

EXPECTING THE UNEXPECTED

ELECTION PLANNING FOR EMERGENCIES

PRESENTED BY



EXPECTING THE UNEXPECTED: ELECTION PLANNING FOR EMERGENCIES

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ELECTION PROTECTION

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NOTE: This report reflects the views of the Lawyers' Committee for Civil Rights Under Law and does not necessarily reflect the views of any other Election Protection partner or supporter.

ABOUT US

The **Lawyers' Committee for Civil Rights Under Law** is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. We are celebrating our 50th anniversary in 2013 and continue our quest of "Moving America Toward Justice." The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law, particularly in the areas of fair housing and fair lending; community development; employment; voting; education; and environmental justice. For five decades, the Lawyers' Committee has been at the forefront of the legal struggle to achieve equality and protect advances in voting rights for racial and ethnic minorities and other traditionally disenfranchised groups. Today, that tradition continues. With the indispensable assistance of private law firms, the Voting Rights Project integrates litigation, voter protection, research, advocacy, and education, and plays a leading role in Election Protection.

Election Protection is the nation's largest nonpartisan voter protection coalition. Supported by a diverse network of local and national coalition partners and volunteers across the country, its mission is to ensure that all persons legally entitled to vote may participate in our democracy. The program has two components – a suite of nationwide hotlines, 1-866-OUR-VOTE, 1-888-VE-Y-VOTA, and 1-888-API-VOTE, and a field program through which trained volunteers assist voters at targeted polling locations.¹ In the 2012 General Election cycle, Election Protection fielded more than 176,000 calls with the support of over 7,000 volunteers. More than 13,000 of these calls came from New Jersey, making it the state with the third highest call volume in the country. New York City callers made approximately 5,700 calls to Election Protection, while New York State residents outside New York City accounted for approximately 6,000 calls. Election Protection also dispatched more than 100 mobile legal volunteers to polling places throughout New York City.

This report and its recommendations are based on the work and observations of Lawyers' Committee staff and hundreds of Election Protection volunteers before, on, and since Election Day 2012. It is the hope that others will benefit from the lessons learned in both New Jersey and New York, where the election was conducted in the aftermath of Superstorm Sandy.

ACKNOWLEDGEMENTS

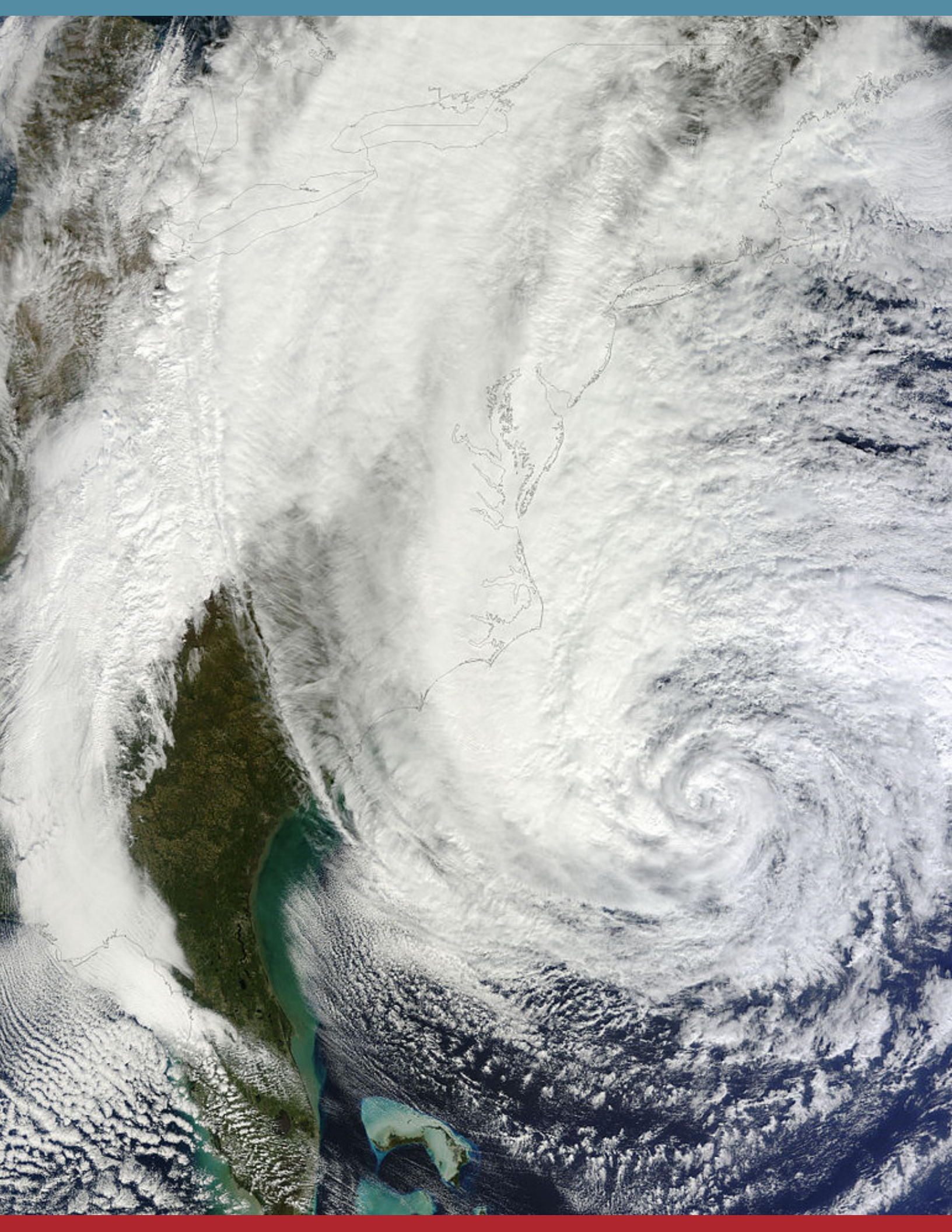
This report was written by the Lawyers' Committee for Civil Rights Under Law, Davis Polk & Wardwell, Lowenstein Sandler LLP, and Kirkland & Ellis LLP. During the 2012 election, these firms organized Election Protection programs in New York and New Jersey. They hosted call centers for the Election Protection hotline, organized volunteer poll monitors, and assisted voters who encountered problems voting because of Superstorm Sandy. They worked with election officials, community groups, and voters to address the many obstacles to access to the ballot that resulted from the storm.

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INTRODUCTION & SUMMARY OF RECOMMENDATIONS

Superstorm Sandy made landfall in New Jersey and New York on October 29, 2012, a week before Election Day. The storm caused immense destruction, decimating portions of both states' infrastructure, including utilities, communications, roads, and public transportation. In the wake of the storm, a crippling combination of flooding, power outages, and gasoline shortages threatened to prevent voters from getting to the polls.

Notwithstanding the challenges, officials in New Jersey and New York went ahead with federal and state elections just a week after the storm made landfall. Both states managed to overcome significant obstacles through emergency accommodations that enabled thousands of eligible voters in distressed areas to cast ballots. These measures included emergency orders that relaxed normal voting laws, allowing displaced voters to vote by extraordinary means, and equipping election officials to carry out their duties.

Despite both states' efforts, however, numerous problems persisted. New York's expanded use of provisional ballots,² intended to enable residents in affected areas to vote, resulted in provisional ballot shortages at numerous precincts. In New Jersey, election officials struggled with e-mail servers and fax machines that crashed as they were overloaded with ballot requests. In both states, voters found it difficult to access reliable information on new voting directives and relocated polling places.

Both states' successes and setbacks underscore the need for state and local jurisdictions to adopt emergency procedures to ensure the orderly administration of elections in the event of an emergency. This report discusses the 2012 General Election in New Jersey and New York in the wake of Superstorm Sandy and offers recommendations to jurisdictions seeking to adopt contingency plans. Recognizing that emergency responders play a crucial role in the aftermath of any disaster and that their ability to vote may be compromised when responding to

Successes and setbacks underscore the need for state and local jurisdictions to adopt emergency procedures to ensure the orderly administration of elections in the event of an emergency.



