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ONE HUNDRED SIXTEENTH CONGRESS

# Congress of the United States

## House of Representatives

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SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS

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November 23, 2020

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

Dear Administrator Murphy:

I write to impress upon you the potentially deadly consequences of your continued refusal to ascertain that President-elect Joe Biden and Vice President-elect Kamala Harris are “the apparent successful candidates for the office of President and Vice President,”<sup>1</sup> and to urge you to make this ascertainment immediately to enable an effective transition of power during the worst public health crisis in over a century. Your refusal to follow the law when the winner is so clearly apparent<sup>2</sup> would be a threat to American constitutional democracy under any circumstances, but your refusal to do so at the height of a pandemic that has already killed more than 250,000 Americans is a direct threat to American lives.

The oversight activities of the Select Subcommittee on the Coronavirus Crisis have revealed the critical importance of governmental preparedness in protecting public health during this crisis. In nearly every facet of the federal government’s response, the failure to act quickly earlier this year exacerbated the damage caused by the rapidly spreading virus. For example, bipartisan health experts told the Select Subcommittee in May 2020 that the federal government’s failure to quickly ramp up coronavirus testing hampered efforts to control the pandemic, with former Food and Drug Administration Commissioner Dr. Mark McClellan commenting that that the nation should have had more testing capacity “months ago.”<sup>3</sup>

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<sup>1</sup> 3 U.S.C. § 102, note 3(c) (“The terms ‘President-elect’ and ‘Vice-President-elect’ as used in this Act shall mean such persons as are the apparent successful candidates for the office of President and Vice President, respectively, as ascertained by the Administrator following the general elections held to determine the electors of President and Vice President in accordance with title 3, United States Code, sections 1 and 2.”).

<sup>2</sup> Having secured 306 electoral votes, President-elect Biden and Vice President-elect Harris are the “apparent successful candidates for the office of President and Vice President” and are in the identical position as then-President-elect Trump and then-Vice President-elect Pence when they were ascertained by your predecessor as “the apparent successful candidates” on November 9, 2016.

<sup>3</sup> Select Subcommittee on the Coronavirus Crisis, *Press Release: Bipartisan Experts Agree that Comprehensive Testing, Tracing, and Targeted Containment Strategy Is Key to Reopening Country* (May 13, 2020) (online at [coronavirus.house.gov/news/press-releases/bipartisan-experts-agree-comprehensive-testing-tracing-and-targeted-containment](https://coronavirus.house.gov/news/press-releases/bipartisan-experts-agree-comprehensive-testing-tracing-and-targeted-containment)).

Similarly, Dr. Anthony Fauci testified before the Select Subcommittee in July 2020 that the failure to rapidly and uniformly implement public health measures in all 50 states led to a “surging” of infections in the United States, even as many other countries were able to quickly control the virus.<sup>4</sup>

With coronavirus infections, hospitalizations, and deaths now rising sharply across the country, the Biden-Harris Transition Team has indicated it is preparing to rapidly respond to the crisis following President-elect Biden’s inauguration. The Biden-Harris Transition Team named a COVID-19 Advisory Board two weeks ago and named Agency Review Teams for the Department of Health and Human Services and other key federal agencies the following day.

Your unwillingness to perform your legal duty is interfering with these preparations by delaying transition activities across the entire federal government and denying the Biden-Harris team the ability to coordinate with the departments and agencies they will lead in less than two months. The Select Subcommittee’s investigations have shown what happens when the federal government responds to the pandemic without sufficient preparation and coordination—yet your actions risk a catastrophic repeat of these failures. According to former U.S. Surgeon General Dr. Vivek Murthy, one of the co-chairs of the Transition COVID-19 Advisory Board, the length of transition time the incoming administration is given “will impact how effective we are at closing the testing gap, ensuring that hospitals and doctors and nurses have enough protective equipment like masks and gloves and make sure we have enough syringes and swabs to proceed with a vaccination campaign.”<sup>5</sup>

Federal officials have expressed hope that 20 million Americans could receive a coronavirus vaccine in December, increasing to 25 to 30 million per month beginning in January, helping to slow the spread of the virus, save hundreds of thousands of lives, and safely enable a gradual return to normal pre-pandemic activities.<sup>6</sup> As Dr. Murthy notes, however, achieving that goal presents serious logistical challenges that can only be surmounted with close coordination between the incoming and outgoing administrations and other stakeholders—coordination that you are actively preventing.

