

THE BROOKINGS INSTITUTION

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TRANSITIONS: PLANNING AND STAFFING A PRESIDENCY

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UNCORRECTED TRANSCRIPT

PANEL 1: PLANNING AND STAFFING AN ADMINISTRATION

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MODERATOR: WILLIAM J. ANTHOLIS: Nonresident Senior Fellow, The Brookings Institution; Director and CEO, Miller Center of Public Affairs, University of Virginia

PANEL 2: CONFIRMATIONS: BOTTLENECKS AND VACANCIES

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ANTHOLIS: Good morning, everyone. It's it's great to see you all today. And it's great to be back here at Brookings. I'm Bill Antholis. I'm the director of UVA's Miller Center and a nonresident senior fellow here at the Brookings Institution. And I spent ten years at Brookings and now ten years at the Miller Center. It's just great to be home. And we're delighted to partner with Brookings Katzman initiative as co-sponsors of today's event, the Miller Center Studies, where the American presidency meets big challenges for the American people, and the Katzman initiative monitors the health of the three branches. So presidential transitions are a real meeting place for for exactly those two missions. And we're delighted to get to partner on today's event. I'll do a little scene setting on what we're going to talk about in the two panels today, and then are I'll introduce our panelists for this first panel. Transitions are complicated and critical, and I should have mentioned, too, that Brookings really started the industry of studying transitions. There was a guy named Laurin Henry who was here from the mid-fifties to the mid-60s, and he really did the first studies of major transitions. And he he understood that they were a moment of high promise when the American people selected a new president and empowered that person to to set a course and to bring in a new administration. But there are also moments of peril when foreign adversaries might target the United States. And the new team is just learning how they work with one another and what the challenges are. Laurin is still alive. He's 103 years old. After ten years at Brookings, he came to UVA and was a faculty member and helped design the Miller Center. So the connectivity between these institutions goes back to this very topic. Presidents are starting from scratch. They have to staff the White House, the Cabinet, and over 4000 political appointees, 1200 of which require Senate confirmation. Typically, transitions have 2 or 3 public narratives, and then they have an internal narrative as well. The public narratives are about announcing people, narrowing priorities and managing politics, particularly with Capitol Hill, both on legislation and confirmations behind the scenes and maybe sometimes out in public. Presidents and their team are establishing processes. That is how things get done, not just what gets done. And so to help us understand all of that and what President Trump and his team are up to, we have two panels. The first will look at planning and Staffing administration, the strategic questions that an administration goes through, and then how this administration is starting out. And then the second will look at the confirmation process itself, including why there are bottlenecks and what happens when there are vacancies. Our first panel has three terrific experts who have lived through and studied presidential transitions. My colleague Katie Dunn Tenpas is both the director of the Katzman Initiative here at Brookings and is also a senior fellow with us at the Miller Center and is a UVA Ph.D., which we're very proud of. Also with us is Pete Wehner of the Trinity Forum, who served in senior White House positions in the George W. Bush White House and before that served in the Reagan and Bush '41 administrations. Pete writes regularly and is a longtime friend and colleague of many of us here at Brookings

and and also at the Miller Center. And then finally, Louisa Terrell, who served in the Obama and Biden administrations in the Office of Legislative Affairs, and she was the director of legislative affairs under President Biden for his first 18 months. No. First two and a half years in office, which is an extraordinary record of legislative accomplishment. She also served on President Biden's Senate staff. And we're really lucky to have Louisa with us. She participated in the big event that we did, along with Pete and and Katie at the Miller Center about a year ago, looking at many of these complicated issues. So the sketch that I did above is an orderly story we tell ourselves about presidential transitions. It turns out most past transitions have had moments of disorder and sometimes even chaos, rocky moments with confirmations that fail, processes that are being worked on the fly and sometimes in public. And it's also fair to say, regardless of what thinks of one thinks of President Trump, that he doesn't think of himself as a normal president, he sees himself as a disrupter and in many cases a dismantling of certain parts of the federal government. So he also has a views of strong use of executive powers. But that's not new to President Trump. That's a trend that has been growing over time. And I hope we will get into some of those topics today. So the first question I'm going to ask the first couple of questions that I'm going to ask of our panelists is to do some benchmark setting before we dive into the Trump transition. What are we looking for? What are we looking at? So I'll start with Louisa. What makes for a good transition? You were the last one of us to live through one of these. How do you define a successful transition and what are you focusing on and watching?

TERRELL: Well, first of all, I got my thing. First of all, thank you, everyone, for having me. Bill, it's lovely to be here. Brookings, Thank you for hosting. So I'm going to sort of piggyback on what you said, which is I think there is an external and an internal mandate for transitions. So externally a transition comes in and they are setting out signals. They have a signal that they are telling voters, they are showing that they are getting what they're paying for. They're sort of starting to position a kind of administration to deliver on the things that they have discussed as they and what they what they ran on and what they won on. I think the other thing, there's also an external signaling, as you noted, bell, about outside stakeholders, whether that's Congress, whether it's advocacy groups, whether it's just sort of the D.C. ecosystem, that they're ready to sort of work together. You know, this you're not going it alone and you've got a signal they are sort of getting ready to do that work. I think internally, you know what I think about it and I'm both with the Obama transition and with Biden's was you you have to understand you've got to maximize every moment time. You know, it's everybody says it and it just happens to be true. Time is the one thing they're not making more of. And you have to maximize every moment in a transition, and, frankly, when you get into the White House. And so there I think that it's kind of a discipline and a coordination piece. So when I see a successful transition, there

is kind of this everyday hammering of what is the, you know, your 100 day agenda. How is every piece of the transition pro laddering up to those agenda pieces? So you don't have people sort of wandering in the woods and doing lots of pieces that are not coordinated because you have to kind of come in ready to go. And I was telling these folks, when we are prepping, you know, I have a very distinct memory. When we were doing Biden's transition, where our chief of staff, sort of incoming chief of staff every day would have us on a zoom and every piece of paper, every staffing choice. You were showing how it was, again, mirroring and sort of underscoring what that sort of prioritization is. So I think that discipline and the coordination sort of internally and externally, that kind of signaling is sort of the two pieces that I would say.

ANTHOLIS: Pete.

WEHNER: Yeah. Thanks to Bill for hosting Brookings and the Miller Center. It's that time when institutions are under attack and losing trust. These are two that they're doing the opposite. So thanks for for that and it's great to be here. Yeah. I'd say in terms of what what characterizes a good transition, I mean, traditionally competent nominees would would be one lack of chaos, coordination, coordination with agencies, coordination with Congress to and in particular the Senate, because that's where the confirmations happen. And so what you're looking for is a kind of seamless transition. It's not easy because if you're a new administration, a lot of the people that are often involved in the transition are people who worked on a campaign. You have a president who has people whom he trusts, and so that those people often will follow that individual in whatever life that that that the the candidate goes into. And so if you go from being a candidate to president, it's just a very different kind of thing. Requires in many cases, not all a different skill set. I'd say also that coordination with the outgoing administration can be important. I know that when I was in the Bush White House, when we transition to the Obama White House, there was a very conscious and intentional effort led by Josh Bolten, who was our chief of staff, to make it as easy for the incoming administration, the Obama administration, as as possible. That doesn't always happen. But but we tried to do that for George W Bush in 2000 when he won. It was actually more difficult than even in most administrations because you'll recall there was that contentious election and Supreme Court decided ultimately the Florida election. So you don't have much time in most transitions, but that in that case it was it was even more of a of a compressed period of time. But I'd say it probably was was relatively smooth, probably smoother at the end of it than we would have anticipated it at at the beginning of it. Yeah. So so competence, coordination and then confirmation itself, You do want to get the people, the Cabinet secretaries and other other people in the administration confirmed. And you want to, as Lisa was saying, you

want to try at least traditionally, you want to try and tell a narrative or use even the confirmation process as advancing both what your agenda is going to be in the future, and also to try and show to the public that the reason that they voted for you is that that rationale is going to be is going to be carried on.

ANTHOLIS: So, Katie, you're an expert in so many of these different dimensions, but in particular how the White House builds its team and how the White House builds the Cabinet. So tell us a little bit about what you're watching in particular in those areas.

TENPAS: And I also want to say thank you. And I'm really excited about this first collaboration with the Miller Center and the Katzen Initiative. I hope it's the first of many. I think that our respective skill sets and expertise really match quite well. So I think about this differently. I'm obviously not a practitioner. I haven't served in a White House. And I think, you know, as a teacher or a professor, I would say that there's four basically things, four things they should be doing. They should be focused primarily on personnel. As Bill mentioned, there's roughly 4,000 presidential appointees. That's a lot of people to staff a presidency. I think it's also worthwhile to point out that we have a truly unique system. You have to think about it as that Every four or every eight years we basically lop off the top of a pyramid. And say, okay, bye bye to all those leadership roles and this new person who may or may not have ever served in government is now going to find individuals that can fulfill these roles and do it in a period of roughly 75 days. Now, it's not the case that they're supposed to fill all these positions on January 20th, of course. But nevertheless, it's a gargantuan task. So personnel is first and foremost. Second is policy planning. Thinking about the executive orders that you'd like to implement. Thinking about what your first 100 days of legislative efforts will be. That's really important. Jim Heffner famously wrote a book or has a quote about hitting the ground running that after you become elected, you really want to start January 20th and have a true sense of which policies you're going to promote, in what order. Understand your priorities and hit it hard. The third is agency outreach. After a while, when we talk about the Trump administration, it's a different, different things are happening. But generally speaking, what's happening now in other transitions is that you're fanning out agency review teams across the government so that your new people can sort of get briefed. What's happening at EPA? What are the meetings in January, February, March that they're going to expect administration personnel to attend? What are the pots of water that are boiling over? What are the crises? We need to know these things. And then finally, they want to think about these 1775 days, roughly, although it's less now, of course, but they want to think about them strategically. So how should the president be spend -- or the president-elect be spending his or her time now? Which constituencies should they be reaching out to? Maybe they should visit

key states that they believe rewarded them or awarded them with their election. But it should be strategic. You know, every day should not be sort of off the cuff. This is what I'm doing. It should be very well planned out so that when January 20th comes along, you've actually accomplished a great deal up to that point.

