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COVID-19 and Other Election Emergencies: Frequently Asked Questions and Recent Policy Developments

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SUMMARY

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COVID-19 and Other Election Emergencies: Frequently Asked Questions and Recent Policy Developments

This report addresses frequently asked questions and policy developments surrounding *election emergencies*. For the purposes of this report, election emergencies are defined as unexpected, rapidly developing, external events that could substantially interrupt normal voting, election administration, or campaigning. Examples include sustained natural disasters, major disease outbreaks, or certain attacks on election systems.

There appears to be no modern precedent for a nationwide emergency in the United States, such as COVID-19, affecting elections and voting. Election administrators do, however, routinely prepare for various contingencies. Prominent examples of recent election emergencies in the states include the 2001 terrorist attacks; Hurricanes Katrina and Rita in 2005-2006; and an H1N1 (swine flu) pandemic in 2009. Effects from each episode varied substantially.

Thus far in 2020, some election jurisdictions have changed their voting processes in response to COVID-19. These changes have included postponing elections; expanding early voting options; expanding mail voting options; and modifying in-person voting procedures to minimize health risks to voters and election workers.

The federal government plays a supporting role in U.S. election administration, which remains primarily the responsibility of states, territories, and localities. Congress has responded to COVID-19, in part, by appropriating additional funding for payments to states, territories, and the District of Columbia (DC) to support election administration. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) provided $400 million for payments to states "to prevent, prepare for, and respond to coronavirus" during the 2020 federal election cycle. In addition, some of the funding Congress has previously provided for election administration-related payments to states, territories, and DC can be used for certain costs incurred as a result of the COVID-19 pandemic.

The COVID-19 pandemic has produced some agreement among policymakers about the need for certain elections policy actions, particularly providing funding for states, territories, and DC. Disagreement continues about whether Congress should require states to adopt mail voting or other forms of absentee balloting, and if so, how. In May 2020, the House passed (208-199) H.R. 6800, the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. The legislation would provide additional funding for grants to states, territories, and DC and set additional requirements for the administration of federal elections. Other legislation introduced during the 116th Congress that could be relevant for election emergencies includes H.R. 6202, H.R. 6379, H.R. 6512, H.R. 6673, H.R. 6777, H.R. 6807, H.R. 6847, H.R. 6853, H.R. 7068, H.R. 7118, S. 3440, S. 3529, S. 3725, S. 3778, S. 3822, S. 3961, and S. 4033; at the time of this writing, none of these other bills has advanced beyond introduction.

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Introduction

The Coronavirus Disease 2019 (COVID-19) outbreak has affected significant aspects of American life—including political campaigns, elections, and voting. In a matter of weeks, several states postponed primary elections; campaigns increased their online presences in lieu of in-person events; and voters faced changes in voting processes.

Election administrators around the country began preparing for how to assemble ballots and administer elections amid new requirements for "social distancing," a term that had been unfamiliar for many just weeks previously.[1] Many political campaigns abandoned traditional door-to-door voter outreach and began hosting online events, including fundraisers, in lieu of rallies. Some candidates also began filming political advertisements themselves at home.[2] Cancelled events and government agency closures prevented certain conventional voter registration opportunities.[3] In some places, voters requested mail ballots in record numbers as some jurisdictions expanded access to mail voting.

The COVID-19 pandemic is a recent example of what this report calls *election emergencies*, but it is, by no means, the only such example. Natural disasters, for example, have disrupted or threatened to disrupt elections throughout American history.

This report responds to frequently asked questions that appear to be most relevant for Congress as the House and Senate consider whether or how to pursue legislation, conduct oversight, or appropriate federal funds to respond to or anticipate election effects of emergencies, especially COVID-19. The following pages

- address the policy context by defining *election emergencies* and providing brief historical examples;
- summarize recent legislative developments;
- summarize policy issues that might confront Congress; and
- review selected state, territorial, and local responses to previous or anticipated election emergencies resulting from the COVID-19 pandemic.

Scope of Report

This report addresses frequently asked questions and policy developments surrounding election emergencies. As used in the report, *election emergencies* refers to unexpected, external events, such as natural disasters, disease outbreaks, civil unrest, or sustained attacks on election systems

[1] For a sample of COVID-19 contingency planning around the country, see, for example, discussion at U.S. Election Assistance Commission, "Public Hearing: Election Response to COVID-19, Administering Elections During the Coronavirus Crisis," April 22, 2020, https://www.eac.gov/events/2020/04/22/public-hearing-election-response-covid-19-administering-elections-during.

[2] See, for example, Emma Dumain, "'No Manual': How SC Campaigns are Adapting in the Age of Coronavirus," *The State* online, April 16, 2020; Connor Radnovich, "Campaigns Upended by COVID -19, Going Digital," *Salem Statesman Journal*, April 19, 2020, p. A3; Michael Scherer, "Stumping Via Webcam: Politicking is Transformed," *Washington Post*, April 28, 2020, p. A1; and Emily Wilkins, "DIY TV Ads Keep Candidates Connected With Voters Stuck at Home," Bloomberg Government, April 27, 2020.

