

Congress of the United States
Washington, DC 20515

November 19, 2020

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

Dear Administrator Murphy:

We request that you brief us immediately on your ongoing refusal to grant the Biden-Harris Transition Team access to critical services and facilities specified in the Presidential Transition Act of 1963¹ and millions of dollars in funding that Congress appropriated on October 1, 2020, for transition activities under the Act.² The results of your briefing will help inform whether we bring you, your Deputy, your Chief of Staff, and your General Counsel to testify at a public hearing.

Under the Presidential Transition Act, it is your responsibility as Administrator of the General Services Administration (GSA) to begin transition activities as soon as you ascertain “the apparent successful candidates for the office of President and Vice President.”³ President-elect Biden and Vice President-elect Harris have clearly satisfied any good faith reading of this standard.

President-elect Biden has now collected more votes than any other candidate for President in history, and he defeated President Trump by a margin of nearly six million votes.⁴ By November 7, 2020, virtually every major news organization had declared President-elect Biden and Vice President-elect Harris as the clear winners when they obtained a majority of Electoral College votes. In the weeks that followed, they won two additional states—Arizona and Georgia—bringing their Electoral College tally to 306 compared to President Trump’s 232. At this stage, there is no conceivable argument that Joe Biden and Kamala Harris are not “the apparent successful candidates for the office of President and Vice President.”⁵

¹ 3 U.S.C. § 102 note.

² Continuing Appropriations Act, 2021, Pub. L. No. 116-159.

³ 3 U.S.C. § 102 note.

⁴ *Joe Biden Breaks Obama’s Record for Most Votes Ever Cast for a U.S. Presidential Candidate*, CBS News (Nov. 18, 2020) (online at www.cbsnews.com/news/joe-biden-popular-vote-record-barack-obama-us-presidential-election-donald-trump/).

⁵ *With Final States Called, Biden’s Projected Electoral College Victory Matches Trump’s in 2016*, NBC News (Nov. 13, 2020) (online at www.nbcnews.com/politics/2020-election/final-states-called-biden-s-projected-electoral-college-victory-matches-n1247766).

Unlike the dispute after the 2000 election in *Bush v. Gore*, there is no legitimate path forward for President Trump—regardless of how many baseless lawsuits he files or his irrelevant refusal to concede. He has now lost dozens of cases in multiple states as many of his own attorneys abandon his efforts.⁶ There is no valid legal basis to withhold the ascertainment designation under the Presidential Transition Act. As the nonpartisan, independent Center for Presidential Transition has concluded: “While there will be legal disputes requiring adjudication, the outcome is sufficiently clear that the transition process must now begin.”⁷

In 2016, by comparison, former Secretary of State Hillary Rodham Clinton won the popular vote by nearly three million votes, but Donald Trump prevailed in the Electoral College by narrow margins, and there was far more doubt about the outcome of that election than there is today.⁸ Yet, the GSA Administrator at the time made the ascertainment determination immediately—on November 9, 2016—the day after the election.⁹

Your actions in blocking transition activities required under the law are having grave effects, including undermining the orderly transfer of power, impairing the incoming Administration’s ability to respond to the coronavirus pandemic, hampering its ability to address our nation’s dire economic crisis, and endangering our national security.

In passing the Presidential Transition Act, Congress explicitly warned: “Any disruption occasioned by the transfer of executive power could produce results detrimental to the safety and well-being of the United States and its people.”¹⁰ Congress reaffirmed the importance of a timely and orderly transition by passing the Presidential Transition Enhancement Act of 2019 with overwhelming bipartisan support. President Trump signed this bill on March 3, 2020, which expanded the transition resources available to an incoming presidential administration.¹¹

We also have questions about last-minute actions taken by the White House relating to GSA leading up to the election. On September 2, 2020, President Trump issued an executive order modifying the longstanding order of succession within GSA to place the General Counsel as fourth-in-line to perform the duties of Administrator after you, your Deputy, and your Chief of

⁶ See, e.g., *Trump is Not Doing Well with His Election Lawsuits. Here’s a Rundown.*, New York Times (Nov. 13, 2020) (online at www.nytimes.com/2020/11/13/us/politics/trump-election-lawsuits.html); *Another Shake-up on Trump Campaign Legal Team*, Politico (Nov. 16, 2020) (online at www.politico.com/news/2020/11/16/trump-campaign-legal-shake-up-436924).

⁷ Center for Presidential Transition, *A Message from the Center for Presidential Transition Advisory Board* (Nov. 8, 2020) (online at <https://presidentialtransition.org/wp-content/uploads/sites/6/2020/11/Center-Advisory-Board-Statement.pdf>).

⁸ *It’s Official: Clinton Swamps Trump in Popular Vote*, CNN (Dec. 22, 2016) (online at www.cnn.com/2016/12/21/politics/donald-trump-hillary-clinton-popular-vote-final-count/index.html).

⁹ *Obama’s GSA Administrator: Presidential Transition is Too Important to Politicize*, CNN (Nov. 18, 2020) (online at www.cnn.com/2020/11/18/opinions/obama-gsa-administrator-transition-turner-roth/index.html) (statement by former GSA Administrator Denise Turner Roth).

