

November 10, 2020

The Honorable Gerald Connolly
Chairman
House Committee on Oversight and Reform, Subcommittee on Government Operations
2157 Rayburn House Office Building
Washington, DC 20515

Re: Request for Hearing on the General Service Administration's Role in Presidential Transition

Dear Chairman Connolly:

As the House of Representatives comes back in session following its Election Day recess period, we request that you use your authority as Chairman of the Government Operations subcommittee to hold oversight hearings with the General Service Administration (“GSA”) Administrator, GSA’s Inspector General, and experts on presidential transition to examine the process by which GSA administrators “ascertain” the “apparent successful candidates” in presidential and vice-presidential elections.¹ While we look forward to the explanation provided by GSA Administrator Emily Murphy in response to your recent letter, we believe that GSA’s process and any response she provides must be rigorously examined in the public forum of a hearing along with the analysis of the Inspector General and other relevant experts.²

On November 7, 2020, following the significant narrowing of uncounted votes in several swing states, media outlets projected that former Vice President Joe Biden was the apparent winner of the 2020 presidential election.³ The GSA plays a critical role in the presidential transition process both before and after Election Day. Pursuant to the Presidential Transition Act of 1963, as amended, GSA provides the President-elect’s transition team with “a fully equipped headquarters” and a variety of services including “office space, telecommunications, IT services and equipment, and furnishings, supplies and other things they need to do their jobs.”⁴ The Act directs the GSA Administrator to “ascertain’ the ‘apparent successful candidates’ for President and Vice President before the funds, services and facilities authorized by the Act become available to the Transition Team.”⁵

¹ See 3 U.S.C. §102 note.

² Office of The Honorable Gerald Connolly, Connolly, Pascrell, Titus Blast Trump Administration Blocking Presidential Transition, Nov. 9, 2020, available at <https://connolly.house.gov/news/documentsingle.aspx?DocumentID=4126>.

³ See e.g., Jonathan Martin and Alexander Burns, Biden Wins Presidency, Ending Four Tumultuous Years Under Trump, *New York Times*, Nov. 7, 2020, <https://www.nytimes.com/2020/11/07/us/politics/biden-election.html>.

⁴ See 3 U.S.C. §102 note; see also U.S. General Services Administration, Statement of David J. Barram, Administrator, General Services Administration before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and the United States House of Representatives, Dec. 4, 2000, <https://www.gsa.gov/about-us/newsroom/congressional-testimony/statement-of-david-j-barram>.

⁵ See 3 U.S.C. §102 note.

The Government Operations subcommittee has previously wrestled with how the GSA Administrator should “ascertain” the “apparent successful candidates” in a presidential election. On December 4, 2000, amidst the Florida recount of the 2000 presidential election, the subcommittee convened a hearing entitled: “Transitioning to a New Administration: Can the Next President Be Ready?”⁶ As then-subcommittee chair, Rep. Stephen Horn (R-CA), explained:

The Presidential Transition Act as amended authorizes funding for the General Services Administration to provide suitable office space, staff compensation and other costs associated with the transition process. The act also calls for the Administrator of the General Services Administration to ascertain the, quote, apparent successful candidates for the office of President and Vice President. The Administrator, of course, does not determine the winners. That responsibility, as set in the Constitution, clearly belongs to the electoral college and, failing that, Congress. Obviously, the Presidential transition period must begin well before Congress meets to tally the electoral college votes in January. The brief transition period from the day after election to the day of Inauguration is the time in which an incoming President makes crucial administrative decisions. ...

Indeed, the 88th Congress clearly recognized the importance of the transition period by stating in the 1963 law that “any 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.” ...

We’ve called this hearing to examine whether the Presidential Transition Act provides sufficient guidance to the Administrator on how to proceed when an election such as this is disputed. Clearly the law allows the Administrator certain discretion in complying with its provisions. It is imperative, however, that those charged with implementing this law most carefully consider the implications of their decisions and the precedents they establish. Our ultimate concern is to ensure the strength and continuity of the U.S. Government, most especially in extraordinary times such as these.⁷

As former GSA Administrator David Barram explained in his testimony before the subcommittee that day, “[w]hile the Act gives no explicit criteria or deadlines for making this ascertainment,” some legislative history suggests that “if there is ‘any question’ of who the

⁶ U.S. House of Representatives, Committee on Oversight and Government Reform, Subcommittee on Government Management, Information and Technology, Hearing on “Transitioning to a New Administration: Can the Next president Be Ready?”, Dec. 4, 2000, <https://www.govinfo.gov/content/pkg/CHRG-106hhrg75062/pdf/CHRG-106hhrg75062.pdf>.

