THE BIDEN 100 DAYS
APPOINTMENT POLITICS IN CONTEXT

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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 elections to the organic responsibility of the chief executive to maintain an effective national government. Because, in this way, appointments combine both policy and duty, 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. And because, in this way, it affects both policy and duty, appointment politics also reflects the impact of all the forces at work in national affairs: partisan polarization, service, security, continuity, and so on.

This paper summarizes the Biden Presidency's early experience with presidential appointments cast in the context of how well it has performed compared to its predecessors in the modern appointments process.

THE CONTEXT OF APPOINTMENTS

Three elements define the context of presidential appointment politics. First, the Washington community uses the 100 days as an initial measure of a new administration. Second, appointment politics reflect forces defined in five separate measures. And third, WHTP relies on an understanding of the scholarly research on important forces defining appointment politics.

The Importance of the 100 Days

Seasoned practitioners, like James A. Baker III, believe that the first 100 days presents the best opportunity for a president to establish a "personal mark," making the early period the best testbed for the new team.[1] This earliest mark sets the administration's reputation among the Washington community, always taking its measure for competence and leadership. It also provides the earliest opportunity of the new administration to influence public decision-making on policies important to those in the administration and to those who voted for the new president. And it offers the best opportunity for the new administration in terms of the public's acceptance and willingness to "go along."

Five Measures of Appointments

The White House Transition Project tracks appointments in a five ways:

o   The *total number of nominations,* excluding most board positions and most of those
     positions, like US Marshals and the uniformed military, that execute policy but do

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[1] "[In these early days, there] is a minimization of the…adversarial approach. [Y]ou 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." James A Baker III, quoted in Martha Joynt Kumar, George C. Edwards III, James Pfiffner, and Terry Sullivan, "Meeting the Freight Train Head On—Planning for the Presidential Transition," *Presidential Studies Quarterly* 30, no. 4 (December 2000): 754–69.

not make it. This number reflects how well the administration can attract and vet candidates for the executive offices key to the national administration. It is a measure of executive effectiveness.

o   The *total number of confirmed nominations* for these executive positions. This number reflects how well the Senate can vet and deliberate on the qualifications for executive office. It is a measure in part of legislative leadership by the majority party.

o   The *pace of deliberations* measures how long has each nomination takes through the four steps of the appointments process. It effectively measures the organization capacity of each institution involved in appointments: the White House, the executive agencies for vetting, the Senate committees and the Senate majority leadership.

o   Completion of *Stand-Up Critical Positions* tracks how many of the 276 positions identified as critical to core government duties have been filled by the process of presidential nomination and Senate confirmation. It effectively assays how well the new administration has taken on its core responsibilities.

o   The *Standing Backlog* measures, in each institution, the number of unfinished nominations. These measures present a preview of the White House and Senate processes.

The appointments process involves four steps, two in the Executive and two in the Senate. Each presents an opportunity to vet individuals and to make decision about those nominees. In the Executive, the first process identifies potential nominees and ends with the President declaring an "intent to nominate" someone to a particular position. That begins the executive vetting process ending with sending a nominee's credentials to the Senate. In the Senate, the first stage involves the deliberations on Senate committees of jurisdiction which ends with a report from the committee to the full body. The final Senate stage ends with the Senate's vote on confirmation.

10 Things We Now Know About Appointment Politics

Based on the results of research across several disciplines, the following outlines the basics of what we know:

1. **Presidential 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.

2. **Senate Delay Becomes the Equivalent of 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. **Senate Delay Can Mean Something Else.** A truly obstructive minority happens less often that 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.

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.
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. ***Early Planning Pervades Appointment Politics.*** Early transition planning increases the numbers of early nominations and earlier nominations get faster treatment in the Senate.

THE BIDEN 100 DAYS

Appointment politics begins in the planning for the presidential transition [#10, above] and with the continuity of government, the number of critical and fixed-term appointments filled by the outgoing administration to maintain a continuity during the transition and the early part of the new administration. The early Biden transition reflects both these forces. Initially, using their transition preparations, the Biden team produced a record-setting number of early announcements of its "intent to nominate" new personnel. It then built on that momentum producing a record setting pace of early nominations and finally maintaining its pace over the length of the 100 days, it ended up setting a record for more nominations than any previous administration during the first 100 days.

As it stood up the national establishment, however, the Biden administration faced two complications. First, the Trump presidency had failed to fill a large number of "stand-up critical" fixed-term positions in the executive, undermining continuity. So, despite its lead on nominations overall, the Biden administration started behind on these critical positions. Second, the multiple crises confronting the new team and the Senate has drastically delayed Senate vetting and confirmations (note #1 above).