ANTHOLIS: Katie, I want to start again with you and stick with the importance of the White House and the White House team and how they manage the agencies and others. What does that look like? Who are who are the important people that are named and are to be named? In this case, they've named some White House officials. They haven't named the entire team, but it's coming together. And President Trump wants a strong executive branch. How important is it to have a strong White House if you want a strong executive branch?

TENPAS: Yeah, well, I would say that if you look historically at the evolution of the White House staff and its role, what you see is this increasing centralization of power within the White House. So if you were to look at FDR, his administration, what you would find is that his Cabinet members had tremendous influence and were frequently for their input and their opinions. But what's happened over time is the White House staff has grown. The number of professionals have grown. And so presidents have internalized the expertise within the White House. As a result, I would argue, and I do because I study White House turnover and I study what I call the A-Team very carefully. These are some of the most influential unelected officials in our entire government. They see the president on a daily basis. There's no way a single president can master so many areas, so many issue areas that they have to rely on these individuals. So White House staffing at the beginning of a transition is critical. He's named his chief of staff. He's named his national security advisor. These are all things that actually are similar to prior transitions. One thing that is unique is he's named several deputy chiefs of staffs and giving them, given them vast portfolios. So somebody like Louisa, who was the assistant to the president for legislative affairs, I believe now there is a deputy chief of staff who has legislative affairs, maybe also has a hand in public liaison or personnel. My point is simply that these deputy chiefs of staff have multiple issue areas that they're responsible for, and that is new. Generally speaking, you are given one deputy chief of staff and you're focused on policy or you're focused on personnel. But the staffing so far, even though it's pace, is good, it is unique in the in in terms of the extent of responsibilities that have been delegated to key individuals.

ANTHOLIS: So, Louisa, you both worked at the White House. Right? And Pete you were the strategist for deputy chief of staff, working directly for the chief of staff and the deputy chief of staff, Karl Rove. As you're

watching this White House build the White House team, it's a second term, but also a second first term. How what are you watching and what are you seeing in terms of how he's building his White House team?

WEHNER: Yeah, in terms of what I'm seeing, I see several things. I mean, I'm seeing chaos, right? Right now there I disaggregate a little bit. There's the White House team and then there are the Cabinet appointments. And right now, the chaos is centered mostly on on the Cabinet, the Cabinet choices. Susie Wiles ran the campaign. She is is, she has the trust of Donald Trump, which which matters. You do want somebody as a chief of staff that the president or incoming president does does trust. And she is, by all accounts, competent. She she she ran a good campaign with with a candidate who not known for his for his discipline, but in the things that she could control, she she controlled them pretty pretty well. But being chief of staff of the White House is different than running a campaign. There are just a lot more variables that you have to deal with, a lot more people and you have less control over circumstances in in in a White House than you do in a campaign. And often you don't have that much control over things, you know, in a in a in a campaign itself. The deputy chief of staff, Stephen Miller, is is is not my cup of tea, to put it mildly. He served in the first administration. And I think that he and others in the White House, I mean, they have more experience now. And so they're there. They're more alert, I would say, to what they consider to be the pitfalls or or the blockage that occurred from what they what they really wanted to do. So I think they're going to come in and and, you know, with with more intentionality and they're going to defer less to other people, including including Cabinet Cabinet agencies. I mean, the other thing that I'm seeing, we can talk talk more about this, but I think that it's fair to say, as you as you were hinting at, Bill, which is that Donald Trump, for a variety of reasons, and his staff, you know, view what they're doing as a hostile takeover. And that's just unusual. They they view many of the agencies of government as enemies of the people. And so they want to they want to neutralize them, and I think in some ways debilitate them. And that's just different than than what we've seen in past administrations. Be interesting to see, because Katie is right. I mean, the concentration of power that's historically happened going from the Cabinet agencies to the White House is almost without interruption. It's just that the White House staff has gotten more and more influential. It's interesting. The world is more complicated. The information that we deal with is is greater. So in one sense, there's more to deal with and there are just fewer people to to deal with it because the White House staff is just limited in the number of people that you that you have. And having seen it up upfront. Louise can can testify to this, too. But there is there is no substitute for access to the president in determining what information flow goes to him, what papers that he sees, what his schedule is like, the advice that he's getting, I mean, that those are huge factors that shape the attitudes and and knowledge of of of the president. And

an awful lot rides on on of his on those decisions. And so you want to try and get people surrounding him who are people that are intellectually and morally reliable and have some degree of integrity. And we will see how this plays out in this particular case.

ANTHOLIS: Louise, I'm reminded when when you came in, it was Covid, so almost all of the transition meetings and maybe the first months of the White House were were by Zoom or whatever, whatever format you used. Maybe it was teams. I don't know. And also it was a disruptive transition because the Trump administration was very slow to hand over power. And then you came into the White House. What was team building like in that chaotic set of circumstances, particularly from your perspective of trying to get people confirmed and and tee up a legislative agenda? I think you passed the the Covid bill within 2 or 3 months and were already teeing up an infrastructure bill. Tell us a little bit about that, what that was like. And as we're watching the new team come in, how you were watching the team building.

TERRELL: Right. It's a little PTSD to go back to what it was like then. But you are absolutely correct. We I have very distinct memories that senior staff met at the National Zoo and we got on busses on Inauguration Day, all massed up. Separated. You had a you got one row. You weren't sitting next to anyone. We get to the White House. We are. You are. You can't have meetings. So the senior staff that are in the White House on that very first day, you're on zooms, I think it was zooms to do all your meetings and you're slowly sort of aggregating staff, then slowly coming into the building, both in the White House and in the EOB, because that had to be done very carefully. So there was a kind of disconnect that was just that just had to happen because we weren't covered in the kind of interpersonal texture pieces that you need to build right away, I think was harder to do. At the same time, I think it was just a very kind of unique moment in history where we all felt very compelled by the incredible sort of pain and problems that were afflicting the country around Covid. And we felt very we were also connected about that kind of going out and making sure we did the rescue work. I will say the other thing, that for a transition that we really weren't able to do and not able to do in the first couple of months was those kind of relationship buildings. You kind of need to go out. And there was no hill meetings. There was no way about how you were sort of talking with your nominees and either socializing them with members and figuring out strategies with committee staff. You're not able to do that in person. And it left us, I think, in some harder positions to do that when you really needed look, when you're arguing for a nominee, it's almost like you're arguing for a legislative policy. You have to really go out and sort of make the case. And so that part was a little that was that was more that was challenging. So there

was this, you know, big kind of relief when we were finally able to go out and be up on the Hill and go back and forth and kind of the flow, because that took a lot of time.

ANTHOLIS: I want to stick with you for a second, Louisa. So you all took on some transformational. Legislative priorities. The first Covid bill was \$1.9 trillion major infrastructure bill. The Trump transition has a different view of transformation. They're about either dismantling things, potentially even shutting down agencies or parts of the federal government. But in some ways also building up some other things, potentially a much bigger, bigger use, at least of the Department of Homeland Security if moving forward on on immigration. From a legislative standpoint, both confirmations and actually passing these laws. How does change get managed? Big changes are a shock to the system. And you're the front person on that one. When you you're watching the Trump administration do this. What are you watching as they manage these big shifts?

TERRELL: Yeah, it's a great question, Bill. I mean, part of it is I think the thing that I'm looking at right now is looking at the way that President elect Trump is has a mandate that he feels very strongly and is very clear, communicating that up to Capitol Hill and to other political leaders and a real consensus and coalition around him amongst the Republicans. Will there be? There will be. I mean, I'm going to be very careful about my crystal ball. Just going to say it's I am not that many money, but I do think that there may be some divergences. But clearly, when you come into that kind of the momentum and the way that he's coming out, I think you are, from a White House perspective, able to manage more of that change because you're not going to have your caucus kind of going left, right, up, down. He's coming into a way in which they're they're very much coalesced around around him and around the agenda and how they won. So managing some of that change, I think is is somewhat, I would say, easier or at least you can see the the other thing that I think is. A little different here is that I don't see 600 agenda items, right? We have kind of a as we all know, it's harder to get things done in Congress. And so that not like by that margin, you're just going to have a smaller legislative agenda. So when I look at it, I think President elect Trump has some very specific views on what he would want to do from the executive branch, has some specific views about how he would thinks about the value of agencies. And then thinking through kind of an economic agenda, we all we're all going to learn a lot about tax. Is everyone ready for that? Because that's how we're all going to be learning about this year. You know, there's not there's not a ton of things. So he's got to be focused on it doesn't have to look at 600 different things, I'd say.

ANTHOLIS: And just to stick for one second on since you mentioned tax, there's tax, there's tariffs on. How many big pieces of legislation do you think can get done in this Congress? Do you have a sense of the bandwidth?

TERRELL: I mean, I think, again, we sort of got a deep lesson in in the reconciliation process, right. Where he where the Republicans can move on by themselves. So I think, you know, it kind of will depend on how much they'll put on the Christmas tree. That is reconciliation. They will have to abide by rules and parliamentary sort of pieces on that. But they all know that these first two years like this is your time. So we'll have to see a little bit about how much they can do there and whether there's some room for some bipartisan pieces that would be separate and distinct from reconciliation. But my own view is when when you've got the chance, don't wait. They have reconciliation now. So I would assume, again, I'm sort of crystal balling, so don't don't hold me to it is that they would that Trump and his team and the Republicans will use the reconciliation and really try and do as much as you can whether there'll be a second bite of the apple with the second reconciliation, perhaps that's there. But you don't know. So you don't want to don't want to miss the opportunity. So that's sort of depends. But I think that's the big, big piece.

