

THE ELEMENTS OF PRESIDENTIAL TRANSITIONS

HEARING

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
OF THE
COMMITTEE ON OVERSIGHT AND
REFORM

HOUSE OF REPRESENTATIVES

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Thursday, December 10, 2020

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
COMMITTEE ON OVERSIGHT AND REFORM
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:03 a.m., via Webex, Hon. Gerald Connolly (chairman of the subcommittee) presiding.

Present: Representatives Connolly, Maloney, Norton, Sarbanes, Plaskett, Raskin, Lynch, Speier, Hice, Comer, and Palmer, Massie, Grothman, and Keller.

Mr. CONNOLLY. I want to welcome everybody to today's remote hearing. Pursuant to House rules, members will appear remotely by Webex. I know we are all familiar with Webex by now but let me remind everybody about a few points.

First, you have been using active view for our hybrid hearings. This will still work but grid view will give you a better perspective in a remote hearing and make you look better. If you have any questions about this please contact committee staff.

Second, we have a timer that should be visible on your screen. Members who wish to pin the timer to their screens should contact committee staff for assistance.

Third, the House rules require that we see you. So, please have your cameras turned on at all times.

Fourth, members appearing remotely who are not recognized should remain muted to minimize background noise and feedback.

Fifth, I will recognize members verbally but members retain the right to seek recognition verbally themselves. In regular order, members will be recognized in seniority for questions.

Last, if you want to be recognized outside of regular order you may identify that in several ways. You can use the chat function to send a request. You may send an email to the majority staff or you may unmute your mic to seek recognition from the chair.

Obviously, we do not want people talking over each other so my preference is that members use the chat function. It works very efficiently. Or email us to facilitate formal recognition. Committee staff will ensure that I am made aware of the request and I will recognize you.

We will begin the hearing in just a second when we are ready to begin live stream. We are ready to go.

All right. Committee will come to order. Without objection, the chair is authorized to declare a recess of the committee at any time

and we may have to that because of the vote schedule this morning.

And I now recognize myself for my opening statement.

Every four or eight years our Nation has undergone a peaceful transfer of power. In 1981, for example, another one-term president handed over the reins of government to his election adversary, Ronald Reagan.

In the wake of the election, President Jimmy Carter calmed the Nation, saying, “We will have a very fine transition period. I told him I wanted the best one in history.”

President Carter even sent incoming President Ronald Reagan a telegram that read, “It is now apparent that the American people have chosen you as the next president. I congratulate you and pledge to you our full support and cooperation in bringing about an orderly transition of government in the weeks ahead. My best wishes are with you and your family as you undertake the responsibilities that lie before you.”

Unfortunately, our Nation has yet to see that kind of graciousness in a telegram or tweet this time around. I called this hearing today to examine the laws, norms, and administrative practices that make a peaceful and efficient transition possible.

What have we learned over 36 Presidential transitions that have followed Presidential elections? The first one, of course, was President George Washington relinquishing his office to President John Adams, and what improvements can we make for future transitions?

The transition currently underway to the Biden administration marks the twenty-fifth Presidential transition when the incoming president is of a different party than the outgoing president.

This election was the first in 28 years when in which an incumbent president sought reelection and failed, and only 10 times in our Nation’s history has a sitting president lost a reelection bid.

This context looms large over Congress’s job to ensure that the transfer of power remains peaceful but occurs. The transition period between administrations is when our Nation often is at its most vulnerable. In 1932–33, for example, at the peak of the Great Depression, then-President Hoover and President-Elect Franklin D. Roosevelt failed to cooperate, delaying much-needed relief to a starving public.

In February 1993, shortly after Bill Clinton’s inauguration—I am sorry—terrorists attacked the World Trade Center in New York City the first time.

In 2009, President Obama was inaugurated during one of our Nation’s most severe financial crisis since the Great Depression and America is practiced in transition during duress.

This transition, in the midst of an unprecedented pandemic and economic stress, is no exception. Even in the smoothest of transitions, the president elect and vice president elect have between 72 and 78 days in which to take the reins of the Federal Government.

In the 2020 transition, the General Services Administration delay in ascertaining the winner of the election has but the post-election transition period to just 57 days.

The loss of 20 days is consequential both to the incoming administration and, more importantly, to the Nation as a whole. In 57

days, the president and vice president elect must staff the White House and the executive office of the president, creating a government structure to organize, prepare, and train teams to lead the more than 100 departments and agencies of the Federal Government.

These teams will be the point of a spear that works throughout the next administration to reinvigorate the more than 2.1 million civilian employees, 3.5 million contract employees, and 1.3 million military employees who serve and protect this Nation every day.

And that is just one transition responsibility. As you can see on the screen, during the next 41 days the Biden administration will be preparing to make more than 4,000 Presidential appointments, roughly, 1,200 of which require the Senate's advice and consent.

Many of those appointees will need to undergo thorough time-consuming background investigations. As I have already noted, this new administration is taking these steps in the midst of a global pandemic that is worsening by the day, really worsening by the day.

These individuals will inherit the top positions of a nation in need of economic stimulus more than ever. They inherit a country where racial tensions have been stoked over the past four years.

Sending up an effective transition team is a tall task and it highlights the importance of getting the things right and helping this administration get the leaders, support, and resources it will need to bring this Nation back from the brink.

The primary law that governs the transfer of power is the Presidential Transition Act of 1963. As you can see on the screen, the law has been amended significantly four times to address lessons learned from previous transitions.

Prior to Presidential elections the law requires eligible candidates to establish a transition-related organizational structure, making sure that would-be presidents are prepared for the post-election sprint.

The law also authorizes funding for office space, staff compensation, and public transition services for both the president and vice president elect and their team.

Importantly, the law also aligns outlines the process by which candidates can designate and start vetting candidates who would fill important national security or other sensitive roles in the incoming administration. This law is meant to ensure a new president is ready to lead on day one.

In the transition from George Bush to Barack Obama, the Obama/Biden transition team had more than 349 individuals cleared to enter agencies, to learn about their operations, and engage the work force for the transition.

In 2016, President-elect Donald Trump had 323 people cleared to enter agencies. Setting up a transition team is like designing the Nation's largest startup company.

This year, those teams are taking the baton on vaccine production and distribution, economic relief, and they face a president, though, who could very well be facing a conflict with Iran that could affect our national security directly. The stakes are high. They couldn't be higher.

Pursuant to the Presidential Transition Act, it is the administrator of the General Services Administration who triggers access to transition funding and office space.

In the wake of this election, the administrator inexplicably made what should be a ministerial decision into a political one.

At this hearing, we will examine ways to amend the Presidential Transition Act to put clearer guardrails which, I might add, the administrator of GSA has invited Congress to do, on what it means to ascertain a Presidential election and the winner.

We will also examine at this hearing the role of Congress during the lame-duck period. We have a responsibility to ensure that this administration does not place political appointees who lack qualifying expertise into the competitive civil service or promulgate so-called last minute midnight regulations or fail to properly collect, retain, and preserve Presidential or Federal records.

In addition to those political appointees who have burrowed in or who seek to, this administration has taken the troubling step of issuing an executive order that would potentially enable President Trump to fire scores of Federal employees on his way out the door and replace them with his political appointees.

This strikes at the heart of a merit-based civil service. This order removes civil service protections from Federal employees, stripping their statutory appeals rights and permitting them to be replaced with political appointees.

The order undoes 137 years of merit system hiring and expertise in our Federal work force and could be a harmful attack on the integrity of our government.

I want to make the moment right now to insert into the hearing record several resources that underscore the intense bipartisan opposition to this executive order creating a so-called Schedule F, including an op-ed from 50 former career officials and political appointees from the Office of Management and Budget and another letter from 22 good government organizations and scholars including the Partnership for Public Service, which Mr. Stier represents here today and we will hear his testimony.

Mr. CONNOLLY. A Presidential legacy should be earned over four years, not panic dumped on a nation six weeks before the outgoing president leaves office.

That is why today I plan to introduce the Midnight Regulations Review Act with Chairwoman Carolyn Maloney, Chairman Raja Krishnamoorthi, and Representative Jackie Speier.

The legislation would require the Government Accountability Office to create a list of the regulations that the outgoing administration promulgates during the lame-duck, which would allow Congress and the incoming administration a review, whether they are based on evidence and research or whether they should be considered for amendment or elimination.

Congress must take stop immediately of harmful regulatory actions launched by any outgoing administration in order to exercise its authority to repeal regulations pursuant to the congressional Review Act.

The bill also builds on the bipartisan work of Senate colleagues Ron Johnson, Republican of Wisconsin, and Tom Copper of Delaware, requesting that GAO produce a report similar to the one we

are going to require a year after the inauguration to examine more in depth the impact of specific midnight regulations.

The nation needs the next administration to be a success. We need our people to stay safe and healthy during what promises to be the deadliest stretch of the pandemic yet. We need vaccine production and distribution to be comprehensive and efficient.

We need to prevent small businesses from collapsing and keep renters and homeowners with roofs over their heads. We need to heal the acrimony that divides our Nation.

To make that possible, we need the outgoing administration not to burn the building down on its way out. We need a new team to have the opportunity to restore what makes America great. It is time we put our Nation before our political party.

I look forward to hearing from our witnesses and I now call on the distinguished ranking member, Mr. Hice, for his opening statement.

