259-67; Jon R. Bond, Richard Fleisher and Glen S. Krutz, 2009, “Malign Neglect: Evidence that Delay Has Become the Primary Method of Defeating Presidential Appointments,” *Congress and the Presidency*, 36:226-32.

applications, this time sensitive effect reflects the confluence of two operational effects, one in the White House and one in the Senate.

In the Senate, the operational realities of confirmations rest on the reality that only two Senate committees (Foreign Affairs and Judiciary) have permanent confirmation staffs. The remaining committee staffs must squeeze confirmation duties into their policy responsibilities. Party leadership as well does not regularly have staff dedicated to and experienced in managing Committee recommendations on nominations. On most committees, then, and among the leaderships, processing administration nominations depends upon carrying that workload along with handling primary policy responsibilities.

Second, the two inflection points which dramatically lengthen the deliberations process, just before the July 4th recess and again at the August recess, suggest periods when Senate workload increases dramatically. And the passing of the second inflection point witnesses a significant increase in deliberation, a period when the budget process and the appropriations process come together in a dramatic way.

As the Senate policy workload increases, then the time available for confirmations, regardless of their importance, necessarily declines, leading to lengthening confirmation times. Earlier nominations get handled more quickly because the responsible Senate staffs and the Senators themselves have relatively fewer responsibilities to compete with confirmations.

For positions with fewer responsibilities, the Senate responds to increasing workload with a fixed level of scrutiny leading to a leveling off of confirmation times. With the added responsibilities of time sensitive positions, the Senate tries to give those nominations a constant level of attention. That commitment leads to lengthening confirmations because the necessary attention gets interleaved with other responsibilities.

The interleaving of policy and confirmations affords a second element in delay: it offers opportunities for momentary but significant delays to magnify the potential influence of individual Senators in the appointments process. Using these increasing opportunities for gamesmanship in obstruction not only afford the appearance of partisan obstruction but they also produce the anecdotes that administrations and critics all anchor their assessments in, thereby unnecessarily magnifying obstruction and partisanship.

The lengthening consideration process for time sensitive positions, especially in conjunction with the realities of Senate workload also affords opportunities for reforming the process and lowering the “temperature” of the rhetoric about nominations. Fewer nominations held over in the Senate process as the work load increases also reduces the possibilities for strategic delay and gamesmanship by Senators seeking opportunities to leverage the Senate process on substantive issues.

USING EFFICIENCY TO REPLACE POLARIZATION

Observers, the general public, and experts generally describe the appointments process as hopelessly broken, mired in partisan polarization. Efforts at reform universally fail because, in the past, these recommend changes that the principals have no incentive to adopt or which require first ending partisanship, itself. The decline of partisanship should represent a policy goal, a reaction to other changing conditions, rather than a causal force. Instead, identifying a series of steps each improving efficiency in the system without jeopardizing cherished and partisan positions would undermine partisanship without directly addressing (or threatening) it. In turn, each improvement in efficiency would then suggest further efficiencies, building on the declining partisan atmosphere by focusing on efficiency and process. In effect, then, these alterations, based

in efficiency, create a common ground for change without challenging basic relationships or responsibilities.

If an administration merely introduced early those nominations previously made between the end of the 100 days and the June inflection point, and then moved each successive group earlier in the process, then this “front-loading” strategy would improve the stand up rate for the next administration by nearly 30%. Again, nothing changes about the partisan response to the administration’s nominations, yet the change alters the system’s efficiency and that alone reduces the appearance of polarization.

Estimates on Front-loading

Table 1 reports the actual behavior and success of the previous three presidencies during their first 100 days and so on. The objective of front-loading is to bring down average confirmation times by squeezing more nominations into the earlier period before the Senate’s policy agenda begins to dominate deliberations. Based on the average performance from these previous presidents, front-loading would have added an additional 17 nominations among the time sensitive positions and 56 among the not time sensitive. These increases would result in a little over 415 nominations by the first 100 days, a 21% increase over the average past performance. That additional front loading would result in about a 29% reduction in Senate deliberations

Operational Needs to Accomplish Efficiency

In addition to improving an administration’s relationship with the Senate, standing up the government faster, and probably moving the new president’s agenda with more speed, front loading nevertheless will present operational challenges. To accomplish those tasks, both the executive and the Senate would have to expand their capacities to accommodate the recommended additional workload.

Based on current operations in these agencies, adjustments that would help in meeting these operational needs would include:

1. Establishing permanent confirmation staffs on Senate policy committees.

As noted earlier, Senate committees do not hire permanent staff specifically for processing confirmations, though every committee has a significant and on-going confirmation process driven by the pace of presidential appointments.

2. The FBI would have to hire more temporary investigators.

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

3. The US Office of Government Ethics would require at least a 300% increase in its auditing staff.

According to internal estimates, its current staffing levels afford US OGE enough staff to process 400 nominees by the August recess, or 100 shy of what the average White House operation has accomplished in the previous administration and on average 50 nominations per month. To

handle the front loading proposed here, the US OGE would need to increase its processing by 50% to around 75 per month.

4. The Office of Presidential Personnel and the White House Counsel would need more robust staffing, and would need to rely less on volunteers and detailees.

