



THE WHITE HOUSE TRANSITION PROJECT 1997-2021

Smoothing the Peaceful Transfer of Democratic Power

LESSONS ABOUT APPOINTMENT POLITICS

In his famous *Federalist* #72, Alexander Hamilton described executive branch appointments as “the intimate connection between...the executive magistrate in office and the stability of the system of administration” — linking a single individual’s election to the national establishment. Hence, executive appointments unite partisan policy-making with the organic duty of the executive to maintain an effective national administration. Because appointments affect both policy and responsibility in this way, clashes over appointments have always animated and troubled the transfer of presidential power, even from the Republic’s early days. No surprise, then, that the single most important, landmark Supreme Court decision, *Marbury v Madison*, evolved from a controversy over filling appointments during a presidential transition.

WHO WE ARE AND WHAT WE DO

For more than twenty years, the White House Transition Project has led research on appointment politics. We maintain the longest running, real time analysis of appointments, with published reports every 10 days on how a new administration stacks up against its predecessors.¹ WHTP’s more formalized research projects provide answers to questions about how to structure information needs to properly assess the qualifications and risks associated with potential nominees and what forces affect the progress of the appointments process from intent to nominate through to confirmation. Since 2000, WHTP researchers have helped recent administrations better structure their internal evaluations, helping them make changes that have eased the burdens on nominees by more than 30%, while maintaining the essential information needed to assess a nominee. We have helped the Senate leadership do the same. In 1999, we wrote and published the first software allowing nominees to electronically fill out and then file all their government forms in a format similar to TurboTax®.

In addition, WHTP research has provided answers to questions about the forces affecting an administration’s stand-up of a new government. This research has identified a number of effects that counter-balance the impact of partisan differences. Using this research, WHTP can recommend a range of changes to the appointments process that have and would speed up the stand up process.

WHAT WE NOW KNOW

Based on the results of research across the discipline, the following outline the basics of what we know:

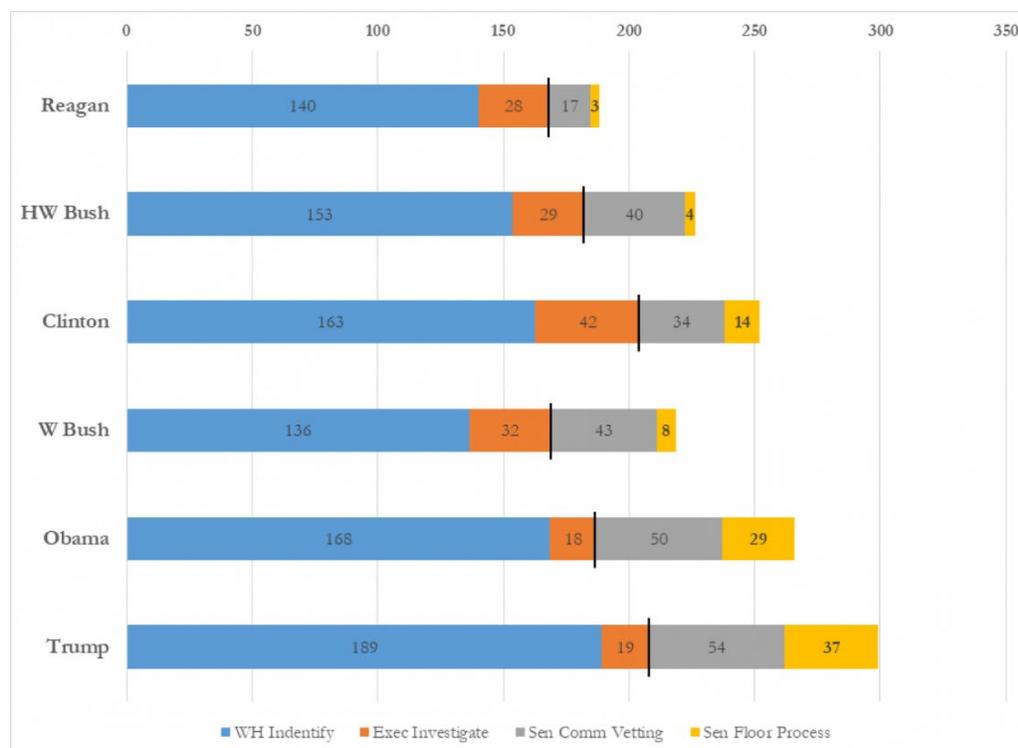
1. ***Nominations don’t fail.*** Nominations fail less than 10% of the time. Of the last 4,000 nominations reviewed since the Reagan administration, the Senate rejected 1. The Senate returned with no action another 450, of which the administration immediately renominated 200 and the Senate confirmed them all.

