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TASK FORCE ON EMERGENCY PREPARATIONS FOR ELECTIONS

TESTIMONY FOR THE PRESIDENTIAL COMMISSION
ON ELECTION ADMINISTRATION

SEPTEMBER 4, 2013

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Co-Chair, National Association of Secretaries of State (NASS) Task Force on Emergency
Preparations for Elections**

Before the Presidential Commission on Election Administration | September 4, 2013 | Philadelphia, PA

Good morning. I am honored to be here today to testify in two capacities: First, as Louisiana Secretary of State and chief state election official, and second, as the Co-Chair of the National Association of Secretaries of State (NASS) Task Force on Emergency Preparedness for Elections. I want to discuss state disaster readiness and emergency planning for elections and share some of the research and recommendations from our group.

The nation's chief state election officials have been working hard to ensure that state laws and practices for the emergency management of elections provide eligible voters with a positive voting experience and a process that is fair and equitable. Contingency planning and emergency responses are never a small feat in a presidential election year, given our decentralized electoral system that includes an estimated 7,800 local election jurisdictions, 200,000 polling sites, 2 million poll workers and, for the last cycle – approximately 125 to 130 million voters.

The 2012 general election cycle will go down as a particularly memorable one for me and many other election officials who experienced a major curveball that no political pundit could have predicted - Hurricane Sandy. The powerful storm hit the East Coast just days before the November 6 presidential election, threatening to disrupt the voting process in at least 16 states, including my home State of Louisiana.

As the storm approached the U.S., Secretaries of State and state election directors were actively sharing information - usually through regional or sub-regional channels. Once Sandy struck the coast at the end of October and a considerable number of election administrators found themselves working under a state of declared emergency, the National Association of Secretaries of State

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(known as NASS) held a conference call in which I was able to speak with fellow officials from New York, Vermont, New Jersey, Maryland, New Hampshire, Connecticut, Washington, D.C., Delaware and Massachusetts. Having experienced the effects of storms such as Hurricanes Katrina and Rita on elections in Louisiana, I advised my colleagues to communicate with local election officials, local law enforcement agencies and local utility companies before the storm to be prepared to quickly evaluate damages and resources needed to provide for alternative means of voting and to extend deadlines for mail ballots and in-person early voting if possible.

In January 2013, after the election was complete and the results were officially certified, my colleagues and I formed the NASS Task Force on Emergency Preparedness for Elections. Consisting of Secretaries of State and Election Directors from 24 states, the Task Force's mission is to support state election officials in their efforts to effectively adopt sound election practices in preparation for, and response to, emergency conditions. Our goals include: 1) identifying relevant laws and policies related to disaster and emergency planning; 2) sharing experiences and lessons learned from past emergency situations; 3) engaging with relevant state and federal agencies and other stakeholders, and; 4) discussing ideas and strategies for effectively dealing with future emergency scenarios impacting an election.

The Task Force has spent the past six months gathering research and compiling information that will be helpful to state election agencies. NASS has conducted a survey of state election offices to gain insights on laws governing emergency authority and election continuity, contingency planning, emergency outreach partnerships and more. I am going to cover some of the highlights of our findings to date.

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POSTPONING ELECTIONS

The first area that the NASS Task Force wanted to examine was laws and guidelines for the postponement of elections. In 2012, there was a lot of media buzz and public speculation around the idea that Hurricane Sandy could require the postponement of the presidential election.

Under the U.S. Constitution, the primary decision on postponing an election lies with the states. While federal law stipulates that emergency postponement power for federal elections must come from those with the power to "make or alter such Regulations" of voting for Congress, Congress has never really exercised this authority. According to the Congressional Research Service, primary or local elections for federal office have only been postponed a handful of times since 1860 due to catastrophic events, but no examples could be found of a general election being postponed or delayed during a federal election cycle.ⁱ

For the most part, this matter has been left in the hands of the states. This makes great sense when it comes to disasters, which tend to be localized and best evaluated by state and local officials on the ground when it comes to formulating responses.

NASS survey findings on this subject show that 12 of the 37 responding 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 an election is made by the Governor, chief state election official, or a combination of the two. Most of the time, this action may only take place following a declaration of a state of emergency by the Governor.