Total Nominations — Transition Preparations Set the Stage for a Record Setting Performance

By inauguration day, the Biden team had prepared a record-setting number of nominations to forward to the Senate. This performance attested to their earlier transition preparations (see Figure 1, below). The Biden team then dissipated this pace at around the 50 day mark when it slipped behind the Obama and Reagan pace. A late surge, however, beginning around day 75 set the stage for the Biden nominations

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[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).

eventually surpassing the Obama performance. The Biden team ended the 100 days by setting a new record for nominations delivered to the Senate.

Total Confirmations — Too Much for the Senate to Handle

The pace of Senate confirmations, however, has blunted that record-setting nominations pace. Biden's confirmations in the Schumer Senate have fallen far below the average for his predecessors (see Figure 2, below). This performance seems the product of the two processes. First, the Biden presidency ended the first 100 days in about the same place as the last time the Senate had a 50/50 partisan division, during the Trent Lott/George W. Bush Senate. The Schumer/Biden Senate has scored about 7 confirmation higher than that performance.

Second, research highlights the impact of Senate workload (#9 above) on slowing confirmations and here the Schumer Senate has faced a number of challenges, reflecting the breadth of the crises confronting the Biden presidency. Each of these, from a coup attempt to the logistics of a national epidemic, have drawn the Senate's attention away from simply business as usual with respect to confirming early nominations. Biden ends the 100 days around fifteen confirmations ahead of the McConnell/Trump Senate record-setting *worst* performance and about ten confirmations off the average pace.

Stand-Up Critical[3] Positions — The Transition Mattered Here

Any administration carries out a range of national responsibilities, from security to pandemic preparations and logistics. Stand-Up critical positions in the national administration carry through on these responsibilities, often while serving partisan policy aims as well. The government has recognized the importance of these basically non-partisan duties (e.g., the Board of Governors of the Federal Reserve or the Director of the FBI) by making theirs a fixed-tenure appointment in government. These terms in office, designed to reinforce a certain independence from partisan trends also realize the importance of these positions to the continuity of the national administration.

Filling stand-up critical positions then depends in part on the outgoing administration taking care to preserve the continuity of government and in part on the incoming administration's ambitions for an agency with such fixed-term positions. The Biden administration has not fared well on stand-up critical positions, filling only 26% of these positions by the end of the first 100 days.

Two elements have affected this performance. First, the outgoing Trump administration had failed to fill a number of these critical positions with fixed-term tenure, reducing continuity of government and presenting the Biden team with an extra challenge. By comparison with the outgoing Obama administration which had filled 51 of these positions, the Trump team had only filled 38. Those unfilled positions presented the Biden team with a serious deficit to overcome early on.

By the end of the first 100 days, the Biden team has in place 73 of these critical positions, based primarily in confirmations of Biden nominees. By the end of the first 100 days, the Trump White House had produced 49 nominees and the McConnell Senate had confirmed 23. By contrast, the Biden White House has produced 105 nominees and the Schumer Senate has confirmed 34. Both administrations have ended up with the same number of positions filled, but for Trump the number of filled positions depended heavily on the outgoing Obama administration and the McConnell Senate filling these 50-odd critical positions. With the similar support from the Trump administration as the Obama team produced, Biden/Schumer would have filled around a third of all stand-up critical positions by the end of the 100 days, with a substantial number of

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[3] In 2012, the White House Transition Project teamed with the National Commission on Reform of the Federal Appointments Process to identify positions critical to whether the government executes its myriad responsibilities. These positions include those managing national security, managing the president's agenda, and managing the administration of government services. For the Biden administration the stand-up critical positions number 275, one less than for the Trump administration.

nominations yet to confirm. Currently there are 71 stand-up critical nominations left for the Senate to confirm.

A second source of challenge presented by stand-up critical positions derives from the nexus of Senate deliberations on policy and on appointments (again, #9, above). The more policy matters the Senate takes up, the less time it has to devote to appointments. The number of major issues facing the Schumer Senate majority (and the country for that matter) has clearly slowed confirmations. The current backlog of presidential nominated but-as-yet Senate confirmed appointments sets a substantial record, more than twice the typical number (see below). If the Senate maintains its slow pace presented in Figure 3 but processes and confirms (see #1, above) those Biden nominations already put to the Senate, then the Biden/Schumer team should have around 50% of critical positions filled by mid-June. By comparison, the Trump administration had only 30% filled by mid-June 2017.

Pace of Deliberations — Everything Slower

Appointments to the national administration involve the confluence of deliberations across the institutional divide between executive and legislative functions. Filling a position in the national administration involves both the President's nomination and the Senate's acquiescence (see #1, above). And each of these involves institutional processes beginning with the President's election and consideration of the responsibilities presented by the national administration that the new government must fill out. White House deliberations on potential candidates for positions result eventually with a presidential decision to announce an "intent to nominate." Such an intent to nominate generates a vetting by the standing civil services responsible for security and financial ethics. After an eventual agency clearance, the President may decide to submit the candidate to the Senate as an official nomination. The election begins the executive process of deliberations and the nomination to the Senate ends that executive process.