In the past three administrations, the Office of Presidential Personnel has relied initially on a relative small group of permanent staff (averaging around 8 staff¹⁹) and a much larger group of detailees from agencies to process nominees. In addition, often, decisions made during the transition severely limit the capacity of the personnel operation so that it becomes doubly handicapped.²⁰

Both the Office of Presidential Personnel and the Counsel's Office would benefit from the additional support from an operation much like the Office of Management and Budget which bolsters the president's capacity to perform budgetary functions assigned to the Presidency by statute. A new, permanent Office of Presidential Personnel Management would present a new administration with a highly experienced professional staff managed by a small group of presidential appointees. Based on the estimates of previous OPPs from the previous three administrations, the staff necessary to handle 415 nominations prior to the 100 days would amount to around 10 staff with another 12 executive assistants and clerks. A group of three presidential appointees would head this staff. Such an office would provide a permanent capacity to meet the challenges of speeding up nominations and facilitate their presentation before the Senate. Such an office would also reduce considerably the time it takes for a new administration to prepare its nominations, a time that the most experienced observers say involves at least twice as much time as the Senate takes to deliberate on a nominee.²¹

A Caution About Causality

The current results, while statistically significant, do not derive from a more comprehensive model structured to reveal "causality." This lack of a more complex statistical context means that we cannot, as yet, attribute a causal link between delay in nominations and delay in confirmations or a link between the importance of the nomination and its Senate treatment. But the pattern suggests a reasonable pattern.

Nominations (especially those for critical policy-making positions) get the full attention of all involved during the early period of the administration, while the new President lays out a policy agenda reflective of the election results. The latter takes time and involves a complex budgeting process which itself takes time. For lack of another, the new president's initial nominations take front and center and in that environment, the Senate generally acquiesces.²² As the president's

¹⁹ This number includes assistants to the president, special assistants to the president, and associate directors.

²⁰ The early Bush White House, for example, modeled its staffing requirements on the outgoing Clinton White House personnel operations which had very little in the way of appointments to fill. By comparison, the Bush team entered the White House with some 190,000 resumes of job seekers to process.

²¹ Clay Johnson, who spent two and a half years as White House Personnel Director before moving to OMB, has estimated that on average the internal White House process sifting through nominees takes at least twice as long as the Senate consent process. Clay Johnson, 2008, "Recommendations for an Effective 2008 Transition," *Public Administration Review*, 68, 3(July/August):624-6.

²² This acquiescence does not imply that the Senate has forgone its responsibilities but the initial transition period generally supports instincts to bipartisan cooperation, the Senate leadership often has undergone a shakeup in response to an electoral defeat, and the new President has certain leeway. In addition, savvy presidents anticipate opposition to some potential nominations and choose in some instances to forego those confrontations in favor of others.

policy agenda comes to the fore and becomes the primary topic of consideration and institutional activity, nominations take a back seat in both the White House and the Senate. Neither has the staffing to do both simultaneously. In this less focused environment, due consideration by the Senate takes longer only as it succumbs to the Senate's primary work in making policy. In addition, the lack of Senate focus on appointments means opportunities for advantage taking by opportunistic (and typically more partisan) Senators and interest groups. These opportunities lengthen consideration of only a few nominees, however, as the broader-based, trend line extends the consideration process in any case. In that environment, however, procrastination can appear partisan.

While critical to highlighting the purported relationship, the current statistical analysis does not "control" for other potential effects (e.g., circumstances, numbers of the president's Senate partisans, economic conditions) nor does it report direct measures of the purported causal mechanism, i.e., Senate workload. Forthcoming research will focus on this more complex statistical, causal analysis.

APPENDIX: THE BASICS OF FEDERAL APPOINTMENTS

Federal appointments covered in this study require presidential nomination and Senate confirmation (PAS positions involving Senate “advice and consent”). They come in four basic varieties depending on their function in governing.

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

For more detail on these appointments and positions, see the following joint publication: US Office of Personnel Management and (alternating) US Senate, Committee on Homeland Security and Government Affairs or US House, Committee on Oversight and Government Reform, *US Government Policy and Supporting Positions*, (published after election day on various presidential election years); see particularly its Legend and Appendix 1.²³

Identifying the Time Sensitive Positions

Take the PAS positions and divide them into five categories, according to function and importance: national security sensitive, management of the president’s agenda sensitive, economic policy sensitive, agency management sensitive, and non-sensitive. The first four categories (about 210 positions) derive from different ways of high-lighting importance to a president’s ambitions. National security sensitive positions account for around 70 positions and include those easily identified, like the Secretary of Defense, and some less obvious, like the Under Secretary of Agriculture for Food Safety, and key ambassadorships, e.g., to the Russian Federation and the UK. Management of the president’s agenda positions (around 30) include the cabinet secretaries and deputies for all the remaining cabinet agencies and some important independent agencies (like the Social Security Administration), and some ambassadorships (e.g., to Israel). Economic policy involves presidential advisors (e.g., Director OMB) or those involved in critical regulatory functions (like the FED, SEC, and EPA) and some key ambassadorships, e.g., to the EU and the People’s Republic of China, agency management positions (another 70) involve relations with important constituencies (congressional affairs and communications) or ancillary management responsibilities (the general counsel, CFO, or Administrator). Another 900 positions fall under “not time sensitive” and this group includes the bulk of PAS positions.

²³ While used most often as a basic summary of the presidential appointments universe, *Policy and Supporting Positions*, does not cover all of the positions that require presidential nomination and Senate advice and consent. For example, a number of commissions, e.g., on the US Holocaust Museum and Hopi-Navajo Resettlement do not always get listed and the details for these appointments require examination of the US Code and the organic legislation.