MR. HICE. Thank you, Mr. Chairman, and I would just like to say I noticed that Mr. Sarbanes has joined the conference—the hearing today, and it is my understanding he just lost his father yesterday, and I just want to extend my condolences. I know I lost my dad about a year ago and prayers with the Sarbanes family, and I am sorry.

MR. SARBANES. Thank you very much. Thank you very much. I appreciate that. Thank you.

MR. HICE. You are very welcome.

MR. CONNOLLY. Mr. Hice, if I could interrupt and without penalizing your time, I had the privilege of working for Paul Sarbanes for 10 years in the U.S. Senate on the Foreign Relations Committee.

He was a towering figure. He, perhaps, had the most penetrating intellect I have ever worked with or for, certainly, in the U.S. Congress.

He was quiet but he was effective. He was the kind of go-to guy where people, on a bipartisan basis, sought counsel and guidance and insight, and that is how he exercised enormous influence in the U.S. Senate on a range of issues.

Of course, Sarbanes-Oxley is named after him. But that only begins to, frankly, penetrate his influence on the U.S. Government and, certainly, the U.S. Senate over those years.

So, John, our hats go out to you and the family. I know you were proud of your dad. It was a privilege in my life and career to have spent 10 years working with him. Thank you for allowing me.

MR. SARBANES. Thank you. I appreciate that very much, Mr. Chairman, and to the ranking member, thank you for taking a moment to pass your greetings and thoughts. Thank you.

MR. HICE. Well, you are very welcome and it is very heartfelt, our feelings toward you and your family.

Thank you, Chairman Connolly, for calling this hearing regarding the ongoing Presidential transition. This year's transition highlights a number of significant shortcomings in the governing statute for transitions and I think this is something that we all need to look at.

At present, it is ultimately a judgment call by the GSA administrator as to when a victor is apparent in order that they can ascer-

tain the winner before providing post-election fines or services. It is very difficult to operate under the statute of apparent sometimes, and that was certainly the case this year.

As I personally made clear in a letter to the GSA on November 13, even the drafters of the Presidential Transition Act contemplated that an ascertainment should not be made if the results were uncertain and unapparent. Again, that was certainly the case this year.

With no guidance or clarity, GSA looked to the precedent set under the Clinton Administration in 2000 when it waited until December the 12 decision in the *Bush v. Gore* in order to make an ascertainment.

We certainly have not waited that long. Looking for some element of official action before ascertaining a winner, which, ultimately, came when key states certified their election results, was an acceptable course of action, given the ambiguous nature of this year, as I mentioned earlier.

I encouraged GSA to do what they are supposed to do, which is to follow the law, not to react to the vitriol being spewed by the political left, enabled by the mainstream which, quite frankly, has become nothing more than their propaganda arm.

This led to threats, led to threats of violence against Administrator Murphy and her staff. This is shameful, shameful behavior by everyone who is involved.

To those who shriek about the Trump campaign exercising its right to contest the results, I would say it is bold talk coming from a group that for four years has refused to acknowledge the legitimacy of President Trump's victory and his presidency even to the extent of calling for impeachment before he was even inaugurated, even having investigations and spying into his campaign, and perhaps those are the types of things that the chairman was referring to about this administration not exercising those types of behaviors if there is a transition coming now.

So, you know, when you look at the collusion accusations from the Obama Administration, the Clinton campaign, the FBI, and even a Russian agent, all to fabricate a false narrative of collusion against the Trump campaign, this is unbelievable that we are looking at and even making accusations, potentially, of the Trump campaign right now.

Not to mention, as I already referenced, a kangaroo court on an impeachment trial. The reality is that Joe Biden himself has provided an answer to all of this.

He said, quote, "I think we are going to not be so far behind the curve as we thought we might be in the past. There is a lot of immediate discussion and I must say the outreach has been sincere," end quote, that coming from Joe Biden himself.

Moreover, TSA has been working on the transition for over a year and has provided the Biden campaign resources as early as September, back when Democrats were campaigning on promises to defund the police and implement the Green New Deal.

It is not true that the less than three weeks—it was less than three weeks that I want to emphasize. It is not true that the less than three weeks that GSA waited somehow put our national security at risk or delayed distribution of a COVID-19 vaccine.

The truth is that Joe Biden had free election resources made available to him and plans for COVID-19 vaccine distribution were well underway. And like the George W. Bush scenario in 2000, nothing prevented Joe Biden from vetting and selecting the individuals he intends to nominate for key positions during those three weeks or even before the election.

The Trump administration should actually be applauded for their endeavors both pre-and post-election. Personally, what I am concerned about are the many constituents in my district and beyond who don't have confidence in whether the vote was accurately even counted.

I am concerned Democrats have completely ignored the question of the election irregularities and have done exactly nothing to investigate them.

Mr. Chairman, I hope that at some point we will be able to look at those things because that should be bipartisan. Election integrity impacts everyone in our country and, of course, the entire direction of our country. I hope we will be able to go down that path at some point in the future.

And with that, I yield back. Thank you.

Mr. CONNOLLY. Thank you, Mr. Hice, and certainly, if there are irregularities we want to know about them. I will point out for the record the Republican coordinator for the mechanics of elections in your home state of Georgia actually has stated publicly that there were not such irregularities and that, indeed, Joe Biden had one the election.

And with respect to violence, he had a press conference condemning threats of violence against him and other Republican officials in your state who had the intestinal fortitude to defend the results of the election.

I might add that all of that was also reinforced by the secretary of state of Georgia, who is also a Republican and who also reiterated that in three checks the results are the same.

President-elect Biden has won the electoral votes of Georgia, and that there was no evidence of fraud or substantial irregularities of any kind that would materially affect the outcome of the election.

So, we can do that, but I guess in this particular case—

Mr. HICE. Would the gentleman yield?

Mr. CONNOLLY. Of course.

Mr. HICE. Thank you, Mr. Chairman. Listen, I am fully aware of those that you referenced. I am also fully aware both in the House and the Senate and in multiple lawsuits and in multiple other ways we have hundreds, we have thousands of affidavits of irregularities and potential voter fraud, and regardless of a secretary of state who is trying to hide his own political career and trying to convince people there were no irregularities the facts point otherwise, and I hope that we will be able to look into these.

Again, the election security and integrity impacts not only Georgia, it impacts our entire nation and where those accusations are severe and alarming I think it is incumbent upon us to look into it.

Thank you.

Mr. CONNOLLY. Thank you.

I now call on the distinguished chairwoman of the full committee for her opening statement.

Chairwoman Maloney, welcome.

Chairwoman Maloney. Thank you. Thank you, Mr. Chairman Connolly and Ranking Member. I thank both of you for calling this hearing and I would like to be associated with your remarks on the loss of our great friend and colleague, Paul Sarbanes.

He was an iconic leader and legislator. It was my honor to work with him on working for stronger relations between Greece, Cyprus, and America, and I worked with him on financial regulation and bills as chairman of the Finance Committee.

He had a towering impact on legislation that will help this country for decades to come, most notably the Sarbanes-Oxley Act that really brought accountability to corporate America, more transparency, and, really, accountability to the American people. He was a towering figure and a really great person, and we join you, John, in mourning his—a great loss.

Now I would like to thank Chairman Connolly very much for highlighting the many issues that have been raised by this unstable transition. An outgoing president should make every effort to assist and prepare the incoming administration to take office for the good of the country and for our national security.

Instead of working to ensure the orderly transfer of power to the winner of the election, President Trump has been attacking the validity of the election and subverting the transition process.

These actions are not only reprehensible and shocking, they are dangerous. But I am sorry to say that I am not surprised.

Throughout his administration, President Trump has chosen to put his personal interests before the needs of the country and has disregarded both congressional oversight and, I would say, public scrutiny.

According to press reports, he has ignored Federal records laws, regularly tearing up our shredding documents that are required to be preserved.

The destruction was so bad that career records officers were reportedly forced to use Scotch tape to put important documents back together.

Given this track record, I am deeply concerned that President Trump and his aides may attempt to conceal or destroy important White House materials during their last remaining days.

That is why I sent a letter to the White House last month demanding the administration comply with their responsibilities under the Presidential Records Act and the Federal Records Act.

Eight other committee chairs join me in this letter and we jointly demanded that the White House preserve all materials that are potentially responsive to the request and subpoenas issued by this Congress.

These records belong to the American people. They are important for our historical record. They will also be critical to our ability to fix the damage that has been done during this administration.

I look forward to the testimony of our witnesses today on this and other issues that need to be addressed to ensure that the current transition goes as smoothly as possible from this point forward.

We must also work to ensure that future transitions are more seamless than this one. Thank you, and I yield back.

[Technical issues.]

Mr. CONNOLLY [continuing]. That have been exposed during this transition.

Mr. Comer, the distinguished ranking member of the full committee, are you with us?

Mr. COMER. Yes.

Mr. CONNOLLY. You are recognized for an opening statement. Welcome.

Mr. COMER. Well, thank you, Chairman Connolly, and for all the witnesses appearing here today. I would like to thank Ranking Member Hice for his leadership in this area, particularly the letter he sent to the GSA administrator advising her about the requirements of the Presidential Transitions Act and encouraging her to stand strong and follow the law in the face of great opposition.