ANTHOLIS: And if they have a series of troubled confirmations, does that reduce the bandwidth on the legislative side or do those things operate parallel but not connected to one another?

TERRELL: I mean, my our view when we were doing it both with Obama and with Biden, is that we really tried to have parallel tracks. You couldn't think of these things to be sequential because, again, time is your time is your enemy and the only thing you got. So we really tried to move them parallel. You also tried to figure out if you were going to spend political capital, whether it's resources, time that we were very conscious of what we were spending on the nomination side and making sure that it wasn't interrupting the parallel track we were doing to either build legislation, getting consensus doing that. So I think it's very possible to do that. And again, I do I put a lot of weight behind the kind of mandate that that President elect Trump brings to this is very clear about who he wants. And he's obviously started very early. I mean, there are ways in which he has kind of banged this out. So the way I look at it, it's almost leapfrogging over some of the things one would do normally during a transition. And I read this that he is most thinking about January. He's not thinking of what he's doing in December, that this is a January piece. And so that he would be able to kind of push this nomination in one breath and then be able to think through the legislative piece.

ANTHOLIS: So a couple questions pivoting off of that to you. One, one is around how an incoming administration balances executive actions versus legislative priorities. There's a whole lot of executive actions where the past administration did things by executive action and the incoming team just sort of reverses them. But then there are some big priorities that are distinct. You were helping do strategy. Does an administration think through the strategy of those things, or is it just like this person's out there firing off this executive action on behalf of the president? How does how does it work? And what are you looking at, particularly now with the incoming team for what they might do administratively and what they might do by legislation?

WEHNER: Yeah, I mean, you think about about them. For us, the Bush presidency in 2000, there was not as much focus on executive actions that I recall going going in. There was a good deal more thought about legislation. Legislation just is is tends to be more permanent than executive actions, partly for the reason that you said, which is the president will often come in and use an executive action. And so certainly happened with Trump, which is Biden came in and reversed several things that Trump had done with executive action. Biden comes in and reverses them. Now Trump comes in and he'll reverse some of what what what what what Biden did. The legislation tends tends to be, as I said, more more permanent. And we gave a fair amount of of focus to a couple of legislative priorities. One was the No Child Left Behind and the second one was was on on taxes. And we got it through those two pieces of legislation, which are pretty significant, really within a matter of months. In fact.

ANTHOLIS: Tax cuts was the first semester. And and No Child Left Behind was the second semester.

WEHNER: Yeah. Yeah, exactly. In fact, we're not. So I was deputy director of speechwriting for basically two years. And on September 11th, I went to the senior staff meeting because Mike Gerson, who was the chief speechwriter and top aide to a top aide to President Bush was at home in Alexandria and he was working on a community character speech. Because we had gotten those legislative priorities through and we were thinking trying to think through what is going to be the agenda in the narrative for the fall and communities of character was was something that paralleled what the Bush first inauguration speech was. So I was actually at the senior staff meeting the morning of September 11th because I would go in when Mike wasn't there, by the way, I remember thinking at the senior staff meeting, this is one of the most uneventful days of the Bush presidency. It shows you the vicissitudes of life. The main topic of conversation was a congressional barbecue that was going to be held in the South Lawn of the White House and ate at 5 p.m. So I got back to

my office and I and I sent an email to to Mike because I would always summarize what this happened at the senior staff meeting. And my first sentence was not not much is going on today. And that was exactly five minutes before the first plane hit the hit the tower. And of course, after that, everything changed for for for us, you know, the first executive order for us, the first one, I think first 1 or 2, was establishing the Office of Faith-Based Initiatives. And once September 11th happened, then the executive orders having to do with with aspects of of the war on terror that became more more central. But that was not not particularly important for for us in terms of of Trump. I mean, he's going to use executive orders, I think, more than we did and probably more than most presidents do. I think one thing to really be alert to is the so-called Schedule F, and that has to do with trying to replace tens of thousands of civil servants, people who stay in government through various various administrations. They're not politically particularly politicized. I think probably the pejorative is that they're referred to as bureaucrats. I mean, in my experience, these are extremely important, capable, competent people and they're extremely important for government to run, run efficiently. And what happened at the end of the Trump administration is that they tried to sort of schedule F, which is to try and remove these career civil servants and replace them with political appointees. And they ran out of time to to do that. But they are going to try and do that Now. I'm worried about that both because I think just as as a more neutral observer, I think that trying to replace those civil servants with political employees on a mass scale is going to hurt just competence in governing and in general. But beyond that, I worry about it because this particular president, with the particular people that he wants, in my estimation, is determined to do tremendous damage to the institutions of government and even the Constitution itself. So that is something I would keep an eye on. It's not the only executive order that they're going to that they're going to use for sure, but it's one that I think deserves a lot of a lot of attention and a measure of concern.

ANTHOLIS: We're going to turn to questions for the audience in about 7 or 8 minutes. And I'm going to pose a question to Katie. But one quick one, just following up. You mentioned both the tax cut, No Child Left Behind. And let me just say, that's a little bit of right brain left brain in the Bush administration. Right. The note the tax cut was done almost entirely, I think entirely by Republican votes, maybe a Democrat or two. No Child Left Behind was bipartisan, and President Bush started working on it in the transition with Senator Kennedy. And it took almost a year to get done. One could say of the Trump administration. There were things that he appealed to swing voters with inflation, perhaps even immigration. But then there were things that were very much directed toward the base, some of the more disruptive things like dismantling the Education Department and things like that. Or or schedule F are there, as you are in the White House dealing with that. You're having to manage the internal debates around that. Are you watching particular

internal debates in the administration, in the Trump administration, for whether the Susie Wiles of the world or the Stephen Millers of the world seem to be having an upper hand?

WEHNER: Is that for me? Yeah. I mean, of course you always do want to watch that and find out who seems to have the the upper hand. But but I think this is just different. Donald Trump is sui generis. So for one thing, I would say just and we've all observed him maybe for longer than we wish. But in any event, I think it's fair to say that, you know, he may wake up on Tuesday and think one thing and wake up on Thursday and think something entirely different. He's not a person who is focused on policy. I mean, I've talked to people who've worked in the Trump administration, the first one, and what it was like to try and brief him and that you just said didn't have an interest, wouldn't wouldn't read things would happen after you slide at a very short attention span. So I think a lot of this is just going to be on a whim and on impulse. And I think that's how he's he's led his life. It's how he ran his campaign. You know, people told him time and time again, some experts who have run campaigns successfully, he said you have to be disciplined. You have to do it this way. You have to focus on these issues. Don't do that. And he did that rather than the more disciplined approach. And he won. And so given his personality type and given the fact that he's won, he thinks that he can get away with anything that he knows better than anybody else. And I think to a degree, unseen in my in my lifetime, the number of checks on on him, whether internal in the White House or just having aides that you feel like can go to a president say, I wouldn't do this, I think you should rethink this or too, you know, in Cabinet positions to actually stop things that he wants to do that we're not going to we're not going to see. So I pay attention to who has the upper hand, you know, Stephen Miller, Susie Wiles, That stuff matters. I think it matters less in this case than it does in most cases.

ANTHOLIS: So, Katie, you're you're watching all of this, particularly from the Katzman initiative, which pays attention to Interbrand, the health of inter branch relations, and not just between the White House and Congress, but also the way the courts come in across this range of issues. There are a number of different things that will go back and forth between the White House and Congress and may get kicked to the courts like schedule F or rulemaking authority in the agencies. So as this plays out in the not just the transition period, but in the first months of the administration. Are there particular things that you're watching there?

TENPAS: Yeah, that's a tough question. I really wanted Pete's question, which was originally my question, but that's okay. I'll answer that. I would just say that. So in terms of the judiciary and what the Katzman issue really cares about is trying to ease the tension between the branches. Right? They were created to have a

tension between them. But Bob Katzmann, who was a scholar at Brookings from 1981 to 1999, really believed that you could come up with small ways to sort of educate both sides, and that if members of Congress understood the constraints on judges and if judges understood the constraints on members of Congress, they might get along better and there would be less tension between those branches. At the moment, we have unified government. And so in the case of inter branch relations between the White House and Congress, they seem to be synchronized to some extent. How long that lasts is another question, because I think that Trump's impulsiveness and his behavior might wear down the Speaker of the House and the new majority leader over time so that those tensions between that branch right now, it seems relatively harmonious. But I think over time that could be problematic in terms of judges, too. You have to remember that president President elect Trump is going to get a lot more judicial nominations and to fill up the courts. They did an incredible job. In fact, they have the record going back to Reagan in terms of the number of appointments to the courts, court of appeals and the federal district courts. There is question and sort of speculation about whether there will be some Supreme Court appointments if Justice Alito and Justice Thomas decide to retire. So there will be additional appointments there. Interestingly, when President Biden took over, took office, they really seemed to prioritize. Judicial nominations. And so there's a chance if they get more nominations in the next couple of months, I'm sorry, more confirmation in the next couple of months, they will come close to have matched the Trump administration numbers. So, I mean, he's got a lot of power. You know, I wouldn't, you know, speculating on schedule F and the constitutionality of that. Basically, you're changing all these merit based positions to at will firing, which is was not the idea of the civil service reforms, you know, at the turn of the century and going forward, which we were trying to eliminate the spoils system. And this is basically flipping us backwards in time. I'm not a lawyer, so I can't really sort of assess the constitutionality of Schedule F, But like Pete, I have a huge reverence for civil servants and their expertise. They are the institutional memory and expertise in our government that we rely on every single day. The Partnership for Public Service does incredible work, highlighting the stories of key public servants. And if you read any single one of those stories, you will be inspired for the rest of that day, if not longer. And so schedule F makes me shudder a little bit because of the value that I see in our civil service. So I am hoping the Court's okay. And but I have no sort of expertise to really determine that.