[3] See, for example, Pam Fessler, "Pandemic Puts A Crimp On Voter Registration, Potentially Altering Electorate," NPR, May 26, 2020, at https://www.npr.org/2020/05/26/860458708/pandemic-puts-a-crimp-on-voter-registration-potentially-altering-electorate; and Michael Wines, "Covid-19 Changed How We Vote. It Could Also Change Who Votes," *The New York Times*, June 14, 2020, at https://www.nytimes.com/2020/06/14/us/voter-registration-coronavirus-2020-election.html.

like ransomware or distributed denial-of-service (DDoS) attacks, that have affected or could affect standard election operations. These emergency situations often necessitate a rapid response from election officials to prevent or mitigate damaging effects.[4] The COVID-19 pandemic is the most recent example of such an election emergency. As such, this report focuses in particular on the effects of COVID-19 on U.S. federal elections and voting issues in 2020.

Use of the terms *emergency*[5] and *disaster* in the report is not intended to imply policy-specific definitions that occur in areas that are beyond the scope of the report, such as emergency management, disaster preparedness, and homeland security policy areas.[6] Other issues that are beyond the scope of the report include constitutional or legal issues, such as federal authority to postpone elections.[7] The report also does not address homeland security or critical infrastructure issues not directly related to voting and elections issues covered herein. Several other CRS products cited throughout the report address elections and other policy issues that are beyond the scope of this report, including general discussion of issues such as the federal and state roles in elections and voter registration. Election emergencies may be closely related to broader and typically longer-term election security issues, such as foreign interference in U.S. elections. For additional discussion of election security, see CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

Policy Context

What are election emergencies?

Election emergencies, as used in this report, refers to unexpected, rapidly developing, external events that could substantially interrupt normal voting, election administration, or campaigning. These election emergencies can include sustained natural disasters, disease outbreaks, or certain attacks on election systems (e.g., cyberattacks). Election emergencies are distinct from *contested elections*, which typically involve challenges to election results (often under state law).[8]

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[4] Election officials typically engage in contingency planning to address a variety of scenarios, which may include preparations for certain common emergency situations. Other emergency situations, however, may be beyond the scope of the preparations made. Whether to respond to these situations, and if so, when and how, are policy decisions for Congress and the states, territories, and DC, on which this report takes no position.

[5] In using the term *emergency* generally rather than as in other policy contexts, this report relies on common usage of the term. For example, *Webster's New World Dictionary* defines *emergency* as "a sudden, generally unexpected occurrence demanding immediate action." See *Webster's New World Dictionary*, ed. Victoria Neufeldt, Warner Books Paperback ed. (New York: Simon & Schuster, 1990), p. 195. The *Oxford English Dictionary* similarly defines modern usage for *emergency* as "A juncture that arises or 'turns up'; esp. a state of things unexpectedly arising, and urgently demanding immediate action." See *Oxford English Dictionary* online, https://oed.com/view/Entry/61130?redirectedFrom=emergency#eid.

[6] For selected additional discussion beyond the elections and voting topics discussed here, see, for example, CRS Report R44669, *Department of Homeland Security Preparedness Grants: A Summary and Issues*, by Shawn Reese; CRS In Focus IF11529, *A Brief Overview of FEMA's Public Assistance Program*, by Erica A. Lee; CRS In Focus IF10683, *DHS's Cybersecurity Mission—An Overview*, by Chris Jaikaran; CRS Report R45809, *Critical Infrastructure: Emerging Trends and Policy Considerations for Congress*, by Brian E. Humphreys; and CRS In Focus IF10677, *The Designation of Election Systems as Critical Infrastructure*, by Brian E. Humphreys.

[7] For additional legal discussion, including on questions of federal authority to postpone elections, see, for example, CRS Legal Sidebar LSB10425, *Postponing Federal Elections and the COVID-19 Pandemic: Legal Considerations*, by Jacob D. Shelly.

[8] For additional discussion, see, for example, CRS Report RL33780, *Procedures for Contested Election Cases in the*

Classifying an event as an election emergency does not necessarily mean that election administrators are unprepared for it or that it will disrupt an election. Typical election contingency plans account for a number of possible circumstances and might include, for example, provisions for

- backup polling sites;
- backup poll workers, including expanded recruiting efforts (e.g., to college students);
- additional options to register to vote or cast ballots, such as mail voting or early voting;
- chain-of-custody and other ballot-security matters;
- educational campaigns to alert political campaigns and voters to election changes; and
- financial planning to purchase new equipment or open additional vote centers where voters may cast absentee ballots in person before Election Day.[9]

Where does COVID-19 fit in the current elections policy environment in Congress?

Before the COVID-19 pandemic emerged in the United States, campaign and election security, particularly foreign interference, were the most prominent election policy issues facing the House and Senate.[10] These issues remain prominent topics of debate, oversight, and legislative activity. Congress and election administrators are thus now facing potential foreign and domestic challenges to voting and elections in the United States.