We should all be thankful for public servants like GSA Administrator Emily Murphy, who followed the law even as she was vilified in the media and received thousands of threats against herself and her staff.

Government officials take an oath to uphold the Constitution and the laws pass through our government, and her adherence to the Presidential Transition Act as written should be commended, not lamented.

The act provides no clear guidelines for how the GSA administrator should proceed when elections are contested, and this is something that needs to be fixed.

I suspect Democrats will attempt to portray the three weeks that passed between the election and ascertainment as incredibly detrimental to the Biden administration, a ready excuse for anything that goes wrong.

But the real work of transition, choosing and vetting a team begins well before the election and doesn't have anything to do with GSA, and indeed, Joe Biden himself and people close to him have said the transition, quote, "has been fairly smooth."

Vaccine distribution plans have been coming along, although if memory serves some Democrat Governors aren't that eager about a vaccine developed under President Trump.

As for access to the president's intelligence briefing book, it might have made the country safer having a three-week delay, given the ties of the state and DNI nominees to China.

I will end by echoing Ranking Member Hice's concerns, concerns shared by my constituents that widespread voting irregularities and even reports of outright fraud may have disenfranchised their votes.

So, I would echo his call for this committee to hold hearings to examine this election to ensure that our constituents can be confident that their vote counts.

Thank you, and I yield back.

[Technical issues.]

Mr. CONNOLLY [continuing]. Your remarks.

I now want to introduce our three witnesses and I will note that votes have now been called. There are two votes in this first and last series. So, there will be some interruption.

My hope is that we can continue to do the hearing.

Ms. Norton, I may ask you to take over the chair while I vote, if you can do that.

Ms. NORTON. Of course, Mr. Chairman. Happy to. I am able to vote. I am always available—

[Laughter.]

Mr. CONNOLLY. You are wonderful.

Ms. NORTON [continuing]. Until the D.C.—until the D.C. Statehood bill passes. Thank you.

Mr. CONNOLLY. Exactly. Exactly. I look forward to the day where I can ask you for this favor. Thank you so much. I appreciate it.

Our first witness today is Martha Joynt Kumar, who is the director of the White House Transition Project. Then we will hear from Max Stier, who is the president and chief executive officer of the Partnership for Public Service, which has done a lot of work on transitions. And finally, we will hear from Lisa Brown, who was the co-director of Agency Review for Obama/Biden Transition Project.

If the witnesses will be unmuted so we can swear you all in as is the custom of our committee, and if I can see them. If you can put them on the screen so I can see them.

[Technical issue.]

Mr. CONNOLLY [continuing]. Max Stier and Martha Joynt, I see you all. If you would raise your right hand.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[Witnesses are sworn.]

Mr. CONNOLLY. Let the record show that all of our witnesses have answered in the affirmative. Thank you. And without objection, your full written statements will be made part of the record.

With that, Ms. Kumar, you are now recognized for your five-minute testimony and we welcome you before the committee.

STATEMENT OF MARTHA JOYNT KUMAR, PROFESSOR EMERITA, DEPARTMENT OF POLITICAL SCIENCE, TOWSON UNIVERSITY

Ms. KUMAR. Thank you very much.

Good morning, Chairman Connolly, Chairwoman Maloney, Ranking Member Hice, and Ranking Member Comer.

And I would like to say a word about Paul Sarbanes. As a professor at Towson University in Baltimore, Senator Sarbanes was very generous with his time to students and both in having students in his office as interns and as meeting with—the sessions that the students greatly prized.

Following the hearing theme of the elements of a Presidential transition, I would like to briefly explore three elements that are important aspects of recent transitions.

First, the strength of the 1963 Presidential Transition Act. In the 58 years since the president and Congress formally considered transition legislation, the two branches have done so in a bipartisan manner.

As the stakes in a smooth transition rose, they increased the resources and the government institutions involved in transitions.

The General Service Administration was the lead transition institution in 1964, but now our Presidential transition is an all of government operation with the president playing a lead role along with his departments and agencies.

Changes in the political environment, national security concerns, transition experiences, and the increase in the complexity of government all have played into the development of the current shape of transition planning.

The two branches have constructed a transition framework that now moves up the clock to after the major party nominating conventions and provides funds to both party candidates, not just a president-elect.

Laws also provide for an information structure that calls upon the president to create a council setting transition policy for departments and agencies.

Second, tacit understandings between presidents and presidents-elect, and as important as the transition laws have been in creating a supportive framework for Presidential transitions, equally important is the support presidents have offered to their successors.

Until this year, incumbent presidents who lost their campaigns for reelection have quickly conceded their loss, and second, called upon their staffs to pave a smooth road for the president-elect and his team.

George H. W. Bush, our most recent one-term president who ran for reelection, instructed his White House senior staff the day following his 1992 defeat to, quote, "Be helpful and leave no ticking time bombs for the incoming Clinton Administration," according to his White House economic and domestic policy advisor, Roger Porter. "The voters have spoken," Bush said, "and our job is not to make the task of the incoming administration more difficult than it would otherwise be."

Third, planning their own truncated transitions. Both George W. Bush and Joseph Biden were stalled for weeks from receiving the information and materials developed for them and their staffs. Instead of 75 days, their transitions were limited to 37 and 57 days, respectively, prior to Inauguration Day.

Yet, both developed strategies that ameliorated their situations. In their campaigns, both Biden and Bush focused on a digestible number of issues that they could easily translate into governing priority proposals.

Both men focused, first, putting a Presidential decision-making system in place by constructing a White House staff prior to choosing their cabinet secretaries and announcing their policy initiatives.

Additionally, Bush and Biden set up functioning personnel systems well before the election in order to have a team in place.

Dante Fascell, the sponsor and floor manager of the first Presidential Transition Act, had a goal of institutionalizing transition process based on access to information and cooperation from government officials. His goal has been met almost all the Presidential transitions since the Act became law in 1964.

Congress and the president recognized then and continues to acknowledge the importance of an effective transition to a good start for a new president. Having a well-organized operation developed

early in the election year benefits a president and the public as well.

With an experienced and knowledgeable staff, an incoming president can seize the political momentum and establish his brand of leadership at a time when the public is paying attention. Transition law has provided presidents opportunities to gather information—

Mr. CONNOLLY. Ms. Kumar?

Ms. Kumar, if I could just ask you to sum up because we are trying to ask everyone to do a five-minute summary and then we will get into questions afterwards.

Ms. KUMAR. Well, I just have two more sentences.

Mr. CONNOLLY. OK. Great. Sorry. Sorry for the interruption.

Ms. KUMAR. Oh, that is OK.

Transition has provided presidents opportunities to gather information they need and to enable them to deal with the national security challenges that inevitably rise in the early days of an administration.

With the late start and the 2020 transition during a time of a pandemic and with the economic crisis as well, we may be at a point for Congress to revisit transition laws and assess where there are needs for legislative fixes.

Mr. CONNOLLY. Thank you so much, and it was nice of you to mention Dante Fascell. I knew Dante very well and worked with him when I was a young Senate staffer before he was chairman of our committee and after he became chairman of our committee. He was a great American. Thank you for remembering him.

Ms. KUMAR. He was very important to the development of the legislation, starting in 1962.

Mr. CONNOLLY. Yes.

Mr. Stier, you are recognized for a five-minute piece of testimony and, of course, your full statement will be entered into the record.

Welcome.

STATEMENT OF MAX STIER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, PARTNERSHIP FOR PUBLIC SERVICE

Mr. STIER. Many thanks, Chairman Connolly, and Ranking Members Hice and Comer, for this hearing and for inviting me. It is a pleasure to be here with Martha Kumar and Lisa Brown, who are phenomenal colleagues in this area.

We have heard a lot already about how important a Presidential transition is. It is ultimately about the—not just the peaceful transfer of power but, ultimately, about the effective transfer of power.

Come January 20, we will have a president and his team that will be responsible for an extraordinary set of real challenges: the pandemic, the needs around the economy, and the list goes on and on. Those are the knowns, and there will be unknowns as well.

The transition process is a monumental task. It is impossible if there is no private sector analog it is so large. You think about the contours of our government: \$5 trillion, 4 million people, half of them military reservists and in uniform, hundreds of operating units, and, as the chairman has already identified, the 4,000 political appointees that need to be brought in.

It is a massive task and the history is that it takes a long time to get it done. The history is also terrific to see that Congress has done so many updates of it and has learned from past practice.

We are, obviously, not done yet. This is still the middle of the race and, therefore, everything we are talking about is really an interim assessment. But there are real opportunities for improvement.

The Partnership and its Center for Presidential Transition has been at this work for a very long time. Since 2008, we have helped every team get ready for McCain to Obama, Romney, Clinton, Trump, and now the Biden team. So, thanks to this committee for the updates you did just this year.

We will do a review of what has happened when it is all over. But in the meanwhile, we do have a set of 10 interim recommendations captured in my testimony and I am going to hit seven of them if I can, very quickly.

The first where there seems to be a unanimous view on this we do need to clarify the standard for post-election transition support. It should be a ministerial decision, it should be clear, and it should be a low bar.

This is not about deciding who is president. This is deciding whether someone is going to get the information they need and help they need to be ready to govern if they are in charge on January 20.

No. 2, we need to make more support available pre-election, and this will actually help in a very substantial way this first question around clarifying the standard. This, Congress has already done a lot of great work about lengthening the runway so there is more pre-election activity done in transition planning.

