

March 12, 2020

Disrupted Federal Elections: Policy Issues for Congress

Introduction

Super Typhoon Yutu struck the Commonwealth of the Northern Mariana Islands (CNMI) approximately 10 days before Election Day 2018. That election included one federal contest, for U.S. House Delegate. Governor Ralph DLG. Torres issued an executive order postponing the general election from November 6 to November 13. The order also postponed early voting. This episode appears to be the only case of a postponed federal general election in modern history. As discussed below, other election disruptions are more common.

This CRS In Focus briefly introduces historical and policy issues that could be relevant for congressional oversight, legislation, or appropriations related to what this product calls *disrupted elections*. This term means events such as natural disasters, other emergencies, or cyber attacks that could substantially delay or prevent normal voting, election administration, or campaigning.

Disrupted elections do not necessarily mean that election administration or voting results are flawed. Routine events, such as recounts, can delay final results. Even under normal circumstances, certifying final results occurs well after Election Day. In addition, election administrators routinely prepare for unexpected circumstances before, during, and after Election Day. Although not the focus of this product, more traditional *delays* (e.g., simple equipment failures, long lines, or new administrative procedures) may raise similar policy issues and options to disruptions arising from disasters or emergencies. Constitutional or legal issues not addressed here also could be relevant. Other CRS resources, some of which are listed at the end of this product, are available to Congress.

Selected 2020 Examples

- On the morning of March 3, Tennessee voters awoke to tornado damage hours before “Super Tuesday” voting began. State and local election administrators quickly directed affected voters to alternate sites. Also on the morning of March 3, the Associated Press reported “voting by flashlight” after storms caused a power outage at a Bibb County, Alabama, polling place.
- During the March 10 presidential primary, voting was delayed and a St. Louis polling place was relocated after a person allegedly threatened poll workers and damaged voting equipment.
- A 2019 Novel Coronavirus (2019-nCov) outbreak has affected election administration and campaigning. For example, fears of infection reportedly led to Super Tuesday poll worker absences in California and Texas. In both states, media reports indicated that the

jurisdictions were prepared for absences and that election administration continued smoothly.

- Disruptions also are affecting political campaigns. Some 2020 presidential campaigns, for example, cancelled large public events during the primaries. The two major political parties reportedly also were monitoring the 2019-nCov outbreak ahead of summer presidential nominating conventions.

Policy Background and Issues

The remainder of this In Focus discusses selected policy background and potential considerations for Congress. History provides examples of issues, while others are more theoretical given the unknown nature of future disruptions that might arise.

Federal Election Statutes and Oversight

The U.S. Constitution and federal statutes structure election administration and voting in the United States. State, territorial, and local election administrators—supported by thousands of volunteer or part-time poll workers—administer all U.S. elections. Federal agencies overseen and funded by Congress play a supporting role.

Federal statutes set, among other provisions, uniform general election dates and minimum standards for polling place and voting access; they also regulate federal campaign finance. These laws generally do not address election disruptions, and no federal election statute is devoted specifically to the topic.

Perhaps because of the primarily state and local role in election administration, congressional legislation devoted specifically to disrupted elections is relatively uncommon. Provisions in legislation devoted to options such as mail or other forms of remote voting, early voting, and voter registration could be relevant for congressional consideration of disrupted elections. In addition, after some previous disrupted elections, Congress has conducted hearings to consider appropriations to replace election equipment and to oversee state-level contingency planning, election equipment, and voter access.

Federal Absentee Voting and Related Provisions

As with other election administration issues, states or territories are responsible for determining how voters may cast ballots. However, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires states to permit registration and voting by certain overseas civilians and members of the “uniformed services” (the military; and National Oceanic and Atmospheric Administration, and Public Health Service, commissioned officers). Previous legislation has proposed expanding these

provisions in various circumstances, some of which could be relevant for disrupted elections. In the 116th Congress, S. 1397 would require states to accept the Federal Write-In Absentee Ballot (FWAB) from non-UOCAVA voters affected by certain disasters or health emergencies. Currently, the FWAB is a backup federal ballot for UOCAVA voters whose state ballots do not arrive on time. Also in the 116th Congress, S. 3440 would require states to establish voting contingency plans for declared emergencies, and require states to accept absentee ballots in specified situations.

