

NASS Task Force on Emergency Preparedness for Elections

Update on Task Force Findings and Activities – July 2013

I. Background and Purpose of Task Force

The NASS Task Force on Emergency Preparedness for Elections was formed in January of 2013 in response to the impact of Hurricane Sandy on the administration of the 2012 Presidential Election. The Task Force consists of Secretaries of State and Election Directors from 24 states. Its mission is to support state election officials in their efforts to establish/enhance administrative election practices in preparation for, and response to, emergency conditions. Efforts include identifying relevant laws and policies; sharing experiences and lessons learned from past emergencies situations; engaging with relevant state and federal agencies and other stakeholders; and discussing ideas and strategies for effectively dealing with future emergencies scenarios impacting an election.

II. Task Force Activities

Since the formation of the Task Force in January, NASS and the Task Force members have worked to gather and exchange information relevant to the administration of elections in emergency situations. For example:

- A Task Force webpage was developed that includes a variety of resources, including research and reports on relevant laws and policies; pending and recently enacted state legislation dealing with election administration in emergency situations; and state election contingency plans and other emergency planning materials.
- Three Task Force conference calls have been held since March 2013. During these calls members have discussed the mission and goals of the Task Force; identified pertinent topics and issues for the Task Force to consider; and reviewed and exchanged information on relevant state and federal policies.
- Conversations have taken place with key stakeholder organizations, including the National Emergency Management Association, the Emergency Management Assistance Compact, the Florida Division of Emergency Management, the Federal Emergency Management Association, and the United States Postal Service.
- A comprehensive survey was conducted in order to identify and better understand state laws and policies relevant to the administration of election in emergency situations.

III. Topics Examined

Through the efforts described above and additional research, NASS has compiled information on a variety of issues, policies, and events relevant to the administration of elections in emergency situations. This includes: state laws authorizing the postponement of an election in an emergency; election

contingency plans and alternative election procedures for emergencies; voting by individuals responding to or impacted by an emergency; involvement of election officials in state emergency preparedness planning; and federal government assistance in emergency situations impacting an election.

A. State Laws Authorizing the Postponement of an Election

The survey conducted by NASS asked states if they have a law authorizing officials to postpone a state or federal election in an area of the state impacted by an emergency. The responses to that question indicate that twelve states have a law that specifically authorizes the suspension, delay, or postponement of an election in an emergency situation. In most of these states the decision to suspend or postpone the election is made by the Governor, chief state election official, or a combination of the two (depending on the state) following the declaration by the Governor of a state of emergency. For example:

- In Louisiana, upon declaring a state of emergency or impending emergency, and upon certification of the Secretary of State that an emergency exists, the Governor may suspend or delay an election. The delayed election must resume or be rescheduled as soon thereafter as is practicable.
- In Kentucky, in a state of emergency, and upon recommendation by the Secretary of State, the Governor may declare a different time or place for holding elections. The election must be held within 35 days from the date of the suspended or delayed election

Survey responses from several other states mentioned other mechanisms the state could potentially utilize in order to suspend, delay, or postpone an election in an emergency situation, including a court order, emergency powers of the Governor, or legislative action. For example:

- Michigan noted that in a state-level emergency the state would rely on the Governor's authority to issue Executive Orders related to health and safety provisions, and at the local and/or regional level, local courts may cancel, postpone or extend the Election Day polling place hours by court order.

One of the issues raised by the Task Force is the scope of state or federal authority to postpone or delay a federal election. Some members have suggested that there should be a federal law authorizing the cancelling or postponing of a federal election in certain circumstances. This topic received significant news coverage in the days prior to Hurricane Sandy when it was unclear how severe the storm's impact might be on the administration of the Presidential election.¹ According to the Congressional Research Service, since 1860 there have been several federal primary elections or local elections that have been postponed due to catastrophic events, but no examples could be found of a federal general election being postponed or delayed.²

There is little research on this topic and what does exist generally lacks any clear findings or conclusions. However, in 2004 the Congressional Research Service (CRS) published a report examining issues involving the postponement or delay of a federal election in emergency situations.³ That reports indicate the following:

- Congress appears to have the authority to enact a federal law setting the conditions, times, and dates for rescheduling of elections to federal offices in emergency circumstances, and with proper

standards and guidelines could delegate the execution and application of those provisions to executive branch or state officials.