ANTHOLIS: So then let me steer you back to the question that I meant for you that I asked Pete. But I am curious to get your take as well, because you study White House both continuity and turnover. Yeah, the White House is going to be managing different strands and different forces of the coalition that elected President Trump and that will carry forward his agenda. What are you watching for there?

TENPAS: So on the one hand, there is the impulsivity, which sort of is a wild card in terms of efficiency and ability to implement your agenda. On the other hand, there's Project 2025 and there are a group of people who've been working for the entire Biden administration, you know, sketching out specific programs and policies that they want to implement. So in that respect, you know, 2016 was a surprise win. Like, whoa, we won, now what do we do? But these people have actually been carefully considering legislative options, executive orders. And I think it's actually a more dangerous position. And the fact that he is impulsive in a sense almost pushes more authority into the hands of these unelected individuals who work in the White House. So I would say that despite the perceived chaos and disorganization of the individual at the helm, I feel like the people working for him are much more organized this second time.

ANTHOLIS: Got it. Okay. Now is the time to turn to questions from the audience. Please wait for the microphones. That'll come from the back. I have a question here. Please tell us who you are and we'll take this question and then this question.

AUDIENCE QUESTION: Hi, Ashley Murray from States Newsroom. I just wanted to ask you about these presidential transition memos that haven't yet been signed by Trump. So there's the GSA memo and then the White House memo. I did read the 2010 amendment to the Presidential Transition Act. Could. I don't ever go. I couldn't really understand what the consequences were for not signing this. Can you explain the weight of these memos? And does he really have to sign them?

TENPAS: I can take that one. It's absolutely critical. Okay. There are three there's one with the GSA that basically gives the transition team roughly \$7 million in addition to computer and workspace. They didn't sign that. They don't need it. If they had signed that, they would have had to report contributions to the transition of over \$5,000. They don't need that, Right. They've got billionaires on their side, so they don't want that. The second one, DOJ, through the FBI, does security clearances. That is critical in order to get access to confidential information and national security information. Those staff members and transition team members need national security clearances. There are there's reporting that indicates that there's still resentment for the Mueller report and the information that they received that they gathered in that period. That was they gathered from the FBI, I suppose. So there's very a high level of suspicion towards the FBI and DOJ, which might reflect the appointment that he named as well. And then the third is with the White House and the White House. The White House memoranda. The signing of that comes after you've been ascertained as the

next president elect, and that what is critical, because the White House grants you access across all of these agencies so that you can bring your teams in to get briefed so that you know what to do on January 20th without signing it. By law, they cannot access these government offices. So that means zero briefings. To me, that's really dangerous. If you look back, the Miller Center has done an incredible project called the First Year Project, where they looked at presidents first years and noted that there have been a whole series of crises. So if you think about the Clinton administration, in the first year, there was the first bombing of the World Trade Center. There was Black Hawk Down. If you think about JFK, you had the Bay of Pigs within his first year. So there are all these historical incidents that indicate that this first year is a really vulnerable moment for the United States. And if you look at just what happened in this past election, the amount of Russian interference, Iranian interference, the bomb threats that occurred in Atlanta that they have now linked to Russian. This is not a time where you need to be lackadaisical about trying to figure out how the government works or what the crises are across the government. I think these memoranda are really important. One of them should have been signed September 1st. One of them should have been signed October 1st, and then after the election, the Harris transition signed both of them September 1st, October 1st. And the Trump transition has not signed any. Their public remarks indicate that they are negotiating with the lawyers. Unclear. I don't have any inside information, but I hope that helps.

ANTHOLIS: And any. I. That question was covered. Other questions from the audience right here in the third row.

AUDIENCE QUESTION: Jim Heffner, George Mason University. You touched on this, but would you speculate further about the challenges to Susie Wiles as Chief of staff, which traditionally is guarding access to the President? Control it, making sure that all issues are staffed out and so forth. And for people try this in the first Trump administration. What do you think about how Susie Wiles is going to be able to deal with these challenges?

WEHNER: I think she's going to be crushed by them, and that's has nothing to do with her. I think it has everything to do with with with Trump and how how he operates. As you said, there were chiefs of staff, four of them in the first administration. We now know through reporting Bob Woodward and others and even public comments that they have made, how extraordinarily difficult it was for for them to try and control Donald Donald Trump and and the chaos that was there. And I think Trump, to point out, is going to make Trump on one point all look like a like a walk in in the in the park. So I think it's just going to be really, really

hard, harder than the campaign. I mean, you have somebody like just, you know, take it. Take an example. Elon Musk right now. What exactly is his role? How does one control him? What means does she have to control him? Does he have complete access to to to trump somebody? He says to do one thing, somebody executes it's somebody else's. Don't do it. I think it's going to be really, really hard. I also want to say I do think that this is a surprise. I would say to me, but I think it's important that we just realize what is unfolding even in the transition, that what we're seeing, these ethics rules that are being ignored, these security clearances that are being ignored, the efforts to weaken the checks and balances, the threats which which may be realized of recess appointments, ignoring transparency. And, you know, we can play this back in in four years, but I certainly wouldn't be shocked if President Trump ignores court orders, including Supreme Court orders. There's I think what we're what we're finding out is that an awful lot of government is is done by norms and by expectations certain what were once certain givens that people had. They haven't necessarily been litigated. But the Supreme Court can you know, if the Supreme Court had said they did say to Nixon that you have to turn over the tapes in 74, there was no question that, you know, he would he would have to do it or he would have he would have been he would have been impeached. If you've got a version of this now and, you know, as a version of what what Stalin said, which is how many divisions is the pope have, how many divisions do Supreme Court have? It's a very interesting opinion and I choose to ignore it. That is the kind of thing that I expect that we're going to see. And we haven't seen it before. And I'm not sure that our system is is particularly equipped to deal with it. But we are where we are.

ANTHOLIS: Thank you for the question. Another question here and then one over there.

AUDIENCE QUESTION: Albert Price. A retired professor from University of Michigan, Flint. In political science literature. Congress and agencies are connected because all of the programs that were created were created by Congress to benefit the constituents of Congress people. With both Schedule F and the idea of eliminating entire civil service positions. How does that make Congress an ally of Trump and the idea of dismantling government because it exists to benefit. Congress, the structure by Congress? Do you see that as something where. They might actually have some spine. Or are they going to just say, do what you want?

ANTHOLIS: Louisa, do you want to take that?

TERRELL: I think you raise a really good question. And one thing that I've given some thought to having been on the Hill for a long time. You're absolutely right. Like, I can walk up in the hill and find a senator who cares very much on both sides of the aisle about an entity. And there are a lot of senators and members of Congress who in some ways feel like, hey, I'm going to outlive the president. What I really care about, I'm on a subcommittee. I worked hard about funding. I care about the staffing. They're like their babies. So I think that is a really important question and one that is going to come to the fore. Right. And how. And some of that you're going to see in the nominations fight, right? Like I'm a I'm a senator or a member who have been on defense, you know, been on the right committee, is appropriating kind of care. Listen a lot to the rank and file who work there. You know, how is that going to influence their vote on who leads the agency? That's one. And then to your point about, you know, what is too far, what how far will they go to protect their kids? I do think part of how we think about that, again, I agree so much with with Pete and Katie about sort of just this new world order and where is there going to be both political incentives and political cover for for some Republicans to be able to push back? How and where does that happen? Who has the room, who succeeds if it happens, Who gets punished if it happens? And by punished, that's how you know, there's some retribution in that. But again, I do I do remember so much sort of longtime Hill folks would always be like super great about the president. You guys come and go, We're here for the duration. And what what how will that tension show up now, I think is a really good question. I don't know the answer to it quite yet, but I think we're going to see it both in the nomination and that will tell us more about what lengths will go to.

ANTHOLIS: Question over here on this side. And maybe have one time for one more question after that. So if somebody has a question, please raise your hand.

AUDIENCE QUESTION: Thank you. Bill Hetterman from the Maxwell School CSI Joke program. Hi. It seemed like the panel was grouping together attacks on government and attacks on the Constitution and my read of the presidential vote was that the American people still have serious reverence for the Constitution. But the people that voted for Trump said, I'm so unhappy with the government that I'm willing to let the ball loose in this China shop and I wonder if you see a distinction there and how that can be paid attention to fuel.

WEHNER: Yeah, it's an interesting question. I'm not sure that I could discern the degree of reverence the American people have for the Constitution or not based on this this this election. I think to the degree that I would infer anything from it, it probably worries me more than it reassures me. And the reason that I say that

is because this is an individual in Donald Trump who attacked the Constitution in a very public way in terms of the peaceful transfer of power. The attack on the Capitol and all the rest, that wasn't something done in secret. It was done in very vivid images. And the American people knew it and they had seen it and they lived through it. And they said, that's okay, we'll go with him, you know, one more time. So but, you know, if you look at it, what people voted for, what was driving factors in the election. Reverence for or non reverence for the Constitution doesn't appear it was primarily the economy, the direction of the country, inflation and immigration. It was sort of a cluster of cluster of of of issues. I do think that that the other thing that you mentioned, which is so there's constitution on one hand and then there are covered government and governing institutions on the other. There I think Trump did tap into something that exists. I'm going to set aside for now, partly because we don't have enough time on whether that antipathy and lack of trust in government is fully warranted or not. There's no question, based on the on the survey data, that that the people feel like the government is profoundly out of touch with them. They're angry and they want somebody, at least a lot of people want a kind of wrecking ball. Now they think that the wrecking ball is going to create good change. Sometimes wrecking ball creates bad change. So there is a tremendous motivation in the public for change. But whether they get the change that they think they're going to get is isn't is an open question.

ANTHOLIS: Katie, you want to take that?