The COVID-19 pandemic has produced some agreement among policymakers about the need for certain elections policy actions, particularly regarding funding to states and territories. At the same time, disagreement continues about whether additional policy changes should be made, and, if so, how those changes should be achieved. For example, several states have created at least some additional mail voting opportunities. However, some Members of Congress continue to disagree about topics such as whether Congress should require states to permit mail voting for all eligible voters; whether additional voting flexibility, if created, should be permitted only during the 2020 election cycle or permanently; how much Congress should regulate the availability of in-person voting options; and similar issues.[11] There also is debate in Congress about whether or

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House of Representatives, by L. Paige Whitaker; CRS Report RL32717, *Counting Electoral Votes: An Overview of Procedures at the Joint Session, Including Objections by Members of Congress*, coordinated by Elizabeth Rybicki and L. Paige Whitaker; CRS Report R40504, *Contingent Election of the President and Vice President by Congress: Perspectives and Contemporary Analysis*, by Thomas H. Neale; and CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

[9] For examples of state-specific contingency considerations, see, for example, National Association of Secretaries of State, *State Laws & Practices for the Emergency Management of Elections*, Task Force on Emergency Preparedness for Elections summary report, April 2017 update, https://www.nass.org/node/1692, pp. 6-7.

[10] See, for example, CRS In Focus IF11456, *Disrupted Federal Elections: Policy Issues for Congress*, by R. Sam Garrett; and CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

[11] On how these and similar issues are affecting litigation that is beyond the scope of this report, see, for example, CRS Legal Sidebar LSB10470, *Election 2020 and the COVID-19 Pandemic: Legal Issues in Absentee and All-Mail Voting*, by L. Paige Whitaker.

to what extent responding to COVID-19 requires examining voting rights and voter access issues, topics that are otherwise beyond the scope of this report.[12]

In addition to the issues described above, several more traditional campaign finance, election administration, and voting issues also have received attention in hearings and have been the subject of legislation throughout the 116th Congress. Other CRS products cited throughout this report provide additional detail on those topics.

What are some historical examples of election emergencies?

For more than a century, states and localities have administered elections during unusual circumstances. The 1918 pandemic flu, for example, affected voting throughout the country.[13] There appears to be no modern precedent for a pandemic or other widespread illness affecting U.S. elections on the nationwide scale that has occurred to date with COVID-19. Perhaps the closest modern example occurred in 2009, when some states held "off-year" nonfederal elections during the H1N1 swine flu outbreak, but effects were far more limited than for COVID-19.

Selected recent examples appear below.[14] The facts surrounding specific cases of election emergencies—which this report does not attempt to address in detail or uniformly—vary significantly. In general, jurisdictions typically have responded to these previous situations with some combination of postponing elections and providing additional flexibility to voters (e.g., expanded access to mail voting or early voting), depending on state-specific authorities permitting them to do so. In some cases, state, territorial, or local governmental responses have been controversial.

Because these examples concern past instances of election emergencies, and because response options vary across jurisdictions, the examples do not necessarily illustrate how these or other jurisdictions would respond to other scenarios. As the examples below show, state-level (e.g., gubernatorial) authority to postpone primaries has been invoked in some previous cases. Federal statute sets federal general election dates based on provisions in the U.S. Constitution.[15] As noted previously, this report does not address legal issues surrounding congressional or state-level authority to postpone elections.[16]

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[12] See, for example, differing policy proposals in legislation; and various witness and Member statements accompanying the oversight hearings noted in the "Recent Legislative Developments" section of this report.

[13] See, for example, Jason Marisam, "Judging the 1918 Election," *Election Law Journal*, vol. 9, no. 2 (2010), pp. 141-152.

[14] In addition to the cited sources, some information in this section is adapted from archived CRS Report RS22436, *Elections in States Affected by Hurricanes Katrina and Rita*, by Kevin J. Coleman and Eric A Fisher; archived CRS Report R42808, *Hurricane Sandy and the 2012 Election: Fact Sheet*, by Eric A. Fischer and Kevin J. Coleman; and archived CRS Report RL32654, *Safeguarding Federal Elections from Possible Terrorist Attack: Issues and Options for Congress*, coordinated by Eric A. Fischer. Messrs. Coleman and Fischer, and some of their coauthors on archived Report RL32654, have retired from CRS. Congressional requesters may contact R. Sam Garrett, coordinator of this report, for additional information about these archived CRS products.

[15] See U.S. Constitution, Art. 1, §4; and Art. II, §1; and 2 U.S.C. §7 and 3 U.S.C. §1.

[16] For additional discussion, see, for example, CRS Legal Sidebar LSB10425, *Postponing Federal Elections and the COVID-19 Pandemic: Legal Considerations*, by Jacob D. Shelly.