⁷ *Id.*

winner is ‘in a close contest’ this determination should not be made.”⁸ Former Administrator Barram did not explain the terms “any question” or “close contest.”⁹

Despite media outlets projecting former Vice President Biden as the winner of the 2020 presidential election and now President-elect, GSA Administrator Murphy, a Trump political appointee, has not ascertained any apparent winner.¹⁰ GSA internal orders from June 2012 state that GSA’s Presidential Transition Support Team (“PTST”) prepares, and on the day after the election, the Administrator signs, a “letter ascertaining the apparent successful candidates. If the Administrator is unable to ascertain the apparent winners of the election, all subsequent activity is held in abeyance until that determination is made and the letter is signed.”¹¹ According to a statement from GSA, “[a]n ascertainment has not yet been made,” but Administrator Murphy “will continue to abide by, and fulfill, all requirements under the law.”¹² GSA has provided no further explanation or evidence to support Administrator Murphy’s position regarding the apparent winner of the 2020 presidential election, but on October 29, 2020, less than a week before Election Day, Murphy announced the appointment of former White House attorney Trent Benishek as GSA’s new General Counsel.¹³ During his tenure in the White House Counsel’s office, Benishek was a member of President Trump’s impeachment defense team.¹⁴

As the subcommittee also knows well, Administrator Murphy has been less than forthcoming about GSA’s role in issues of critical personal importance to the President. Documents obtained by the Oversight Committee in 2018, suggested “that President Trump himself directed the General Services Administration and the FBI to modify a years-in-the-works plan to move the FBI’s downtown Washington headquarters” in a move that could potentially benefit Trump’s financial interest.¹⁵ The GSA Office of Inspector General found that Administrator Murphy provided testimony that “was incomplete and may have left the misleading impression that she had no discussions with the President or senior White House

⁸ See 3 U.S.C. §102 note; see also, U.S. General Services Administration, Statement of David J. Barram, Administrator, General Services Administration before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform and the United States House of Representatives, Dec. 4, 2000, available at <https://www.gsa.gov/about-us/newsroom/congressional-testimony/statement-of-david-j-barram> .

⁹ *Id.*

¹⁰ Lisa Rein, Jonathan O’Connell and Josh Dawsey, A Little-Known Trump Appointee is in Charge of Handing Transition Resources to Biden — and She Isn’t Budgeting, *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.

¹¹ U.S. General Services Administration, 1080.1D ADM GSA Support for Eligible Presidential Candidates, Presidential Transition and Inaugural, June 1, 2012, <https://www.gsa.gov/directives-library/gsa-support-for-eligible-presidential-candidates-presidential-transition-and-inaugural-10801d-adm>.

¹² *Id.*

¹³ See U.S. General Services Administration, Trent J. Benishek Appointed GSA General Counsel, Presidential Transition and Inaugural, Oct. 29, 2020, <https://www.gsa.gov/about-us/newsroom/news-releases/trent-j-benishek-appointed-gsa-general-counsel-10292020>.

¹⁴ See The White House, In Proceedings Before The United States Senate Trial Memorandum of President Donald J. Trump, Jan. 20, 2020, <https://www.whitehouse.gov/wp-content/uploads/2020/01/Trial-Memorandum-of-President-Donald-J.-Trump.pdf>.

¹⁵ Charles Clark, New Evidence Suggests Trump’s Coordination with GSA on FBI Headquarters Plan, *GovExec*, Oct. 18, 2018, <https://www.govexec.com/oversight/2018/10/new-evidence-suggests-trumps-coordination-gsa-fbi-headquarters-plan/152128/>.

officials about the project.”¹⁶

Despite the events of the 2000 election, GSA still does not appear to have any public guidance on its website explaining how the GSA Administrator should fulfill her mandate to “ascertain” the “apparent successful candidates” for President and Vice President in the 2020 election.¹⁷ Congress and the American public need to know whether GSA has and is following any non-public guidance related to this question and whether former Vice President Biden should already have access to federal funds designated for the President-elect of the United States. The subcommittee should also investigate whether GSA has received any communications from the White House or other federal agency regarding how to “ascertain” the “apparent successful candidates” before or after President Trump decided to contest the election results. Throughout the Trump presidency, Donald Trump and his political appointees have routinely bent, broken or ignored federal laws barring the coopting of federal resources for political purposes.¹⁸ Delaying the transition process would not only undermine America’s democracy, but could also have far reaching impacts on critical government functions like national security.

The American public deserves to know whether the Trump administration is following the law and effectively and transparently managing the 2020/2021 presidential transition. The Government Operations subcommittee has been integral to investigating and educating these issues in the past including holding public hearings with GSA after the 2000 presidential election. We believe that public hearings are necessary again now, to fully examine GSA’s process and Administrator Murphy’s decision-making.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

cc: The Honorable Jody Hice
Ranking Member
House Committee on Oversight and Reform, Subcommittee on Government Operations

¹⁶ Jonathan O’Connell, [GSA Chief May Have Misled Congress about White House Involvement in FBI Headquarters, According to Draft of Inspector General Report](https://www.washingtonpost.com/business/2018/08/07/gsa-chief-may-have-misled-congress-about-white-house-involvement-fbi-headquarters-inspector-general-finds/), *Washington Post*, Aug. 7, 2018, <https://www.washingtonpost.com/business/2018/08/07/gsa-chief-may-have-misled-congress-about-white-house-involvement-fbi-headquarters-inspector-general-finds/>.

¹⁷ See generally U.S. General Services Administration, <https://search.gsa.gov/search?utf8=%3F&affiliate=gsa.gov&query=%22apparent+successful+candidates%22> (accessed Nov. 9, 2020).

¹⁸ Citizens for Responsibility and Ethics in Washington, [The Hatch Act: Mixing Partisan Goals with Official Positions in the Trump Administration](https://www.citizensforethics.org/reports-investigations/crew-reports/the-hatch-act/), <https://www.citizensforethics.org/reports-investigations/crew-reports/the-hatch-act/> (accessed Nov. 9, 2020).