One of the best examples of this is in 2004 when, in light of the 2001 attacks, Congress came back and said, we are going to allow for security clearances, interim security clearances, to be done pre-election, and that was extremely important and we believe that there are many things that could be done that would move forward some of the support whether it is the Office of Government Ethics, doing reviews blindly pre-election, or many other places where you can actually help the transition teams do work pre-election so they don't actually have to do it post-election and so they are even better ready than they are today.

No. 3, and very importantly, we need to reduce the number of political appointees and those that require Senate confirmation. The biggest task that an incoming team has to do, and it is overwhelming, is to get 4,000 people in place.

Four thousand isn't the magic number. It is a number that has actually grown over time. It has doubled since 1960 overall and the number of Senate-confirmed positions have increased by 20 percent since 1980.

If you reduce the number you make it a lot easier for a new team to come in and you will make our government work even better. Senator McCain actually introduced legislation in 2010 to do just this and identify \$800 million that could be saved over 10 years by cutting the number of political appointees in half.

No. 4, we do need to stop Schedule F. We have too many political appointees. The last thing we need to do is create, you know, 10, 100, X number of political appointees.

That is not how you get effective government. That is not how you make sure we have efficiency in our government. We need a professionalized civil service that will ensure that our problems are addressed in the most cost-effective ways. Schedule F runs exactly contrary to that.

No. 5, we also need to look at the burrowing rules where there are some requirements that are relatively new that there are reports to Congress.

They should be public, and I think we need to review to see whether the actual transfer of a political appointee to a career civil service position should actually have a higher standard itself.

We also need, six, information. We need a modernized Plum Book. We should have real-time information about who the political appointees are, not just the Senate-confirmed ones but the entire 4,000.

And, last, we also need to update the Federal Vacancies Act. We have seen a bunch of issues associated with that. We can do better.

And then, finally, and the most important think I can say right now is, Congressman Sarbanes, I too join the list of huge fans of your father, who was a towering public servant. You have done remarkable work yourself. I am sure he was very, very proud of you and I just want to give you my condolences and thank you for following in his footsteps.

Mr. CONNOLLY. Thank you, Max.

John, did you want to respond? OK.

Mr. SARBANES. Yes, just—yes, quickly. Thank you, Max, and others who have acknowledged my father's work. It has been quite overwhelming the last few days, the tributes and remembrances that have come in. But the constant theme which is being echoed here today is that he was a workhorse, not a show horse.

He put his head down. He just wanted to help people. He did that every single day and he did it in a quiet but steady and determined fashion. So, thank you for paying your respects. I appreciate it.

Mr. CONNOLLY. Thank you, John.

Ms. Brown, you are welcome and we look forward to your five-minute testimony. Thank you.

STATEMENT OF LISA BROWN, VICE PRESIDENT AND GENERAL COUNSEL, GEORGETOWN UNIVERSITY

Ms. BROWN. Thank you.

Chairman Connolly, Chairwoman Maloney, Ranking Members Hice and Comer, and distinguished members of the subcommittee, thank you for inviting me to testify at today's hearing.

As Chairman Connolly indicated, I served as co-director of Agency Review for the Obama/Biden transition. Since then, I have participated in nonpartisan confidential convenings organized by Max's Partnership to brief Presidential campaigns for both parties on the importance of an effective transition and what that entails.

I have also been on the other side of a transition when, as counsel to Vice President Gore, I helped oversee an orderly transition

out of the White House after Vice President Gore conceded the 2000 election to George W. Bush.

Presidential transitions are times of vulnerability for our country. Not only is there a change in precedent, there is simultaneously a change in leadership at every executive branch agency.

Risks range from delays to oversight to errors, and on the national security front to being caught flatfooted by a savvy adversary with ill intent.

It is, therefore, vital that the transition of power from one Presidential administration to the next be as seamless as possible. No business would ever choose to have their entire leadership leave on one day.

The only reason the executive branch is able to do so successfully every four or eight years, including during times of crisis, is because of the cooperation of the outgoing administration and the professionalism and expertise of career civil servants.

This is not a partisan issue. This is about the efficient and effective functioning of government with the people it serves.

I have personally benefited from such cooperation when I became assistant to the president and staff secretary. I entered the White House on the afternoon of the inauguration and found an office that had little more than furniture and a computer with a wiped hard drive.

I was expected to start work immediately. My ability to do so seamlessly was due to the fact that during the transition I had met with Raul Yanes, the final staff secretary to President Bush, and his predecessor, then-Judge Kavanaugh, as well as John Podesta and Todd Stern, staff secretaries for President Clinton.

All had been gracious with their time, forthcoming and helpful in advising me how to navigate my new job. It continued a long nonpartisan tradition through many administrations, has benefited both new officeholders and the country they serve.

Transition from President Bush's administration to that of President Obama was successful because of the extensive cooperation between the two. President Bush set the tone for collaboration from his White House staff to Cabinet secretaries and agency heads and their political and career staffs.

Federal Government is a complex bureaucracy, making any transition a daunting task and a massive amount of work. Even when one has the full allotment of time between Election Day and Inauguration Day.

Agency Review, which is just one piece of the transition, entails establishing a structure and process to review over 100 executive departments, agencies, and commissions.

Our structure involved over 500 people specific to use for each agency. Thanks to the strong working relationship with the White House, the members of our Agency Review teams had received security clearances prior to the election and we had agreed on a process enabling teams to go into the agencies soon after.

I met with the GSA transition team the morning after the election and our teams then spent days meeting with career employees who were consummate professionals and absolutely indispensable to the efficient and smooth transition. If we ran into any glitches, we were able to raise them with the executive director of the tran-

sition, who resolved them expeditiously with his White House counterpart.

Why does all of this matter? The goal of Agency Review is to complete a timely and thorough review of agencies in the White House, to provide the president-elect, Cabinet appointees, and their key advisors with the critical information needed to begin governing the minute they take office.

The information collected informs the policy and budget planning process and personnel selection during the transition, and ensures that new administration officials can hit the ground running when they take office the day after inauguration.

Agency Review ensures that new appointees will know what they will immediately confront when they walk in the door, what pressing legislative, litigation, regulatory, budgetary, or programmatic matters will require immediate action so they don't drop any balls or miss an opportunity to act.

Agency Review also identifies key opportunities to begin implementing the president-elect's policy priorities of each agency. This work, which must occur at every agency, is critical to protecting and serving the American people.

The challenges facing the country today are even more daunting than those we faced in 2008, making cooperation between the outgoing and incoming administrations more important than ever.

I look forward to answering your questions and thank you again for the opportunity to testify. Let me please add my condolences regarding Senator Sarbanes.

He was a remarkable public leader. I am a Maryland resident and so have for a long time followed him and been grateful to him.

Mr. CONNOLLY. Thank you so much, and as a matter of fact, I am going to call—out of respect for the memory of his dad and for the wonderful work he is doing, too, I am going to call on Mr. Sarbanes to—for the first questioning.

Before I do that, let me just run down for Ms. Norton the order. Obviously, she could change it. But it is going to go Mr. Sarbanes, Mr. Hice, Mrs. Maloney, Mr. Palmer, Ms. Speier, Mr. Comer, and then Brenda Lawrence, Delegate Plaskett, Congressman Lynch, Congressman Raskin, and I will probably do cleanup.

So, in just a little bit, Ms. Norton, I am going to ask you, if you would, to run the hearing while I go and cast two votes. I have myself and the proxy. I will be as fast as I can and try to come back. But I really appreciate your willingness to do that, if that is OK with you, Ms. Norton.

Ms. NORTON. Of course, Mr. Chairman. Of course, Mr. Chairman.

Mr. CONNOLLY. Thank you so much. Thank you so much.

And I now call on Mr. Sarbanes for his five minutes of questioning.

What? Oh, sorry about that.

Ms. Speier, are you there?

[No response.]

Mr. CONNOLLY. Mrs. Lawrence?

[No response.]

Mr. CONNOLLY. Ms. Plaskett?

[No response.]

Mr. CONNOLLY. Mr. Lynch?

[No response.]

Mr. CONNOLLY. Mr. Raskin?

[No response.]

Mr. CONNOLLY. All right.

Mrs. Maloney, are you prepared to go?

[No response.]

Mr. CONNOLLY. Mr. Raskin, are you there?

[No response.]

[Laughter.]

Mr. CONNOLLY. Well, all right. You know what? I think, Ms. Norton, normally I would go last. But if you don't mind, I will go now and then hand over the gavel to you while I go vote.

Ms. NORTON. Of course. Of course, Mr. Chairman.

Mr. CONNOLLY. Thank you so much.

And, Mr. Hice, I believe you are there so you would be the first on your side of the aisle.

[No response.]

Mr. CONNOLLY. People are probably voting. OK.

On November 9—I recognize myself for my five minutes of questioning.

On November 9, days after Joe Biden was projected as the winner of the Presidential election, President Trump actually instructed leaders of Federal agencies not to recognize the Biden victory and to block cooperation with President-elect Biden's transition team.

In addition to those actions, President Trump even proposed the treacherous idea of state legislatures overturning election results to favor him. Such actions, clearly, could undermine trusted democracy and, in fact, do, and further hamper the incoming administration's ability to access information to get ready to govern.