Credit: Erik Hersman

an emergency, this report includes proposed model legislation that would enable emergency responders to secure and cast ballots more easily, whether within or outside their state of residence.

In summary, we recommend that states and local jurisdictions committed to planning for a possible disaster take the following steps:

- » Develop contingency plans
- » Adopt laws or rules that make it easier to cast ballots in an emergency
- » Educate voters about the emergency plan
- » Create a relocation and resupply plan to fill essential needs
- » Develop a plan for recruiting and training poll workers on emergency preparedness
- » Collect and publish relevant post-election data
- » Preserve the right to vote for first responders during emergencies
- » Study proposals on how and whether to postpone or extend federal elections

NEW JERSEY

Emergency Powers Act and New Jersey Directives

In response to Superstorm Sandy, Governor Chris Christie, Lieutenant Governor Kim Guadagno, and other state executives in New Jersey issued a number of emergency directives aimed at enabling every registered voter in the battered state to cast a vote in the 2012 election.

Executive Order No. 104—Governor Christie Declares a State of Emergency

In anticipation of Superstorm Sandy, Governor Christie issued Executive Order No. 104 on October 27, 2012, declaring a state of emergency in New Jersey in advance of the storm. Governor Christie's exercise of authority was based on the broad powers granted him under New Jersey law³ and the imminent threat posed by Sandy. The voting-related directives that followed were issued pursuant to the Executive Order.

Directives Issued to Ease Voting Restrictions

Following the storm, the Lieutenant Governor (who is also Secretary of State and New Jersey's chief elections official) issued six voting-related directives from November 1 through November 9, 2012:

November 1st Directive Easing Voting Restrictions. The directive issued on November 1, 2012: (1) extended the deadline by which county clerks could receive mailed applications for mail-in ballots until the close of business on Friday, November 2, 2012;⁴ (2) required all county clerks and election offices to remain open during business hours every day, including Saturday and Sunday, through Monday, November 5, 2012 (the day before the election); (3) required county clerks and election officials to take all reasonable measures to notify voters of extended office hours; (4) required county boards of election to ascertain and report on which polling places were likely to be inaccessible on Election Day and to identify alternative sites; (5) relaxed the requirement that an authorized messenger of mail-in ballots could serve as such only for ten or fewer voters;⁵ (6) waived the requirement that members of a district's board of elections be resident in the county where the district is located; and (7) allowed polling places to be located more than 1,000 feet from an election district's boundary line.⁶



President Barack Obama and New Jersey Gov. Chris Christie survey storm damage after Superstorm Sandy in Brigantine, N.J.

November 3rd Directive Allowing E-mail Voting and Mail-In Ballots for Displaced Voters.

A first directive issued on November 3, 2012: (1) extended the deadline for election boards' receipt of marked mail-in ballots until November 19, 2012, so long as these ballots were postmarked on or before November 5; (2) directed local election officials to designate any voter displaced from his or her

primary residence because of the storm as an "overseas voter" under the Overseas Residents Absentee Voting Law, which authorizes voting by e-mail and fax;⁷ (3) directed county clerks to accept applications for e-mail or fax voting until 5:00 P.M. on Election Day; (4) required displaced voters to transmit their e-mail or faxed ballots along with a signed waiver of secrecy for receipt by the county boards of elections no later than 8:00 P.M. on Election Day;⁸ and (5) directed county clerks to ensure counties had adequate supplies of provisional and emergency ballots.

November 3rd Notice and Communication Directive. A second directive issued on November 3 required county boards of election to make all efforts to inform voters where to vote by: (1) posting information on county and municipal websites; (2) arranging for reverse 9-1-1 calls to advise all voters of polling place changes no later than Monday, November 5, 2012; (3) making public service announcements on local television and radio stations and in newspapers; and (4) posting notices at polling places that were closed, advising voters where they could vote.

November 3rd Directive Expanding Voting for Displaced Voters. A third directive issued on November 3 allowed voters displaced by the storm to vote by provisional ballot at any polling place in the state.⁹ It also required county boards of election to count ballots in the voter's county of registration; thus, any provisional ballot cast outside a voter's home county was to be delivered to the Commissioner of Registration in the home county to be counted. Finally, the directive instructed the county boards to count "[all] eligible votes," meaning those which the voter was qualified to cast. Because voters would be using out-of-district

ballots, they might be disqualified from voting in the local races and on the local ballot initiatives that appeared on those ballots, but the directive ensured that at least their votes for president, vice president, and statewide offices and ballot questions would count.¹⁰

November 6th Directive to Accommodate the Processing of E-mail and Fax Ballots and Preserve Displaced Voters' Right to Vote. The directive issued on November 6, 2012, required county clerks to continue processing until 12:00 P.M. on November 9 all mail-in ballot applications received by e-mail or fax by 5:00 P.M. on Election Day (November 6). The directive also extended the time for voters to cast the ballots they received in response to their applications; under the new deadline, ballots had to be received at the county board of elections by November 9, 2012, at 8:00 P.M., three days after Election Day.

November 9th Directive Regarding Certification of Election Results. The directive issued on November 9, 2012, extended deadlines for: (1) certification of county election results until November 21, 2012; (2) applications for court-ordered recounts until November 28, 2012; (3) impoundment of voting machines until November 28, 2012; (4) certification of federal and state elections until December 11, 2012; and (5) filing of election contest petitions until December 13, 2012.

Early In-Person Voting

Although New Jersey does not regularly operate a system of early in-person voting, the November 1 directive, ordering the county clerks and election offices to remain open throughout the weekend before the election, encouraged voters to take advantage of early voting options. A preexisting provision of New Jersey law permitted voters to apply in person for mail-in ballots at the county clerks' offices up to 3:00 P.M. on the day before the election.¹¹ County clerks throughout the state responded by allowing voters to apply for and then cast mail-in ballots in person from November 2-5.

WHAT WORKED

As reflected by the more than 13,000 calls received by Election Protection,¹² New Jersey residents showed an exceptional determination to vote despite the effects of a storm that left tens of thousands without power, transportation, or housing. Fortunately, many of the emergency measures aimed at permitting them to vote proved successful.

- » **Early In-Person Voting:** The emergency implementation of early in-person voting enabled thousands of people to vote over the weekend before the election, relieving the volume on Election Day.¹³
- » **Emergency Relocation of Polling Places and Mobile Voting:** New Jersey opened and operated polling places throughout the state despite overwhelming challenges and also created mobile polling places, with voting machines installed in buses, to tour shelters housing displaced voters.

Although after the storm hit on October 29, it seemed that it would be all but impossible to find functional locations to support the volume of voters, election officials made it happen.

- » **Provisional Voting by Displaced Voters:** To afford displaced voters the opportunity to vote, one directive allowed them to cast provisional ballots anywhere in the state, protecting the voting rights of thousands.¹⁴ One drawback of this system was that the ballots displaced voters used in out-of-district precincts did not match the ballots of their home precincts. While votes for President, Vice President, and statewide candidates and ballot initiatives counted, provisional voters in out-of-district precincts generally could not vote in local races unless they knew to write in their candidates of choice. Still, the ability to vote at any polling place they could reach preserved the franchise at least for the national and statewide offices at the top of the ballot.
- » **Back-up Paper Supplies:** One of the directives issued on Saturday, November 3, instructed county officials to assess the extra demand and ensure an adequate supply of paper ballots. County officials succeeded, often using personal cell phones to arrange emergency deliveries of hundreds of boxes of paper ballots that had to be transported through a maze of obstructed roads.
- » **Open Lines of Communication:** State and county officials maintained open lines of communication with Election Protection volunteers and other organizations dedicated to fair elections. Daily calls in the week leading up to Election Day, and constant calls and e-mails on Election Day itself, enabled real-time, collaborative problem-solving.