CNMI, Super Typhoon Yutu, 2018

Super Typhoon Yutu devastated the Commonwealth of the Northern Mariana Islands (CNMI), a U.S. territory, approximately 10 days before Election Day 2018.[17] 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 the start of early voting.[18] This episode appears to be the only case of a postponed federal general election in modern history resulting from the kinds of emergencies described in this report.[19]

Mid-Atlantic and Northeast, Hurricane Sandy, 2012

Hurricane Sandy made landfall north of Atlantic City, NJ, on October 29, 2012.[20] The 2012 general elections were scheduled for November 6.[21] The storm was more than 1,100 miles wide, and affected jurisdictions on the East Coast from Florida to Maine, and west to Wisconsin.[22] A Federal Emergency Management Agency (FEMA) mitigation assessment found that Sandy ultimately affected 24 states and the District of Columbia.[23] New Jersey and New York suffered the most significant damage, including from flooding, wind, and power outages.[24]

A National Association of Secretaries of State (NASS) report explained:

> As Hurricane Sandy approached the U.S. coastline in the days leading up to the 2012 presidential election, many officials were concerned about the potential impact of the storm on election administration efforts. While the storm's impacts on the election were not as serious as initially feared in most jurisdictions, it did interfere with voting process [sic] in several states, including interruptions to early voting and damaged or destroyed polling places.[25]

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[17] Super Typhoon Yutu was declared a major disaster on August 5, 2018. See Federal Emergency Management Agency, *Northern Mariana Islands Typhoon Soudelor (DR-4235)*, June 19, 2019 update, https://www.fema.gov/disaster/4235. CRS Analyst Bruce R. Lindsay provided consultations on disaster declarations cited in this section.

[18] Governor of the Commonwealth of the Northern Mariana Islands (Ralph DLG. Torres), *Executive Order No. 2018-19*, October 29, 2018.

[19] Archived CRS Report RL32654, *Safeguarding Federal Elections from Possible Terrorist Attack: Issues and Options for Congress*, coordinated by Eric A. Fischer, found no cases of postponed federal general elections, based on review of *Washington Post* and *New York Times* coverage from 1860 to 2002. In addition, research for the current report found no cases of federal election emergencies as described in this report that resulted in postponed federal general elections, other than the CNMI example. Research for the current report is based on sources cited throughout the report and on a review of various media, scholarly, and historical congressional sources.

[20] Several states were issued emergency and major disaster declarations for Hurricane Sandy. In the case of New Jersey, an emergency was declared on October 28, 2012. Based on extensive damage, the emergency declaration was superseded by a major disaster declaration on October 30, 2012. See Federal Emergency Management Agency, *New Jersey Hurricane Sandy (EM-3354)*, October 16, 2014, https://www.fema.gov/disaster/3354; and https://www.fema.gov/disaster/4086.

[21] For additional discussion, see *Hurricane Sandy and the 2012 Election: Fact Sheet*, by Eric A. Fischer and Kevin J. Coleman. Messrs. Coleman and Fischer have retired from CRS. Congressional requesters may contact R. Sam Garrett, coordinator of this report, for additional information about these archived CRS products.

[22] Federal Emergency Management Agency, "FEMA Fact Sheet: Mitigation Assessment Team Results—Hurricane Sandy," https://www.fema.gov/mat-results-hurricane-sandy.

[23] The storm caused few or no disruptions in some jurisdictions, but caused substantial problems in others. See, for example, Danny Yadron and Naftali Bendavid, "Election 2012: Campaigns Track Pace of Early Voting," *The Wall Street Journal*, November 3, 2012, p. A5.

[24] See, for example, Danny Yadron and Naftali Bendavid, "Election 2012: Campaigns Track Pace of Early Voting," *The Wall Street Journal*, November 3, 2012, p. A5.

[25] National Association of Secretaries of State, *State Laws & Practices for the Emergency Management of Elections*,

Election officials responded by relocating polling places where possible, extending early voting options, and, in some cases, permitting additional absentee voting. New Jersey, for example, extended federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) protections to affected voters.[26] Some of the New Jersey actions generated controversy, particularly a decision by the chief state election official to permit some voters to return ballots by fax or email. While some election officials and scholars praised the efforts to provide ballot access in extraordinary circumstances, others argued that the actions were impermissible under state law, generated security risks, or both.[27]

Various States, H1N1 Flu Pandemic, 2009

As another CRS product explains, the World Health Organization (WHO) declared an H1N1 (swine flu) pandemic in June 2009.[28] Because few states hold major "off-year" elections, H1N1 appears to have had a limited impact on U.S. elections.

The U.S. Election Assistance Commission (EAC) reportedly requested that states provide the agency with information about H1N1 contingency plans.[29] At least two election authorities—those in Virginia and Wisconsin—issued statewide H1N1 elections guidance.[30] Many of the recommendations in these documents were similar to those issued more recently for COVID-19.[31] Then as now, election administrators were encouraged to, for example, review their contingency plans; consult with state and local health authorities; prepare for poll worker absences; clean voting equipment; and require social distancing. Some election jurisdictions reportedly also encouraged mail voting.

Task Force on Emergency Preparedness for Elections summary report, April 2017 update, https://www.nass.org/node/1692, p. 8.