Ms. Brown, when you were co-chair of Agency Review for the Obama/Biden Transition Project, how important was it for the incumbent administration to acknowledge the process and to work with you rather than, effectively, against you?

Ms. BROWN. President Obama—

[Technical issue.]

Ms. BROWN. Sorry.

Mr. CONNOLLY. Go ahead.

Ms. BROWN. First—

[Technical issue.]

Mr. CONNOLLY [continuing]. So, that we can hear Ms. Brown. Thank you.

Go ahead, Ms. Brown.

Ms. BROWN. Thank you.

President Obama himself has often cited President Bush's collaboration as absolutely indispensable to his transition. They worked very closely. The administrations worked very closely together.

As you have indicated, President Obama was taking office during a recession and it was a time of crisis, and President Bush actually worked—his team worked with our team to tee up decisions and say, which decisions do you want us to make, which decisions do you all want to make, and in order to ensure that at such a time of crisis the transition was as smooth as possible.

And we were welcomed into agencies. We were able to get to work immediately, and it made all the difference. There is quite a lot of information that you access during Agency Review that is not public.

So, you—it is not until that transition period post-election that you are able to get access to classified information, for example.

And so, certainly, with regard to national security matters it is vitally important that the incoming administration be fully briefed so that you don't have some type of a gap after they take office.

Mr. CONNOLLY. Thank you.

And I think that you—that point you make about national security I am looking at the Center for Presidential Transition identifying a number of national security issues that are affected by the length of the transition and the cooperation or noncooperation, you know, just beginning with a review of 17 intelligence agencies and their responsibilities and their issues, you know, a number of other key officials that they have to place into place, to say nothing of ongoing international security issues that matter, right.

There is a war that just kind of got, you know, semi settled in the Nagorno-Karabakh. There is an active war in Ethiopia in the Tigray province. There is, you know, active Russian meddling in Ukraine, Moldova, Georgia. There is Chinese activity on the Indian border that has gone kinetic.

I mean, there are lots of issues, plus terrorism and plus the Middle East and, I mean, you know, the United States can't interrupt its responsibilities in the world and national security is—looms very, very large and it needs to be seamless, to underscore your point, I think.

Ms. BROWN. Chairman Connolly, I might add, I believe the 9/11 Commission actually referred to the delay in the Bush—when Bush came into office because of *Bush v. Gore* that he—his abbreviated—I think it was 50-plus days of transition was part of the reason that he was—it took him a long—much longer to get his national security team into place and I have cited that as one possible reason for 9/11.

Mr. CONNOLLY. You are exactly right. It was quite explicit that they cited that as a contributing factor to the unreadiness of the U.S. Government to the threat that ultimately, tragically, materialized on 9/11. Thank you.

On November 23, the head of the GSA, Emily Murphy, finally ascertained the winner of the election, allowing President-elect Biden to access post-election resources and information.

In her letter, which I now insert into the hearing record, she suggested that Congress should create clearer guardrails on what it means for the GSA administrator to ascertain who the president and vice president-elect are.

On the other hand, as early as November 8 the Partnership for Public Service and four former leaders of Presidential transitions released a statement saying, “We congratulate Vice President Joe Biden and Senator Kamala Harris on their successful and historic campaign for the White House.

While there will be legal disputes requiring adjudication, the outcome is sufficiently clear that the transition process must now begin.”

I ask that this release also be included in the hearing record at this point.

Mr. CONNOLLY. Mr. Stier, among those who signed onto that letter I just referred to were Josh Bolten and former Utah Governor, Michael Leavitt. Those are big names in the liberal Democrat world, right?

Mr. STIER. I am just looking at Ranking Member Hice. Am I permitted to answer the question, given the time?

Mr. CONNOLLY. Yes.

Mr. STIER. OK. I just wanted to completely—Yes. I—so the Center for Presidential Transition is a part of the Partnership for Public Service. It is a—

Mr. CONNOLLY. No, my question was—my question to you was Josh Bolten and Utah Governor Michael Leavitt signed that letter. Are they liberal Democrats, to your knowledge?

Mr. STIER. My point to you is the answer is we are a nonpartisan organization and we have leaders from both the Republican and Democratic Parties that are involved in this.

Mr. CONNOLLY. I don't know what's hard about this Mr. Stier.

Mr. STIER. Yes. Yes.

Mr. Stier, to your knowledge, are they liberal Democrats or are they Republicans?

Mr. STIER. Chairman Connolly, as you know, they are Republican in their party affiliation. They are Americans in their treatment of the transition.

Mr. CONNOLLY. I understand that. I am trying to make the point that you are trying to make, if you would cooperate, and that is—that is that Republicans as well as Democrats signed that statement.

This wasn't a partisan statement. It was a recognition of the results of a free and fair election that were fairly decisive. Would that be a fair way of describing it?

Mr. STIER. Yes, it would.

Mr. CONNOLLY. OK.

Is Mr. Hice back?

Mr. HICE. Yes, sir.

Mr. CONNOLLY. OK, great. Mr. Hice, you are recognized for your five minutes of questioning, and then, Ms. Norton, if you would take the gavel. I am going to step out and go vote and then I will come back.

Ms. NORTON. Of course. Of course.

Mr. CONNOLLY. Thank you so much for doing that.

And, Mr. Hice, you are recognized.

Mr. HICE. Thank you, Mr. Chairman, and I think we are having some computer problems and that may have been a part of why you couldn't find someone else a while ago to ask some questions.

As I get into this, I do want to highlight the fact that a lot of the reason that we are here today, I think, is simply because the Democrats, for this entire year, have been pushing for vote by mail, and look, we all know when you have vote by mail you are not going to be able to get results back in a timely fashion.

We need look no further than simply to ask Chairwoman Maloney about that. Her own election took over six weeks to get an answer, finally, as to who won, and now we are looking at it on a na-

tional basis and we are here complaining that less than three weeks was involved in having a transition with GSA.

Well, a lot of that can be attributed to the fact that we have been pushing and accepting across the country vote by mail, which is a disaster on multiple fronts. But rather than focus on the transition that is already underway, I would like to speak to the fact that the majority is holding this hearing because they are frustrated with the fact that states are exercising their right to question and investigate irregularities in this 2020 election.

And, frankly, I find this to be gross hypocrisy because the Democrats were consistently questioning the results of the 2016 election until recently. In fact, the talk of impeaching President Trump started before he was actually even elected.

In April 2016, Politico posted an article suggesting that Representative Alan Grayson said that Trump's insistence on building a wall on the U.S.-Mexico border could lead down a path of impeachment.

In 2017, Al Green and Brad Sherman, in the first years of his presidency, introduced a resolution impeaching the president due to high misdemeanors. Then there is the whole Russian collusion thing that we have already talked about, a falsely peddled narrative that went on for years and cost the taxpayers tens of millions of dollars.

You have Heba Abedin, the sister of Hillary Clinton's top aide, Huma Abedin. She used Facebook to call on the Justice Department to request an audit of the vote of the 2016 election.

Concerns about the voting machines also are nothing new. In fact, a member of this committee on the other side of the aisle validated fears in voting machine irregularities and introduced legislation to prevent states from contracting with firms owned or influenced by non-U.S. citizens.

This bill would have impacted at least two very large companies, one of which would be the Dominion voting systems. And a Democratic senator, in a speech at an election security conference in Washington, DC, said that the voting machine lobby literally, and this is a quote, "literally think they are above the law. They are accountable to no one and they have been able to hot wire the political system in certain parts of our country," end quote.

So, confidence in the democratic process is not a partisan issue. If we spend millions of dollars giving credence to the Russian collusion narrative then, certainly, we ought to be able to give a few weeks to ensure that the election that just took place was done so with integrity, and I would think also that we should be holding legislative investigative hearings to explore the elective—elect irregularities in order to earn back the trust of the American people. I think all of this is extremely important.

Mr. Stier, do you agree that a Presidential transition doesn't just start after ascertainment or even once the candidates are declared that the preparations for this huge undertaking should actually take place months before the election?

Mr. STIER. Absolutely. It is a very powerful point that you make there. If you are going to be ready you have to start early, and this committee and Congress has, over time, made it easier and easier for that to happen and I think there are some additional improve-

ments that could be made that would reduce the concerns around ascertainment because more work would be done pre-election.

Mr. HICE. OK. And would you agree that that actually took place?

Mr. STIER. Yes. The Biden team has followed best practice. They started early, they started smartly, and they started with good people.

Mr. HICE. OK. Thank you very much. I see my time has expired. I yield back.

Ms. NORTON.[Presiding.] The gentleman's time has expired.

Next on the list, as called by the chairman, would be Mr. Sarbanes, if he has finished voting.

Mr. Sarbanes?

Mr. SARBANES. Yes. Thank you, Madam Chair. I appreciate it. Can you hear me OK?

Ms. NORTON. I can hear you.

Mr. SARBANES. Great. I want to thank the witnesses for your testimony.

Mr. Stier, I would like to begin with you and may end with you, depending on how long your answer is. But a lot of the attention around the transition tends to focus on the higher level political appointees and so the process by which one group is anticipating leaving and the other one is coming in.

But I would like to get your perspective from the work that you do. You know how the rank and file operate and do their jobs inside these agencies and we are talking about professionals who care deeply about the mission of the organization that they serve.

