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GSA head Emily Murphy's refusal to certify transition violates historical precedent

By Eli Lee

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In order to justify delaying the presidential transition process, General Service Administration Administrator Emily Murphy has reportedly relied on a comparison between this election and the contested 2000 race. But the comparison doesn't hold up. Recent elections and the GSA director from the 2000 election directly contradict the Trump appointee's decision to delay, and expose the deadly consequences to her stonewalling.

Other allies of the president have suggested that it is normal for the GSA to wait for states to certify their results before releasing the transition funds. This too is false. Going back at least to 1992, the GSA has always made the transition funds available to the winning candidate well before all states had certified their results—the only exception being the 2000 election, and even then, the funds were made available before California had certified its results.

This election has much more in common with the 2016 and 1992 elections, when transition funds were released soon after the elections were called. Even taking 2000 as an example, the precedent set then suggests that 2020 transition funds should be released now.

Congressional Republicans seeking to support Murphy also rely on a warped version of history.

Murphy's refusal to [complete](#) the "ascertainment" of the "apparent successful candidate" in the 2020 presidential election isn't just undemocratic—it could have deadly consequences. Leaders of Joe Biden's coronavirus advisory board [recently stated](#) that Murphy's refusal to start the transition is preventing them from consulting federal health officials and accessing important medical data, potentially hobbling the federal government's pandemic response next year. Dr. Anthony Fauci has even [warned](#) that holding up the transition could slow the distribution of a vaccine.

“To continue to stall is nothing less than a politically-driven dereliction of duty.”

Under the Presidential Transition Act of 1963, after a presidential election, the transition to the next administration formally begins when the administrator of the GSA, the federal agency responsible for keeping the government running, [“ascertains”](#) the “apparent successful candidate” for president. This ascertainment releases crucial federal resources and funding to the incoming transition team. Only the GSA administrator can ascertain the winner of the presidential election for these purposes, effectively giving them personal control over the start of the transition.

Although Biden was widely declared the apparent winner of the presidential election on November 7, Murphy has, as of the publication of this report, refused to designate him as the “apparent successful candidate,” thus delaying the dispersal of significant federal resources to support the presidential transition. [Recent reporting](#) and [one statement from GSA](#) indicate that Murphy's refusal to declare Biden the president-elect is based on “what she sees as the precedent set by the 2000 election, where there was not a clear winner for more than a month.”

If history is the guide to whether GSA should ascertain the winner and cooperate with the Biden transition, it's clear that it should. Close parallels can be drawn between the 2020 election and the 2016 contest, which was decided by an identical electoral vote difference based on similar margins in key swing states. In 1992, the last time an incumbent president lost to a challenger, GSA appears to have begun the transition process by November 5, two days after the election was called on election night. In 2016, the transition began the day after the election, after Hillary Clinton conceded that morning. Incumbent President Barack Obama, who endorsed and campaigned for Clinton, [invited](#) President-elect Trump to the White House to discuss the transition within 48 hours of the election.

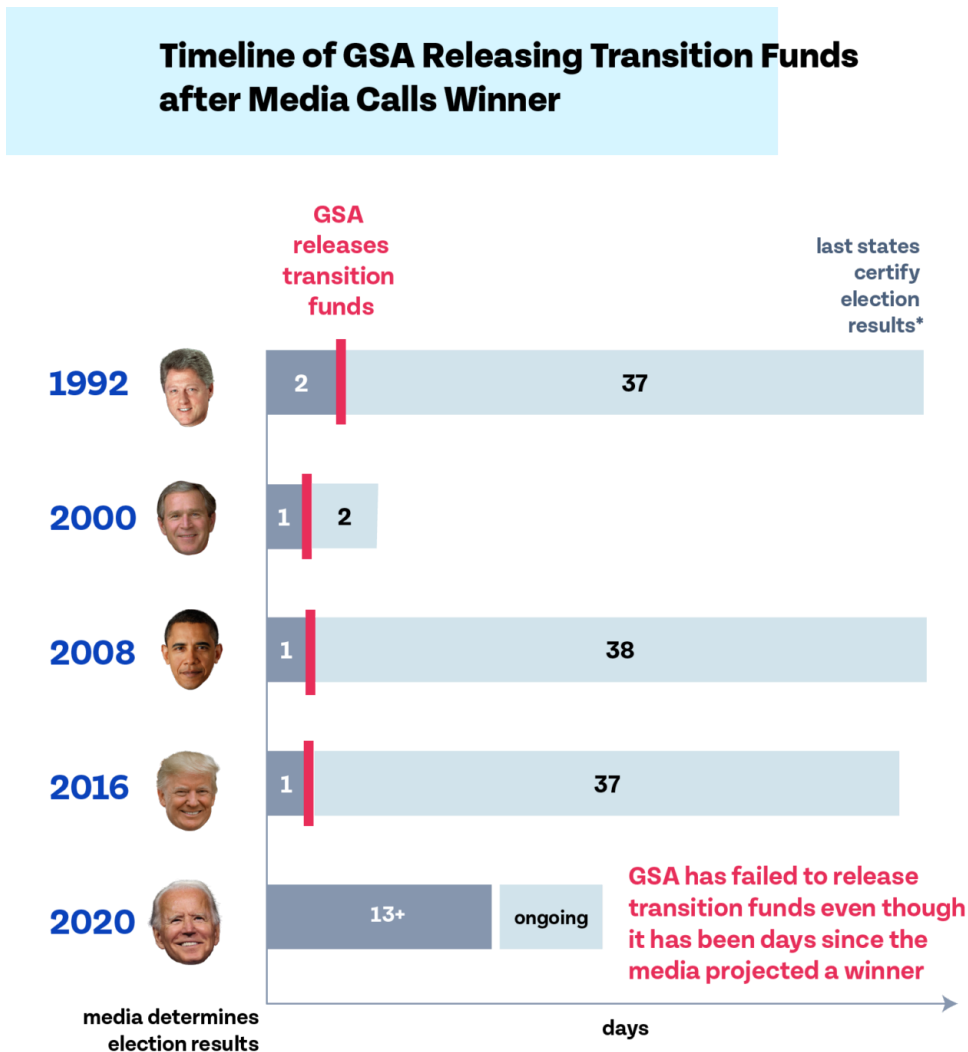
The 2008 presidential transition, while less of a historical analogue, proceeded similarly. It took just [two hours](#) for the GSA Administrator to start the transition process after the election was called by the media.

