

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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November 13, 2020

The Honorable Emily Murphy
Administrator
General Services Administration
1800 F St. N.W.
Washington, D.C. 20405

Dear Administrator Murphy:

On November 9, 2020, Democratic House Members sent you a letter that misrepresented the facts surrounding your responsibilities under the Presidential Transition Act of 1963 (Act).¹ I write to correct the record.

Under the Act, you, as administrator of the General Services Administration (GSA), have the authority to provide government-funded transition assistance to the President-Elect and the Vice-President-Elect.² However, this assistance can only occur after there are “*apparent*” successful candidates for the office of the President and Vice President, respectively, as “*ascertained*” by the Administrator [you].”³

There are enough state contests in question, such that there is not yet an apparent President or Vice-President-Elect. Precedent and legislative history present three situations where there may be an un-apparent President-Elect:

1. The drafters of the Act anticipated three electoral situations where there would be an un-apparent President-Elect: (1) a tie, (2) a plurality winner, or (3) the presence of extensive voter fraud or intimidation.⁴ The third being applicable to 2020 since the Trump campaign has raised questions and filed legal challenges in several states;
2. The drafters concluded that “if there is any doubt in the Administrator’s mind” the Administrator does not have to release transition assistance.⁵ Since states have not yet

¹ Letter from Gerry Connolly, et. al., Member of Congress, to Emily Murphy, Administrator, U.S. Gen. Serv. Admin. (Nov. 9, 2020) available at <https://connolly.house.gov/news/documentsingle.aspx?DocumentID=4126>; See Presidential Transition Act of 1963, Pub. L. No. 88-277, § 3(c), 78 Stat. 153 (1964).

² *Id.*

³ *Id.* (emphasis added).

⁴ *Transitioning to a New Administration: Can the Next President be Ready: Hearing Before the Subcomm. on Gov’t Mgmt, Information, and Technology, Comm. on Gov’t Reform, 106th Cong, 2nd Session, (Dec. 4, 2000) (Prepared Statement of Paul C. Light).*

⁵ *Id.*

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certified an electoral winner and some states are still tabulating legal ballots, there remains doubt as to the winner; and

3. The precedent set by the Clinton Administration in the contested 2000 election is that to ascertain an apparent President-Elect there would need to be a concession—which has not yet occurred in 2020—or no more legitimate continuing legal challenges—which has not yet occurred in 2020.⁶

According to Congressional intent and past precedent set by President Clinton, as of today, there is no apparent President-Elect.

A GSA spokesman recently stated that “the GSA Administrator ascertains the apparent successful candidate once a winner is clear based on the process laid out in the Constitution.”⁷ I strongly encourage you to do just that: follow the Constitution and past precedent, not the media, when making your determination of the President-Elect. This democracy relies on a rule of law and the law must be followed.

Sincerely,



Jody Hice
Ranking Member
Subcommittee on Government Operations

cc: The Honorable Gerry Connolly, Chairman
Subcommittee on Government Operations

⁶ *Id.*

⁷ Courtney Buble, *GSA Holds the Key to When or If Biden Gets Access to Full Transition Resources*, GOV'T EXEC. (Nov. 6, 2020), <https://www.govexec.com/management/2020/11/gsa-faces-tricky-decision-ascertaining-election-winner-formally-kicking-transition/169854/>.