Once the Senate receives a president's nomination, the first of two Senate processes begins with the nomination's referral for review to the committee of jurisdiction responsible for the relevant policy area. Senate committees end their deliberations with a report to the full Senate recommending some course of action by the Senate and placing the nomination on the Senate's calendar for action. The full Senate then begins its period deliberations culminating with a floor vote, typically for confirmation.[4]

Measures of Pace. These two institutional processes, then, produce three clear milestones for measuring the pace of deliberations in presidential appointments. The first considers the time from inauguration to the White House referring a nominee's credentials to the Senate.[5] The second measures the time in Senate committee vetting, while the third considers the time on the Senate calendar until a final confirmation vote.

Figure 3, below, describes the typical experience of the executive and Senate deliberations, reported in days in each phase. The figure also reports the typical experience of each of the previous presidencies, Ronald Reagan through to President Trump. The figure describes two clear patterns:

- o *The Past.* First, the evidence does not support the oft-cited pattern of an ever-lengthening appointments process. The length of deliberations in both institutions have seen considerable variation. Most of those presidencies with more investment in transition preparations have had quicker overall deliberations (Biden seems the exception) — Reagan, Bush '43, and Obama — while those with no investment in preparations have longer deliberations — Bush '41 and Trump.

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[4] In some instances, especially at the end of a Congress, the Senate may "return" a nomination to the Executive without taking action and unless the President renominates that person in the new Congress (typically what happens) the nomination has "died." While returning a nomination may delay confirmation, it rarely thwarts a President's nomination as about two/thirds of all returned nominees eventually receive Senate confirmation.

[5] Another potential measure would consider the amount of time from the election to nomination under the logic that the election vests the President-to-come with the responsibility for these eventual nominations.

o *The Source of Delay.* Second, executive deliberations typically outdistance the Senate's (#5, above). The typical presidency spends more than twice the time on individual nominations than the average Senate (55 *vs* 21 days, respectively). Complaints about the length of Senate deliberations, therefore, often miss the main source of appointment delays.

The Biden 100 experience follows these patterns. Like the Clinton White House, the Biden White House delayed a large number of nominations until after the 50-day mark and then surged those nominations. Eventually, that surge set a record (see above). That pattern, however, meant the average nominee took far longer in the executive side than normal (a 30% increase over the average[6]). In addition, the Schumer Senate majority has taken more than twice as long as the typical Senate majority to process those nominees (54 *v* 21).

Backlogs — The Senate Has Much to Do, While the Executive Pipeline Appears Empty

Following Hamilton, finding nominees and shepherding them through the Senate confirmation processes presents a central challenge to any new president. The backlog of nominations in each institution, then, measures something of their operational efficiency and in the Senate in particular, something of their prospects for future preoccupations.

Representation — Biden Makes Good on His Promise on Gender Diversity

Since its early going, the Biden team has manifest an important role for women. While women hold 48% of the positions in the President's cabinet, in the Biden 100 days have evidence an even stronger commitment to gender diversity — 56% of all the nominations tracked by WHTP have fallen to women. If the cabinet reflected this broader pattern, for example, it would 2 more women. As illustrated in Figure 5, below, the Biden 100 days experience has produced nearly twice as many women as the average for his predecessors (the average for all previous nominations is around 24%). Biden has even exceeded the average from Obama and Clinton, the previous democratic administrations (34%), by a 33% increase,[7] and a 44% increase over the average for Republican presidencies (at 22%).

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[6] Because the 100 days has a fixed upper limit (at 100 days), the percentage increases reported here use a Kruskal's *Lambda* statistic for comparisons, rather than a simple increase over the base.