[26] For additional UOCAVA discussion, see CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Overview and Issues*, by R. Sam Garrett. Retired CRS analyst Kevin Coleman originally authored this report.

[27] A Rutgers-Newark Law School study, which gained publicity when it was issued in 2014, questioned whether some of the New Jersey voting changes were permissible under state law, a topic that is beyond the scope of this report. For additional discussion and background supporting and opposing the state's response, see, for example, Penny Venetis et al., *The Perfect Storm: Voting in New Jersey in the Wake of Superstorm Sandy*, Rutgers School of Law-Newark, Constitutional Rights Clinic report, October 2014; Michael T. Morley, "Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks," *Emory Law Journal*, vol. 67 (2018), pp. 563-570; Ginger Gibson, "N.J. to Allow Voting by E-mail and Fax," *Politico*, updated November 6, 2012, https://www.politico.com/story/2012/11/nj-to-allow-voting-by-e-mail-and-fax-083282; and Ted Sherman, "Post-Sandy Voting Moves Broke the Law, Study Says," *Newark Star-Ledger*, October 24, 2014, p. 1.

[28] See archived CRS Report R40554, *The 2009 Influenza Pandemic: An Overview*, by Sarah A. Lister and C. Stephen Redhead.

[29] See, for example, Avana Harry, "H1N1 and Election Day: What States are Doing to Keep Voters Flu-Free," ABC News online, November 3, 2009, https://abcnews.go.com/Health/SwineFlu/h1n1-election-day-protecting-voters/story?id=8987234.

[30] See Board of Elections, State of Virginia, "SBE H1N1 Preparedness for November 3, 2009," agency statement; and Government Accountability Board, State of Wisconsin, *Guidance: H1N1 Flu Pandemic and Possible Impact on the Conduct of Elections*, memorandum to election clerks and commissions, September 18, 2009. Both documents are available on the EAC website, "CORONOVIRUS (COVID-19) RESOURCES," https://www.eac.gov/election-officials/coronavirus-covid-19-resources.

[31] See, for example, various federal, state, and nongovernmental resources on the EAC website, "CORONOVIRUS (COVID-19) RESOURCES," https://www.eac.gov/election-officials/coronavirus-covid-19-resources.

Gulf Coast, Hurricanes Katrina and Rita, 2005-2006

Hurricanes Katrina and Rita struck the U.S. Gulf Coast in August and September, respectively, 2005. Both hurricanes reached Category 5 status and devastated parts of Alabama, Florida, Louisiana, Mississippi, and Texas.[32] Katrina killed approximately 1,200 people.[33] Katrina and Rita affected elections throughout the Gulf Coast in 2005 and 2006.[34] Hundreds of thousands of voters were displaced, and voting locations and equipment were damaged.

National attention focused on New Orleans. Katrina and Rita had dramatically changed the city's electorate and demographics as 22 candidates vied to be the next mayor.[35] According to media reports, polling places and voting equipment were damaged throughout the city.[36] Citing the desire to "ensure maximum citizen participation in the electoral process" and the Secretary of State's determination that elections could not be held safely, Governor Kathleen Blanco issued an executive order on December 9, 2005, postponing municipal primaries and runoffs, and extending candidate qualifying periods.[37] Those elections were originally scheduled for February 4 and March 4, 2006, respectively.

The governor's order specified only that the postponed elections should be rescheduled "as soon as practicable."[38] Amid voting rights litigation (a topic that is beyond the scope of this report), and after a U.S. District Court judge reportedly stated during a hearing that he was prepared to order an election date, state election officials rescheduled the dates for April 22 and May 20, respectively.[39] State election officials also reportedly conducted a public education campaign

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[32] Several emergencies and major disaster declarations were issued in response to the 2005 hurricane season. For example, an emergency was declared August 27, 2005, for Louisiana in response to Hurricane Katrina. Due to extensive damages, the emergency declaration was superseded by a major disaster declaration on August 29, 2005. See Federal Emergency Management Agency, *Louisiana Hurricane Katrina (EM-3212)*, September 28, 2010, https://www.fema.gov/disaster/3212; and Federal Emergency Management Agency, *Louisiana Hurricane Katrina (DR-1603)*, November 1, 2005, https://www.fema.gov/disaster/1603.

[33] U.S. National Oceanic and Atmospheric Administration, National Hurricane Center and Central Pacific Hurricane Center, *Hurricanes in History*, "Hurricane Katrina 2005," https://www.nhc.noaa.gov/outreach/history/#katrina. For discussion of the federal government's role in disaster recovery, see, for example, CRS Report R43139, *Federal Disaster Assistance After Hurricanes Katrina, Rita, Wilma, Gustav, and Ike*, coordinated by Bruce R. Lindsay and Jared C. Nagel.

[34] For additional historical discussion, see archived CRS Reports RS22436, *Elections in States Affected by Hurricanes Katrina and Rita*, by Kevin J. Coleman and Eric A Fisher. Messrs. Coleman and Fischer have retired from CRS. Congressional requesters may contact R. Sam Garrett, coordinator of this report, for additional information about these archived CRS products.