They want to do a good job, and I imagine that these transitions create a tremendous amount of anxiety for the rank and file because they want to make sure that the agency handoff is happening in a way that represents high standards and professionalism.

So, perhaps you could speak to what that looks like, the kind of inside mechanics. Pick an agency if you would like as an example and talk about what it means for that civil servant, that Federal worker, who cares deeply about their job and making sure that the function of the agency is being carried out in a—at a high level and how important it is for them to have the transition done well or for there to be problems with the transition.

Mr. STIER. So, Congressman Sarbanes, a fabulous question.

The reality is that it is the career work force that is the engine room of our government and it is vital that that career work force is tended well and engaged well by new political teams if our country is going to be able to address the critical issues that we have in front of us, the economy, you name it.

A quick example. You said to give you an example of an agency. The Small Business Administration in this past year had to put out 5 million loans, which is 80 times what it has done previously, and that was, obviously, to help critical small businesses across the country.

That is a phenomenal workload and that work is being done by career civil servants. So, you ask what the experience of the work force, the career work force, in a transition.

The motivation of that career work force is to get mission done and it needs leadership in place to help provide policy guidance. The transition is often a time of uncertainty and that uncertainty causes challenge. We all know that in any management context uncertainty is the bane of good management.

And so in a transition context, it is very important for the existing leadership to be supporting the career work force and continuing the work of government and that the handoff in leadership is smooth.

The first task of any new leadership team should be to engage effectively that career work force because their ability to get stuff done is going to depend on that relationship, and that smooth handoff is exactly what we are talking about here.

It is one of the reasons why I think we should have fewer political appointees because it would make that handoff easier and you would have leaders that stayed around longer.

One of the big challenges in the context of the system we have right now is we have short-term leaders that don't align against the long-term problems that government is intended to address or the health of the institutions that they are in fact responsible for.

Last point, if you look at our testimony, we believe the political leaders should be held accountable for good performance and for their effective management of the career work force, and then we would have better return on taxpayer dollars for more effective government.

Mr. SARBANES. Let me—thank you. That is exactly what I was interested in hearing. Let me do a followup here.

If you had the political leadership in an agency resisting the transition for any period of time, could that translate into actually having rank and file staffers in these agencies, effectively, being told to sit on their hands, so they are literally stuck not being able to perform the duties that would ensure a smooth transition. Could it take on that appearance?

Mr. STIER. So, one of the improvements that this committee and Congress helped make this last year is to ensure that it is a career leader in charge of the transition preparation in every agency. That was an improvement that was quite important that you just did and, I think, makes a big difference.

But, fundamentally, everyone should be on the same team and that team needs to make sure that our government is working effectively. The political team coming out needs to off board as effectively as the incoming team did.

Lisa talked about the Bush exit as the gold standard of handoff and we should use that as the model for how to do that right.

Mr. SARBANES. Thank you very much.

Ms. NORTON. Thank you very much, and I thank the gentleman whose time has now expired.

I now call on Mr. Palmer.

Mr. PALMER. Thank you, Madam Chairman, and I do want to express my condolences to my friend and colleague, Mr. Sarbanes.

You are in my prayers, especially this time of year, and I lost my dad in 2012 and I think about him often, and I hope, and I know you do, you are going to have many fond memories. But you will miss him.

Mr. SARBANES. Thank you very much. I appreciate it. Thank you.

Mr. PALMER. Mr. Stier, are you aware of previous precedent set by the Democrats in delaying the ascertainment of a president-elect and circumstances of lately contested elections?

Mr. STIER. I think the last time, and I am not sure if the reference is to the 2000 election, the last time you saw a delay in the ascertainment was in the 2000 election, and it had real consequence.

We have already heard about the 9/11 report itself. You know, if you look at the numbers, the 1,200 Senate-confirmed positions, President Obama was the high water mark of getting his senior team in place.

In the first 100 days he was able to get 69 in. That is—you know, that is the high water mark. But President Bush, in light of the shortened transition period, was only able to get half that number in in the first 100 days. So—

Mr. PALMER. I would like to point out, though, in that Bush 43 transition that one of—for me, one of the really problematic issues related to 9/11 was the delay over the confirmation of John Ashcroft as the U.S.—United States attorney general, which was entirely political. But that is another topic for another time.

And I do appreciate your answer on that because it was the former Clinton GSA administrator, David Barram, who testified before this subcommittee about the delay, delaying the ascertainment, and Dante—former Congressman Dante Fascell was quoted by my good friend, Mr. Connolly.

I just want to read you a quote from the hearing regarding the legislation that governs this from 1963. He said, “There is nothing in the Act that requires the administrator to make a decision which, in his own judgment, he could not make. If he could not determine the apparent successful candidate he would not authorize the expenditure of funds to anyone and he should not.”

I think in this case, as the process has gone along, the GSA administrator has made a decision and the process has begun. Would you agree with that, Mr. Stier?

[No response.]

Mr. PALMER. You are mute. I am sorry. You are muted.

Mr. STIER. Thank you for that. I am competing with the clerk on who is unmuting so we are going back and forth on that there.

But the answer is that I am very impressed with the fact that I hear bipartisan interest in clarifying the standard for ascertainment. I think it needs to happen.

We need to make sure that this is viewed in fact as a ministerial decision, that there isn't as much discretion involved so that we can see, you know, more investment in transition activity faster.

Mr. PALMER. Well, again, quoting former Congressman Fascell, he says in the unlikely proposition that would happen and he was, at that time, it had only happened three times. Actually, this is the fifth time.

He said that if the administrator had any question in his mind he simply would not make any designation in order to make services available by the Act.

With that in mind, I don't think the Act really contains the guidelines to assist the GSA administrator. Do you think we need to make some changes? Amend the Act?

Mr. STIER. Absolutely. I think we do and—or you do, rather, and to amend it to make sure that you have clarity that this is a low bar, and, as I indicated earlier, you could also reduce the importance of that decision by allowing more work to be done pre-election so this doesn't become as big a gate as it currently is.

Mr. PALMER. I appreciate your response, and I need to go vote so I am going to yield the balance of my time, Madam Chairman, and I thank you.

Ms. NORTON. I thank—I thank the gentleman for his questions.

By order of seniority, next would be Mrs. Maloney.

If she is not back, by order of seniority, my questions would be next.

I do want to express my condolences to my friend and neighbor, my next-door neighbor from Maryland, Mr. Sarbanes, along with Republicans—as Republicans and Democrats have already done on this committee.

I want to indicate that ranking—Ranking Member Hice cited the *Bush v. Gore* as taking even more time to certify. But I hope that we understand that that was because of the fact that the election had not been called, I believe, in Florida because of hanging chads. The election was called, for all intents and purposes, on November 3 on this occasion.

My question goes to a serious concern I have about the relationship of the—of the transition and its 20 days lost to the public health emergency that we are now experiencing, our record high daily case counts, even though there is, I am happy to note, hope on the horizon that a vaccine will become available in a few days.

My question, first, is to Ms. Kumar. How important is a seamless transition threatened in the midst of a national health crisis?

Ms. Kumar?

Ms. KUMAR. Yes. Yes, I am now unmuted.

It is—it is terribly important to get a hold of the—of the pandemic and to—in order to do that, the Biden team needed to have information on the distribution process and all of the different producers of vaccines of the differences between them, and much of that information—

Ms. NORTON. Go ahead.

Ms. KUMAR. Yes. That information could not be provided until the administrator ascertained a president-elect, and what ended up happening was that they had to—the Biden team would then have to do work arounds and talk to people who are knowledgeable from—who had been in the administration earlier, which is not a good substitute for getting the latest information which is required on this.

So, that is a good example of the kinds of crises that occur that you need to have the transition start as early as possible and with the detailed information provided to the next person who is coming into the presidency.

Ms. NORTON. Yes, this pandemic does present much more than a wrinkle for the transition.

Ms. Brown, how could—how could delays in assessing national health information affect plans to distribute and administer the vaccine?

Ms. BROWN. So, I think Martha has addressed this. I think you really want to make sure is that the incoming—that President-elect Biden's team is fully briefed on Operation Warp Speed, knows what CDC is doing, knows what DOD's distribution plans are so that—and how are they working with states already, what has been—how much vaccine has been ordered over what period of time. All these questions.

It is, as you well know, an organizational challenge to distribute the vaccine across the country. And so staying with the nitty gritty detail of all of that is extremely important for the country to make sure that when they take office that there is no blip in that distribution.

Ms. NORTON. Well, Mr. Stier, finally, as we look at what the president-elect is doing on the pandemic response, can you indicate what he is doing right on his response, given these delays?

Mr. STIER. So, as has been—thank you, Congresswoman.

As has been noted earlier, the Biden team got, you know, going very early with professionals to pre-election and I think the most important thing they did right is starting very early to prepare for the possibility that they would ultimately be in charge and bringing in real expertise to—around public health issues to get up to speed and to look at the different options.

You know, obviously, this is, as you just heard from everybody else and you know yourself, a huge task, and I think the only point I would offer beyond what has already been made is that there are a lot of unknowns and one of the more tricky aspects of this for an incoming team will be not only knowing what has happened already but being up to speed and having the relationships both with the career work force and with colleagues across the government so that they can deal with a fast-moving and challenging situation and make good choices.

That is really why we need great leader support.