TENPAS: Yeah. And just one more thing to add to that is that there was exit poll data. Take it for what it's worth, because exit polls are notoriously dubious, but indicating that the idea of democracy and if you remember, the final sort of the final chapter of the Harris campaign was really focusing on democracy and the threat that he posed to democracy. The exit polls show that that didn't really resonate, that it was more of the economy and more immediate immediate concerns like the economy or the cost of groceries and things of that nature. And in the circular firing squad, which occurs after the Democrats lose their elections, you know, there are people who are saying, the Harris campaign, they shouldn't have pursued, they shouldn't have pushed that theme of democracy because it just didn't resonate. It probably always came across as elitism. And secondarily, that there are sort of two views of democracy. There are a set of people who actually think that January 6th was completely legitimate and a good way to exercise their democratic rights. And I realize there's obviously the other view, but I think that democracy kind of means different things to different voters.

ANTHOLIS: Louisa, any closing thoughts here? We've got less than a minute left.

TERRELL: I'm going to do I'm going to agree with my esteemed panelist and and agree with with both of what you both had said. I really do. I think it's mostly comes down to like kind of throw the bums out and we don't care about the institutions and so dismantle disruption. And to Pete's point, what what that rats I'm not sure people were hyper focused on, but we'll see where we we'll see where we land.

ANTHOLIS: So I'll I'll way in with 20 seconds left. There's been a growing use of executive power that goes back at least four presidencies, and presidents from both parties have increasingly used executive power. And that plays to the base of both of their parties, and they're much less concerned. That's why we see a rise of executive orders, one president after another. The American public divides roughly equally into four quadrants. People who want a little more government, people who want a little less government. People want a lot more government. People want a lot less government. This is the first time since the last time President Trump was elected that people want a lot less government, have elected a president, and we'll now see whether they want the fruits of of their investment. So with that, thank you all. Let us please thank our panelists. Terrific, terrific group. And now I get to introduce Sarah Binder, my colleague. Still, since I'm a nonresident here at Brookings from governance Studies, who's going to moderate and introduce the next panel? So thank you.

BINDER: Excellent. Give you a chance to get your waters and then we'll get going. All right, Ryan, great. Thanks very much for staying for panel number number two. Today, I'm going to welcome your panel on essentially confirmation, politics, advice and consent. I'll introduce the panelists and then we can get our discussion underway. So I'm joined first by Katherine McGuire. Catherine is the chief of the American Psychological Association, first chief advocacy officer. She came to the APA after decades of public service, including senior staff leadership positions in Senate committees, and most recently serving as a Senate confirmed Assistant Secretary for Congressional and Intergovernmental Affairs at the Department of Labor. Christina Kinane I forgot to ask how to pronounce your last name, but we're doing okay. Assistant professor of political science at Yale University. She studies the interactions of Congress, president and bureaucracy in policymaking. She is my go to top expert on appointment politics, including when presidents opted not to send nominations to the Senate. Molly Reynolds, my colleague in government studies, a senior fellow. She's an expert on congressional rules, especially the Senate's, in how the rules can and cannot shape policymaking. So before we turn to the panel, I think I have to say with regards to what we might encounter

come January and his appointments, as I think you are all grasping, this is not your father's or your mother's advice and consent. I don't want to say that the wheels are coming off the bus already. They could certainly use a little bit more air in the tires. So this morning I do want to keep us keep us grounded in the contemporary processes of advice and consent. But also we need obviously, to keep our eyes on what what is unfolding around us and what what is coming. So with that optimistic note. Round one. Awesome. I'm going to start with Christina. Could you set the landscape here for us? What are the broad choices facing a newly elected president when he starts to put his administration in place? What's the scope of the challenge? Where are the vacancies? How do we know or what do we know about past presidents and tackling this?

KINANE: Great. Thank you. Yes. So the challenge I think the first panel kind of indicated is is vast and and it is difficult and it is complex in a lot of ways. And Katie had mentioned this, you know, 4000 number of of presidential appointees. And that number that number is is a lot. There is there's stacks and stacks of resumes. And, calling, that the Office of Presidential Personnel has to go through. But of those, you know, between 3500 and 4000 presidential appointees, there's a little over 1100 that require Senate confirmation. And those include 481 thereabouts that are the what we call powers positions, presidential appointments that require Senate confirmation in the 15 executive departments. And so these are Cabinet level and sub-Cabinet level positions that are tasked with the decision making, the that they're at the top of the hierarchy or the or the second rung of the hierarchy in the bureaucracy. And they're the ones with a lot of the authority to actually make government work and finalize those actions of of all of the career civil servants that we talked about that were talked about in the first panel. And so that includes also, you know, then then you have you move out of there and you have like your 93 U.S. attorneys, 93 U.S. marshals, you know, various people at EPA and over 195 ambassadors at State. So all of these people have to exit government right now. And as Katie said, it's a lopping off of the top pyramid and that creates vacancies. And so those vacancies are created because the resignations are requested and and generally accepted. We expect that the Trump administration will accept all of these resignations. And for those 1200, there has to be a Senate confirmed person or there has to be an acting to fill that position. Or, as you know, Trump has indicated, perhaps a recess appointee that will that will fill those. And so what we know in the past is that starting with Reagan, Reagan was the first president to explicitly request the resignations of all of these Senate confirmed individuals. And in requesting those, accepting them and creating those vacancies would then clear the way for his choices. And in a lot of cases, right at transition. You have careerists, you have these civil servants step in as acting as they step in for, you know, a few days, a few weeks, perhaps a few months while the Senate confirmation process is going through. And, in fact, in the in his first term, he explicitly said that he

was delaying nominations in a lot of departments to extend the time at which those vacancies we saw a lot of vacancies extended throughout Tillerson's State Department. And so I think that what we can expect is a lot to fill and a lot of acting ins will be stepping in in the in the intermediate period of time where there isn't a recess appointee put in.

BINDER: Excellent. And another I'll come back to some of these acting's in what Trump's likely or not likely likely to do. Molly it feels like the Trump presidency has already started, even though Inauguration Day is two months away in the new Senate, we don't get it until January. So tell us generally, what are you looking out for as Trump makes announces his intended appointments as Democrats are scurrying to confirm Biden judges. And in January, if and when we make it there, when the new Congress begins, flash points, pressure points, what are you looking out for and what should we think about more generally about advice and consent?

REYNOLDS: Sure. So as you mentioned, in some ways that politics, the sort of confirmation politics of the second Trump administration have already begun. So I'll say I'll note first that this week the Senate has been attempting to process pending nominations for a number of federal judges who have been nominated by President Biden. And we saw earlier this week sort of a little bit of of hardball on the part of Republicans, sort of a night where they kind of made everyone stay in the Senate and take a series of votes to go into and out of executive session in order for Chuck Schumer to file cloture on these pending nominations. And, you know, and refusing to waive the mandatory quorum call, that sort of thing. They also then pretty quickly went back to kind of business as usual and have indicated that, you know, they're willing to reach time agreements to have the votes when they want to have the votes and that sort of thing. But I think this is a useful reminder that there are kind of different levels of hardball in different levels of politics that we're talking about and that, you know, we should be thinking about. If Republicans felt like they were under pressure this week to play a little bit of hardball. And the remaining Democratic judicial nominations, will Democrats feel the same way in January? And, you know, they also try to insist on votes to go into and out of executive session. And what will Republicans do if they do that? And so it's just it's a good reminder that we have kind of this low level procedural gamesmanship that underlies the much bigger and broader questions in terms of kind of what I'm watching between now and the end of January. I think the next thing I'd say is what does the actual roster of Cabinet nominees look like by the time we get to January 3rd? So it's not still November. So a lot of time between now and January 3rd. We have a number of nominees who I would say are especially controversial or particular or sort of especially potentially challenging to get through to confirmation. Have

any of them been pressured successfully to step aside to withdraw their own nominations, or are they and President Trump just resistant to any kind of political pressure from Senate Republicans? And or is President Trump and sort of with the nominees as his allies, just really interested in picking a political fight with with Senate Republicans? So we'll sort of get more into this and a little bit, I think, when we talk about the president's recess appointment power. So once January 3rd rolls around, we've sworn in the 119th Congress. It is quite common, particularly for some of the president's highest profile nominees for the Senate to start moving on, processing the nominations, even though, like the nomination won't formally be made until President Trump himself is sworn in. But to start the process of potentially holding confirmation hearings in those couple of weeks between January 3rd and January 20th, I think one thing to kind of keep an eye on in in that in that respect is particularly if we are still talking about some of these most controversial. A nominee is what do those confirmation hearings look like? Are they do they ultimately sort of surface information that is potentially damaging to the individual's prospects for confirmation? Or do we, as is often the case in contemporary American politics, really see a contentious confirmation hearing kind of turn the dial on negative partizanship and basically cause both sides to dig in even further. Here I'm thinking about kind of the experience with the Brett Kavanaugh confirmation hearings. Are these would a very contentious hearing sort of cause again cause for Republicans to actually dig in further in support of a nominee, even if what's coming out in the course of that hearing is really potentially politically damaging to the individual. And then the last thing I'll say and we're going to we're going to dig into this, I think in more detail in the next round is this question of if we get to January 20th and President Trump has been sworn in and formally submits the nominations for the current set of folks who have been identified, are there any of these individuals who the Senate is really not interested in holding confirmation votes on? And then at that point, do we sort of move into what I'll sort of call the recess appointment gambit? Do we move into the world where President Trump tries to get these folks in place by using the recess appointment power in a way that has not previously been used and I would argue was not anticipated by the drafters of the various pieces of the Constitution that fit together to create the possibility of the president using the combination of Senate adjournment and the recess appointment power to get some individuals in place through the Senate is not interested in in confirming. So we may well get to the point where senators are faced with the choice of either voting for nominees that they don't really want to vote on, but protecting the prerogative of the Senate versus kind of taking taking the easy way out, but in a way that is damaging to the Senate's institutional health. But we'll talk more about that in a little bit.

BINDER: What could go wrong? All right.

REYNOLDS: Nothing whatsoever.