The Select Subcommittee and Biden-Harris Transition Team are not alone in expressing alarm at your actions. Nearly 200 public health experts wrote to you last week urging you to act, noting that “every additional day” of delay “places American lives at risk.”<sup>7</sup> Groups

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<sup>4</sup> Select Subcommittee on the Coronavirus Crisis, *Press Release: At Hearing, White House Task Force Members Confirm Failed U.S. Response Made Coronavirus Crisis Worse* (July 31, 2020) (online at [coronavirus.house.gov/news/press-releases/hearing-white-house-task-force-members-confirm-failed-us-response-made](https://coronavirus.house.gov/news/press-releases/hearing-white-house-task-force-members-confirm-failed-us-response-made)).

<sup>5</sup> *Biden Covid Advisers Say Transition Delay Hurts Pandemic Prep Beyond Vaccines*, Politico (Nov. 17, 2020) (online at [www.politico.com/news/2020/11/17/covid-biden-transition-delay-pandemic-prep-437147](https://www.politico.com/news/2020/11/17/covid-biden-transition-delay-pandemic-prep-437147)).

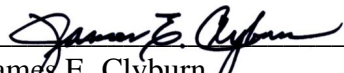
<sup>6</sup> *20 Million Americans Could Receive Covid-19 Vaccine in December*, Politico (Nov. 13, 2020) (online at [www.politico.com/news/2020/11/13/trump-covid-vaccine-december-436481](https://www.politico.com/news/2020/11/13/trump-covid-vaccine-december-436481)).

<sup>7</sup> *Public Health Experts: Delay in Presidential Transition ‘Places American Lives at Risk’*, Forbes (Nov. 19, 2020) (online at [www.forbes.com/sites/jemimamcevoy/2020/11/19/public-health-experts-delay-in-presidential-transition-places-american-lives-at-risk/?sh=3eb9bad639ea](https://www.forbes.com/sites/jemimamcevoy/2020/11/19/public-health-experts-delay-in-presidential-transition-places-american-lives-at-risk/?sh=3eb9bad639ea)).

representing thousands of American doctors, nurses, and hospitals have similarly called on the Trump Administration “to work closely with the Biden transition team to share all critical information related to COVID-19” in order to “save countless lives.”<sup>8</sup> And the former Ebola response coordinator and former Assistant Secretary for Preparedness and Response at the Department of Health and Human Services recently warned, “The unprecedented obstruction of the transition process by the outgoing Trump administration represents a serious, significant and urgent danger to the American people.”<sup>9</sup>

I know from personal experiences that election losses are painful. Far more painful in my personal experiences, however, have been the losses of loved ones. Millions of Americans are counting on those of us in positions of public trust to do all we can to protect them from this virus that is currently killing more than 1,000 of our fellow Americans each day. For their sake, I urge you to perform your legal duty by ascertaining that Joe Biden and Kamala Harris are the President-elect and Vice President-elect so that they can be fully prepared to protect the American people from this deadly virus when they take office on January 20.

Sincerely,

  
James E. Clyburn  
Chairman

cc: The Honorable Steve Scalise, Ranking Member

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<sup>8</sup> Letter from Richard J. Pollack, President and CEO, American Hospital Association; James L. Madara, CEO and EVP, American Medical Association; and Debbie Dawson Hatmaker PhD, RN, FAAN, Acting CEO, American Nurses Association, to President Donald J. Trump (Nov. 17, 2020) (online at [searchf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2020-11-17%2520web-Final-Trump-Letter.pdf](https://searchf.ama-assn.org/letter/documentDownload?uri=%2Funstructured%2Fbinary%2Fletter%2FLETTERS%2F2020-11-17%2520web-Final-Trump-Letter.pdf)).

<sup>9</sup> Leslie Dach and Nicole Lurie, *Every Day Spent Obstructing the Transition Means More Covid-19 Deaths*, Washington Post (Nov. 19, 2020) (online at [www.washingtonpost.com/opinions/2020/11/19/delayed-transition-covid-19-deaths/](https://www.washingtonpost.com/opinions/2020/11/19/delayed-transition-covid-19-deaths/)).