



Hurricane Sandy and the 2012 Election: Fact Sheet

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Summary

Questions have arisen about what actions might be taken by the federal government to respond to the possible impacts of Hurricane Sandy on the November 6 election in affected states. Since 1860, several federal primary elections or local elections have been postponed following catastrophic events, and on at least three occasions in the last 20 years, the federal government has provided funding or assistance to state or local governments engaged in conducting such elections. Those were primary elections affected by Hurricane Andrew in Florida (1992), the terrorist attacks in New York (2001), and Hurricane Katrina in Louisiana (2005). Although none of the events affected general elections, they may be instructive with respect to response to problems created by Hurricane Sandy.

According to the Federal Emergency Management Agency (FEMA), 16 states plus the District of Columbia received impacts from Hurricane Sandy. In several cases, election-related activities have been or are likely to be affected. Impacts and responses include

- suspension, and subsequent extension, of early voting hours,
- loss of regular polling places from damage, destruction, or power outages,
- extension of voter registration deadlines,
- extension of deadlines for accepting absentee ballots,
- expanded use of provisional ballots and ballots submitted by e-mail and fax, and
- use of alternative polling places, including U.S. military resources.

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Federal elections are traditionally administered by state and local governments. While Congress has the power to regulate federal elections, it has exercised that authority in limited circumstances.¹ Nevertheless, questions have arisen about what actions might be taken by the federal government to respond to the possible impacts of Hurricane Sandy on the November 6 election in affected states. This fact sheet discusses examples from prior elections in the United States where natural disasters, severe weather, or terrorist attack affected elections, including instances of federal assistance or postponement. It also includes discussion of developments relating to the impacts of Hurricane Sandy on elections in affected states.

Examples from Prior Elections

Since 1860, several federal primary elections or local elections have been postponed following catastrophic events,² and on at least three occasions in the last 20 years, the federal government has provided funding or assistance to state or local governments engaged in conducting such elections. In at least four cases, state or local elections were postponed, but no instance was found by CRS in which a general federal election was postponed or delayed.

The responses to Hurricane Andrew in Florida (1992), the terrorist attacks in New York (2001), and Hurricane Katrina in Louisiana (2005) all involved cancelling and rescheduling a primary election, as well as federal assistance. Although the events did not affect general elections, they may be instructive with respect to response to problems created by Hurricane Sandy.

Hurricane Andrew hit Dade County, Florida, on August 24, 1992, and the statewide primary election scheduled for September 1 was postponed for Dade County until September 8 by order of Dade County Circuit Judge Leonard Rivkind. According to the Dade County elections supervisor, 102 precincts could not be used for the election, which affected 132,000 voters.³ The U.S. Army reportedly set up 65 polling places in tents⁴ but they “patrolled at a discreet distance and carried no weapons. Their role Tuesday was limited to distributing jugs of water and asking voters if they needed any help.”⁵ Active-duty personnel were not present at the polling places during the election because of prohibitions on the use of troops at polling places.⁶ The cost of the Army’s assistance to Dade County could not be determined.

¹ CRS Report RL30747, *Congressional Authority to Standardize National Election Procedures*, by Kenneth R. Thomas.

² For details, see CRS Report RL32654, *Safeguarding Federal Elections from Possible Terrorist Attack: Issues and Options for Congress*, by Eric A. Fischer et al. See also CRS Legal Sidebar, “Does Congress Have the Power to Postpone the Election?,” by L. Paige Whitaker, <http://www.crs.gov/analysis/legalsidebar/pages/details.aspx?ProdId=293>; CRS Report RL32623, *Postponement and Rescheduling of Elections to Federal Office*, by Jack Maskell; CRS Report RS21942, *State Election Laws: Overview of Statutes Regarding Emergency Election Postponement Within the State*, by L. Paige Whitaker; and CRS Report RL32471, *Executive Branch Power to Postpone Elections*, by Kenneth R. Thomas.

³ Peter Mitchell and John C. Van Grieson, “Storm Creates State of Confusion: Election Delayed in Dade,” *Orlando Sentinel* August 30, 1992, p. A1.

⁴ United Press International, “Voter Turnout Low in Hurricane-Delayed Election,” September 8, 1992.

⁵ Jane Sutton, United Press International, “Hurricane-Delayed Election Held Despite Chaos,” September 8, 1992.

⁶ After the Civil War, laws were enacted limiting the role of U.S. military forces in domestic activities. The best known is the Posse Comitatus Act of 1878 (18 U.S.C. §1385). However, other provisions of law specifically prohibit the use of the military at the polls except in the event of an attack and prohibit military and civilian government employees from interfering in elections (18 U.S.C. §§592-595).