In Louisiana, a state that I've already noted is no stranger to dealing with the aftermath of hurricanes, the Governor may suspend or delay an election upon declaring a state of emergency or an impending emergency, and upon certification of the Secretary of State that an emergency exists. The delayed election must resume, or be rescheduled, "as soon thereafter as is

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practicable."

ENFRANCHISING VOTERS AFFECTED BY EMERGENCIES

Another important topic the NASS Task Force has sought to examine is the ways in which states can facilitate voting by individuals directly affected by emergencies, either because they are first responders who are helping with relief efforts in an area affected by a disaster, or because they are voters who have been displaced from their residence due to an emergency evacuation or some related factor, such as injury.

While my state and states such as California, Maine, New Hampshire, Oklahoma, Virginia and West Virginia have laws which clearly specify voting options for emergency workers and/or voters displaced by an emergency, a significant number of states are seeking to create clear laws or guidelines to this effect.

One of the chief highlights of the NASS survey may be the degree to which states told us they can use their existing absentee voting, mail voting, and early voting procedures to facilitate voting by individuals in the aforementioned circumstances. For example, the Washington Secretary of State's office noted that the state's mail balloting system, which includes the ability to electronically download a replacement ballot, inherently provides increased access to those affected by an emergency. (Please note that if there is no electricity, a replacement ballot cannot be downloaded)

In the wake of Sandy, which interrupted early voting and damaged or destroyed polling places in several states, officials were able to mitigate the storm's impacts on voters through a variety of actions.



Consider the following examples:

- In New York and New Jersey, more than 250 polling places were relocated, while displaced voters were permitted to vote a provisional ballot at any polling place in the state.
- Connecticut extended its voter registration deadline by two days.
- Maryland, New Jersey, New York and Pennsylvania extended their deadlines for requesting absentee ballots, while the District of Columbia, Maryland and Virginia extended their deadlines for early or absentee voting.
- 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 return their ballot by e-mail or fax.

Task Force participants have also emphasized that communicating voting rules and polling place changes to voters should be a top priority for election administrators and state government leaders.

PLANNING FOR CONTINGENCIES

The final piece of the puzzle is contingency planning and state emergency preparedness procedures. These efforts have long been an important part of election administration. There are many scenarios that warrant taking precautions and making preparations to prevent, mitigate, and recover from an emergency situation that may disrupt an election. A number of states have well-established guidelines for reporting and making recommendations with respect to regional, state and local contingency planning efforts for elections.



Ten of 37 states that responded to the NASS survey said they have a statutory requirement for the development of an election emergency contingency plan. However, the vast majority of responding states have proactively developed materials to facilitate the administration of elections in emergency situations. These activities generally create a blueprint for state election offices to carry out, or aid localities with their planning, communications, equipment options, records retention and other necessary strategies in the course of contingency planning.

Some more specific examples include:

- 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 and other election officials.
- Procedures for 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.
- Power outage procedures for polling places, including evaluation of polling place power needs for lighting and voting machines, as well as access to back-up power sources, such as generators.
- Polling place relocation instructions and lists of alternative polling locations.
- Evacuation procedures for bomb threats, fires and other emergencies.
- Guidelines for managing poll worker shortages, including designating and contacting alternate poll workers, and;
- Procedures for securing voting machines and election materials in emergency situations.

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The NASS Task Force has also emphasized the importance of maintaining cooperation and coordination between election officials and state emergency management officials. The Emergency Assistance Compact, a multi-state mutual aid agreement that facilitates relief assistance between states in disaster situations, notes that each participating state emergency management office maintains contact information for state and local personnel deployed to other compact states. We suggest that state election officials' work with their state emergency management office for information on how election information can be communicated to those individuals in future situations where an emergency occurs close to an election.

FEMA representatives 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.

This is just an overview of the information and data collected by NASS. The full survey summary will be released as a NASS Task Force report in February 2014. Additionally, a great deal of information on the NASS Task Force and its state findings is already available online at www.nass.org, which is the association's website

Thank you for the opportunity to join you here in Philadelphia today as a representative of the National Association of Secretaries of State and the great State of Louisiana. I welcome your comments and questions.

ⁱ [Hurricane Sandy and the 2012 Election: Fact Sheet](#), Congressional Research Service, Nov. 8, 2012.