The success of the steps taken by those in New Jersey is borne out by the data. While voter turnout was lower than in 2008, New Jersey voters once again turned out at a rate slightly higher than the national average despite the struggles faced by voters in the aftermath of Sandy. The table below shows the turnout rates for the voting-eligible population who cast ballots in 2012, 2008, 2004, and 2000, comparing New Jersey with the nation.

Table 1: Voter Turnout in Presidential Elections in New Jersey and the U.S., 2000-2012

Election Year	New Jersey Turnout Rate	U.S. Turnout Rate
2012 ¹⁵	61.9%	61.8%
2008 ¹⁶	64.1%	63.6%
2004 ¹⁷	66.0%	63.8%
2000 ¹⁸	61.8%	59.5%



Despite the problems outlined below, election officials fulfilled the promise stated at the beginning of each directive they issued: “Notwithstanding Hurricane Sandy and its aftermath, the State of New Jersey is committed to holding a fair, open, transparent, and accessible election on Tuesday, November 6, 2012.”

Hotline volunteers from Lowenstein Sandler LLP help voters on Election Day 2012.

WHAT DID NOT WORK

While many steps taken by New Jersey election officials helped mitigate the disruption caused by the storm, they were not all successful.

Polling Place Lookups

Various methods of finding information regarding voters’ individual polling locations failed to function properly in the aftermath of the storm. Election Protection received thousands of calls from voters in New Jersey with the same question—“Where do I vote?” Historically, hotline volunteers easily answered this question by entering a voter’s address in a statewide online database to retrieve the matching polling place. This year an additional option was available—voters in New Jersey and hotline volunteers could obtain polling place information by sending a text message with the word “WHERE” to 877-877. But frequently during the 2012 election, neither the online database nor the text message system worked.

New Jersey voters called the Election Protection hotline with variations of the same story:

- » “My polling place is closed because of Hurricane Sandy. Will it be open on Election Day? If not, where do I vote?”

- » “There is no power at my polling place and I do not have enough gasoline to travel to a location with power. How do I vote?”
- » “I had to leave my home in Monmouth County because of Hurricane Sandy and I am staying with family in Middlesex County. How do I vote?”

On both Election Day and the day before, the statewide database frequently froze, preventing voters from finding essential information about their polling place. When the state database froze, the text system for locating polling places failed, as did polling place searches on general search engines such as Google.

When polling place lookups failed, a voter or a volunteer would check the applicable town and/or county websites to see if polling places in the voter’s town had been moved. Municipal or county websites, however, did not list polling place information in an easily accessible format, if the information was available at all. Relocated polling locations were often listed by ward and district numbers, making it difficult for the vast majority of voters who did not know which numbers corresponded to their addresses. Municipal and county websites generally provided no way to link the voter’s address with the voter’s ward and district numbers.

What had been the easiest question to answer with an optimally working database became the most difficult question – “Where do I vote?”

Emergency E-mail and Fax Voting

While the emergency provisions for e-mail and fax balloting were intended to ensure that displaced voters could find a way to cast their ballots, the state lacked the resources and infrastructure necessary for this option to function smoothly.

The most significant issue (by far) reported to Election Protection in connection with the electronic voting option was the difficulty in obtaining ballots after the submission of electronic requests for e-mail or fax ballots. In some cases, initial e-mail requests for ballots were rejected by overloaded systems. One voter from Brick, New Jersey, a shore town hit hard by Superstorm Sandy, submitted an application to vote by e-mail three times on Election Day and then called Election Protection to express concern that she would not be able to vote because the 5:00 P.M. application deadline was approaching.¹⁹ A caller from Newark who was assisting displaced elderly and disabled voters called to report that Essex County’s e-mail voting system was overwhelmed and would not accept submissions requesting ballots.²⁰

Ballot requests by e-mail or fax were unsuccessful even before the crush of Election Day. A New Jersey voter displaced to Florida sent an e-mail and fax to her county clerk the day before Election Day trying to obtain a mail-in ballot. She had not received a response as the deadline approached.²¹ Another voter who lost her car to the storm and had no means of getting to a polling place applied for an e-mail ballot the weekend before the election but had not received a response when she called the hotline on Election Day.²²

In response to voters who called to say that they had not received ballots after making e-mail and fax requests, volunteers for Election Protection reached out to the county clerks' offices to try to remedy the problem. The county clerks indicated that they had neither the staff nor the technological capacity to process the thousands of requests received between November 3, 2012 and Election Day. Intent on protecting voters' rights under the directive, some county clerks even attempted to issue ballots from personal e-mail addresses.

In response to the overload of the county systems, the Lieutenant Governor issued an Election Day directive that allowed voters who had successfully submitted e-mail or fax applications by 5 P.M. that day to cast the ballots they received in return any time before November 9 at 8 P.M., three days after Election Day. Yet when hotline volunteers advised callers about this extension, most were not mollified, as they anticipated, correctly as it turned out, that the election would be called shortly after the polls closed, and they had little interest in casting ballots after that time.

Moreover, this directive raised questions of a possible conflict with federal law. Under Article II, Section 1, of the Federal Constitution, Congress has the power to determine the time of choosing the electors for the presidential election and the "day on which they shall give their votes." Congress has set Election Day by federal statute: "electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President."²³ The statute further provides that "[w]henever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct."²⁴ Any attempt by a state to extend the deadline for a presidential election should be considered in light of these laws.

Out-of-State Emergency Workers

On the morning of November 5, 2012, a dispatcher ("M.T.") called Election Protection on behalf of 10,000 emergency workers who were working throughout New Jersey to repair battered infrastructure. M.T. told an Election Protection volunteer, "my guys need to vote," and informed her that 2,000 of the emergency workers were New Jersey residents while 8,000 were from out of state. The volunteer advised M.T. that all New Jersey displaced voters, including all resident emergency workers, could vote by provisional ballot in any polling place in the state. M.T. proceeded to schedule time off for voting for the 2000 New Jersey workers who had been dispatched all over the state. Election Protection leaders also did what they could to assist M.T. in making accommodations for workers who lived in neighboring states; for example, M.T. assigned workers from Pennsylvania to shifts in western New Jersey and granted time off to cross the border into Pennsylvania to vote. But no solution was available to most of the remaining 8,000 workers from across the country.²⁵

NEW YORK

NEW YORK EXECUTIVE ORDERS

Shortly before Election Day, New York Governor Andrew Cuomo instituted emergency measures to provide voters greater access to polling places. Various boards of elections throughout the state also took steps to preserve polling places and mobilize the equipment and supplies necessary to facilitate voting in New York in the week before the election.

Executive Order 47 - Governor Cuomo Declares a State of Emergency

New York law grants authority to the governor to temporarily suspend, by executive order, provisions of statutes, local laws, or other regulations in the event of a “state disaster emergency.” Specifically, the statute provides that:

Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.²⁶

On October 26, 2012, pursuant to his authority under the statute, Governor Cuomo issued Executive Order 47, which formally declared a state of emergency for New York State. Among other things, the declaration enabled the Governor to issue executive orders concerning the 2012 General Election.

Executive Order 62

On November 5, 2012—the evening before Election Day—Governor Cuomo issued Executive Order 62, citing New York’s commitment “to holding a fair and accessible general election and maximizing voter participation” for all eligible voters, including those residing in federally declared disaster areas in New York State.



Executive Order 62 permitted all eligible voters residing in New York City or any county for which the federal government had declared an emergency (i.e., Nassau, Rockland, Suffolk, and Westchester Counties) to cast affidavit or provisional ballots at any polling place in New York State. By virtue of its universal application, the order avoided any issues that might result from asking election officials to determine who was a displaced person. Further, the executive order directed the New York State Board of Elections to require county boards of elections to “instruct poll workers to provide affidavit ballots” and provide “notice and guidance” to voters. These directions included informing voters that, if they used affidavit ballots, their votes would count for President and U.S. Senator, as well as “any other candidate for office and district, as well as any ballot initiative that appears on the official ballot in the voter’s home district.”²⁷

Soldiers in the New York Army National Guard move portable generators to be used at polling places in New York City areas that remained without power as a result of Superstorm Sandy.