September 11, 2001, the day of the terrorist attack that destroyed the World Trade Center, was also the day of the New York primary election. Governor Pataki signed an executive order about noon halting the election statewide. The primary was rescheduled for September 24. Votes cast on September 11 were not counted, but absentee ballots were. Some polling places remained closed on September 24, and persons who would have voted at those locations were required to request absentee ballots.⁷

Following the attacks, the Federal Emergency Management Agency (FEMA) approved \$7.9 million “to assist the New York City Board of Elections cover expenses associated with canceling and rescheduling statewide primary elections on Sept. 11, 2001.”⁸ According to FEMA’s September 2002 press release on the grant, the Board “incurred a variety of costs including computer damage caused by electrical power disruptions; the removal and redispaching of voting machines and election equipment at polling sites; labor costs associated with technical specialists, Board of Election employees and poll workers; and replacement ballots and poll supplies.”

Following Hurricane Katrina in 2005, FEMA reportedly provided \$733,000 to Louisiana to replace voting equipment in New Orleans before the rescheduled city council and mayoral primary held on April 22, 2006. The primary was originally scheduled to be held on February 4, 2006. Nearly half of the city’s electorate, an estimated 250,000 voters, was displaced by the hurricane. The state had requested between \$3 million and \$4 million to meet extra costs that resulted from Hurricane Katrina’s destruction.⁹

In contrast to the three cases above, a primary election in Hawaii on September 19, 1992, was not postponed after a hurricane struck the island of Kauai a week before, causing extensive damage. Also, the 1954 general election for federal and state offices in Maine, held in September,¹⁰ was not delayed despite two hurricanes that struck the state and caused extensive damage, one two weeks and the other two days before the election. The impact of the storm on turnout apparently was minimal.

Developments in the Affected States

According to FEMA, 16 states¹¹ plus the District of Columbia received impacts from Hurricane Sandy. In several cases, election-related activities have been or are likely to be affected, and some

⁷ Mark Berkey Gerard and Lara Naaman, “New York’s New Primary Day,” September 24, 2001, <http://www.gothamgazette.com/iotw/newelection>.

⁸ FEMA press release, “FEMA to Reimburse New York City for Cancelled Rescheduled 9/11 Primarily [sic] Elections,” Number 1391-148, Sept. 6, 2002. FEMA assistance to states relating to elections is authorized by provisions in the Stafford Act, which established the agency (see especially 42 U.S.C. §§5170(b),5172(a)).

⁹ Associated Press, “FEMA Won’t Pay for New Orleans Election,” April 16, 2006.

¹⁰ Maine did not change its election day to conform with the rest of the nation until 1960.

¹¹ According to a posted FEMA analysis, states with counties receiving moderate or higher impacts include CT**, DE*, KY, MA*, MD*, NC, NJ**, NY**, OH, PA*, RI*, VA*, and WV*, as well as DC*. Counties in ME, NH*, and VT were also affected (“FEMA MOTF-Hurricane Sandy Impact Analysis,” <http://fema.maps.arcgis.com/home/webmap/viewer.html?webmap=307dd522499d4a44a33d7296a5da5ea0>, November 2, 2012). * refers to jurisdictions receiving emergency declarations by President Obama, permitting FEMA to provide resources directly to them. ** refers to states receiving major disaster declarations, making disaster assistance available to individuals and business owners in designated counties.

observers have speculated that the storm's impacts may depress voter turnout in some cases. Some notable developments are listed below:

- In New Jersey and New York, many previously designated polling places have been damaged or destroyed or did not have electric power restored by Election Day. More than 250 polling locations in the two states have been moved, including locations in all New York City boroughs and six surrounding counties.¹² An estimated 1 million New York voters live in areas where polling places were affected by the storm, including 250,000 whose polling place has been moved. New Jersey considered but in the end rejected using U.S. military trucks as temporary polling places in some cases.¹³
- New York and New Jersey extended the deadline for requesting absentee ballots and receiving those mailed by the deadline.¹⁴
- Also in New Jersey, displaced voters have been designated as overseas voters,¹⁵ thereby permitting the voter to request, receive, and submit a ballot by fax or e-mail by November 6, just as military and overseas voters are normally permitted to do in the state. Such voters must also submit their ballots by mail.¹⁶ Any voter who wishes to vote in this manner must waive the right to a secret ballot.¹⁷ Some experts have expressed concerns about the security of e-mail voting. However, the requirement that the ballot also be mailed may sufficiently mitigate such potential security risks.
- Displaced voters in New Jersey and voters registered in New York City and specified counties may vote at any state polling place using provisional ballots (called affidavit ballots in New York).¹⁸
- In Connecticut, many polling places lost electricity during the storm, but power was reportedly restored to almost all by November 6, and only two locations were changed because of Sandy.¹⁹ The voter registration deadline was also

¹² James Rowley, "Voting Places in Storm-Ravaged U.S. Northeast Moved for Election," *Bloomberg Government*, December 6, 2012.