BINDER: This is not a laughing matter. I appreciate it. But All right, Katherine, you have been in the trenches. You survived. You thrived as he was in your here at both ends of Pennsylvania Avenue, and you've been confirmed by the Senate. So I'm hoping you could bring us inside the process. What is it like? What do you tell nominees who've you've been the Sherpa for them? What are they like to encounter at various stages? And then I think in another round, we'll come back to the uniqueness, perhaps of this round.

MCGUIRE: Absolutely. I would I would first start out by just letting everybody know I do work for the American Psychological Association. And we did do a major Stress in America survey right before the elections. And it was all about political anxiety. So I just had to ask, please raise your hands if you're suffering from political anxiety. Over 80% of America is suffering from political anxiety. We had the Harris Group Harris poll. Help us with the survey. And the other interesting information that came out in that survey was when participants were asked whether they felt or how they felt about if the checks and balances that were in place in our in our society were working. And across the board, 76% of Republicans said it wasn't working. 79% of Democrats said it was working and 74% of independents. So there's something I'm just going to start out by saying there's something going along going on here. When ideologically across the political spectrum, is there something there when everyone's feeling like checks and balances aren't aren't working? And to that point, your question was about the Senate process. I was a an assistant secretary in the Labor Department. I've also served, as she has, what's known as a Sherpa, meaning I am escorting those individuals who are nominated through the Senate, through all their meetings, coaching them, teaching them how to get through a confirmation process. And then on the other side of it, I was staff director on the Senate Health, Education, Labor and Pensions Committee, where I actually ran the nominations that were in the Senate. And the first thing I would talk about by way of the question about becoming a Senate appointed or confirmed individual would be. You know, several things to ask yourself. The first would be, what is your motivation? I like Louis. On the previous panel. We were we were we call our Senate Senate rats, so to speak, very, very loyal to the institution. And I, I mean, I literally I grew up in the institution of the Senate, having spent over 18 years there. And I was a public servant first and foremost. So I serve a servant leader. And so when I was called upon to serve, it was to serve serve the government, serve the institution. When I talk about your motivations, I have seen those who have been nominated and then they get through the confirmation process and they were more about power and glory, really thinking that these positions were

going to elevate them in some stature. And they had some very rude awakenings because in the end, when you're in a Senate confirmed position, I have not served in the military, but I almost liken it as in serving in a military capacity because you're serving the mission. You are serving at the pleasure of the president. And there is very little room, very little margins for any individual thought in that process. And so I think that was something that I learned throughout my experiences. The second thing for people that are looking at becoming a going through a Senate confirmation process is that I always say get your financial house in order. You should do that before you ever think about it. There is heavy scrutiny by the White House Office of Ethics, but also the legislative counsel's office looking at your financials. And those financials will be on the front page, possibly of every newspaper. So you should you should definitely get your financial house in order. And and the other thing is that you should talk to your family and friends. And I'll tell you my own experience. So, I mean, I I'm still with my husband after 35 years, I should say that. But I was in a in a really interesting position, having worked in the Senate. And I have a reputation of being very bipartisan and a legislative problem solver. And when I was nominated, I served for one year in the Trump administration. One year I came in as what is known as a privileged nominee, which is a very rare thing, which is where they they I was nominated by the president. My nomination actually went on the Senate calendar. It sat there for ten years. Nobody objected to it being there. I did not have a hearing. I did not meet to meet with a single senator. I literally ran my own nomination process, which is a rarity. But we are also in a position back then where Senator Patty Murray, who you may know the name, she was ranking member on the Senate Health Committee, She had known me for over a decade, and she wanted to make sure, as the ranking member on that committee, that she had somebody that she knew and the committee knew that they could also reach when they had questions. And so that that was a rarity. But I would say that what I also learned through this process and is, is that it is more complex than what you're seeing play out in the newspapers. There is the federal side of it or the White House side, where in the past I'll say in the past, because I don't know what the process is right now, like everybody else, where you have an ethics financial disclosure requirement, you have an FBI requirement, you have to sign an ethics pledge. And then on top it, on top of it, we're all hearing, you know, these loyalty, fealty type pledges that the Trump administration has been prone to. Once us once a president is sworn in, that is when those papers that accomplished that would accompany the nominee are actually transmitted to the Senate. And that is when the Senate from you might not know they all every single committee in the Senate has their own process. Every Senate committee has their own biographical questionnaire. Every every Senate committee asks for your financial disclosure. And that's where things get really, really interesting because Senate staff are very, very curious individuals. They are some of the best individuals at oversight, and they really start digging into things. And that's where things like, you know, you

paid your maybe your your your nanny or your domestic help less than minimum wage. There's those kinds of things come up. You may have excessive credit card debt. You think the Senate staff are really good at combing through law enforcement police records? I think some of that is because they've done opposition research for campaigns in the past, so they kind of know where to look. But I think that that is something that. Those who are wanting to put themselves in a position they don't really realize up front. They think that they've got all the paperwork done, they've got the nomination of the president, and then all of a sudden it hits the Senate and the Senate is like, whoa, we're going to we're going to really scrutinize this. And they have their own process. So I'll just turn it back to you. I look forward to the conversation.

BINDER: Excellent. So let's start with that moment when those Senate committees are doing their own vetting. And I'm curious, given the reports, as you mentioned, that there seems perhaps Trump, once he's in office, won't allow the FBI to do background checks of X number of nominees? I guess two questions. So first, is there any recourse for Senate for senators and the Senate to secure any type of FBI background checks, even if perhaps only in the period before January 20th? I don't know. But second, I guess, how much of a substitute are the committee based vetting processes? How much confidence would you have that there'd be sufficient vetting, sufficient for senators and for those committees that are used to a particular level of confidence in the nominees?

MCGUIRE: So I don't have a real clear answer on that. But I an observation and I heard this actually from a senator yesterday, and he had pointed out just the irony that all senators, in order to have gain access to confidential as well as top secret information, they all they all have background checks. Everybody's fingerprinted. They don't just just by virtue of clearance. Right. Get or being sworn in, just get automatic access as senior staff on Capitol Hill in order to get clearance. We were all fingerprinted and went through these different processes. So I think it's just going to be interesting. Just when we're looking, we're thinking about the Senate and thinking even even from financial disclosure aspects that what's required of a senator perhaps should also be required of a Cabinet appointee or a political appointee.

BINDER: And maybe the answer is obvious or not, but is the concern of the of the senators by not having that full vetting? I imagine one part of a concern is a policy implications or blackmail, like what was available. But is there also a concern for senators going out and voting for, say, to confirm and then being blindsided leaders like how do you like what's going through senators heads when they're faced with this?

MCGUIRE: I think you just identified the questions, which is it's always I, I would say lawmakers in general are risk averse. They want as much information as possible. They want to make educated decisions. And it's really hard to move forward when you don't have when you don't have all the cards because it would expose could also expose them politically. I would I would also say just thinking about what we've been watching with the attorney general nominee, Gates, as well as the Department of Defense nominee, is that the media plays. I saw there was a media course. The media plays an incredibly crucial role as kind of the investor and a fellow investigator, so to speak, in the process. And I mean, over the over the last 25 years, I mean, there are examples where the media actually has brought different aspects of of a nominee or, you know, or or new information to light that was missed even in these questionnaires.

BINDER: Excellent. Christina, tell me. So you've done lots remarkable research on acting's and presents, use of acting's, and not just President Trump's use of acting's, which I thought was quite, quite important. So I guess the first question is about the acting's the, the dynamic. You noted that when Trump asks and receives resignations, that there is a top career person who would move in as acting. I'm curious first about a level of authority, like what is this just stalemate? Is this just put the plane on? Although I don't know. I'm not a pilot. Autopilot Auto could choose auto crews. I don't know. Whatever. Is that is that what goes on here? And then I come back to other questions about how else you can get into the acting positions.

KINANE: Sure. So, I mean, like the the biggest part about the absence of a Senate confirmed appointee is that the position doesn't have to actually be filled by an acting it under. It's you know, as long as it's covered under the federal vacancies reform act there is a provision there that says by default the first assistant will become the acting. But that requires two things. One, that there is a designated first assistant that exists as a as a position. And two, that someone is actually filling that position. And so in. A lot of circumstances. The place at which that first assistant position exists and a person is filling it is when there is a careerist, a career civil servant who is then filling that position. But there's a lot of first assistant positions that are political appointees that then become vacant because of this, you know, wide scale resignation aspect. And so the Federal Vacancies Reform Act, which is just which is the Second Amendment to the Vacancies Act passed in 1868. This one was passed in 1988. And it has a lot of explicit provisions about who can serve as an acting, how long they can serve for. And the acting states itself technically carries the same weight. You are you are allowed to perform the duties and authorities of the position. Now, courts a lot of courts have court cases have not quite narrowed down what that actually means. A lot of the general consensus is that if it's the it's the powers that are non delegate ball, which requires that at least that there's a statute that