[7] Because the proportion of nominees has a fixed upper limit (at 100%), the percentage increases reported here use a Kruskal's *Lambda* statistic for comparisons, rather than a simple increase over the base.
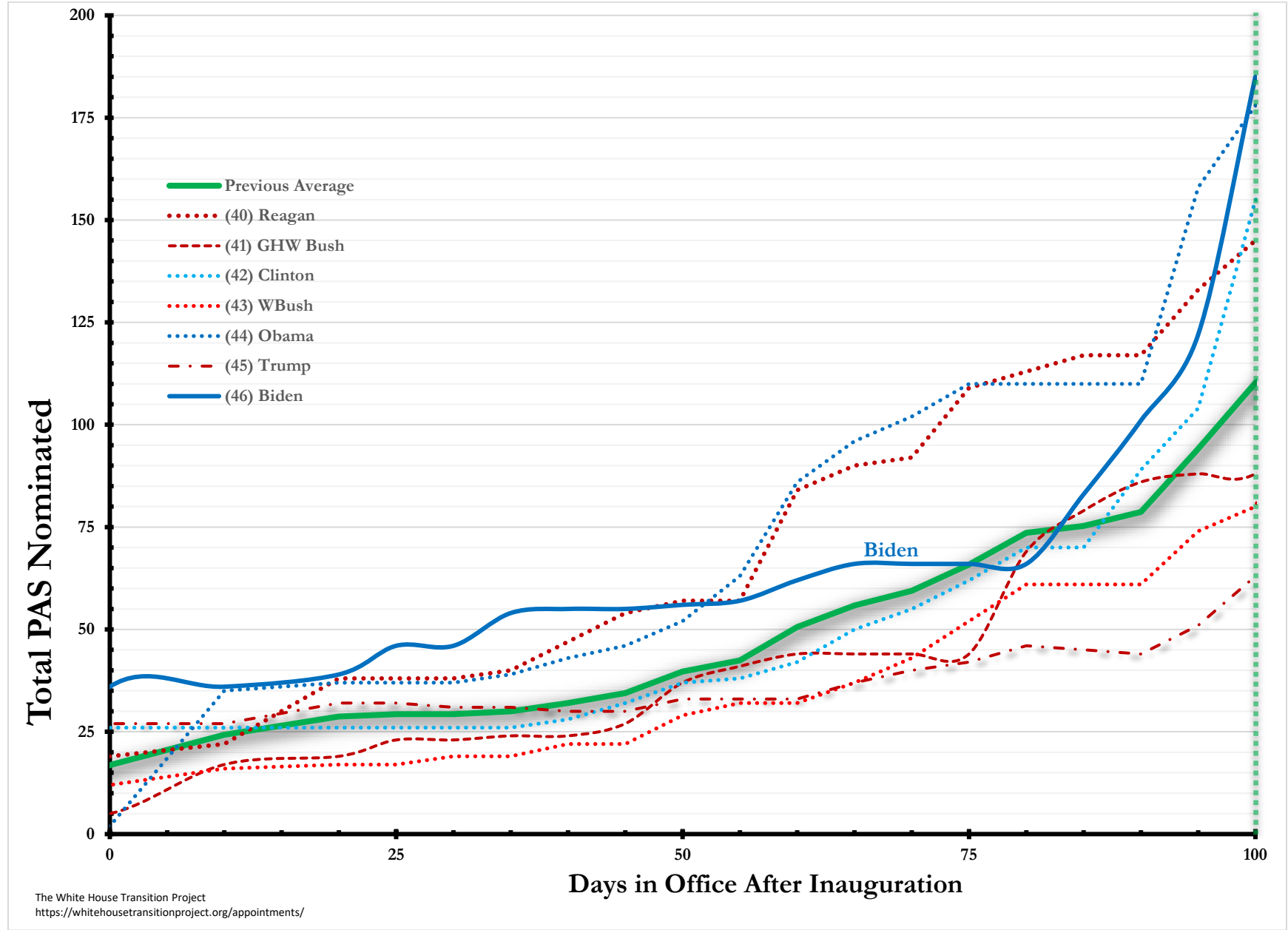
Figure 1. Total Nominations, 100 Days

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https://whitehousetransitionproject.org/appointments/

