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Disrupted Federal Elections: Policy Issues for Congress

Introduction

The coronavirus disease 2019 (COVID-19) outbreak has renewed interest in how election administrators and political campaigns prepare for emergencies and natural disasters. Some states have postponed primary elections. Political campaigns have expanded online outreach in lieu of in-person events. According to media reports, national party conventions are proceeding as scheduled, but contingency plans are under consideration. Legislation has proposed additional funding and voting options in federal elections. As of this writing, legislation and elections planning are changing daily. This product will be updated periodically.

This updated 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 cyberattacks 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 to disruptions arising from disasters or emergencies. Constitutional or legal issues not addressed here also could be relevant. Other CRS products are available to Congress.

116th Congress Legislation

Several bills introduced in the 116th Congress could be relevant for disrupted elections. The following bills contain provisions specifically related to emergencies, such as COVID-19 response.

- S. 1397 would require states to accept a federal write-in ballot. Currently, the only such ballot is the Federal Write-In Absentee Ballot (FWAB), a backup federal ballot for military and overseas voters (discussed below) whose state ballots do not arrive on time.
- S. 3440 and H.R. 6202 would require states to establish voting contingency plans for, and require states to accept absentee ballots during, certain declared emergencies. S. 3529 contains similar contingency and absentee voting provisions, and would extend additional

voting options and requirements to subsequent federal elections.

- As of this writing, additional legislative activity responding to the COVID-19 outbreak is anticipated. A draft Senate amendment to H.R. 748, the anticipated vehicle for an appropriations measure, reportedly would provide \$400 million in election security grants to the Election Assistance Commission (EAC), to be distributed to states. In addition, Division L of H.R. 6379 contains several elections provisions. Among others provisions, the bill would require states to establish contingency plans; provide early voting and vote-by-mail options in federal elections; provide same-day registration; and provide absentee ballots to voters affected by emergencies.

Selected Recent Examples

COVID-19 is a recent and prominent example of election disruption, but is by no means the only such example.

- 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 Torres issued an executive order postponing the general election and early voting. This episode appears to be the only case of a postponed federal general election in modern history.
- On March 3, 2020, 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 March 3, the Associated Press reported “voting by flashlight” after storms caused a power outage at a Bibb County, Alabama, polling place.
- States 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.
- The COVID-19 outbreak has affected election administration and voting. 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.
- Election administrators in several states are developing or revising contingency plans in response to the COVID-19 outbreak. In some cases, these plans reflect long experience maintaining election continuity after

hurricanes or other natural disasters. In others, states are considering new issues, such as expanded mail voting.

Policy Background and Issues

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 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. Federal agencies oversee and funded by Congress play a supporting role.

Perhaps because of the primarily state and local role in election administration, congressional legislation devoted specifically to disrupted elections is historically 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). Some current and previous legislation related to absentee voting and disrupted elections references UOCAVA or requires coordination with the Federal Voting Assistance Program (FVAP), which administers the act.

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 EAC administers funding authorized under the Help America Vote Act (HAVA). The EAC has issued guidance stating its interpretation that previous rounds of FY2018 and FY2020 funding may be used for COVID-19 response in some circumstances. As noted previously, legislation under consideration as of this writing would provide additional funding.

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 (including in 2020) or nonfederal general elections. 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, FVAP (for UOCAVA voters), and Justice Department also provide voting information.

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