Congress has said that this position shall be the only position that does this thing. And outside of that, there are powers and duties and authorities that the position carries, either in terms of regulatory powers, powers to sign off on grant making powers to sign off on investigations, on strategic planning, on budgets, on or, you know, a inspectors general, on on audit reports and all of these powers, as long as they are not designated explicitly as non delegate, all can be performed by. Well, if they are if they are non delegate or they can be performed by the person who's an acting. But the curious case of it that Trump really highlighted in his first term was that you can remove that active status title and have someone performing the duties and authorities of the position in which they're basically serving as an acting without that acting title. And the place at which that would come into play is if a nominee isn't submitted to the Senate. So the Federal Vacancies Reform Act not only requires certain or stipulate certain individuals who can fill this role as as an acting, they can be the first assistant, they can be confirmed in any other position. So this is where Trump could actually go to commissions, potentially go to independent regulatory commissions for acting and or there are top civil servants or GS 15 or higher. So they could be a political appointee who's been in the agency for 90 days of the last year. And so those are the stipulations for the individuals. But then once they're once they're elevated to that acting status, they have a time limit. And that time limit is 210 days from the time at which the vacancy occurs, except if the vacancy occurs at a transition, at which point it extends to 300. However, the really important kicker in all of this is that the minute a nominee is submitted, the time limit pauses. And as long as the Senate does not move on the nominee, that pause continues. And so as long as the nominee is not returned by rule 31, which I'm sure maybe you'll talk about Molly, but if it is not returned, then then acting can continue to stay and be officially an acting and not have to resort to that performing the duties and authorities of the position. And in terms of of use, yes, Trump Trump did did use them a lot. He declared them my acting's and was was quite had quite an affinity for them in his first term. He if we think about so I, I collected continuous data going back to Reagan and for Trump 27% of his position days of the top level positions in the executive branch department. So these are those 480 or so positions that I mentioned at the outset that are the Cabinet level and sub-Cabinet level positions. 27% of the position days in his first term were filled with acting ins. And, you know, you had this you had this, you know, very big reliance on them. They served and they said they served for an average of 313 days on average, these acting instead. And that might seem like a lot in a big operation. However, going back to Reagan, it actually is not all that is not all that different. In fact, 27% of the top leaders now, this isn't the position days. This is just the top people. 27% of the top leaders were acting and they served for an average of 290 days. So Trump is actually not that far off from past existing use. And in fact, Biden's actions of which he had 25% and Biden and Trump's use of vaccines are actually statistically indistinguishable from each other in terms of

percentage of position days. His was 25%. And so you have you have this this really heavy reliance, but it's not unique to Trump. But what we can imagine is that it's only going to increase because now he knows not only that they exist because he didn't use them very much at the very beginning of his first term. That was much of that was after his first year. And then he started relying on them. And so you might imagine that hitting the ground running in this first time, he'll get people in place where he can use them as actions. I threw that to that FDR a stipulation of first assistance.

BINDER: It is a reason why presidents might prefer acting's shy of not being able to get somebody, someone else confirmed. But what's the motivation for presidents to pursue those that strategy?

KINANE: Well, I think there's a lot. So so first there's the career angle. And you're right, as you'd mentioned, and I don't think I answer the question, but that when a career is to serving as an acting, they're often just a caretaker. And that's because they're going to return back to their career position after they serve as an acting. But when a political appointee serves in an acting, there's really no difference. You know that the difference is that of a of a real light between them and a confirmed appointee because they're serving in a political capacity and because they are serving at the behest of the president. Now, the difference is, is what the rest of the agency and those below them, the subordinates, view the acting as being legitimate or having the authority. And you can imagine that if there's someone who is awaiting Senate confirmation, even if it's a political acting, if you know that they're on their way out or they're only going to be there for a couple of months, then you might not view them as as the as the permanent appointee. That's what we call confirmed people, even though they're 100% not permanent, as we all know. But so so the the the temporary status of these acting INS is going to impact their their view or their that the view of them from their subordinates. But outside of that, there isn't really much constraint in terms of what they can do. And so what we can see is that if, in fact, you have a president who explicitly says, this is my guy, this is the guy that I'm putting in here, I have no intention of of having him replaced or having her replaced or it's very clear that the nominee that's been submitted has no no movement forward from the Senate and that acting is going to serve indefinitely. That's going to verge right up on on the same type of of legitimacy as a as a permanent person.

BINDER: Either nominated the vacancies Act in the substantive forms as the most complex and inscrutable. But thank you for making it seem like I understand it. Awesome. Great. Molly Recess appointments. What do we need to know? And all the other questions? You know, I would ask you. Go for it.

REYNOLDS: Because, you know, you should know that given Sarah is also someone who thinks about the Byrd rule for a living, that the fact that the Federal Vacancies Reform Act is more inscrutable really says something. All right. So why are we having a conversation about recess appointments? I think the sort of biggest takeaway is that this is President elect Trump trying to test the loyalty of Senate Republicans and not sort of flesh that out. But as I said, we have kind of three basic possibilities for how things proceed. So one is that we have is the set of Cabinet nominees. We're still waiting for a couple, but we have the Senate and things will proceed according to the usual process. There will be hearings. There will be votes. The second option is that the Senate chooses to be sent home, chooses to assent to being recessed to create the the possibility of President Trump to make recess appointments. And the third possibility is that the Senate refuses to recess and Trump basically attempts to send them home anyway, using powers given to the president under Article two, Section three of the Constitution, which lets the president adjourn Congress and here I'm quoting in case of disagreement between them, that being the House and the Senate with respect to the time of adjournment. We'll come back to that in a second. So in the first case, excuse me, where we would see things proceed, kind of according to the usual process. I would assume that if a Cabinet nominee gets to the point of having a floor vote, it's exceedingly likely that that vote is going to succeed. It's possible that a couple of nominees would drop out, would decide to withdraw. But in contemporary American politics, it is very unusual for a Cabinet level nominee to outright fail on the floor. The last time we had one of those, a failed vote for a Cabinet nominee was in 1989 with John Tower. So it would not be unprecedented, but it would be unusual to get to the point of someone actually coming to the floor for a vote and having that vote fail. But let's say we're we're in a world where the Senate has decided that it is going to prioritize kind of political concerns and agree with President Trump that they are going to go on recess in order to allow Trump to make recess appointments. The recess appointment power is one that exists under the Constitution thanks to a Supreme Court decision in 2014, basically for the president to be able to make recess appointments. The Senate must be on recess for more than ten days. It's also true that if the Senate and the House are going to go on recess for more than three days, they have to both agree to do so. So there is a world where senators look at this set of Cabinet nominees that the president has put forward and say, look, we really do not want to be in a position of having to take votes on these appointments. But we also do not want to try and push back against President elect Trump to the point of either actively voting them down or resisting President Trump's sort of recess appointments plan. In this case, assuming the House is also on board with this plan, which I will mention briefly in a second. But assuming the House and the Senate both kind of look at the political circumstances and say, hey, we are we don't love this, but we don't want to kind of exercise our institutional prerogatives here. They they could agree to recess for more

than ten days and create a circumstance where President Trump could fill these positions during a recess of more than ten days. If that happens, under the provisions for recess appointments, individuals could serve until the end of 2026. And we also note, though, that in this sort of world, the recess appointment power is a pretty blunt tool. So it's not the case, basically. It would be very hard for the Senate to say and there's no sort of procedural way to bind this for the Senate to say, look, we're going to go on recess, but we only want you to fill like these four positions. We want you to hold the rest of them for us to exercise our advise and consent responsibilities. And when we come back. So basically, it would be if the Senate were to agree to do this by agreeing to go on recess for more than ten days, it really would be just them deciding that the politics of the situation mean that that's what they want to do versus exercising their constitutional advise and consent responsibilities. There are then there's then sort of the refusal scenario. So the situation where the Senate refuses to agree to go home and agree to a recess but does not so simply does not take the necessary action that would create the circumstances where where Trump could use the recess appointment power. And here we're really in this world where what can happen hinges on this, on the definition of disagreement in that that clause that I read to you from the Constitution. So what what constitutes disagreement? If the House sort of at the behest of Speaker Mike Johnson or presumptive speaker Magic Johnson decides that they're going to approve an adjournment resolution that says that they're going to be in recess for more than ten days, sends that over to the Senate, and the Senate refuses to act. Does that constitute disagreement? That is there are reasons to think that sort of under the Senate precedents, the answer would be no. But this is an open question that I think would be very quickly, very quickly litigated in this scenario where. There is a. Where the Senate does not want to assent to Trump's Trump's plan. There also exists the ability for the Senate majority and minority leader if they agree to call the Senate back into session. So that's what they would they do that? I don't know. So that is sort of one a third possible scenario. And then the last thing I'll note is that there has been some reporting in the last 24 hours or so that there may be some House members who are also not super excited about this plan for President Trump to sort of with the cooperation of Mike Johnson, to create the circumstances that could be called this agreement such that he could send the Senate into recess, the kinds of House Republicans who have sort of begun to say that they're not super excited about this plan are not individuals who have shown a real pension in the past for standing up to President Trump when push comes to shove. This is a little bit of like, I'll believe this when I see it, but it is it is worth noting that in this sort of most unusual, this most the scenario here that kind of pushes the constitutional boundaries the most, which is the one where the House cooperates with President Trump to create a circumstance where the House and the Senate are allegedly in disagreement. And in that world, you actually do need the House, a simple majority of House members, to go along with this plan. And so it's

worth noting that, like, we should not necessarily assume that that part of the plan is locked down, let alone what happens in the Senate.

BINDER: Excellent. Thank you. With that, before we turn to the audience, Katherine, what do you make of this sort of trade off, those implicit and explicit in what I was saying, sort of like senators choices here? Right. Roughly loyalty, perhaps to Trump. Obligations and respect they have for the Senate. Like not necessarily prediction of what happens, but like. Well, how hard a choice is that or or isn't it?

MCGUIRE: So I've been sitting here reflecting on everything everybody's been saying, which is a dangerous thing, because I feel my political anxiety going up. But I think. If first of all, the reflection, if I can just share what was going on in my head as I was reflecting on the acting, you know, and the vacancies and I, I was thinking, first of all, that I should share that there really was a cat and mouse game during the second two years of the Trump administration. During 17 and 18, there was a trifecta. The Republicans controlled the White House, the Senate, and and and in the House. And you'll recall that's when the big tax bill went through with all Republican support. And then in 2000, at the midterm election, that's when the Democrats regained control of the House and under Speaker Pelosi. And at that point in time and that was 18 when I was in there, there became a real defensive strategy, which was acting. The Senate can compel any Senate confirmed nominee to come up and testify. That's, first of all. So if you have if you have someone that's acting, they could also compel them to come and testify. So at the Trump administration really was doing and I'm thinking about my own position after I left, as they just left these assistant secretary positions and some of them just opened and then just had squatters with us, what we called them. We had people squatting in there doing the job without the title. Right, or without that, without any type of confirmation. So your question is like, what are what are they thinking?