Governor Cuomo also directed all county boards of elections to “use all available means” to disseminate his executive order to election inspectors and voters, including ordering that the text of the order be conspicuously displayed on all county boards’ websites and at all polling places. To effectuate these measures, the executive order temporarily suspended or modified the sections of New York’s Election Law that govern voter eligibility and ballot canvassing.²⁸

Executive Order 62 dramatically expanded the ability of voters adversely affected by Superstorm Sandy to cast ballots in the 2012 General Election, so long as they did so in New York State. The order did not, however, address the needs of first responders who did not reside in New York City or the affected counties, including those who were dispatched to affected areas from elsewhere in New York State. Nor did the order help voters from outside New York State who were in New York assisting in the aftermath of Superstorm Sandy.

WHAT WORKED

Despite the disruption stemming from closed polling places, displaced voters, and the flooding of both the headquarters of the New York City Board of Elections (the “City Board of Elections” or the “City Board”), a number of things went well in New York City during the 2012 General Election. These included:

- » **Provisional Voting by Voters in Affected Areas:** Executive Order 62 was critical in preserving the ability of New Yorkers to vote. The New York City Board of Elections alone received more than 300,000 provisional ballots for the 2012 General Election. By contrast, the City Board received fewer than 190,000 provisional ballots in the 2008 election, despite an overall heavier voter turnout.²⁹
- » **Emergency Relocation of Polling Locations and Voting Machines:** New York City relocated 60 polling places in response to the storm. The Mayor’s office helped by providing access to city buildings for use as temporary polling places, not far from usual polling places. Due to potentially severe flooding on Staten Island, the City Board of Elections requested and gained permission to move all voting equipment from the City Board’s Staten Island facility to the Staten Island Armory. Without this preemptive action, Staten Island would have had significant problems in deploying necessary voting machines on Election Day. As it turned out, the City Board’s Staten Island offices later had to be evacuated.³⁰
- » **Back-up Files:** Anticipating the loss of access to computer files, paper ballots, and other necessary materials, the New York City Board of Elections made backups of all materials essential to election operations, including polling places lists and voter databases. The City Board also employed a backup e-mail system in the event that its normal internal communication system malfunctioned.³¹
- » **Back-up Ballots:** In response to Executive Order 62, the City Board of Elections arranged for the printing of 1.3 million ballots, equal to 250 affidavit ballots for each of the City’s more than 5,200 election districts. Then, anticipating even greater demand, the City Board printed more than 60,000 additional provisional ballots in-house on Election Day. The City Board received and responded to more than 120 requests from polling places that ran out of provisional ballots on Election Day.³²
- » **Open Lines of Communication with Election Protection:** The New York City Board of Elections welcomed and maintained contact with nonpartisan volunteer groups, like Election Protection. Among other benefits, this contact gave the City Board access to valuable and timely information about voting problems. In addition, Election Protection assisted with poll worker recruitment, obtaining 100 additional poll workers for Election Day.

These efforts helped preserve the right to vote for thousands of New Yorkers who were adversely impacted by Superstorm Sandy. As shown below, however, voter turnout fell slightly in New York, although not as much as the 1.8% percentage point drop nationally.

Table 2: Voter Turnout in Presidential Elections in New York and the U.S., 2000-2012

Election Year	New York Turnout Rate	U.S. Turnout Rate
2012 ³³	58.7%	61.8%
2008 ³⁴	58.8%	63.6%
2004 ³⁵	60.2%	63.8%
2000 ³⁶	59.0%	59.5%

WHAT DID NOT WORK

Shortage of Provisional Ballots and Long Lines at Polling Places

While the use of provisional balloting helped preserve the voting rights of New Yorkers who resided in the City or the affected counties, the Executive Order also exacerbated problems that are not uncommon in elections. Because of the timing of the order and because it permitted all residents in affected areas to vote at any New York polling location, the order contributed to voter and poll worker confusion, crowded polling places, ballot shortages, and frustration due to long lines.

Because Executive Order 62 was issued on the day before Election Day, poll workers and volunteers had limited opportunity to familiarize themselves with the change, making it difficult for them to advise voters effectively. In a number of cases, Election Protection call center volunteers, who reported to call centers at 5:30 A.M., were unaware of the change, and had little time to internalize the new rules for provisional voting. Also, despite the Governor's instructions in the Executive Order, callers reported that poll workers were unable to get assistance from local boards of election because they were reportedly unresponsive, ill-informed about the Executive Order, or providing incorrect directions.³⁷ For example, one group of students in Fulton County was turned away by poll workers and then the Fulton County Board of Elections even though the students were residents of Nassau, Suffolk, Westchester, and Rockland Counties and were therefore entitled under the Executive Order to vote by provisional ballot at any polling place in the state.³⁸

Thousands of voters who lived in affected areas appear to have availed themselves of the right conferred by the New York Executive Order to cast provisional ballots at out-of-district polling places. This may have contributed to the long lines and voter frustration some callers reported to Election Protection. Inadequate staffing at some polling places due to the storm further exacerbated these problems.³⁹

While the City Board of Elections printed thousands of provisional ballots in response to Executive Order 62, provisional ballots still were in short supply. Throughout New York, polling places ran out of provisional ballots near the end of the day,⁴⁰ and some did not receive additional provisional ballots before polls officially closed. Because Executive Order 62 was issued less than 24 hours before the polls opened on November 6th in New York, state and local boards of elections lacked sufficient time to develop a comprehensive plan for the emergency use of provisional ballots, nor could they deploy resources to distribute provisional ballots as effectively as was necessary to limit voter unrest and maximize voter participation.

Other Election Administration Issues

Of the thousands of calls Election Protection fielded from New York residents on November 5 and 6, the most common inquiry was about polling place location.⁴¹ Other common inquiries included:

- » voters calling to find out if the location or hours of a polling place had changed due to damage from the storm;⁴²
- » displaced voters who knew the Executive Order permitted them to vote out of district and wanted to know the location of the closest polling place available to them;⁴³ and
- » voters reporting that they never received absentee ballots in the mail, despite timely requests.⁴⁴

Mail disruption from Superstorm Sandy affected both absentee ballots and voter registration information. One caller from Malverne in Nassau County, New York, was displaced due to the storm but traveled to her proper polling place on Election Day. When she arrived, however, her name did not appear on the rolls. Even though she had updated her registration prior to the voter registration deadline, she had not received a confirmation of her updated registration.⁴⁵ Although the voter cast an affidavit ballot that should have counted, she would have had the proof necessary to vote by regular ballot had she received timely confirmation of her new registration.

Mail disruption from Superstorm Sandy affected both absentee ballots and voter registration information.

Numerous voters called to report they could not travel to relocated polling places due to storm-caused gas shortages.⁴⁶ One caller reported that her polling place was changed and, although she was aware of the new location, she was disabled and could not travel to the new polling place to cast her vote. Although her usual polling place was near enough to her home for her to be able to vote, the location of the new site was too distant for her to get to given her disability.⁴⁷ Other displaced voters who sought refuge outside New York called Election Protection with the hope that they could vote remotely, whether via e-mail or fax (as in New Jersey),⁴⁸ and were told no such option existed.