- States appear to have the authority to enact laws dealing with federal elections in emergency circumstances provided these laws do not conflict with federal laws. "Federal courts have thus generally interpreted federal law to permit the states to reschedule elections to *congressional* office when "exigent" circumstances have necessitated a postponement." However, the report states that there may be different issues raised in the case of the election of presidential electors based on the wording of the relevant federal statutes.

B. Election Contingency Plans for Emergency Situations

The NASS survey also asked states whether state or local officials are required to maintain election contingency plans for emergency situations impacting a state or federal election. The responses to that question indicate that 10 states have a state law requiring state and/or local officials to develop election related contingency plans or similar policies and procedures for emergency situations impacting the administration of an election. For example:

- In Connecticut, the Secretary of State is required to develop a model contingency plan for municipalities to utilize in creating local contingency plans. If municipalities fail to create a contingency plan independently, they are required to follow the model contingency plan. The plan addresses a number of important considerations, including poll worker shortages and replacement; communication with poll workers, local registrars, and public officials; alternate polling locations; contact information lists; ballot shortages; spare ballots; long lines; evacuation procedures; power loss; and medical emergencies.
- In Florida, the state is required to develop an elections emergency contingency plan which gives direction to state and local election officials when an election has been delayed or suspended due to an emergency, including notification to the public of the suspended or delayed election through PSAs, electronic media, and other means. The plan also outlines procedures for conducting a rescheduled election, including: identification of damages polling places and establishment of alternative sites; recruitment of poll workers; temporary absentee ballot sites; borrowing or leasing of voting equipment; and release and certification of election returns.

Many other states indicated that although there is no formal requirement for the development of election emergency contingency plans, they have developed plans, procedures, or advisory materials to facilitate the administration of elections in emergency situations. For example:

- Colorado has developed an emergency and disaster contingency planning guide to assist election officials with events and issues affecting elections.
- Illinois State distributes an advisory election contingency plan for their local officials to utilize in their review and planning.
- Louisiana has developed training materials covering election emergency response procedures for local clerks and registrars.

- Montana provides a draft election contingency plan template and training to local jurisdictions.

The contingency plans and other materials shared by Task Force members are generally designed to provide guidance to local election officials in emergency situations. These materials address a number of potential topics and issues, including:

- Communications plans for emergency situations, including contact information for key staff, local emergency management agencies, law enforcement, fire, medical services, utility providers, election equipment vendors, other election officials, etc.
- Informing voters and the news media of polling place changes and other announcements.
- Contingency paper ballots for touch-screen technology and contingency paper precinct registers for electronic poll books.
- Dealing with power outages at polling places, including access to back-up power sources.
- Polling place relocation instructions and lists of alternative polling locations.
- Evacuation procedures for bomb threats, fires, and other emergencies.
- Managing poll worker shortages, including designating and contacting alternate poll workers.
- Securing voting machines and election materials in emergency situations.

In addition to contingency planning resources, a number of states identified other policies and procedures that can be utilized to facilitate the administration of an election impacted by an emergency situation, including election official authority to implement special procedures, extension of deadlines for returning mail/absentee ballots, and extension of polling place hours.

C. Voting by Individuals Responding to or Impacted by an Emergency Situations

The third topic area covered by the NASS survey asked whether the state has policies or procedures designed to facilitate voting by: (1) individuals who are away from their residence in order to assist with relief efforts in an area impacted by an emergency; and (2) displaced individuals who are required to evacuate due to an emergency or are otherwise unable to vote under normal procedures due to an emergency situation. Many of the state responses to these questions described the existing absentee voting, mail voting, and early voting procedures available in the state as methods that could facilitate voting by individuals in the above circumstances. Several states identified state laws that specifically reference emergency workers and/or voters displaced by an emergency. For example:

- In California emergency workers away from their precinct may receive and cast a provisional ballot.
- New Hampshire requires reasonable efforts be made to deliver absentee ballots to emergency workers.
- Virginia and West Virginia authorize the chief election official to implement alternative/special procedures to facilitate voting by individuals impacted by an emergency situation.

- Maine authorizes the Secretary of State to act administratively to facilitate voting by emergency workers and individuals impacted by an emergency, including central issuance and receipt of absentee ballots.
- Oklahoma's permits a voter deployed as an emergency worker within 10 days before an election to request an emergency absentee ballot.

