

# Emily Murphy was right not to recognize Biden's win until now

I spent 37 days explaining why the GSA would not release transition resources to George W. Bush

By **Beth W. Newburger**

Beth W. Newburger was GSA associate administrator for public affairs from 1996 to 2001. She is a Tony Award-winning Broadway producer of "Dear Evan Hansen," "Tina" and "The Originalist."

November 24, 2020 at 10:00 p.m. EST

President Trump said it best Tuesday when he tweeted, "Remember, the GSA has been terrific, and Emily Murphy has done a great job, but the GSA does not determine who the next President of the United States will be." He commented a day after Murphy, the head of the General Services Administration, wrote in a letter to President-elect Joe Biden that she would release critical resources for his transition to the White House.

Murphy withheld those resources for more than two weeks, well after news organizations called the election for Biden based on vote tallies reported by the states, as is tradition. She was vilified for the delay. But she was right.

She was right for the same reason my boss was right during the only other presidential election in which a loser did not step forward, or too few states had certified their results to assure an electoral college victor. As the spokesperson for the GSA administrator David J. Barram during the 2000 election between George W. Bush and Al Gore, I fended off unrelenting questions from domestic and foreign press, as well as elected officials and their constituents. For 37 days, I stood in front of GSA headquarters — dangling the old-fashioned key that fit the Yale-type lock to the transition offices on G Street Northwest — trying to answer questions that all boiled down to what the BBC first threw at me: "Why can't your administrator make up his mind? The answer should be obvious to him." The fur-clad reporter from the Voice of Moscow insisted I take off my coat to answer his questions because "it looks better on TV." The Polish reporter spoke to me through an interpreter, and so did the Moroccan. The questions were the same. So was the answer. "It will be obvious when the election is officially decided."

We did not hand over the key to the transition office until the Supreme Court tipped the election in Florida, which gave Bush the victory in the electoral college. I was behind the curtain at the news conference called by the Bush team to receive that key from the GSA. Vice President-elect Richard B. Cheney literally pushed me onstage, where I was forced to smile while he gloated at the turnover from our Democratic administration.

Clearly there was a big difference between the 2000 race and 2020's — the outcome of the Bush-Gore race came down to just one contested state, and it was much closer in every respect than the Trump-Biden race. But Murphy, like us,

Until the assassination of John F. Kennedy in 1963, presidential transitions were unstructured. What followed was a bipartisan recognition that the transition from one president to another had outgrown its ad hoc traditions. The Presidential Transition Act provided a formal structure. Only federal employees are authorized to spend federal money, and money is required to effect a modern transition. The law called for a senior federal appointee to recognize a president-elect weeks before the official electoral college certification of the vote. Congress considered the GSA the appropriate agency to provide that recognition. It manages the federal inventory of owned and rented buildings and procures supplies and communications for the federal government. What more logical choice to house and supply the transition offices? What's more, the GSA's chief executive, although confirmed by the Senate, is not a cabinet-level appointee; that person and the agency itself were considered so invisible to the general public that Congress assumed the decision of its leader to ascertain the results of a presidential election could never be controversial. In fact, "ascertainment" was considered perfunctory. The authors of the law expected concession to come within a day or two of the election and could serve as the noncontroversial guideline for the GSA administrator.

As amended in 2004, 2010 and 2020, the law gives the GSA administrator the authority to designate the president-elect within a few days of the election. The problem remains obvious. Neither the law nor the subsequent amendments stipulate the ground rules for ascertaining the winner. The vagaries were first tested in 2000, when Barram was faced with two candidates who had not conceded. Forty-nine states were certifying their results but the outcome in Florida was being decided in the courts. Barram had no legal guideposts for his ascertainment. He withheld it until Dec. 14, two days after the Supreme Court made its decision, hours after Gore delivered his concession speech, and more than a month after the election.

No one wanted to hear that the Transition Act was never intended to subvert the role of the states in certifying their votes, or the constitutional power of the electoral college to make the outcome official in the absence of a candidate's concession. Barram testified before the House to inform them of his interpretation of the law as it applied to his ascertainment. But to no avail. The drumbeat for "ascertainment" continued.

Murphy's dilemma was exacerbated by what followed the 2000 debacle: 9/11. The commission charged with examining the circumstances surrounding that terrorist attack attributed it in part to the delay in ascertaining the election results — a delay in getting the new administration up to speed.