¹³ Associated Press, "NJ Won't Use Military Trucks as Polling Places," *The Daily Journal*, November 5, 2012, <http://www.thedailyjournal.com/article/20121105/NEWS01/311050043>.

¹⁴ Stephanie Condon, "How Sandy Has Impacted Voting in N.Y., N.J., and Conn.," *CBS News*, November 2, 2012, http://www.cbsnews.com/8301-250_162-57544598/how-sandy-has-impacted-voting-in-n.y-n.j-and-conn/.

¹⁵ See CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by Kevin J. Coleman.

¹⁶ According to state law (N.J.S.A. 19:59-14,15), ballots are counted if received electronically by Election Day. Prior to certification of the election results, the electronic version is compared to the written version. Any discrepancies found are subject to investigation.

¹⁷ Lt. Governor Kim Guadagno, "Directive Regarding Email Voting and Mail-in Ballots for Displaced Voters," November 3, 2012, <http://nj.gov/state/elections/2012-results/directive-email-voting.pdf>. The Lieutenant Governor in New Jersey also serves as the state's chief election official.

¹⁸ Lt. Governor Kim Guadagno, "Directive Expanding Ability of Displaced Voters to Vote," November 3, 2012, <http://nj.gov/state/elections/2012-results/directive-displaced-voters.pdf>. Governor Andrew Cuomo, "Temporary Suspension of Provisions Relating to the Election Law," Executive Order, November 5, 2012, <http://www.governor.ny.gov/executiveorder/62>. The specified counties in New York are Nassau, Rockland, Suffolk, and Westchester.

¹⁹ Connecticut Secretary of the State Denise Merrill, "Change of Polling Place Locations for November 6, 2012 Election", November 5, 2012, <http://www.ct.gov/sots/cwp/view.asp?a=3179&q=513550>.

extended. Lack of electricity in some polling places is also a concern for West Virginia election officials, and 10 polling locations have been changed in that state.²⁰ However, in many cases polling places may be able to operate in the absence of a connection to the electric grid, especially if emergency generators can be provided or voting-related equipment can be operated by battery.²¹ In Pennsylvania, power was restored to almost all polling places by November 6, with the remaining few using emergency generators.²² In Ohio, several polling places lost power but were expected to have it restored by Election Day.²³

- In the District of Columbia, Maryland, and Virginia, early voting was suspended during the storm and was later extended.

The following resources may also provide useful information:

- Election Assistance Commission (EAC): Jessica Myers, “Hurricane Sandy 10.31.12,” *The Official Blog of the United States Election Assistance Commission*, October 31, 2012, http://www.eac.gov/blogs/hurricane_sandy_103112 (describes EAC resources that state and local election officials might find useful in responding to impacts of Sandy). The EAC also has links to the websites of state and territorial election offices: Election Assistance Commission, “Contact Your State,” 2012, http://www.eac.gov/voter_resources/contact_your_state.aspx.
- electionline.org, “electionlineToday,” 2012, <http://www.electionline.org/index.php/electionline-today> (compiles news stories relating to the election daily and summarizes them weekly, including stories relating to the impact of Sandy).
- League of Women Voters, “Hurricane Sandy and the Election,” October 31, 2012, <http://www.lwv.org/blog/hurricane-sandy-and-election> (summarizes responses to Sandy in some states).

This fact sheet will be updated as other relevant information becomes available.

²⁰ West Virginia Secretary of State Natalie E. Tennant, “Temporary Polling Location Changes for Hurricane Sandy,” November 5, 2012, <http://www.sos.wv.gov/elections/currentelection/precincts/Pages/PollingLocationChanges.aspx>.

²¹ Electronic voting machines and ballot counters often have batteries that can provide power at least for a few hours.

²² Jaikumar Vijayan, “Use of E-Voting Machines Unaltered Despite Power Outages Caused by Hurricane Sandy,” *Computerworld*, November 2, 2012, http://www.computerworld.com/s/article/9233196/Use_of_e_voting_machines_unaltered_despite_power_outages_caused_by_Hurricane_Sandy. Pennsylvania Department of State, “All Pennsylvania Polling Places Operational for Tuesday’s Election,” *The Sacramento Bee*, November 5, 2012, <http://www.sacbee.com/2012/11/05/4962815/all-pennsylvania-polling-places.html>.

²³ Brandon Blackwell, “9 Polling Places in Cuyahoga County Without Power, 4 Days Before Election,” *The Plain Dealer*, November 2, 2012, http://www.cleveland.com/metro/index.ssf/2012/11/9_polling_places_in_cuyahoga_c.html.

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