Figure 2. Total Confirmations, 100 Days
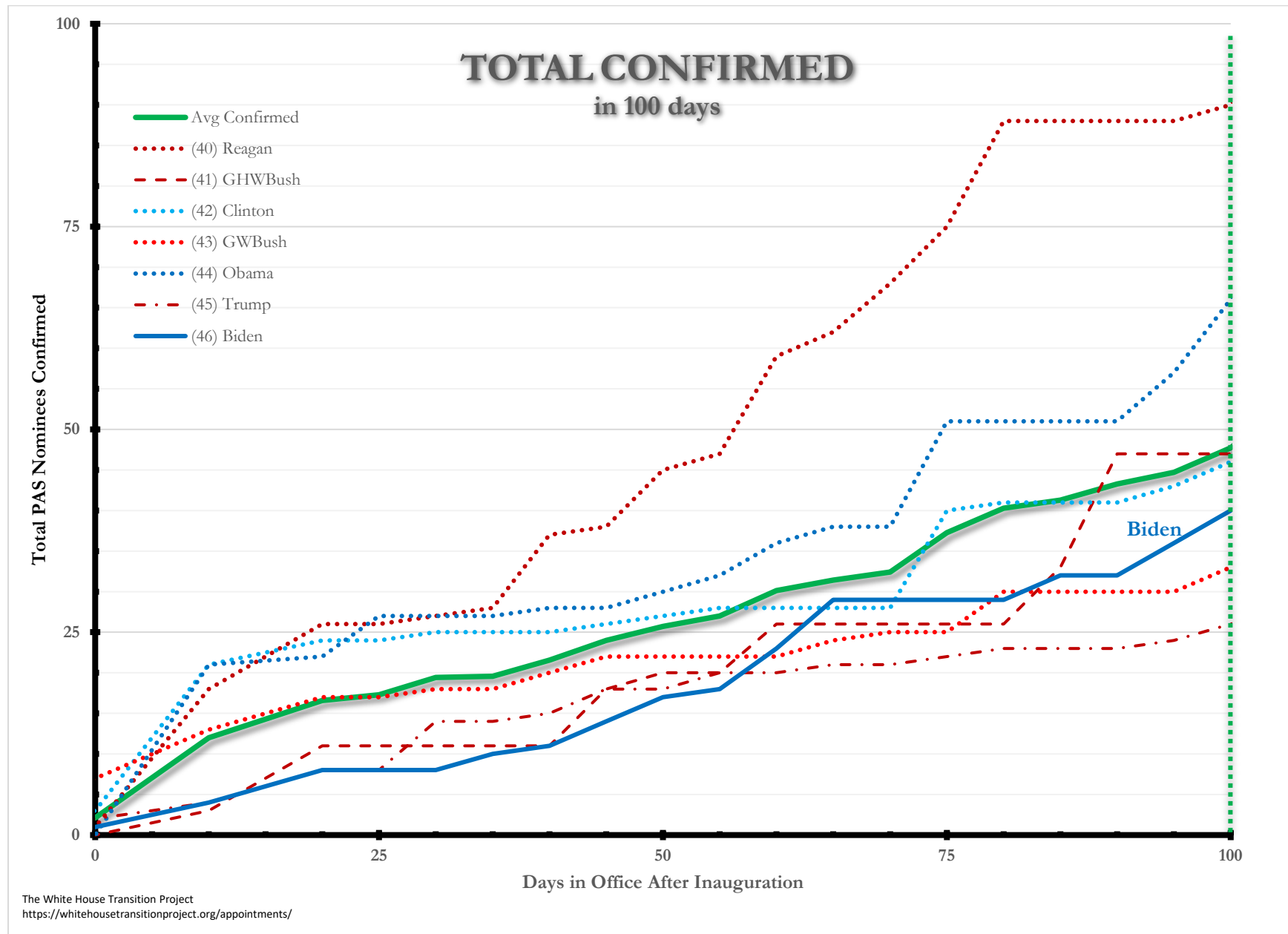
Figure 3. Pace of Deliberation per Phase

PACE OF DELIBERATIONS
(100 days)