In her letter to Biden, Murphy echoed Barram's 20-year-old plea to write the law so it defines what it takes for the GSA to "ascertain" the victor. No public servant should be put in the untenable position of figuring it out for herself.

Like the Constitution, the Presidential Transition Act depends on the good faith of all parties involved to live up to a

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Until the day she wrote her letter to Biden, this race had neither.

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**ronwass** 2 weeks ago

She undercuts her own argument when she admits that in 2000 in Florida everything was indeed unclear. Unlike now when it was clear, except to Trump's fantasymind.

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**carey\_glasshalffull** 2 weeks ago

Thanks for your well-informed explanation, Beth. I am thankful that Ms. Murphy has resolved the issue in her mind, and in the eyes of the American people. For the sake of our peace and safety.

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**ERG2000** 2 weeks ago

Dumb dumb dumb followed with more dumb.

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5 days after Nov. 3. Releasing the funds for the transition should have been done then.

Waiting for resolution of frivolous lawsuits, all filed without a shred of evidence, was unwarranted. The statute in question does not call for waiting till certification. The whole idea is to get the transition moving as soon as possible after the winner is obvious (ascertained). This is particularly important during the pandemic, especially with the vaccination program just getting off the ground.

The worst that could happen if the wrong candidate had been given transition funds is that the transition office would have to be closed down before inauguration due to some entirely unexpected event. If that were to be the case, then some money would have been spent unnecessarily, but when has that ever been a concern of the U.S. Government?

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**bobbernumber3** 2 weeks ago

This article was too stupid to even complete reading, IMO.

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**TimeForChange2020** 2 weeks ago

Bobber: I did read the entire article, unfortunately, and your impression was correct.

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**LeoMarius** 2 weeks ago

Don't even begin to compare 2000 to 2020. In 2000, the entire election hung in the balance based on Florida, which was decided by 0.008%. The month of recounts and legal wrangling never proved who definitively won the election. Gore had a 0.5% national lead.

In 2020, Biden has 306 EVs. In no state is there serious questions of who won, and even if 1 or 2 states were questionable, Biden would still win. Biden has a 7 million national vote lead and is over 51%.

Ranking the last 8 elections, this is only the 4th closest with only the 2 Clinton wins and the 2 Obama wins being bigger wins. This was much bigger than Bush's 2004 win, or

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so the Biden heavy mail in votes were already counted when the first results were announced.

GSA should have handed over the keys the Monday after the election, when every major news outlet called it for Biden. Don't say "the media doesn't decide elections". No, they just report the facts on the ground, which are that Biden won a not particularly close election.

So drop the 2000 comparisons. That was a unique election in US history, the only one that was decided by the Supreme Court because it came down to one state that was a tie.

GSA was playing partisan games for Trump, and it sullied its reputation.

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**Randal Buist** 2 weeks ago

Garbage. Making excuses for people who bowed to trump over the future of our republic is what we've come to expect from the right. Nothing new here.

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**LeoMarius** 2 weeks ago

She's a Trump appointee.

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**Frozen1** 2 weeks ago

2000 was much, much closer than 2020 and there was no Global Pandemic going on back in your day. Trump dictated that Murphy deny President-Elect Biden's Transition. The only one contesting the outcome is Trump's band of foolish lawyers and his cult members. Trump TOLD Murphy when to recognize the "apparent" winner. Murphy also has a sketchy past with Trump, the FBI Building and the Trump Hotel in DC. No, this woman is a trump toady. While we're at it, the Election was truly stolen from Gore. He stepped aside for the good of the Country. What's trump doing?

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**steamboatlion** 2 weeks ago

You admit that 2020 and 2000 were different situations. The legislation specifically refers to the apparent winner. Nobody in good faith could have denied a few days after the election that was Joe Biden. Emily Murphy failed to faithfully execute her lawful duty. She's either a partisan hack, grossly incompetent, or an utter coward, or perhaps all three.

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**LeoMarius** 2 weeks ago

She's a Trump appointee. Enough said.

Like 3 Link Report



**Pravlen\_Gueni** 2 weeks ago *(Edited)*

Reasonable people have know for weeks that the apparent successful candidate was Joe Biden. Unreasonable people file lawsuits alleging election and provide no evidence for that assertion. Emily Murphy is clearly a partisan Trump supporter clinging to the notion that the only way Trump could lose would be from massive fraud in a "rigged election" her delay in ascertainment is a disgrace.

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