¹ [Whitehousetransitionproject.org/appointments](https://whitehousetransitionproject.org/appointments)

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2. **Delay Becomes the Opposition.** The ability to delay a nominee’s confirmation becomes the only option for a truly obstructive minority. They can hope that the agency involved will “drift” in a policy direction away from the new administration’s ambitions or that the administration gives up and withdraws the nominee.
3. **Delay Can Mean Something Else.** A truly obstructive minority happens less often than expected. Many of those Senators dragging their heels have legislative accommodations in mind rather than obstruction or agency drift.
 - o *This Explains Why Limiting Senate Business Reduces Delay.* Only strict limitations on Senate legislative business, which remove opportunism, has sped up deliberations on nominees. In most instances, though, limiting business puts appointments above policy-making.
4. **Tribalism gets too much attention.** While partisan differences do undermine the stand up, a focus on partisanship over-estimates its importance. Other variables matter. Other variables can counteract partisanship and build bipartisan support for nominations.
 - o *This Explains Why Reforms Aimed at Delay Don’t Work.* Past Senate reforms intended to reduce minority obstruction (including using the “nuclear option”) have either had no effect or have made things worse.²
5. **Executive Delay Outpaces Senate Delay.** The bulk of appointments delay comes in the executive branch (see Figure 1, below) not in the Senate.

Figure 1. Length of Deliberation in Each Phase of Appointments



Source: Heather Ba, Brandon Schneider, and Terry Sullivan, “Trump & Setting Records — in How Few People He Has Appointed and How Long They Take to Confirm,” *The Washington Post*, January 18, 2018.

² For details, see Heather Ba, Christian Cmehil-Warn, and Terry Sullivan “The ‘Nuclear Option’ has Fizzled,... Again — Here’s Why and What to Do About It,” *Presidential Studies Quarterly*. (Forthcoming: December 2020).

6. ***The Longer the Executive Waits, the Longer the Senate Takes.*** New research has linked executive vetting periods to the length of Senate delay. Holding constant the length of Executive deliberations, nominations completed by the Executive in the first 100 days take 40 fewer days in the Senate than those after the first 100 days. This dramatic effect.
7. ***Duty matters.*** Nominees for positions with non-partisan responsibilities move more quickly through the Senate.
8. ***Executive Initiative and Duty Counter Polarization.*** Combined and individually, moving quickly in the executive and emphasizing the duties inherent in positions, counter the effects of polarization on delay. Taking advantage of these effects *simultaneously* speeds appointments and undermines polarization.
9. ***Policy-Making and Appointments Exist in the Same Space.*** Senate deliberations slow dramatically as more “legislative” business comes to the fore.
10. ***Current Nomination Strategies Haven’t Mattered.*** Despite intentions, no campaign has deployed a strategy for efficient appointments.³ The variance in strategies has revolved around how to handle requests from Cabinet Secretaries regarding the Agency’s PAS positions, e.g., they get to pick them or they nominate two and the President picks the one, *etc.* These haven’t made an impact.

SOME SIMPLE STEPS WE RECOMMEND

Based on the scholarly research on appointments politics, The White House Transition Project has some suggestions on how to improve the government standup following an election. We believe the standing administrative apparatus can take the following steps to improve the process:

- [1] ***Solidify the Personnel Operation Early.*** Early success depends on early action. Hence, continuity in the personnel operation is critical.
 - o Designate early⁴ a Director of Presidential Personnel reporting to but not a part of the campaign staff.
 - o Have the campaign’s DoPP commit to coming into the White House for at least through the first year.
 - o Avoid understaffing the Personnel Office early in the administration. Personnel often gets second shrift in assigning staff.
 - o Divide PAS positions (from the *Plum Book*) into three groups (ignoring fixed term appointments already filled): a) those positions that could lend a voice to the president’s primary agenda; b) those carrying out a predominately non-partisan executive duty; and c) all others. Focus on the first two.

³ Two campaigns, Reagan and Bush ‘43, articulated strategies but the evidence from their nominations demonstrate no discernible evidence of their using those stated strategies.

⁴ Early has included as soon as one year before the primaries begin. Most campaigns settle this task in May, but at least as soon as the party has identified a presumptive candidate.

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- [2] ***Encourage the Senate to increase their capacity.*** Have the campaign's DoPP begin coordination with the Senate leadership and committees to staff up their vetting capacity to receive a larger number of early nominations.⁵
- [3] ***Encourage the Senate to alter its Rule 30, §5 and §6.*** Eliminate the requirement to return nominees over a 30-day recess. This action requires additional work in the executive to place back into nomination individuals that the Senate should just continue to vet.
- [4] [long term] ***Move the Office of Presidential Personnel to EOP.*** Managed by an Assistant to the President and built to resemble the staffing of the Office of Management and Budget, this office will promote appointments to reflect its role in a well-administered Executive Branch.

⁵ Note that only two Senate committees have a staff permanently assigned to handling nominations. So, after the initial rush, appointments become a lower priority to working the policy agenda.