

Holding Power Accountable

November 10, 2020

The Honorable Emily W. Murphy
Administrator
General Services Administration
1800 F Street, NW
Washington, DC 20405

Dear Administrator Murphy:

The peaceful transition of power is fundamental to American democracy.

As you know, the Presidential Transition Act (“the Act”) provides a framework to support transitions between presidential administrations.¹ It is essential to our democracy, our health, and our national security that you carry out the responsibilities contained therein.

The Act defines the President-Elect and Vice President-Elect as the “apparent successful candidates for the office of President and Vice President, respectively, as ascertained by the Administrator following the general elections.”² Once you ascertain the President-elect and Vice President-elect, the law authorizes you to provide facilities, funds, and other services to the incoming administration.³ To be clear, your ascertainment is not a final declaration of a victor. Final disposition of the election is left to other officials after election results are canvassed and certified, which takes weeks.

We urge you to uphold your duty and immediately ascertain President-Elect Biden and Vice President-Elect Harris as stewards of the incoming administration. Doing so will enable the complex transition processes to begin in earnest, including access to classified information and secure communication networks; transition funding; and access to federal agencies that the incoming administration will soon oversee. Last month, Congress provided the full \$9.9 million you requested for transition activities, and it ought to be utilized as intended now that the projected winners are clear.⁴

GSA’s ascertainment does not depend on final certification of results from local election officials. Since 1963, GSA has ascertained the President-Elect and Vice President-Elect “within hours or a day of media projections, and weeks before the results were made official by the Electoral College,” according to the *Washington Post*.⁵ The obvious anomaly was the 2000 election, which was decided that December by a mere 537 votes in Florida. There were no projected results to trigger the transition until then. Those circumstances do not exist this year, where President-Elect Biden and Vice President-Elect Harris are the projected winners in the Electoral College.

¹ 3 U.S.C. § 102 note.

² 3 U.S.C. § 102 note (§ 3(c) of the Presidential Transition Act).

³ See *id.* (§ 3(a) of the Presidential Transition Act).

⁴ The General Services Administration requested a budget allocation of \$9,900,000 for transition activities earlier this year, of which it reported \$6,300,000 would be for a new Administration. See 2020 Presidential Transition Activities 6 Month Report to Congress (May 2020), https://www.gsa.gov/cdnstatic/2020_Presidential_Transition_Activities_6Month_ReporttoCongress.pdf. The money was provided in the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159).

⁵ Lisa Rein et al., “A Little Known Trump Appointee is in Charge of Handing Transition Resources to Biden—and She Isn’t Budging,” *Washington Post*, Nov. 8, 2020, https://www.washingtonpost.com/politics/trump-gsa-letter-biden-transition/2020/11/08/07093acc-21e9-11eb-8672-c281c7a2c96e_story.html.



There is no reason to depart from the GSA's tradition of ascertaining the winners by now. Major media outlets projected the winners three days ago. Former presidents of both major parties have joined world leaders in congratulating President-Elect Biden and Vice President-Elect Harris on their projected victory of the requisite number of electoral votes.

The risks of a rushed and truncated transition are acute. The bipartisan 9/11 Commission specifically cited the delayed transition after the 2000 election as hampering the new administration in identifying, recruiting, and clearing key appointees.⁶ It recommended minimizing as much as possible disruptions to national security policymaking during a change of administration.⁷ Moreover, the incoming administration will be taking over the federal response to the ongoing coronavirus pandemic, which has left more than 237,000 Americans dead, disproportionately people of color. This will require continued coordination and collaboration between federal agencies. Beyond these emergencies, there are myriad other programs, personnel, and policies where a smooth transition is important to continuity of government. The Biden-Harris transition team must be able to access and assess these agencies because they will soon be leading them.

GSA is already behind where it should be in administering this transition. There are no meaningful objections to the election to justify any further delays to your ascertainment of the apparent winners. There is much at stake, from national security, to the ongoing coronavirus pandemic, to a functioning and responsive democracy. Minimizing these risks is at the core of the Presidential Transition Act, which recognizes that "[a]ny disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people."⁸

This is not a partisan matter. It is one of good citizenship. We urge you to cease any further obstruction of an orderly transition.

Sincerely,



Karen Hobert Flynn
President

⁶ National Commission on Terrorist Attacks Upon the United States (9/11 Commission), Commission Report (2004), pg. 198.

⁷ *Id.* at 422.

⁸ 3 U.S.C. § 102 note.