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). 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. 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].”

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. 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. Since states have not yet

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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.
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.