States also may choose to offer additional voting resources in response to disrupted elections. After Hurricanes Katrina and Rita, for example, state election administrators conducted national outreach to inform voters of absentee voting and remote polling places.

Federal Support for Election Jurisdictions

Two forms of federal support for state, territorial, and local election jurisdictions could be particularly relevant for disrupted elections. First, Congress periodically has provided financial support for election administration. Second, federal agencies provide services to state, territorial, and local election jurisdictions for those that choose to accept such assistance. Neither form of support is specifically devoted to disrupted elections.

The Election Assistance Commission (EAC) administers funding authorized under the Help America Vote Act (HAVA). States appear to be allocating the latest installments, from FY2018 and FY2020, toward enhancing security amid threats of foreign interference in U.S. elections. Other forms of election disruptions, such as natural disasters or illness, could foster debate over providing additional funds.

Of the various federal agencies that can support election jurisdictions, services from the Department of Homeland Security (DHS) and from the EAC could be most applicable for disrupted elections. DHS (particularly its Cybersecurity and Infrastructure Security Agency, CISA), provides services such as assistance with cyber-incident response and security consultations to election jurisdictions and political campaigns. The EAC provides educational resources for election administrators, including those developed by a Disaster Preparedness and Recovery Working Group, for election administrators and voters.

The Federal Emergency Management Agency (FEMA) does not specifically support federal, state, or local elections or have statutory authority on the subject. FEMA-administered funds have been approved in the past for replacing voting equipment and for moving polling places after disasters. FEMA also has publicized voting information for displaced voters.

Foreign Interference

Congressional and federal-agency investigations have established that the Russian government interfered with the 2016 U.S. elections by impersonating Americans to spread political disinformation and organize political events; and conducted cyber operations against U.S. political

campaigns, parties, and election administrators. Federal intelligence and law enforcement agencies have warned that foreign interference in U.S. elections is an ongoing threat, including for the 2020 cycle. The goal of much of this interference appears to be to sow social and political divisions in the United States. Foreign interference could, in and of itself, disrupt future elections; could exacerbate other disruptions (e.g., power failures) by spurring doubt about the legitimacy or accuracy of political or voting processes; or both.

Postponement of Elections

Although the 2018 CNMI case appears to be the only modern example of a postponed federal general election, states have more frequently postponed federal primaries, or nonfederal general elections (e.g., municipal contests). Perhaps most prominently, governors invoked state authority to postpone elections after Hurricanes Katrina and Rita (2005), and Sandy (2012); and for September 11, 2001, New York primaries. Discussion of congressional authority to postpone elections entails legal analysis that is beyond the scope of this product.

Voter Information and Perceived Legitimacy

Depending on circumstances, disrupted elections could foster public doubt about the legitimacy of election procedures or results. Domestic or foreign sources also could seek to disrupt elections by publicizing inaccurate information. State and local election jurisdictions are the most authoritative sources of information about voter eligibility, polling place hours, etc. Federal agencies such as the EAC, Federal Voting Assistance Program (for UOCAVA voters), and Justice Department also provide voting information.

Selected CRS Elections Policy Products

CRS products related to topics such as campaign finance, elections, emergency management and homeland security, public health, and voting could be relevant for congressional consideration of disrupted elections. CRS products addressing legal issues also may be relevant. Selected elections policy products include the following:

CRS In Focus IF11285, *Election Security: Voter Registration System Policy Issues*, by Sarah J. Eckman;

CRS In Focus IF11445, *The Election Infrastructure Subsector: Development and Challenges*, by Brian E. Humphreys and Karen L. Shanton;

CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett;

CRS Report R45549, *The State and Local Role in Election Administration: Duties and Structures*, by Karen L. Shanton; and

CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

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