Relief workers in New York State faced unique problems. One concerned voter from Buffalo called Election Protection on behalf of two thousand coworkers who had been sent to the hardest hit areas of New York to



help with aid and relief efforts and to restore power and utilities. The caller asked whether the Executive Order would enable the emergency workers to vote. The caller was informed that, unfortunately, the Executive Order did not extend to emergency workers registered to vote in areas that were not federally declared disaster areas, even if they were located in a federally declared disaster area at the time of the election.⁴⁹

Many voters could not travel to relocated polling places. Above: Brooklyn residents wait in line for gas after Superstorm Sandy. (Timothy Krause)

EMERGENCY FIRST RESPONDERS

The coordinated relief effort undertaken in response to Superstorm Sandy illustrates the substantial number of first responders displaced by emergencies. For example, at least 57,000 out-of-state utility workers helped just one utility restore power to New York City in the days following Sandy.⁵⁰ Under current absentee voting laws, however, almost all of those 57,000 workers were unable to vote in the 2012 election, as most states require absentee ballot applications to be received a week or more before Election Day.⁵¹

Indeed, nearly every emergency worker who planned on voting in his or her home precinct, and who was instead dispatched to the Northeast after Sandy, could not have applied for an absentee ballot because the window for submitting an application was closed by the time dispatch orders went out. This problem demands a statutory solution.

Five states have enacted laws that protect voting rights for emergency first responders (“EFRs”).⁵² Although none of these statutes sufficiently protects the franchise for EFRs, state legislation can offer meaningful protection.

State legislation alone is insufficient to address the problem, however. Emergencies, including increasingly common weather emergencies, may occur in any state and may draw EFRs from every state. A comprehensive solution therefore requires federal legislation. Fortunately, the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff *et seq.* (“UOCAVA”), provides a ready-to-use framework for establishing a nationwide statutory regime that protects the franchise for EFRs. Modeling the rights of EFRs on those granted to displaced servicemen and women under UOCAVA is an intuitive and effective way to protect EFR voting rights and is consistent with the problem faced by both classes of voters – displacement from their place of residence on Election Day while serving the greater good.⁵³

Substantial revision to UOCAVA is unnecessary. Instead, a new statutory section could extend to displaced EFRs most of the same rights displaced servicemen and -women have under federal law to vote by absentee ballot in federal elections. To this end, a proposed new section, set out in full in Appendix A, would:

Almost all of the 57,000 out-of-state utility workers restoring power in New York City were unable to vote in the 2012 election.



- » define absent emergency first responder broadly, to include any voter who is absent from the place where he or she is qualified to vote while aiding in emergency or disaster recovery efforts in a professional or volunteer capacity;
- » recognize states of emergency declared within thirty days before a federal election by either the President or any state governor;⁵⁴
- » require state election officials to accept and process EFR absentee ballot applications up to noon on the day before the election in which the EFR wishes to vote, and to accept and count all marked EFR absentee ballots that are postmarked or time-stamped on or before Election Day;
- » extend to EFRs the UOCAVA provisions that allow for transmission of absentee ballot applications, blank absentee ballots, and voter information by electronic means, such as e-mail or fax; and
- » bring EFRs under the protection of the Presidential designee, charged with implementing UOCAVA.⁵⁵

Residents of Long Beach Island, NJ thank first responders for their assistance after Superstorm Sandy.

Model state legislation, which mirrors the substantive provisions of the federal statute, is reproduced in Appendix B.

RECOMMENDATIONS & CONCLUSION

Based on the events in New Jersey and New York following Superstorm Sandy, we offer the following recommendations for cities or states preparing for the possibility that they will need to hold elections during or after an emergency.

Develop Contingency Plans

- » Create centralized, written contingency plans detailing what should be done to preserve the election process in the event of an emergency. These plans should be updated and refined over time.

Adopt Laws or Rules That Make it Easier to Cast Ballots in an Emergency

- » Enact proactive state laws that, in the event of an emergency, give displaced voters the right to cast provisional ballots in any state polling place.⁵⁶ Election officials should be instructed to deliver provisional ballots cast out-of-district to the appropriate election officials in the home county of the voter.
- » Develop a plan for e-mailing blank absentee (also known as “mail-in”) ballots to voters. Allow sufficient time and specify reliable methods for returning marked ballots on or before Election Day; and in an emergency, allow more time for the return of absentee ballots. Develop a system to deliver absentee ballots to first responders deployed in emergencies.
- » Extend hours or, when permitted by law, days for polling place operations in the event of an emergency.⁵⁷
- » Implement early in-person voting to alleviate the challenges associated with a large volume of votes cast on a single day in the midst of an emergency.

Educate Voters About the Emergency Plan

- » Develop comprehensive communications strategies for informing voters (e.g., via e-mail, text message, or other electronic means) how and where to vote in an emergency.

- » Maintain public information that links residential addresses to ward and district numbers to enable voters whose polling places have been relocated to find their new polling place more easily. States and counties should also make and maintain maps that show numbered districts and wards available to voters on the internet and at all polling places.

Create a Relocation and Resupply Plan to Fill Essential Needs

- » Designate alternative locations for election administration and create backup voter registration files and methods for accessing necessary data. In the event of an emergency, states and cities might also consider consolidating voting districts, which would decrease the need for provisional ballots. Plans for district consolidation should assure that travel distances are not excessive, consolidated districts are equipped with appropriate numbers of poll workers and machines, and adequate signage and instruction informs voters of the new location.
- » Make plans for storing and testing voting machines during emergencies, accessing emergency supplies of paper ballots, obtaining fuel or electric generators, and ensuring adequate supplies of other necessary provisions.
- » Establish systems that allow for reliable communication among poll workers and election administrators to permit up-to-date replenishment of paper ballots where needed.

Develop a Plan for Recruiting and Training Poll Workers on Emergency Preparedness

- » Train poll workers on emergency preparedness, with detailed instructions on the appropriate use of provisional and emergency ballots, and create a mechanism to update poll workers on changes implemented close to the election.
- » Make plans for the emergency recruitment of poll workers, perhaps drawing on alliances with professional and civic organizations.

Collect and Publish Relevant Post-Election Data

- » Have state's chief election official adopt regulations mandating the collection and publication of meaningful data on the methods by which voters cast ballots during elections occurring in emergencies (and in all elections).

Preserve the Right to Vote for First Responders During Emergencies

- » Amend the federal Uniformed and Overseas Citizens Absentee Voting Act to allow emergency first responders to vote by absentee ballot when they are displaced from their county of residence assisting in disaster recovery. The amendment should require state election officials to accept

and process first responder absentee ballot applications up to noon on the day before an election, and to accept and count all absentee ballots that are postmarked or time-stamped on or before Election Day. The model federal legislation we propose is set out in Appendix A.

- » Amend state laws to protect the ability of emergency first responders to vote. The model state legislation we propose is set out in Appendix B.

Study Proposals on How and Whether to Postpone or Extend Federal Elections

- » This report does not address whether, when, and how to postpone an election or extend the time to vote in response to an emergency. This issue raises complex questions about election administration and how best to preserve the rights of eligible voters both within and outside the areas affected by the emergency. States should also consider the legal implications of extending voting for presidential elections beyond the day specified by federal law. Further study and wider consultation with advocates and election officials would help in devising a sound proposal to address this issue.

Conclusion

Faced with daunting obstacles in the immediate aftermath of Superstorm Sandy's landfall, officials in New Jersey and New York worked hard to preserve the right to vote for their residents in the 2012 General Election. These states' creative solutions and innovative responses to election administration challenges helped maximize voters' opportunities to cast their ballots. Along with the successful efforts to facilitate voting came important lessons for improving election administration during emergencies. The laws and procedures and experiences of voters and first responders discussed in this report can help elections officials nationwide in planning for future emergencies. Based on the lessons learned during Superstorm Sandy, such planning should be a priority in all jurisdictions.

Appendix A – Proposed Federal Legislation

This proposal would add a new section to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff *et seq.*

Sec. 1973ff-8. Emergency first responders

(a) Definitions

The definitions in section 1973ff-6 of this subchapter shall apply to this section.