As Hurricane Sandy approached in the days leading up to the 2012 Presidential Election, many were concerned about the potential impact of the storm on election administration efforts. While the storm's impact on the election was not as serious as initially feared, it did interfere with voting process in several states, including interruptions to early voting and damaged or destroyed polling places. Despite these issues, officials in affected states were able to mitigate the storm's impact on the voters through a variety of actions.⁴ For example:

- In New York and New Jersey, more than more than 250 polling places were relocated and displaced voters were permitted to vote a provisional ballot at any polling place in the state.
- In Connecticut, the voter registration deadline was extended by two days.
- The deadline for requesting absentee ballots was extended in Maryland, New Jersey, New York, and Pennsylvania.
- Early voting or absentee voting deadlines were extended in the District of Columbia, Maryland, and Virginia.
- Maryland allowed displaced voters to receive absentee ballots by email or fax, and New Jersey designated displaced voters as "overseas" voters, which allowed them to vote by e-mail or fax.

In states where polling places were relocated due to the storm, a variety of methods were utilized to inform voters of the new locations. For example, in New Jersey, counties were directed to make all efforts inform voters of polling place changes, including through county websites, reverse 911, PSA announcements, newspaper notice, and postings at original polling places. In New York, polling place changes were posted on state and local election board websites and the Metropolitan Transportation Authority provided "Voter Shuttle Buses" at regular intervals throughout the day to take voters from damaged polling places to alternate sites. In both states, a text messaging services was set up to provide voters with updated polling place information via text.⁵

D. State Emergency Preparedness Planning

The discussions among Task Force members have emphasized the importance of state election officials working closely with local election officials, state emergency management officials, and other relevant agencies to prepare for a potential emergency situation impacting the administration of the election. This type of cooperation was a key part of state efforts to prepare for Hurricane Sandy. For example:

- In Virginia, the State Board of Election's contingency preparations involved coordinating with the Virginia Department of Emergency Management, the Virginia State Police, the Virginia Department of Transportation, and major utility providers. The Board also remained in close communication with

local election officials to monitor developments at the local level and provide guidance and support as necessary.

- In Connecticut, the state reactivated a task force, created in 2011, in order to handle public safety issues and contingency planning. The task force included representatives from the Governor's office, the Secretary of State's office, state emergency management agencies, utility companies, emergency responders, and law enforcement. Efforts of the task force included holding conference calls with state and local election officials to address election administration questions and provide direction on issues such as polling place relocations.

The importance of cooperation and coordination between election officials and state emergency management has also been emphasized during conversations with other relevant organizations. For example:

- The National Emergency Management Association suggested that state election officials engage with their state emergency management office in order to take part in state level emergency planning and preparation discussions and provide input with regard to potential emergency situations impacting an election.
- The Emergency Assistance Compact, a multi-state mutual aid agreement that facilitates relief assistance between states in disaster situations, noted that each state emergency management office maintains contact information for state and local personnel deployed to other states under the compact, and suggested that state election officials work with their state emergency management office for information on how election information could be communicated to those individuals in future situations where an emergency occurs close to an election.
- The Florida Department of State coordinates with the Florida Division of Emergency Management when an emergency has the potential to impact an election, and a state task force is formed to oversee contingency arrangement for polling places and any changes to voting procedures. The task force consists of officials representing a variety of key government functions, including election administration, emergency management, transportation and engineering, information and planning, health, human services, emergency power, public affairs, and law enforcement.

E. Federal Role in Emergency Situations Impacting an Election

One of the topics that members of the task force have raised is the type of assistance available from federal officials in emergency situations that impact the administration of a federal election. According to the Congressional Research Service (CRS), there have been at least three instances in the last 20 years where of the federal government has provided funding or assistance to state or local governments involved in conducting an election⁶ For example:

- In 1992 a statewide primary in Florida was postponed for Dade County after Hurricane Andrew hit the area, damaging numerous polling places. In response the U.S. Army set up alternate polling places in tents and distributed water to voters. The role of troops was limited and they were not

located at polling places due to federal laws such as 18 USC § 592 which prohibits the presence of federal troops at polling places except in the event of enemy attack.

- After the September 11th attacks primary election in New York City were cancelled and later rescheduled. FEMA later reimbursed the state \$7.9 million to reimbursement to assist the New York City Board of Elections cover expenses involved in rescheduling the election.
- In 2006, municipal elections in New Orleans were postponed for over 2 months in the aftermath of Hurricane Katrina. FEMA provided the state with \$733,000 for the replacement of destroyed voting equipment prior to the rescheduled election (the state originally requested \$3-4 million in reimbursement for costs incurred in rescheduling the election).