[35] For discussion of voter turnout and campaign implications in New Orleans mayoral elections, see, for example, Brian Brox, "Elections and Voting in Post-Katrina New Orleans," *Southern Studies: An Interdisciplinary Journal of the South*, vol. 16, no. 2 (2009), pp. 1-23; Betsy Sinclair, Thad E. Hall, and R. Michael Alvarez, "Flooding the Vote: Hurricane Katrina and Voter Participation in New Orleans," *American Politics Research*, vol. 35, no. 9 (2011), pp. 921-957; and James Vanderleeuw, Baodong Liu, and Erica Williams, "The 2006 New Orleans Mayoral Election: The Political Ramifications of a Large-Scale Natural Disaster," *PS: Political Science and Politics*, vol. 41, no. 4 (2008), pp. 795-801. For candidates and election results, see Louisiana Secretary of State, *Election Results—Voter Portal*, https://voterportal.sos.la.gov/static/.

[36] See, for example, Bruce Eggler, "Blanco Postpones N.O. Elections," *Times-Picayune*, December 13, 2005, Metro Section, p. 1. For additional discussion of Voting Rights Act issues, see, for example, CRS Testimony TE10033, *History and Enforcement of the Voting Rights Act of 1965*, by L. Paige Whitaker.

[37] Governor of the State of Louisiana (Kathleen Blanco), *Executive Order KBB 05-96*, December 9, 2005, https://www.doa.la.gov/osr/other/kbb05-96.htm.

[38] Governor of the State of Louisiana (Kathleen Blanco), *Executive Order KBB 05-96*, December 9, 2005, https://www.doa.la.gov/osr/other/kbb05-96.htm.

[39] For additional discussion, see, for example, Bruce Eggler, "April 22 Favored as N.O. Election Date," *Times-*

throughout Louisiana and in 11 other states to alert displaced voters to their options to cast ballots.[40] These included in-person voting at a limited number of New Orleans polling places on Election Day and at other early voting sites in Louisiana. Voters also could return ballots by mail or fax. Some such decisions required federal approval because, at the time, the Voting Rights Act (VRA) required that the U.S. Department of Justice (or the U.S. District Court for the District of Columbia) approve or "preclear" election changes such as alterations to polling place locations and hours in certain "covered" jurisdictions, including Louisiana. In its 2013 *Shelby County* opinion, the U.S. Supreme Court invalidated the formula that triggered the preclearance requirement.[41]

New York, Terrorist Attacks, 2001

The September 11, 2001, terrorist attacks coincided with primary Election Day in New York.[42] Perhaps most notably, this included the New York City mayoral primary. On the morning of the 11th, Governor George Pataki issued an executive order "declaring a disaster emergency" in the state. At noon on the 11th, the governor amended the initial executive order to "temporarily suspend" primary elections in the state.[43] On September 13, the state legislature enacted Senate Bill 5791, in which the assembly determined that conducting the primary as scheduled on September 11 had been "impossible owing to the imminent risk then posed to the health, safety, and welfare of New York's citizens."[44]Among other provisions, the legislation rescheduled the primaries for September 25. It also specified that ballots cast at polling places on September 11 "shall not be counted," but that valid absentee ballots could be counted.[45]

Staging the rescheduled elections required substantial adaptation and coordination across the state, especially by state and local election boards and their staffs. New York City's Election Board office was inaccessible in the days following September 11. In addition, power failures

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Picayune, December 13, 2005, National Section, p. 1; and Michael T. Morley, "Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks," *Emory Law Journal*, vol. 67 (2018), pp. 559-563. Incumbent Ray Nagin eventually won the mayoral election.

[40] According to media reports, the Federal Emergency Management Agency (FEMA) provided the Louisiana Secretary of State with a list of more than 900,000 evacuees, although many of the names were thought to be duplicates. See, for example, Staff and wire reports, "New List From FEMA Satisfies Officials," *Times-Picayune*, December 28, 2005, Metro Section, p. 1. On media outreach, see, for example, Associated Press, "FEMA Won't Pay for New Orleans Election," April 16, 2006.

[41] VRA issues are otherwise beyond the scope of this report. On *Shelby County* and preclearance, see, for example, CRS Testimony TE10033, *History and Enforcement of the Voting Rights Act of 1965*, by L. Paige Whitaker. On post-Katrina preclearance in Louisiana, see, for example, Peter Whoriskey, "Election Plan for New Orleans Approved," *The Washington Post*, March 17, 2006, p. A3; and U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Constitution, Civil Rights and Property Rights, *Reauthorizing the Voting Rights Act's Temporary Provisions: Policy Perspectives and Views From the Field*, 109th Cong., 2nd sess., June 21, 2006, S.Hrg. 109-822 (Washington: GPO, 2007), pp. 140-142; and Jalila Jefferson-Bullock, "The Flexibility of Section 5 and the Politics of Disaster in Post-Katrina New Orleans," *Journal of Gender, Race, and Justice*, vol. 16, no. 3 (2013).