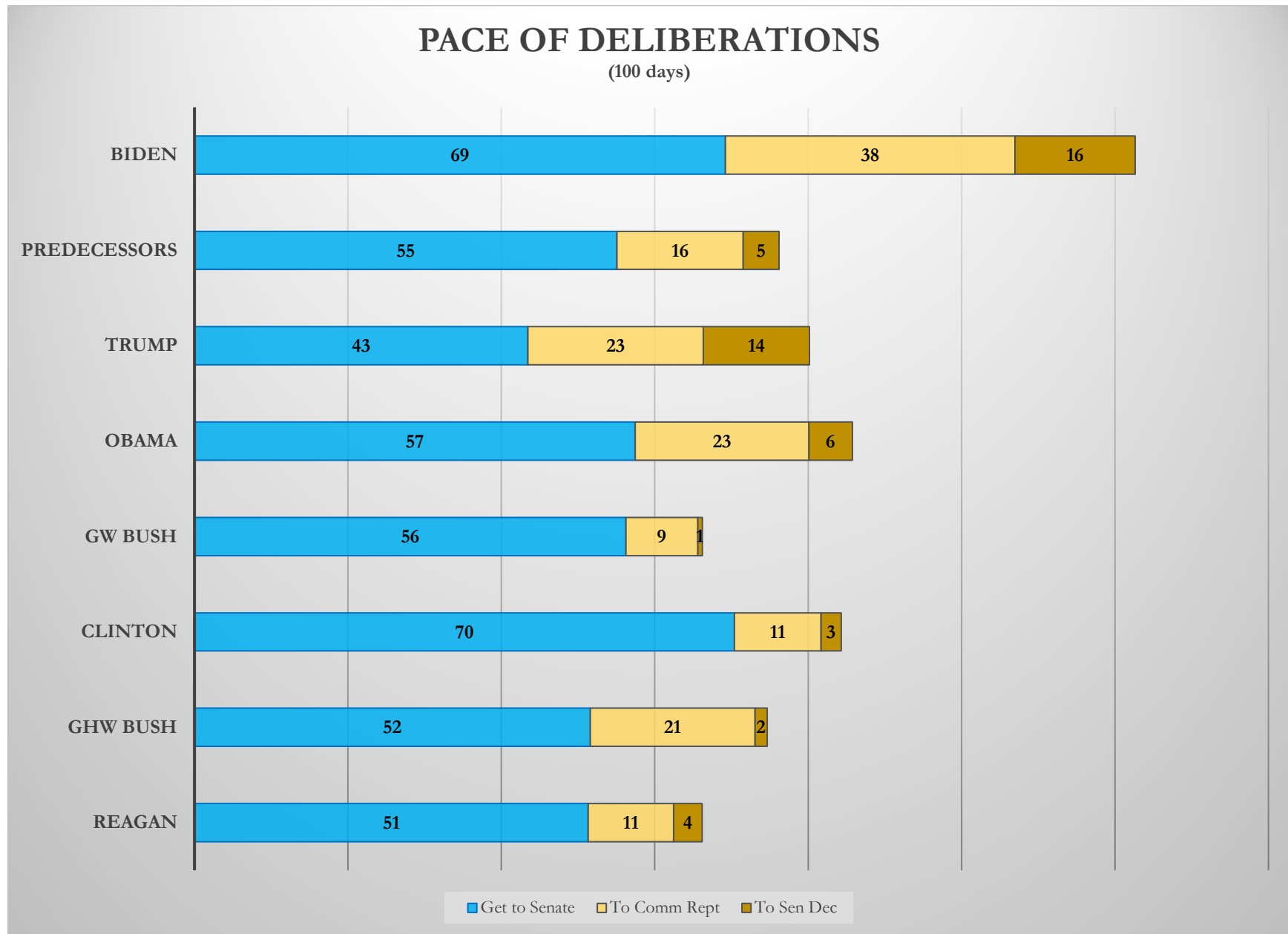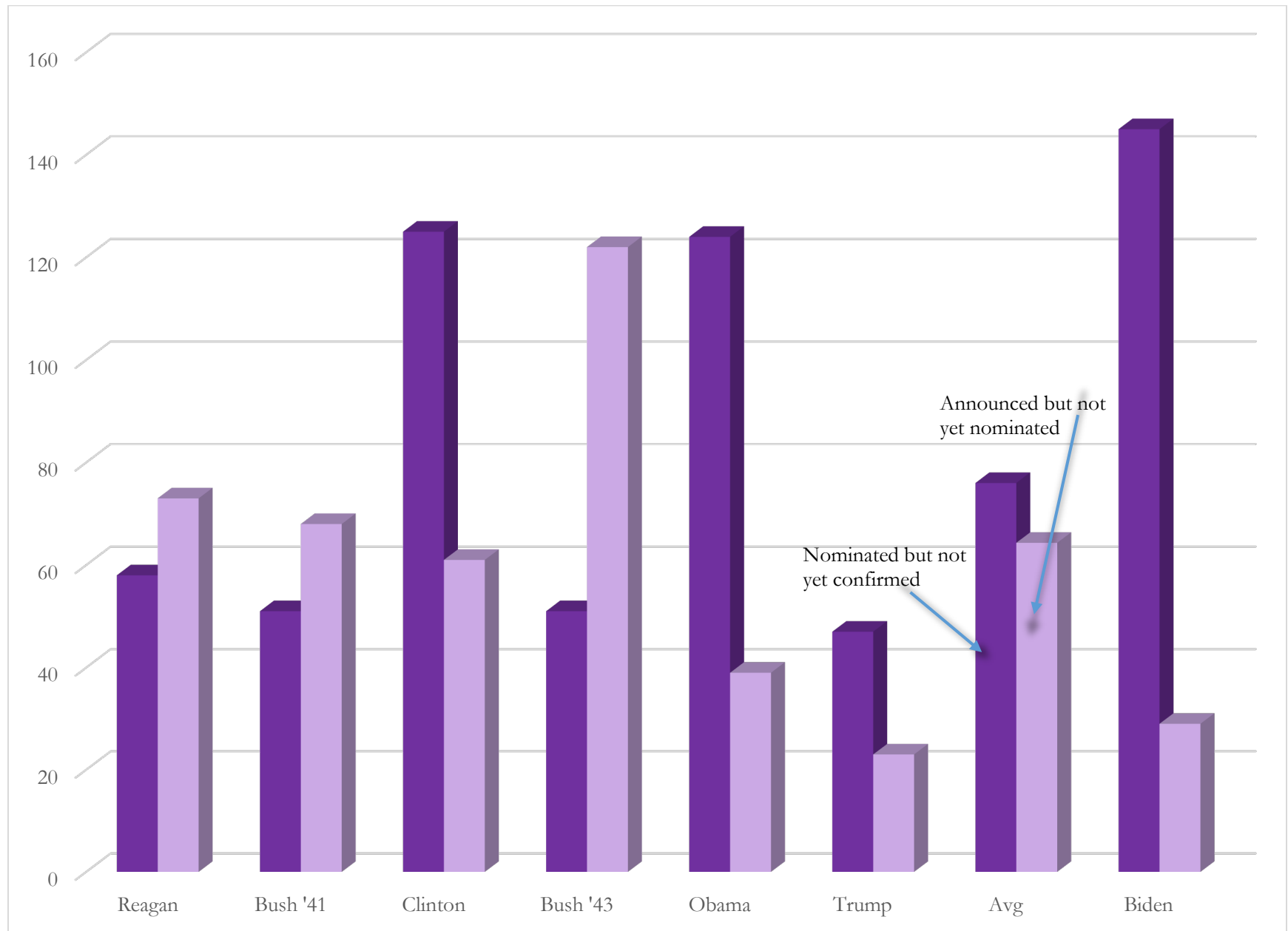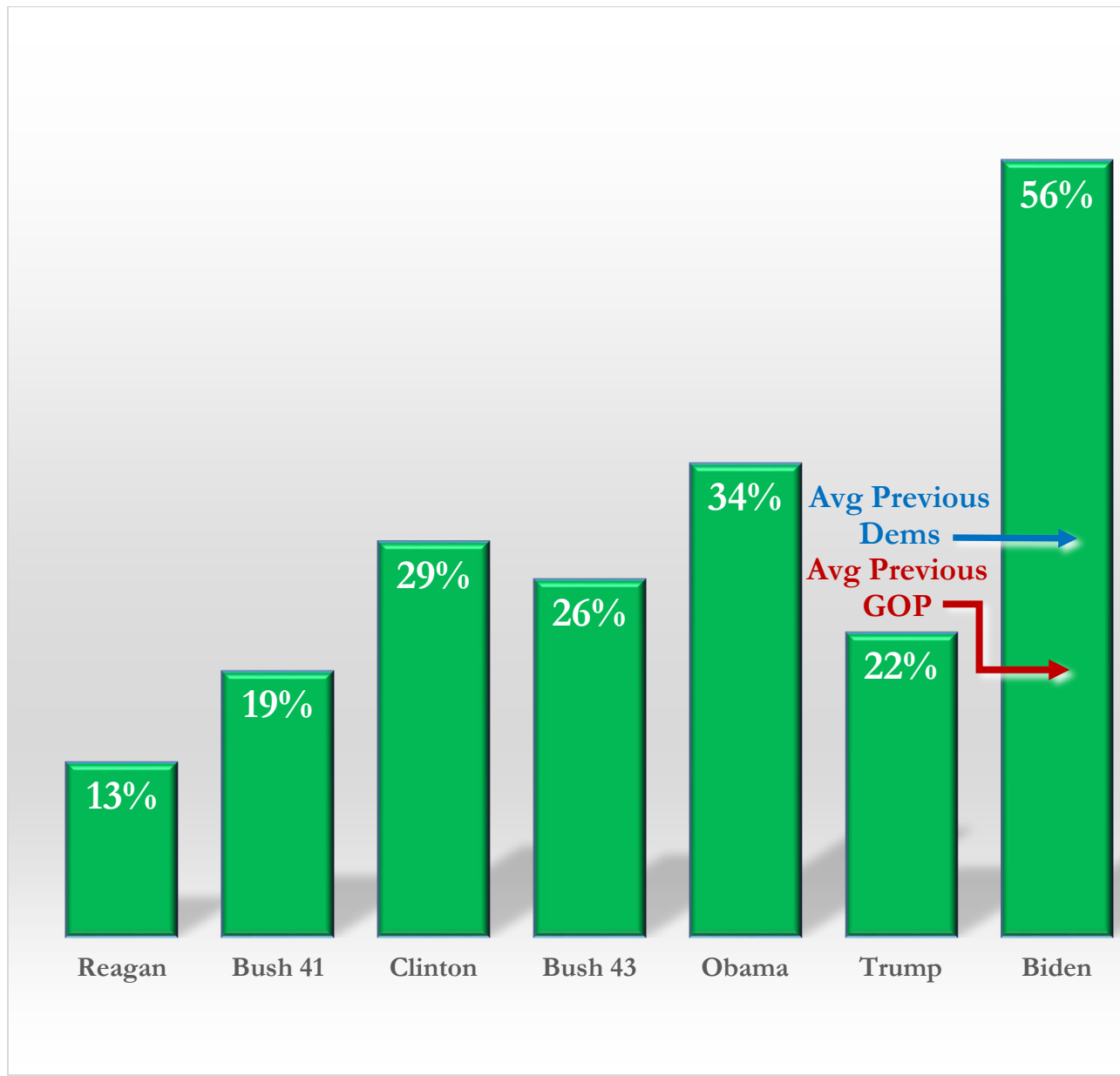|	Get to Senate	To Comm Rept	To Sen Dec
BIDEN	69	38	16
PREDECESSORS	55	16	5
TRUMP	43	23	14
OBAMA	57	23	6
GW BUSH	56	9	1
CLINTON	70	11	3
GHW BUSH	52	21	2
REAGAN	51	11	4