In addition,

(1) “absent emergency first responder” means a voter who is dispatched by his or her employer or who volunteers to assist in a recovery effort in response to an emergency declaration and who is therefore absent from the place of residence where the first responder is otherwise qualified to vote;

(2) “emergency declaration” means a declaration issued by the President of the United States under federal law or by the governor of a State under state law that declares a state of emergency or disaster within thirty (30) days before the general, special, primary, or runoff election for Federal office in which the absent emergency first responder seeks to vote.

(b) Extension of voting rights to absent emergency first responders

An absent emergency first responder shall have the same rights as an absent uniformed services voter under this subchapter, except as provided under subsections (c), (d), (e), and (f) of this section.

(c) Presidential designee

(1) The Presidential designee described in subsection 1973ff(a) shall have primary Federal responsibility for extending the protections of this subchapter to absent emergency first responders. The duties of the Presidential designee and other Federal officials, except those described in subsection 1973ff(b)(8) with respect to the collection and delivery of marked absentee ballots of absent overseas uniformed services voters, shall also apply to absent emergency first responders.

(2) In addition, the Presidential designee shall –

(A) prescribe an official post card form, based on the existing such form created under this subchapter, and containing both an absentee voter registration application and an absentee ballot application, for use by the States as required under subsection (d) of this section; and

(B) carry out section 1973ff-2 of this subchapter, as amended by subsection (e) of this section, with respect to the Federal write-in absentee ballot for absent emergency first responder voters in general, special, primary, and runoff elections for Federal office.

(d) State responsibilities regarding absentee ballots applied for, transmitted to, and submitted by absent emergency first responders

Sections 1973ff-1(a)(2) (States' duty to accept and process voter registration and absentee ballot application); 1973ff-1(a)(8) (States' duty to transmit validly requested absentee ballot); 1973ff-1(a)(10) (processing and acceptance of marked absentee ballots); and 1973ff-1(g) (hardship exemption) shall not apply to voting by absent emergency first responders.

(1) Notwithstanding any other deadline for receipt of an absentee ballot application, each State shall accept and process, with respect to any election for Federal office, any otherwise valid absentee ballot application from an absent emergency first responder, if the application is received by the appropriate State election official not later than noon on the day before the election. Each State shall use the official post card form (prescribed under subsection (c)(2) of this section) as a simultaneous voter registration application and absentee ballot application, except that if the State's voter registration deadline has passed for the election next following the voter's submission of the post card form, the voter shall not be entitled to vote in that election, but shall be duly registered to vote in subsequent elections if otherwise qualified based on the post card form.

(2) Notwithstanding any other deadline for receipt of a marked absentee ballot, a State shall accept and process an otherwise valid marked absentee ballot cast pursuant to this section (including a Federal write-in absentee ballot as prescribed in subsection (e) of this section) if such ballot is postmarked or time-stamped on or before the date of the election in which an absent emergency first responder wishes to vote.

(e) Federal write-in absentee ballot in elections for Federal office for absent emergency first responders

Subsections 1973ff-2(a)(1) (Federal write-in absentee ballot), 1973ff-2(b) (submission and processing of Federal write-in absentee ballot); 1973ff-2(e) (use of approved State absentee ballot in place of Federal write-in absentee ballot); and 1973ff-2(g) (certain States exempted) shall not apply to Federal write-in absentee ballots used in elections for Federal office by absent emergency first responders.

(1) The Presidential designee shall prescribe a Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot), based on the existing such ballot and associated envelopes created under this subchapter, for use in general, special, primary, and runoff elections for Federal office by absent emergency first responders, even if such voters do not apply for or receive States' absentee ballots.

(2) A Federal write-in absentee ballot for use in general, special, primary, and runoff elections for Federal office by absent emergency first responders shall be submitted and processed in the manner provided by law for absentee ballots in the State involved, except that such ballot shall be counted if it is postmarked or time-stamped on or before election day.

(f) Procedures for collection and delivery of marked absentee ballots of absent emergency first responders

Section 1973ff-2a shall not apply to absent emergency first responders.

Appendix B - Proposed State Legislation

SECTION 1. The Legislature finds and declares all of the following:

(a) Disasters and emergencies that occur within or outside the State can affect a resident's ability to vote. Earthquakes, hurricanes, and other disasters, both naturally occurring and man-made, can destroy or damage election infrastructure, including transportation, electrical, and telecommunications systems; disable polling places; disrupt delivery of absentee ballots by the United States Postal Service; interrupt the duties of election officers; and displace voters from their home counties.

(b) State residents are often dispatched or volunteer to help the victims of these disasters. Firefighters, police officers, utility workers, health care professionals, and skilled volunteers, for example, often travel to areas outside their county of residence to assist in recovery efforts and may remain in those areas for extended periods.

(c) Disasters and the associated recovery efforts can occur close to Election Day and affect a voter's ability to cast a ballot in the precinct in which the voter is registered.

SECTION 2. Definitions

(a) "County of residence" means the county that includes the precinct or district where the emergency first responder is registered to vote.

(b) "Absent emergency first responder" means a registered voter who is dispatched by his or her employer or who volunteers to assist in a recovery effort in response to an emergency declaration and who is therefore absent from his or her county of residence.

(c) "Emergency declaration" means a declaration issued by the President of the United States under federal law or by the governor of a State under state law that declares a state of emergency or disaster within ten (10) days before the deadline by which a voter must otherwise apply for an absentee ballot for the election for federal, state, or local office in which the absent emergency first responder seeks to vote.

(d) "Absentee ballot" means any mail-in or vote-by-mail ballot that allows a registered voter to transmit, and requires State elections officers to process and count, a vote in an election for federal, state, or local offices when the registered voter is located outside his or her county of residence.

SECTION 3. Extension of voting rights to absent emergency first responders

(a) Absent emergency first responders shall be permitted to use absentee ballot application procedures and to vote by absentee ballot in elections for federal, state, and local offices.

(b) The Chief State Election Official shall take all steps and actions that may be necessary to implement this section. In addition to any other method of applying for an absentee ballot, the Chief State Election Official shall establish procedures for absent emergency first responders –

(i) to request, by mail, fax, and electronically, absentee ballot applications with respect to elections for federal, state, and local offices;

(ii) to send by mail, fax, and electronically (in accordance with the preferred method of transmission designated by the absent emergency first responder under subsection (iii)) absentee ballot applications requested under subsection (i); and

(iii) to designate a preferred method of transmission of the absentee ballot application, whether by mail, fax, or electronically.

(c) In addition to any other method of transmitting blank absentee ballots in the State, the Chief State Election Official shall establish procedures for transmitting by mail, fax, and electronically a blank absentee ballot described in section 4 to absent emergency first responders with respect to any elections for federal, state, or local offices.

(d) The Chief State Election Official shall transmit a validly requested absentee ballot to an absent emergency first responder where the request for such a ballot is received no later than noon on the day before election day, in accordance with the preferred method of transmission designated by the absent emergency first responder under subsection (b)(iii) herein.

(e) The Chief State Election Official shall establish procedures to ensure that an absentee ballot cast by an absent emergency first responder pursuant to this section shall be submitted and processed in the manner provided by state law, except that an absentee ballot cast pursuant to this section shall be processed and counted if postmarked or time-stamped on or before the date of the election in which the absent emergency first responder wants to vote.

SECTION 4. Form of absentee ballot

The Chief Election Official shall prescribe an absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use by absent emergency first responders voting pursuant to section 3(a) in any federal, state, or local election. The absentee ballot shall be modeled after the Federal write-in ballot prescribed by the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff-2(a)(1).

SECTION 5. Provisional voting requirements for absent emergency first responders

(a) An absent emergency first responder may vote by provisional ballot at any polling place in the State.

(b) All provisional ballots cast by absent emergency first responders must be counted by the election officials in the voter's home county.

(c) If an absent emergency first responder casts a provisional ballot in a county other than the voter's home county, the election officials in receipt of the provisional ballot must deliver it to the appropriate election officials in the voter's home county by overnight mail or hand delivery.