[42] Several emergencies and major disaster declarations were issued in response to 9/11. New York was issued a major disaster declaration on September 11, 2001. See Federal Emergency Management Agency, *New York Terrorist Attack (DR-1391)*, March 5, 2019 update, https://www.fema.gov/disaster/1391.

[43] Governor of the State of New York (George E. Pataki), *Executive Order No. 113* and *Executive Order No. 113.1*, September 11, 2001, in *New York State Register*, vol. 23, issue 39, September 26, 2001.

[44] This legislation was Senate Bill 5791, the Emergency Primary Election Rescheduling Act of 2001; see New York Advance Legislative Service, in *2001 N.Y. Laws 298*.

[45] On the September 25 primary date, see Section 1; on voting eligibility and previously cast ballots, see Sections 3-5; in Senate Bill 5791, the Emergency Primary Election Rescheduling Act of 2001; see New York Advance Legislative Service, in *2001 N.Y. Laws 298*.

damaged the board's computer equipment. The agency also incurred other costs to remove and redeploy voting machines, among other expenses.[46] The State Board of Elections also had to reproduce poll books and poll lists.[47]

Florida, Hurricane Andrew, 1992

Category 4 Hurricane Andrew was one of the most powerful storms in U.S. history.[48] Andrew killed 23 people in the United States in late August 1992. Wind gusts estimated at approximately 170 miles per hour occurred in Dade County, Florida.[49] The storm damaged property and buildings—including polling places for September primary voting—throughout the county. This damage disrupted the county's ability to administer statewide and federal primaries originally scheduled for September 1, 1992.

According to media reports, Governor Lawton Chiles determined that he did not have authority to postpone the election.[50] At the request of county election officials, state courts ordered the elections postponed by one week, until September 8, in Dade County but not elsewhere in the state.[51] The rescheduled primary occurred on the 8th, reportedly amid reduced voter turnout and, in some cases, with the U.S. military setting up tents for polling places but not taking a role in election administration.[52]

How have states changed their election administration procedures in 2020 in response to COVID-19?

In addition to preparing for the November general election amid ongoing COVID-19 concerns, many states have prepared for and conducted federal primary or special elections scheduled for the spring and summer months.[53] Many of the initial administrative changes announced by states

[46] The Federal Emergency Management Agency (FEMA) provided $7.9 million to assist the board with these costs. See Federal Emergency Management Agency, "FEMA To Reimburse New York City For Cancelled And Rescheduled 9/11 Primarily Elections," press release, September 6, 2002, press release no. 1391-148, https://www.fema.gov/news-release/2002/09/06/fema-reimburse-new-york-city-cancelled-and-rescheduled-9/11-primarily.

[47] On these points and other details, see, for example, Testimony of Thomas Wilkey in U.S. Congress, House Committee on House Administration, Subcommittee on Elections, *Hearing on Election Contingency Plans: What Have We Learned and Is America Prepared?* 110th Cong., 2nd sess., May 15, 2008 (Washington: GPO, 2008), pp. 6-19. On September 11, 2001, Wilkey was Executive Director of the New York State Board of Elections. At the time of his cited testimony, he was the first Executive Director of the U.S. Election Assistance Commission (EAC).

[48] A major disaster declaration was issued in response to Hurricane Andrew on August 24, 1992. See Federal Emergency Management Agency, *Florida Hurricane Andrew (DR-955)*, June 2, 2009, update, https://www.fema.gov/disaster/955.

[49] See U.S. National Oceanic and Atmospheric Administration, National Hurricane Center and Central Pacific Hurricane Center, *Hurricanes in History*, "Hurricane Andrew 1992," https://www.nhc.noaa.gov/outreach/history/#andrew.

[50] See, for example, William Claiborne, "Hurricane Takes Toll on Turnout," *The Washington Post*, p. A14.

[51] See, for example, Tom Fiedler, "Storm or No, Election Will be Held," *The Miami Herald*, August 27, 1992, B1, accessed via CRS Lexis subscription; William Claiborne, "Hurricane Takes Toll on Turnout," *The Washington Post*, p. A14; and Reuters, "September Election Delayed a Week in Storm-Hit County," *The New York Times*, August 30, 1992, p. 22.

[52] See, for example, Charles Strouse, Dexter Filkins, and Patrick May, "Apathy, Confusion are Victors in Post-Storm Election," *The Miami Herald*, September 9, 1992, p. A1. Federal law prohibits the presence of U.S. troops at polling places in federal general and special elections. See 18 U.S.C. §§592-593. Some states have assigned their National Guard units to election duties, especially those concerning election security.