¹⁰ 3 U.S.C. § 102 note.

¹¹ Presidential Transition Enhancement Act of 2019, Pub. L. No. 116-121.

Staff.¹² Then, less than a week before the election, President Trump installed White House lawyer Trent J. Benishek as GSA General Counsel.¹³

We do not know why these actions were taken, but they raise questions about whether the White House may be placing undue pressure on you to delay granting the Biden-Harris Transition Team access to the post-election resources required by the Presidential Transition Act. Our concerns are even more heightened in light of the President's erratic decisions to fire other department and agency heads.¹⁴

We have been extremely patient, but we can wait no longer. As GSA Administrator, it is your responsibility to follow the law and assure the safety and well-being of the United States and its people—not to submit to political pressure to violate the law and risk the consequences.

White House officials claim they are not pressing you to block the ascertainment determination and that you have made this determination entirely on your own. White House Press Secretary Kayleigh McEnany declared on national television yesterday, “It is up to the GSA to, what we call, reach ascertainment for an election. They are independent of us and they haven't declared that just yet.”¹⁵ If this is accurate, it is critical that you now follow the law and make the ascertainment designation without any further delay.

For these reasons, we ask that you personally brief us and our Ranking Members by no later than November 23, 2020. We will then determine whether to hold a hearing with you, Deputy Administrator Allison Brigati, Chief of Staff Robert Borden, and General Counsel Trent J. Benishek, regarding the ascertainment designation.¹⁶

¹² President Donald J. Trump, *Memorandum on Providing an Order of Succession Within the General Services Administration* (Sept. 2, 2020) (online at www.whitehouse.gov/presidential-actions/memorandum-providing-order-succession-within-general-services-administration/). Previously, the General Counsel of GSA did not appear on the order of succession. See Executive Office of the President, *Designation of Officers of the General Services Administration to Act as Administrator of General Service* (Sept. 26, 2013) (online at www.federalregister.gov/documents/2013/09/26/2013-23601/designation-of-officers-of-the-general-services-administration-to-act-as-administrator-of-general).

¹³ General Services Administration, *Trent J. Benishek Appointed GSA General Counsel* (Oct. 29, 2020) (online at www.gsa.gov/about-us/newsroom/news-releases/trent-j-benishek-appointed-gsa-general-counsel-10292020).

¹⁴ See, e.g., *Trump Fires Head of Election Cybersecurity Who Debunked Conspiracy Theories*, NBC News (Nov. 17, 2020) (online at www.nbcnews.com/tech/security/trump-fires-head-u-s-election-cybersecurity-after-he-debunked-n1248063); *Trump Fires Mark Esper as Defense Secretary*, New York Times (Nov. 9, 2020) (online at www.nytimes.com/2020/11/09/us/politics/esper-defense-secretary.html); *Trump Dumps 3 Agency Leaders in Wake of Election*, National Public Radio (Nov. 6, 2020) (online at www.npr.org/sections/live-updates-2020-election-results/2020/11/06/932376507/trump-dumps-3-agency-leaders-in-wake-of-election).

¹⁵ *Interview with Kayleigh McEnany*, Fox & Friends (Nov. 18, 2020) (online at <http://video.foxnews.com/v/6210628183001/>).

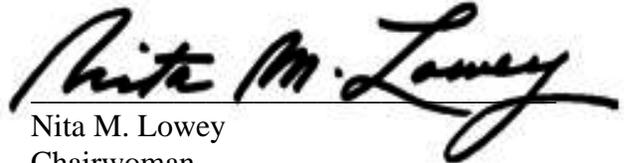
¹⁶ There is direct precedent for such a hearing, if it becomes necessary. The Oversight Committee, when it was led by Republicans in 2000, called then-GSA Administrator David Barram to testify regarding the ascertainment delay after the narrow election in 2000. The outcome of that election rested on a single state with a razor-close margin, which bears no resemblance to the clear facts of the present election. As a result, your testimony would be even more urgent given the lack of any legitimate legal foundation for your actions. See House

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. The Committee on Appropriations has oversight of executive departments and agencies to assist in the determination of appropriation of revenue for the support of the Government under House Rule X.

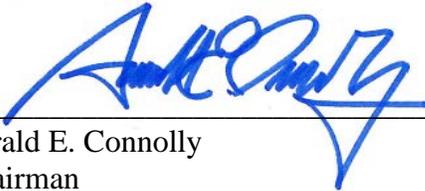
Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Nita M. Lowey
Chairwoman
Committee on Appropriations



Gerald E. Connolly
Chairman
Subcommittee on Government Operations
Committee on Oversight and Reform



Mike Quigley
Chairman
Subcommittee on Financial Services and
General Government
Committee on Appropriations

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Kay Granger, Ranking Member
Committee on Appropriations

The Honorable Jody B. Hice, Ranking Member
Subcommittee on Government Operations
Committee on Oversight and Reform

The Honorable Steve Womack, Ranking Member
Subcommittee on Financial Services and General Government
Committee on Appropriations