(d) The appropriate election officials in the home county of an otherwise eligible absent emergency first responder must count his or her votes for any candidate or on any ballot question as to which the voter is eligible to vote, but must not count votes the voter is not eligible to cast.

Appendix C

Nov. 3, 2012 Letter from Election Protection to New Jersey Lieutenant Governor Requesting Accommodations for Displaced Voters

November 3, 2012

VIA EMAIL

Lt. Governor Kim Guadagno
Secretary of State
State of New Jersey
Department of State
Trenton, NJ 08625
Kim.Guadagno@sos.state.nj.us

Re: Accommodations for Displaced Voters on Election Day

Dear Lieutenant Governor Guadagno:

We represent nonprofit organizations and firms that work collaboratively to protect voting rights through the nonpartisan Election Protection coalition, which is again running a national hotline for the upcoming election. Lowenstein Sandler will be hosting more than 100 volunteers in its call center to field questions from New Jersey voters on Monday and Tuesday, November 5-6. As we prepare for this effort, we are acutely aware of the disruption caused by the storm. In light of the ongoing emergency in New Jersey, we write to request special accommodations for voters who have been displaced from their home districts.

We very much appreciate the special arrangements that you, the Division of Elections, and the county election officials have already made. In particular, we are grateful for the extended hours in the County Clerks' offices and the allowances many county officials are making to permit voters to apply for and submit "mail-in" ballots in person during the period (including the weekend) leading up to the election. The disaster has posed immense challenges, and we thank you for your and others' extraordinary efforts to run a smooth, efficient, and successful election despite the obstacles.

We have heard concerns from many would-be voters, however, about their inability to get back to the precincts where they would normally vote. In Hoboken, Newark, Atlantic City, Belmar, and many other locations throughout the state, residents have been displaced and are living with friends and relatives in other precincts and counties. Many cannot get back because of difficulties with transportation, including the shortage of gasoline and the disruption of public transit. Yet they wish to vote.

As you know, New Jersey law permits individuals to vote by provisional ballot in an array of circumstances, including when their registration is missing from the precinct's poll books. *NJSA 19:53C-3*. Normally, however, provisional ballots do not count when cast outside the voter's precinct of residence, except in narrow circumstances. *Id.* We write to request that you urge the Governor to invoke his emergency powers to permit displaced voters to cast provisional ballots in the districts where they are currently finding shelter. We request further that the Governor order

November 3, 2012

that these ballots be counted as to all races for which the voter is eligible to vote. In the alternative, we request that the Governor order that these ballots be counted at least as to federal and statewide races in which the voter is eligible to vote. We are open, of course, to any alternative system that would allow eligible, displaced voters to cast ballots and have their votes counted.

We realize that this request will impose burdens on already over-taxed election officials both to print and to count many additional paper ballots. We are concerned, however, that unless the Governor makes these or other special accommodations, many displaced voters will be unable to cast ballots at all.

We would also be most grateful if your office would help us advertise our hotline numbers, so that we can offer information to the greatest number of New Jersey voters possible. The Election Protection hotline numbers are: 1-866 OUR-VOTE (866-687-8683) and 1-888-VE-Y-Vota (888-839-8682) for Spanish speakers. New Jersey residents who call these numbers will reach trained, nonpartisan volunteers who are equipped to help them find a way to vote if they are eligible.

Thank you for considering these requests.

Respectfully,



Catherine Weiss
Chair, Lowenstein Center for the Public Interest
Lowenstein Sandler

Kerry Margaret Butch
Executive Director
League of Women Voters of New Jersey

Eric Marshall
Manager of Legal Mobilization
Lawyers Committee for Civil Rights

Jennifer Flanagan
Director of Voting and Elections
Common Cause

Lawrence Norden
Deputy Director, Democracy Program
Brennan Center for Justice

Kerry Margaret Butch
Executive Director
League of Women Voters of New Jersey

cc: Robert Giles, Director, Division of Elections, at Robert.Giles@sos.state.nj.us
Donna Barber, Supervisor of Elections, at Donna.Barber@sos.state.nj.us

Endnotes

- 1 All calls are documented in the Our Vote Live (“OVL”) database, available at <http://electionawareness.appspot.com/> or are on file with the Lawyers’ Committee.
- 2 Provisional ballots (or affidavit ballots) are alternative methods of voting that require a voter to affirm that the voter is entitled to vote in a particular polling place. Provisional ballots are normally offered to voters whose names do not appear on the voter rolls where the voter intends to cast his or her ballot, and the ballots typically are counted only after an election official confirms that the person casting the ballot is, in fact, eligible to vote. This report uses “provisional ballots” interchangeably with “affidavit ballots.”
- 3 See, e.g., N.J. CONST. art. V, § 1 ¶¶ 1, 11 & § 4, ¶ 4 (vesting executive power in Governor); *id.* at App. A:9-33 to A:9-34 (granting Governor emergency powers); *id.* at App. A:9-31 (requiring public officials to assist the Governor and provide information to facilitate Governor’s ability to carry out emergency powers).
- 4 The deadline for voters to apply by mail for a mail-in ballot would otherwise have been seven days before the election, in this case October 30, 2012 (the day after the storm hit), under N.J.S.A. § 19:63-3(b).
- 5 *Cf.* N.J.S.A. § 19:63-4 (governing absentee voting by authorized messenger).
- 6 *Cf.* N.J.S.A. § 19:8-2 (generally requiring polling places to be located within 1,000 feet from an election district’s boundary line).
- 7 See N.J.S.A. §§ 19:59-1 to -8 (delineating procedures for e-mail/fax voting available to “Overseas Voters”).
- 8 See N.J.S.A. § 19:59-14 (requirements for valid overseas ballot).
- 9 *Cf.* N.J.S.A. § 19:53C-3(9)(b), (c), (g)–(j) (establishing requirements for voting by provisional ballot).
- 10 Election Protection leaders in New Jersey requested this accommodation by letter to the Secretary of State dated November 3, 2012 (attached as Appendix C).
- 11 N.J.S.A. § 19:63-3(d).
- 12 In 2012, the number of New Jersey calls to the Election Protection hotline was nearly double the number received during the presidential elections in 2004 (6,766 calls) and 2008 (6,796 calls).
- 13 New Jersey voters cast 283,590 mail-in ballots in the 2012 General Election, constituting 7.7% of all ballots cast. N.J. Div. of Elections, *Vote by Mail Ballots Cast by County*, <http://www.state.nj.us/state/>

elections/election-results/vote-by-mail-ballot-chart-years-03-12.pdf. This continued the upward trend in the use of mail-in ballots over the past few election cycles. Mail-in ballots constituted 6.2% of ballots cast in the 2008 presidential election and 5.2% of ballots cast in the 2010 mid-term elections. *Id.* The 2012 emergency directive and preexisting laws allowing voters to cast mail-in ballots in person during the limited early voting period were an important step in maximizing storm-affected voters' access to the ballot.

- 14 While New Jersey does not report on a statewide basis the number of provisional ballots cast, a tally of the county data from the 2008 and 2012 Presidential elections reveals a jump in the use of provisional ballots. In 2008, among the 3,910,220 total ballots cast in New Jersey, 57,106 were provisional ballots, for a rate of 1.46%. N.J. Dep't of State, Div. of Elections, *2008 Election Information Archive*, <http://nj.gov/state/elections/election-information-archive-2008.html#1> (tallied from presidential results by county). In 2012, among the 3,677,464 ballots cast in New Jersey, 78,574 were provisional ballots, for a rate of 2.14%. N.J. Dep't of State, Div. of Elections, *2012 Election Information*, <http://nj.gov/state/elections/election-information-archive-2012.html> (tallied from county summaries of registered voters and ballots cast).
- 15 U.S. Census Bureau, Current Population Survey, November 2012, Voting and Registration in the Election of November 2012, Table 4a. <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html> (last visited Oct. 18, 2013).
- 16 U.S. Census Bureau, Current Population Survey, November 2008, Voting and Registration in the Election of November 2008, Table 4a. <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html> (last visited Oct. 18, 2013).
- 17 U.S. Census Bureau, Current Population Survey, November 2004, Voting and Registration in the Election of November 2004, Table 4c, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html> (last visited Oct. 18, 2013).
- 18 U.S. Census Bureau, Voting and Registration in the Election of November 2000, Table 4c. <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2000/tables.html> (last visited Oct. 18, 2013).
- 19 Our Vote Live ("OVL") Report #60817, available at <http://electionawareness.appspot.com/>.
- 20 OVL Report #49960.
- 21 OVL Report #46847.
- 22 OVL Report #49020.