Representatives from FEMA took part in one of the Task Force conference calls to provide information about the types of election administration related assistance FEMA may be able to provide states in emergency situations. Key points from that discussion include:

- Absent a disaster or emergency declaration by the President, FEMA assistance for election administration efforts is limited, but FEMA may be able to loan generators that can be used at certain polling places without electricity.
- When an emergency declaration is declared FEMA assistance generally remains limited to loaning generators, however it may also be able to provide technical and advisory services.
- When a disaster declaration is declared and polling places are destroyed or unavailable, the type of assistance FEMA may be able to provide includes generators; technical assistance; temporary facilities for polling locations (e.g. tents, buildings, trucks); and financial reimbursement for costs incurred in renting replacement voting machines, conducting public outreach to inform voters of polling place changes, and other election related expenses.

FEMA also recommended that state election officials participate in emergency management training courses which are offered free online through FEMA's website as part of the Emergency Management Institute's Independent Study Program. The training is designed for people with emergency management responsibilities and the general public. The courses cover critical areas of emergency preparedness, including: incident management; disaster logistics; operational planning; emergency communications; continuity programs; integrated preparedness; hazard mitigation; public disaster communications; and service to disaster victims. Links to the training sites are provided below.

- FEMA Emergency Management Independent Study Program: <http://www.training.fema.gov/IS/>
- National Incident Management System Training: <http://www.training.fema.gov/IS/NIMS.aspx>

Another key federal agency when it comes to assisting election officials and voters in an emergency scenario is the United States Postal Service (USPS). NASS and the Task Force have engaged in discussions with USPS to learn more about their efforts to prepare for and facilitate the delivery of election mail in these circumstances. Key points from those conversations include:

- Through its Election Mail Task Force and operation planning efforts, USPS maintains a comprehensive framework for emergency preparedness that includes the ability to adjust accordingly to specific conditions on the ground.
- If a displaced voter is able to submit a mail forwarding order, any absentee ballot being sent to the voter will automatically be redirected to the voter's new location. USPS can also assist displaced voters by manually tracking an absentee ballot and having it held at or forwarded to an alternate postal location where the voter can pick up the ballot.
- During Hurricane Sandy USPS monitored the impact of the storm on election mail and worked closely with election officials in affected areas. In New York and New Jersey for example, USPS provided election officials with additional express mail supplies and helped expedite the delivery of absentee ballots.

F. Effective State Strategies and Practices

The results of the NASS survey and the discussions on Task Force conference calls have highlighted several ideas and practices that can help election officials prepare for and respond to emergency situations impacting the administration of an election. The effectiveness of different approaches will depend on a variety of factors since each state has unique laws, policies, and procedures concerning election administration, and the types of emergency scenarios that need to be considered (e.g. weather) may vary depending on the geographic region. However, some of the general strategies that may prove useful for state election officials include:

- Working closely with the relevant state agencies, including the state emergency management department and the Governor's office, to discuss the potential impact of an emergency situation on the administration of elections and proactively plan for and coordinate state efforts to manage the situation.
- Assisting local election officials in developing local election contingency plans or similar materials that address potential election administration issues in emergency situations and include procedures for mitigating those issues.
- Developing a comprehensive plan for communicating with local election officials in emergency situations, including situations where loss of power or other issues makes traditional means of communication difficult or impossible.
- Reviewing the relevant laws and policies in other states to consider the benefits of adopting any of those approaches, for example, policies that authorize officials to postpone an election in an emergency situation or permit the use of alternative election procedures in emergency situations.
- Participating in the online FEMA training courses to learn about effective emergency management practices and become better prepared to deal with emergency or disaster situations impacting the administration of elections.

¹ Politico, Hurricane Sandy: Could it push back the election?, Oct. 29, 2012; ABC News, Could Election Day Be Postponed?, Oct. 30, 2013.

² Hurricane Sandy and the 2012 Election: Fact Sheet, Congressional Research Service, Nov. 8, 2012.

³ Postponing and Rescheduling of Elections to Federal Office, Congressional Research Service, Oct. 2004; also see Executive Branch Power to Postpone Elections, Congressional Research Service, July 2004.

⁴ See note 2.

⁵ See CBS New York, Not Deterred By Storm's Effects, Voters In NY, NJ Turn Out For Election Day, Nov. 6, 2012; CBS News, How Sandy victims can vote, find polling places via text, email, fax, Nov. 5, 2012; New Jersey Directive Regarding Notice and Communication;

⁶ See note 2.