Ms. NORTON. Thank you. Thank you very much. The gentleman's time has expired.

Next, would be Mr. Comer.

Mr. Comer, are you there?

Mr. COMER. Yes, I am.

Ms. NORTON. You can—you may proceed.

Mr. COMER. Thank you. Before I begin my questions, I, too, would offer my sincere condolences to Mr. Sarbanes.

Let me begin with Mr. Stier. Joe Biden has said that the outreach from Federal agencies has been sincere, that it has not been begrudging so far and I don't expect it to be.

Is that sentiment consistent with what you are hearing about how the transition is going right now?

Mr. STIER. It is. I think that, again, it is the career work force that is most central to providing information to the Biden team.

My understanding is that those communications are now happening and they are happening well. There are pockets of challenge but there is also an escalation process in place, and I want to doff my hat in particular to Chris Liddell, who was the No. 2 in the

Romney Readiness Project, is now deputy White House chief of staff.

He is expert on these issues and I think has been really a phenomenal leader in government in trying to make sure that the right preparation happened and the right things are happening now.

Mr. COMER. I am glad to hear that because I don't think that is the message that is being portrayed by a lot of the mainstream media. So, I am really happy that we have had this hearing to get the truth out.

Ms. Kumar, let me ask you, Clay Johnson, who led George W. Bush's transition team, has said that Biden, quote, "Can't wait to be sure that the president-elect really is the president-elect. His advisors have to hurry up and move forward."

Do you agree with his sentiment that a candidate's transition team should already be working on identifying key senior staff and cabinet positions even before the official GSA ascertainment takes place?

Ms. KUMAR. Yes. I think that all of us would agree on that, that the earlier you get started the better transition you are going to have.

In Clay Johnson's case, he began in about over a year before the—before the transition actually occurred. Was the executive director and worked on the appointments process.

Because there is so much to do, you have to set up a system where you are going to handle all of the resumes that come in, where if you have—I think the Obama people had over 200,000 resumes come in, and you have to line up—line up your team and figuring out the choices of what are your priority issues and then work at filling those posts early. And you can see that one of the first things that Biden did was filling a task force on the virus because that was his priority issue.

Mr. COMER. Uh-huh.

Ms. BROWN, you served as co-director of Agency Review for the Obama/Biden transition team in 2008–2009. Is that correct?

Ms. BROWN. Correct.

Mr. COMER. Can you describe how Agency Review works to ensure that a president and their team is ready to hit the ground running on day one?

Ms. BROWN. So, they—essentially, the teams go into each agency and try to do their best to learn what are the salient issues, essentially, what is going to hit you in the face when you walk in the door, and then what are the opportunities for implementing a president-elect's agenda.

So, what this means is sitting down in multiple meetings with career staff involved in the different elements of each agency. If you think about something like HHS or DOJ, obviously, they have enormous number of, essentially, subagencies and so each one of those you need to go into, make sure you understand what are they working on at the time.

And, often, Agency Review focuses on what is going to happen in the first 100 days and so that you really make sure that you are ready when you come in. You know what is going to be on your plate and whether it is litigation, regulation, a programmatic issue.

And if I might add to what Martha and Max added, one, even if a president-elect has spent a lot of time before the election thinking about who they are going to nominate, which I agree is incredibly important. You need to back that up.

You still have to do background checks on everyone and that becomes a bottleneck. It is something with the FBI, OPM. That is something that often slows down the nominations and is something that I believe can't happen until after the election in thinking about announcements that—

Ms. NORTON. The gentleman's time has expired.

Next will be Mrs. Maloney if she is back.

[No response.]

Ms. NORTON. If she is not, next will be Ms. Plaskett.

Ms. Plaskett?

Ms. PLASKETT. Yes, thank you, Madam Chair, and thank the witnesses who are here. This is very important information that we are going through and I appreciate all of your perspectives.

The Trump/Biden Presidential transition is the first time that the majority of a transition will be conducted virtually due to the pandemic. In fact, since March 2020, most of the Federal work force has been working from home to adhere to social distancing guidelines.

Given the rise in coronavirus cases, it does not appear that teleworking is going to go away anytime soon. In addition to dealing with the uncooperative outgoing administration, the Biden transition team is in the throes of building a new administration in an abbreviated transition, and virtually.

Mr. Stier, what challenges has the Biden transition team faced due to this virtual operation, if you are aware of any?

Mr. STIER. Congresswoman, you did such a great job of outlining the challenges. It is unbelievable, in the best of circumstances, how large this task is and how meaningful and difficult it is.

But it is, clearly, way more difficult in the context of the pandemic, and as you noted, the Biden team is forced in at least two ways to have to address doing things virtually for itself, for its own team, is having to perform all the functions of—just startup and a very intensive startup done virtually and then having to interact, largely, with the Federal work force virtually as well, and that includes, obviously, engaging with potential appointments—appointees that, you know, you might ordinarily have more face-to-face contact with, in-person contact, than you can in this context.

So, you know, I think that the Biden team really, you know, deserves a lot of credit for the intensity of its efforts very early on. They saw this.

They began organizing in the springtime so they have been preparing for having to do these things. It doesn't make it—the problem—go away. You know, it just means that they are better able to manage it and they have got great people doing it.

I do think that one other point you made there, though, about the Federal work force being virtual, I would hope also at some point this committee could come back to the fact that the Federal work force has done an exceptional job of acting virtually and there is a lot of good lessons learned from that, that government can be

done even better, more efficiently, more cheaply, by the virtual activity that is taking place now.

Ms. PLASKETT. Mr. Stier, that was leading to my second question was that experience of doing this transition virtually can give us—you know, inform future Presidential transitions and how to do it in a more truncated, potentially cheaper fashion.

I think this would go toward your discussion earlier about maybe there not being a necessity for having as many political appointments or as many set confirmed appointments.

You know, not having to take people around to all of the senators to have these discussions, or do we need to do it and should it be virtual and will that speed up the process? So, I am wondering if you have any thoughts about that.

Mr. STIER. So, certainly, on your first issue, I 100 percent agree with that and, again, I mentioned earlier Senator McCain had introduced legislation in 2010 noting that it would save \$800 million over 10 years to cut the number of political appointees in half and, actually, the number of political appointees, the 4,000 that are used today, is double what they were in 1960.

So, that is one plain lesson and I think you are exactly right that we do see a number of overall political appointees and those—especially those that are requiring Senate confirmation would make this process a lot easier. The Senate is a—you know, is a small pipe and a lot is pushed through it and it, frankly, is undoable to get 1,250 people in in real time.

On the virtual point, it is a very interesting one that you raise. I noted earlier that we are still midway through the race. I think we are going to learn a lot of lessons. When this is all over, you know, we have always done an assessment after the fact.

It has taken a bunch of time because there is a lot of information to gather. But I am confident that there will be improvements and efficiencies that are available that we can—we can adopt longer term by doing things virtually.

Ms. PLASKETT. Thank you.

And with the short time that I have remaining, Ms. Brown, there are review teams that physically need to enter Federal buildings to do things such as reviewing classified material. Given your experience with that review process, how might this hinder the transition team's ability to be fully prepared to take office on day one?

Ms. BROWN. Congresswoman, you are absolutely right. There are certain things that can't be done virtually, as Max has indicated. I think we have all become, unfortunately, accustomed to communicating this way. But it is not a perfect substitute. It is harder to suss out the jewel that you were talking to.

You can't deal—you cannot communicate classified information over Zoom. I think that is, obviously, the biggest challenge and so that needs to be done in person.

I will say it should be able to be done in person. Right now, people are working at supermarkets and driving buses and Federal employees who need to be at work are at work, and so I think that is something that we, as a government, should still be able to accomplish with, of course, all of the right safety precautions.

But you are quite correct, that is a piece of it that needs to be done in person.

Ms. PLASKETT. Thank you very much, Madam Chair, for the opportunity to question these witnesses, and I yield back.

Ms. NORTON. I thank the gentlewoman, whose time has expired. Is Mrs. Maloney back?

[No response.]

Ms. NORTON. If not, we will go to Mr. Raskin.

Mr. RASKIN. Thank you, Madam Chair. My thoughts, too, are with my friend, John Sarbanes, and his family. His father, Senator Sarbanes, was a model public servant who believed in public service and was a champion of government and the people who served us in it, and he will be sharply missed by the people of Maryland and by the people of our country.

Madam Chair, this administration has been messing with the civil service. First, the president issued executive orders gutting collective bargaining and attacking unions. Then they shut the government down. Then they tried illegally to abolish the Office of Personnel Management.

Now, President Trump has issued an executive order calling for the creation of a new Schedule F, which would allow reclassification of hundreds of thousands of expert employees in the Federal civil service and take away their ability to appeal adverse actions taken against them, making them easy to remove and easy to replace with unqualified or less qualified political operatives.

Mr. Stier, you run a group that promotes nonpartisan good government. Does this executive order make government better? Does it promote the value of expertise?

Mr. STIER. Thank you, Congressman Raskin, and the answer is, clearly, not. It is really a fundamental attack upon the core notion that we need merit-based system professionals to deal with the really difficult problems that we face as a Nation.

And it is frightening, and I would just offer the additional point that there has been some conversation that this could be easily overturned by an incoming President Biden and my view is that the damage that could be done between now and the next administration is really serious, and to the extent that this can be stopped it would be to the people's benefit because, ultimately, it will lead to incredible inefficiencies, incredible harm to the public and to public servants.