In 2000, the results of the election were delayed by a recount in Florida in which the Republican and Democratic candidates were separated by less than 1,000 votes. This year, in every swing state he won, Joe Biden leads Donald Trump by more than 10,000 votes. David Barram, the administrator of GSA during the contested 2000 election, has explicitly rejected the idea that the 2020 election is comparable to 2000, saying on a [podcast](#) last week that the current situation is “dramatically different” from the one he dealt with that year.

Last week, Rep. Jody Hice, the Republican ranking member of the House Subcommittee on Government Operations, sought to defend Murphy's obstruction of the transition in a [letter](#) written to the GSA administrator. In a [press release](#), Rep. Hice wrote that “state governments certify election results; not the media, and not political parties.” According to Rep. Hice, Murphy's decision not to declare Joe Biden the “apparent successful candidate” is justified by the fact that not every state government has certified the results of the presidential election.

This argument, too, fails to hold up to historical comparisons. In 1992, 2008, and 2016, GSA released transition resources well before many states had officially certified their results. In 2016, GSA's “ascertainment” [occurred](#) despite the fact that one presidential candidate, Jill

Stein requested and was granted a recount in the critical state of Wisconsin, which lasted until December 12th. Even in 2000, after the Florida recount, GSA formally began the transition once Al Gore conceded on December 13—[two days](#) before California certified its results that year.



* based on California, which tends to certify results after most states, according to CREW research

Denise Turner Roth, the administrator of GSA in 2016, [said](#) in a recent interview that during that year’s election, she and her staff monitored three areas before making their ascertainment: election calls from major news outlets, vote counts coming from the states themselves, and the losing candidate’s concession. The only one of those factors currently

missing from the 2020 election is the third: President Trump's concession. This implies that if Murphy is following similar informal guidelines, she is holding up the transition simply because of Trump's own refusal to admit defeat—a political decision, rather than one based on the results of the election.

This decision may be putting the future Biden administration's coronavirus response in jeopardy. In addition to blocking consultations between the transition team and health officials, Murphy's stonewalling is [also](#) preventing the incoming administration from coordinating with Treasury Department officials on future economic relief efforts.

Sadly, when it comes to delayed presidential transitions having human costs, there is a precedent there, too: In 2002, the 9/11 Commission Report stated that delays to the presidential transition in 2000 as a result of the contested election seriously hindered the vetting and appointment of crucial national security personnel. The current delays could represent a repeat of that mistake, this time impacting public health policy during a critical period. These concerns are exactly why, in 2004, Congress [passed](#) the Intelligence Reform and Terrorism Prevention Act, to ensure the incumbent administration supported prospective transition team members in gaining security clearance and access to classified information after Election Day. It's also one of the reasons why the Bush and Obama teams [worked so hard](#) to ensure a smooth transition process, even though both were succeeded by a president of the opposing political party.

If Emily Murphy truly wants to act in her country's best interests, she must declare Joe Biden the "apparent successful candidate" and allow the president-elect's transition to move forward unabated. To continue to stall is nothing less than a politically-driven dereliction of duty.

CREW research interns Angela Li and Tiffany Tam contributed to this report.