- 23 3 U.S.C. § 1.
- 24 3 U.S.C. § 2. While the federal Help America Vote Act (“HAVA”) contemplates that voting may sometimes continue by court or other special order after the normal “time established for closing the polls,” 42 U.S.C. § 15482(c), the statute does not appear to contemplate extending the election by days.
- 25 OVL Report #67762.
- 26 N.Y. Exec. Law § 29-a (McKinney 2012).
- 27 As ballots differ from district to district, a voter who casts a ballot outside his or her home district is eligible to vote only in those races and as to those ballot questions that also appear on the ballot in the voter’s home district.
- 28 N.Y. Elec. L. § 8-302 was modified by Executive Order 62 “so that a voter seeking to vote by affidavit ballot need not affirm that such voter is duly registered in the election district in which such voter seeks to cast an affidavit ballot if such voter is registered to vote within one of the federally declared counties or New York City.” N.Y. Elec. L. § 9-209 was modified by Executive Order 62 “so that every board of elections in the State shall transmit the affidavit or provisional ballot of any voter who resides in one of the federally declared counties to the board of elections wherein such voter is registered to vote to be canvassed with other affidavit and absentee ballots for the election district wherein the voter resides.”
- 29 These data are taken from a presentation titled “Super Storm Sandy Contingency Plan” which was given by staff members of the New York City Board of Elections to the Election Center Special Workshop on April 24-28, 2013 in Minneapolis, MN (hereinafter “NYC Board of Elections Presentation”).
- 30 NYC Board of Elections Presentation, p. 2.
- 31 NYC Board of Elections Presentation, p. 2.
- 32 NYC Board of Elections Presentation, p. 4.
- 33 U.S. Census Bureau, Current Population Survey, November 2012, Voting and Registration in the Election of November 2012, Table 4a. <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html> (last visited Oct. 18, 2013).
- 34 U.S. Census Bureau, Current Population Survey, November 2008, Voting and Registration in the Election of November 2008, Table 4a. <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html> (last visited Oct. 18, 2013).

- 35 U.S. Census Bureau, Current Population Survey, November 2004, Voting and Registration in the Election of November 2004, Table 4c, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2004/tables.html> (last visited Oct. 18, 2013).
- 36 U.S. Census Bureau, Voting and Registration in the Election of November 2000, Table 4c. <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2000/tables.html> (last visited Oct. 18, 2013).
- 37 See, e.g., OVL Report #52818; 63414; 62878.
- 38 OVL Report #53288.
- 39 See, e.g., OVL Report #63924.
- 40 See, e.g., OVL Report #63856; 63380.
- 41 See, e.g., OVL Report #60714.
- 42 See, e.g., OVL Report #39515; 47705.
- 43 See, e.g., OVL Report #43664; 42601; 41684.
- 44 See, e.g., OVL Report #37233.
- 45 OVL Report #2012-5943.
- 46 See, e.g., OVL Report #47452.
- 47 OVL Report #2012-3532.
- 48 See, e.g., OVL Report #2012-3572, 2012-3241.
- 49 OVL Report #36777.
- 50 Kayla Webley, *Hurricane Sandy by the Numbers: A Superstorm's Statistics, One Month Later*, TIME, Nov. 26, 2012, available at <http://nation.time.com/2012/11/26/hurricane-sandy-one-month-later/>.
- 51 See LONG DISTANCE VOTER, ABSENTEE BALLOT DEADLINES, available at http://www.longdistancevoter.org/absentee_ballot_deadlines (reviewing the ballot deadlines of all fifty states).
- 52 New Hampshire, California, Alabama, Louisiana, and Indiana have recently passed legislation. California law authorizes the Governor to issue executive orders permitting emergency workers to vote by provisional ballot in state or by mail-in ballot from out of state. CAL. ELEC. CODE § 14313; Cal. SB 362 (enacted Oct. 4, 2013) (to be codified at CAL. ELEC. CODE §§ 336.7, 3021.5), available at http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0351-0400/sb_362_bill_20131004_chaptered.pdf. New Hampshire requires the Secretary of State to make “every reasonable effort” to transport absentee

ballot request forms, blank absentee ballots, and absentee affidavits to emergency services workers when such workers are unable to vote in person and did not apply for an absentee ballot. N.H. REV. STAT. ANN. § 657:21-a(1). Alabama authorizes the Secretary of State to adopt emergency rules during a state- or federally-declared emergency to allow for absentee voting by those electors who responded to the emergency and are away from their polling places. ALA. CODE § 17-11-3. Louisiana instructs the Secretary of State to take all actions “reasonably necessary” to allow registered voters to vote while they are engaged in out-of-state work responsibilities relating to a declared emergency. LA. REV. STAT. ANN. § 18:1308(A)(2)(j). Indiana provides that during the 2013 legislative term, the census data advisory committee shall study methods for enabling emergency first responders to receive absentee ballots. Indiana Senate Enrolled Act No. 518 (2013). In addition, South Carolina is currently considering a bill that would permit emergency first responders who are dispatched to assist with disaster relief or recovery efforts outside their county of residence to receive and cast any ballot they would have been eligible to cast had they remained within their county of residence. H. 3803, General Assembly, 102th Sess. (S.C. 2013).

- 53 See 156 CONG. REC. S4, 516 (daily ed. May 17, 2010) (statement of Sen. Charles Schumer) (“Now, if [our soldiers] can risk their lives for us we can at least allow them to vote.”).
- 54 EFRs responding to disasters that occur more than thirty days before an election should be able to meet normal state deadlines to apply for and cast absentee ballots. Rhode Island has the earliest absentee application deadline in the country and currently requires absentee ballot applications to be received no later than twenty-one days before the election in which a voter seeks to vote, see R.I. GEN. LAWS § 17-20-2.1(c). See ABSENTEE BALLOT DEADLINES, *supra* note 48.
- 55 The Secretary of Defense is and has been since 1988 the “Presidential designee” for purposes of UOCAVA. See Exec. Order No. 12,642, 3 C.F.R. 575 (1988).
- 56 New York is contemplating this sort of legislation, allowing for *absentee* ballots to be cast by any registered voter if his or her polling place is: (1) “located in an area affected by an executive order declaring a state of emergency or a federal disaster declaration,” and (2) the declaration is made within 14 days of the election. Twenty-seven states (including New Jersey) and the District of Columbia, already permit qualified voters to cast absentee ballots without offering an excuse. National Conference of State Legislatures, *Absentee and Early Voting*, <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx>.
- 57 For example, under New York Election Law § 3-108, state and county boards of elections may hold an additional day of voting if, as a direct consequence of a man-made or natural disaster, 25% or fewer of the registered voters in a city, town, or village actually vote. The Election Law could be amended to authorize the governor to “delay or suspend an election in an affected municipality upon declaration

of a state of emergency or a federal disaster declaration.” This proposal is before the New York State Legislature. See S.B. 5235, 236th Leg. Sess. (N.Y. 2013), *available at* <http://open.nysenate.gov/legislation/bill/S5235-2013>. States are advised to consider the legal implications of extending voting for presidential elections beyond the day specified by federal law.