It is worth noting that our system was based—fundamentally, it started after a president was assassinated by a would-be job seeker and there was a recognition that that is not the way to run a government, that we actually needed people who were selected for their expertise because they were public stewards and had the ability to solve big problems. Those are the ones that we needed in government.

Mr. RASKIN. You recently wrote an op-ed in “USA Today” which, Madam Chair, I would like to submit for the record, if I could.

Ms. NORTON. So accepted.

Mr. RASKIN. Thank you.

And in that piece you said that these actions could make our government less accountable and less effective.

But, Mr. Stier, you have actually called for reform of the civil service. I am wondering why do you think this is not the reform that is required right now?

Mr. STIER. So, thank you again, for that opportunity to answer that question.

There is no doubt that our system does need reform. You know, you look at our pay system right now. It was created in 1949. I don't know of any other organization that is running successfully with a pay system from 1949.

So, there is definite modernization that needs to occur. The challenge with the Schedule F is that it undermines the basic premise that our career work force should be selected for their expertise and they should not be gotten rid of unless there is a problem—there is a cause, a real cause, for getting rid of them.

The Schedule F, what it would enable is a political appointee to fire a whistleblower, someone who has identified waste, fraud, and abuse, and therefore gets fired for it. Or that person never raises their hand because they know they can be fired. That does not serve the American people.

Mr. RASKIN. Thank you.

Ms. Brown, you ran the Agency Review teams for President Obama in the 2008 transition. How important was the presence of career civil servants to you during that transition process?

Ms. BROWN. Thank you for that question.

It is absolutely indispensable. Most of our names went into agencies were with career civil servants. If you think about it, it is only the very top level of these enormous agencies that have—with political appointees.

Everybody else is a career employee and the individuals who really know the ins and outs of programs, who are doing the work of the government every day are career civil servants.

And so they are the ones that you really want to talk to and need to be talking to as you are learning about what is going on in that agency—agency review.

Mr. RASKIN. Well, I appreciate that.

Madame Chair, I just want to say that OMB has identified 425 people, nearly 90 percent of its staff, for conversion to this Schedule F, and this creates real risk that thousands of people will be removed from their jobs right in the midst of the pandemic, right in the middle of the holidays, and right when we need them most for this Presidential transition. We must not allow this plan to go forward.

And I yield back to you, Madam Chair.

Ms. NORTON. All right. I thank the gentleman for those remarks. His time has expired.

The next person who is available appears to be Ms. Speier.

Ms. Speier, are you back?

Ms. SPEIER. I am. Thank you, Madam Chair.

I would like to focus on midnight rulemaking. In the final months of any Presidential administration there is a high volume of rules that are issued.

This is oftentimes called midnight rulemaking because in the attempts in the waning hours of an administration to achieve political policy goals they do them in the dark of night.

So, it is an endless problem. It has gone on from one administration to the next. I am particularly concerned about what might happen at the end of this administration, and I know that Chair-

man Connolly has introduced the Midnight Rulemaking Review Act that would require GAO to create a kind of spreadsheet of major rules promulgated near the end of an administration.

So, Ms. Brown, would incoming administrations benefit from a list of regulations that an outgoing administration promulgated at the eleventh hour?

Ms. BROWN. Definitely. Those are regulations that they are going to need to be addressing the minute they walk in the door. So, it would be extremely helpful to have those.

Ms. SPEIER. So, having said that, the only options to reverse the last-minute regulations are the congressional review authority, correct?

Ms. BROWN. So, it depends upon the stage that the rule is in. If it is proposed, then you could act quickly to pull it back. If it is final, you are absolutely right, you are either going to have to go through the congressional Review Act or go through formal rule-making.

Ms. SPEIER. And in that situation it is a majority of members of both houses to overturn a last-minute regulation, correct?

Ms. BROWN. It is not an easy process. You are correct.

Ms. SPEIER. Ms. Kumar—thank you.

Ms. Kumar, you have studied Presidential transitions. What have you found in terms of attempts to fill legacies through the use of regulatory process at the end of an administration?

And you are muted.

Ms. KUMAR. Yes. OK.

As Lisa has talked about the problem, and one of the things that it does is it starts a new administration on a negative note of things, particularly if there is a party change, that they then have to spend their time rather than working on their priorities, making sure that they—that they address the rules that have been left behind.

In the Bush Administration, at the end of the administration, Josh Bolten, who was the chief of staff and also was running the transition out, sought to address this issue by encouraging the department secretaries by giving them a timetable that they had to—that they had for issuing rules, and they had—his memo was on May 9 in 2008.

And so it said except in extraordinary circumstances, regulations to be finalized in this administration should be proposed no later than June 1, 2008, and final regulations issued no later than November 1.

So, that was an attempt to, by the sitting administration, to get hold of the process and it had mixed success because the department secretaries are dealing with the hot-button issues and they put this toward the end so there were a lot of appeals that they had to deal with.

But it was an internal attempt to deal with it.

Ms. SPEIER. So, has that same process been used in the Trump administration, do you know?

Ms. KUMAR. No.

Ms. SPEIER. You don't know, or no, it hasn't?

Ms. KUMAR. As far as I know, no, it has not. I think there have been—there have been a lot of rules that have been issued. One of

the first things that an administration does when they come in is they stop the printing of the Federal Register for anything that might have been done at the very end because if they are not printed in the Federal Register then they are not—they are not—then they are not live.

Ms. SPEIER. All right. Thank you.

I just want to point out that the congressional Review Act has been used to overturn 17 rules. Sixteen of them were overturned by President Trump in the first two years and these were rules of the Obama Administration that protected water, fair pay, resource management, and unemployment compensation.

And with that, I yield back, Madam Chair.

Ms. NORTON. The gentelady's time has expired, and the chairman is back, I believe.

Mr. CONNOLLY.[Presiding.] Thank you so much. Thank you for doing such an able job, Madam Chairwoman. I appreciate it.

Mr. HICE. Mr. Chairman?

Mr. CONNOLLY. Yes, Mr. Hice?

Mr. HICE. Thank you. Thank you, Mr. Chairman.

Earlier, you made the point that Republicans had signed a letter announcing the election to be over and calling for ascertainment of the winner.

I would like to request unanimous consent to enter into the record an article in the Washington Post by Beth Newburger, who was a GSA associate administration for public affairs during the Clinton Administration. The title of the article is "Emily Murphy Was Right Not to Recognize Biden's Win Until Now."

So, basically, what we have is a Democrat, one who was very much intimately involved in the process, saying that Administrator Murphy was correct.

I would like to enter it into the record, please.

Mr. CONNOLLY. Without objection, it is so ordered.

Mr. CONNOLLY. Thank you.

And I just want you to know that, apparently, I am in good company with President-elect Biden. I won my reelection with 72 percent of the vote, my best in a competitive race ever, by a margin of 140,000 votes, and my Republican opponent has yet to concede.

I not only was certified as the winner, I now have my election certificate ready for framing. So, it is kind of a common illness, apparently, among some to just not recognize the results of elections.

I want to thank all of our panel and I want to particularly thank my dear friend, Eleanor Holmes Norton, for filling in for me while I had to cast several votes with my own and a proxy on two bills before the House floor.

This is a very important hearing and I thank my friend, Jody Hice, for his contribution. I mean, I do think we can—look, we are not going to agree on some politics, a lot of politics, surrounding this issue.

But I do think that Mr. Hice and I and others on the subcommittee and the full committee can try to find common ground, though, in dealing with some of the crevices that have been exposed that need to be fixed in law.

You know, Emily Murphy herself, as the GSA administrator, urged Congress to pass legislation to address the ambiguity around

the process of ascertainment and to better define what ascertainment is and what it has triggered so that that burden is not in the hands of some future administrator to make that decision.

And I think my friend, Mr. Hice, might be receptive to trying to address that legislatively, along with some other issues we have got.

Mr. HICE. I am. I am, thank you.

Mr. CONNOLLY. Thank you, Mr. Hice. I welcome that collaboration and let us try to do that.

Mr. Stier laid out a number of legislative suggestions for the partnership that I think we also ought to take a look at. They are nonpartisan.

God knows Mr. Stier has gone out of his way to stress that, and but that—you know, that is a good thing, and I do think there is fertile ground there for further legislative action.

In my own opening statement, I talked about sort of a midnight regulation process and, again, that is building on bipartisan legislation using—utilizing GAO as the analytical tool to try to bring to bear some judgment on what happened—what is good, what is bad, what is indifferent, and what, if anything, we can and should do about it.

So, I want to thank all of our witnesses for their remarks. I want to commend my colleagues for participating in, I think, a very timely and important conversation. I want to insert into the record a statement of support for the hearing for the White House Transition Project.

Mr. CONNOLLY. I also want to thank our able staff. These are not easy circumstances in which to organize a hearing. I want to thank our witnesses for their cooperation and their patience with the technology and with the schedule of the House.

And without objection, all members will have five legislative days within which to submit additional written questions for the record, and if you go through the chair, we will make sure they are entered into the record.

I ask our witnesses to respond as promptly as possible to any written questions we forward to them, and with that, this hearing is adjourned.

[Whereupon, at 11:49 a.m., the subcommittee was adjourned.]