Figure 4. Backlogs of Confirmations and Nominations

Figure 5. Gender Representation in Nominations at 100 days

Appendix: A Sample of Stand-Up Critical Positions

Stand-Up Critical Positions	
Agency	**Position**
Agriculture	Secretary
Agriculture	Deputy Secretary
Central Intelligence Agency	General Counsel
Central Intelligence Agency	Assistant Director, Administration
Commerce	Secretary
Commerce	Deputy Secretary
Commerce	Assistant Secretary for Administration and Chief Financial Officer
Defense	Under Secretary for Personnel and Readiness
Defense	Under Secretary for Policy
Defense	Principal Deputy Under Secretary for Intelligence
Defense	Principal Deputy Under Secretary for Policy
Defense	Assistant Secretary for Asian and Pacific Security Affairs
Defense	Assistant Secretary for Homeland Defense
Defense	Assistant Secretary for Legislative Affairs
Defense	Assistant Secretary for Nuclear, Chemical and Biological Defense Programs
Defense	Assistant Secretary for Special Ops/Low Intensity Conflict/Interdependent Capabilities
Defense	Chief Information Officer for the SECDEF
Defense	General Counsel
Energy	Deputy Administrator, National Nuclear Security Admin
Energy	General Counsel
EOP, Trade Representative	US Trade Representative
Federal Reserve System	Vice Chair
Federal Reserve System	Vice Chair of supervision
Federal Trade Commission	Chair
Health and Human Services	Commissioner, Food and Drugs
Health and Human Services	Director, NIH
Health and Human Services	General Counsel
Health and Human Services	Assistant Secretary for Management and Budget
Health and Human Services	Assistant Secretary for Public Affairs
Homeland Security	Secretary
Homeland Security	Inspector General
Homeland Security	Deputy Secretary
Homeland Security	Under Secretary for Management
Homeland Security	Administrator, Federal Emergency Management Agency
Homeland Security	Commissioner, U.S Customs and Border Protection
Labor	Assistant Secretary for Public Affairs
Merit Systems Protection Board	Special Counsel
Millennium Challenge Corporation	Chief Executive Officer
NASA	Administrator
NASA	Deputy Administrator
NASA	Chief Financial Officer
NASA	Inspector General
National and Community Service	Chief Executive Officer
Office of the Director of National Intelligence	Chief Intelligence Officer
Office of the Director of National Intelligence	General Counsel
Office of the Director of National Intelligence	Inspector General
Securities and Exchange Commission	Chair
Securities and Exchange Commission	Commissioner
State	Deputy Secretary
State	Inspector General

Stand-Up Critical Positions	
Agency	**Position**
State	Under Secretary for Arms Control and International Security Affairs
State	Under Secretary for Civilian Security
State	Under Secretary for Management
State	Assistant Secretary for Intelligence and Research
State	Assistant Secretary for International Security and Non-proliferation
State	Assistant Secretary for Legislative and Intergovernmental Affairs
State	Assistant Secretary for Near Eastern Affairs
State	Assistant Secretary for Public Affairs
State	Assistant Secretary for Resource Management
State	Coordinator for Counter-Terrorism
State	Amb. To Germany
State	Amb. To India
State	Amb. To Iraq
State	Amb. To Israel
State	Amb. To Japan
Supreme Court of the United States	Associate Justice
Supreme Court of the United States	Associate Justice
The Interior	Deputy Secretary
The Treasury	Assistant Secretary for Financial Institutions
The Treasury	Assistant Secretary for Intelligence and Analysis
The Treasury	Assistant Secretary for International Finance
The Treasury	Assistant Secretary for Management and Chief Financial Officer
The Treasury	Assistant Secretary for Public Affairs and Director of Policy Planning
The Treasury	Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (transferred to DOJ)
Transportation	Administrator, Maritime Administration
Transportation	Assistant Secretary for Aviation and International Affairs
Transportation	Assistant Secretary for Budget and Programs/Chief Financial Officer
USAID	Assistant Administrator, Management
USAID	Inspector General
Veterans Affairs	Secretary
Veterans Affairs	General Counsel
Veterans Affairs	Assistant Secretary for Finance and Information Resources Management
Veterans Affairs	Assistant Secretary for Human Resources and Administration
Veterans Affairs	Assistant Secretary for Public and Intergovernmental Affairs
Veterans Affairs	Chief Financial Officer

WHO WE ARE & 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.[8] 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.

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[8] Whitehousetransitionproject.org/appointments