BINDER: Like, is this this, this choice or is it a choice between what happens at the threat of recess? What?

MCGUIRE: Sure, Sure. So the threat I think that there definitely is, I think, a threat when it comes to the Cabinet Cabinet level and maybe down to the undersecretary level. And then it gets really interesting when you get to the assistant secretary level and like the worker, be assistant secretaries, there's there's like less interest like, yeah, those are those are the experts have spent their entire careers in a Hardrock mining and they're going to serve the mine safety and health and you know that kind of thing. There becomes less interest in in elevating those types of things to, you know, a recess appointment. And I would also say that

judges judges take precedent, really. And if we if we look at right now, we have a Supreme Court that's six three split. That's something for us all to keep our eyes on. If there's any type of a, you know, a retirement or or resignation in the next four years. But if we really get down to the federal circuit, federal appeals court, Republican appointed judges at that level far exceed Democrat appointed judges at the federal at the federal level. And that is the game where a lot of recess appointments just might be kicking in so that there's more of a kind of a legal run. Run the table.

BINDER: Got it. Excellent. Thank you. We have time for some questions. So raise your hand, introduce yourself, and the mic will will miraculously appear.

AUDIENCE QUESTION: Yes. My name is Roger Cocetti. And my question is on the subject of the recess appointments. And I wonder if. If anyone on the panel can be a little bit more precise on a few points. One is, has there been any litigation defining precisely and with greater precision exactly what limits apply to a recess appointment? And secondly, do recess appointments apply to ambassadors. And judges and everything, or simply to Cabinet positions? And if you could also clarify. What two years means, it I gather it's the session of Congress for the next session of Congress. It last. But exactly what does that mean? So a little bit more precision on the limitations and the scope of recess appointments. Thank you.

REYNOLDS: Sure. So I'll come in first and then I'll let Sarah, who's also had to spend a lot of time over the past two days thinking about this question and add anything that I that I miss. So in terms of litigation, the most significant litigation around recess appointments is this 2014 Supreme Court case. I called the National Labor Relations Board versus Noel Canning. I think I have that order right. And basically what generated this case was a choice by President Obama to try and fill some vacancies on the National Labor Relations Board during a very short recess of the Senate. And it was in that. Case that the Supreme Court said that the basically for the for the recess appointment power to be available to the Senates or scuse me, to the president, the Senate had to be on recess for more than ten days. Shorter recesses were not. Did not generate the circumstances under which you could make a recess appointment. And that's why basically since then, we have seen the Senate generally. Do these short recesses come in for what we call a pro forma session where some senator. Often someone who lives relatively nearby, but sometimes, particularly if you are a very new senator, you draw the short end of the stick. I'm looking at George Helmy, who's the appointed caretaker senator from New Jersey, who's had to come down and preside over some of these. In in his brief period in the Senate. And that's why we see this is basically because the Senate will come into

session basically every three days, have a very short session, go out of session. And there's no both. It means that they don't have to go to the House for consent to recess for more than three days. And then it does not create the circumstances under which the president can make recess appointments. As far as I know, there's been no litigation on the question of what constitutes disagreement, in part because also, as far as I know, we've actually never seen the president exercise this particular power under the Constitution, to borrow a term from the Brits. We've never seen him prorogue Congress. So in that sense, again, there's not a lot of past past litigation or precedent to go on in terms of the two years. Basically, it's just that the recess appointment lasts for the duration of the Senate session. And we've come to interpret that as sort of the full session, not not sort of the sessions within the longer two year session. Sarah, Did I miss anything?

BINDER: No. I think I would just add on the potential for litigation and here are some big question marks. We need a legal scholar in the room, if there is one who has it. Let's say there was a Trump a recess appointment, who exactly would have standing to sue if they thought if he had, for instance, perhaps sent Congress home where there had been an actual disagreement and so forth, would you need to wait until that appointee in the agency made a decision that then had harm on the person and then that person challenges it, put aside I don't know what DOJ does in that scenario. I'm just to point out that the Canning decision in 2014, there are three justices still on the bench Roberts, Alito and Thomas. They were a curious they wanted more restrictions on recess appointment power. They didn't like the making recess appointments during a session. They only wanted them intersession. But I be curious when this fictitious case makes it up to the Supreme Court, what happens?

REYNOLDS: And this this question of when does that when did the vacancy occur? Did it occur? Did the vacancy itself occur during a recess? Is also also at play here.

AUDIENCE QUESTION: Of ambassadors and judges? Everything?

REYNOLDS: Yes. And so that was my point about it being a very blunt tool. So if you if you the Senate and you the House are willing to create the circumstances under which President Trump can make recess appointments, that is, he could make recess appointments to anything that is subject to Senate confirmation. There's no I there's no sort of constraint on the power in that way. And then you would get into the question of like if you tried to reach an agreement on a limited set of things, do you believe that President Trump would stick to his side of the agreement?

BINDER: The next question, we have one up here.

AUDIENCE QUESTION: Thank you. Hi. Ashley Murray again from State's Newsroom. Anyone can answer this question, and I think maybe Katherine might want to take it up first. What financial disclosures? I guess every committee's process is different, but is there a standard for the financial disclosures that are required of a Cabinet nominee? And do those ever become public or do they just stay locked in this Senate committee deliberations?

MCGUIRE: There's a bit of a standards. Sorry. Yes, there there is I would say 90% standardization between the federal and then the Senate committees. I think the highest level of scrutiny by way of financial is the finance Senate Finance Committee. They they take I mean, they get down into, you know, the municipal funds and all the different investments or the choices that were in those. And they get involved in, you know, if a nominee is a part owner of a business or what a trust is and the level of involvement, I, I think at the high level, you would probably hear about, you know, so-and-so is, you know, the head of a family trust, that kind of thing. But I have I have not unless there'd been a leak, so to speak, I have not seen those financial documents made made public.

BINDER: Excellent. Another question. Bill in the front.

AUDIENCE QUESTION: First of all, thank you all. It was really terrific. And the exact set of questions that I had had coming in. You've answered almost all of them, but one, when when the the squatters come in, what kind of authorities do they have if they haven't been obviously nominated and confirmed or previously confirmed and formally acting, small acting, what can they do and what can't they do? And what are the constraints on them from doing and not doing?

MCGUIRE: My what Thanks for the question. What what I observed is in many cases, those so-called squatters were brought in at the deputy assistant secretary level. In most agencies, there is an official civilian, we'll call it civil service deputy assistant secretary. And then if we that would be great for all of us to do is to go back and actually observe across government how many political dances the deputy assistant secretaries were added during Trump. That was something that I saw, which was that almost became, I know, in the Department of Labor, almost a one for one across the agencies, putting political appointees that

would many times have really, I would say no experience in the subject matter put in as a deputy assistant secretary. So when they then they would then be called upon to sign letters like to Congress to dispatch, you know, transmittal letters. I would say also at the same time, they are heavily monitored, heavily here, heavily, I think kind of where as a as someone who had worked in the system, I'll just say where I got a little crosswise was that from an integrity perspective, I would never, ever sign a letter that wasn't factually correct and adhered with the law because I was a Senate person, right? So that was always a rub because it was like, okay, well, then we're going to have to find somebody to sign this letter. And so that's when, you know, the dasses come in. You know we call squatters. I know this is on YouTube, but I'll say they were also called minders by those who are in civil service. You talked a bit we talked earlier about Schedule F, and there was an executive order at the end of the Trump administration to try to implement that whole schedule F rating, the government and all these political. But I would I would say that what was really interesting was in in doing that kind of a thing, going in the direction of the schedule F, is that those civil servants, let's say the head of the Bureau of Labor Statistics, you know, who wasn't going to shy away from giving the Labor report as the Labor report, right, not going to make any fuzzy numbers. They became in the, you know, political crosshairs. Right. Because it was like, wait a minute, you got to put a jobs report out and this isn't going to be a rosy jobs report. And so I watch them because they are very I mean, I have highest regard for civil servants. And they would say, here's the law, here's the extent of our regulations. And sometimes, you know, they were put in the broom closet. You know, you see you see that happening, academia or whatever, which is like, okay, if you're not going to be part of the team, then we're going to move you to a smaller office or we're going to move you to the basement kind of thing. So those are some tactics that I saw to try. I mean, seriously, this is not cloak and dagger stuff. This is stuff that's happened, but things like that to try to bring these political people into into line.

AUDIENCE QUESTION: Can they be called to testify.

MCGUIRE: If they are heads, the heads of agencies? Yes, they could be. Yeah. But that they are not they can't. They can't be. No. That's the thing. And I would say we had a little bit of a conversation amongst ourselves that there is a there was an agreement that dates back to the Obama administration where it was a it was a bit of an MOU of sorts with the Senate about in the in Congress about who would be called, who could be called. And they it it was an agreement, first and foremost as the secretary, then the deputy secretary, then the undersecretary, and then you get down to the assistant secretary level. And and there was no more information agreement, you know, about people who are non confirmed after that.

BINDER: We have time for one more quick question. If I could.

KINANE: Just like can I just follow on on that? Just to put like a more so the when you see them there, they're signing it as performing the duties and authorities of the position. So performing the duties and authorities of the assistant secretary or something along these lines. And typically that will happen with the first Trump administration. There is a few actions that I was watching and on 200 day 210, they would strip the acting title off of the website and then any communication or any documents that they signed they would sign instead of acting assistant secretary, they would be principal deputy acting or a principal deputy assistant secretary performing the duties and authorities of the position of assistant secretary. And the minute they do that, they are doing any and all powers duties that are non delegate ball, which is a very small, small thing that are non eligible. So it's basically everything that the position can do. And so it's it's pretty it's pretty vast in terms of the scope of what they can do.

BINDER: Do that vacancies Act just earned another nomination for most complex law. So excellent well thank you very much. Thank you to the panelists. I learned a lot. It was awesome. And thank you for your questions and for coming.