[53] The scope of this report is limited to federal elections; a number of states have had to prepare for and conduct state or

addressed plans for these spring and summer elections, but some states have also announced policy decisions affecting the November election.[54]

Some of the changes state election officials have announced for voting processes in these elections address the current, or anticipated, health risks associated with preparing for and conducting in-person voting, whereas others expand the options for when or where voters can vote.[55] The scope of changes considered varies across states, depending on a variety of factors, including the capacity of existing election practices to sufficiently alleviate concerns related to COVID-19; the legal authority and practical ability to implement certain election practices; and the projected effects of COVID-19 in different jurisdictions and at different points in time. Options state election officials have considered broadly involve

- postponing a primary or special election;[56]
- expanding early voting options;[57]
- expanding mail voting options, including conducting an election primarily or entirely by mail;[58]

local elections amid COVID-19 concerns, and these elections are beyond the scope of this discussion. For additional details on announced election changes related to COVID-19, see Ballotpedia, "Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic, 2020," at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020.

[54] For additional details on announced election changes related to COVID-19, see Ballotpedia, "Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic, 2020," at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020.

[55] For more details on these actions, see Ballotpedia, "Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic, 2020," at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020.

[56] As noted previously, federal statute sets federal general election dates based on provisions in the U.S. Constitution. See U.S. Constitution, Art. 1, §4; and Art. II. §1; and 2 U.S.C. §7 and 3 U.S.C. §1. For discussion of legal issues that are beyond the scope of this report, see, for example, CRS Legal Sidebar LSB10425, *Postponing Federal Elections and the COVID-19 Pandemic: Legal Considerations*, by Jacob D. Shelly. See also Nick Corasaniti and Stephanie Saul, "16 States Have Postponed Primaries During the Pandemic. Here's a List," *New York Times*, May 27, 2020, at https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html/.

[57] See CRS In Focus IF11477, *Early Voting and Mail Voting: Overview & Issues for Congress*; CRS Legal Sidebar LSB10470, *Election 2020 and the COVID-19 Pandemic: Legal Issues in Absentee and All-Mail Voting*; National Conference of State Legislatures, *COVID-19 and Elections*, June 1, 2020, at https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx; and Ballotpedia, "Absentee/mail-in voting procedure changes," in "Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic, 2020," at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020#Absentee.2Fmail-in_voting_procedure_changes.

[58] See CRS Insight IN11356, *Mail Voting and COVID-19: Developments and Potential Challenges*; CRS Legal Sidebar LSB10470, *Election 2020 and the COVID-19 Pandemic: Legal Issues in Absentee and All-Mail Voting*; National Conference of State Legislatures, *COVID-19 and Elections*, June 1, 2020, at https://www.ncsl.org/research/elections-and-campaigns/state-action-on-covid-19-and-elections.aspx; and Ballotpedia, "Absentee/mail-in voting procedure changes," in "Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic," 2020, at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020#Absentee.2Fmail-in_voting_procedure_changes.

- modifying in-person voting processes, including offering curbside or drive-through voting, relocating polling places from senior facilities or to larger spaces, or reducing the number of polling places or poll workers;[59] and
- establishing additional cleaning and social distancing protocols for election facilities, including sanitizing voting equipment, providing personal protective equipment to election workers, and encouraging voters to wear face coverings.[60]

Primary election dates were postponed in 16 states and two territories due to COVID-19 concerns.[61] At least 29 states with primaries during the spring and summer months have announced changes for these elections that would expand access to mail voting.[62] The approaches these states have taken have varied, broadly addressing ways voters may receive or cast mail ballots. Announced changes have included suspending mail voting qualifications or modifying them to include COVID-19; automatically sending ballot request forms or mail ballots to all registered voters; and providing prepaid postage for ballot return envelopes or enabling certain individuals (such as family members) to submit voters' ballots on their behalf.[63]

[59] See, for example, Alexa Ura, "Texas Recommends People Bring Their Own Hand Sanitizer to Vote This Summer," *The Texas Tribune*, May 26, 2020, at https://www.texastribune.org/2020/05/26/texas-coronavirus-voting-procedures/; Margaret Stafford, "Coronavirus brings changes to polling places in Missouri," Associated Press, June 1, 2020, at https://apnews.com/273686445245b27c43c7384e1078b2c4; and Teri Weaver, "2020 NY elections: Did your polling place change? It's a coronavirus precaution," *The Post-Standard*, June 13, 2020, at https://www.syracuse.com/politics/cny/2020/06/2020-ny-elections-did-your-polling-place-change-its-a-coronavirus-precaution.html.

[60] See, for example, Texas Director of Elections Keith Ingram, "Voting In Person During COVID-19," Election Advisory No. 2020-19, June 18, 2020, at https://www.sos.state.tx.us/elections/laws/advisory2020-19.shtml; Indiana State Department of Health, "COVID-19 Guidance for Election Polling Station Locations," June 26, 2020, at https://www.sos.ms.gov/About/Pages/Press-Release.aspx?pr=1110; and Lauren Irwin and John Frank, "How Colorado Will Run an Election Amid the Coronavirus and What it Means for the June Primary," *The Colorado Sun*, June 23, 2020, at https://coloradosun.com/2020/06/23/colorado-june-primary-election-coronavirus/.

[61] Nick Corasaniti and Stephanie Saul, "16 States Have Postponed Primaries During the Pandemic. Here's a List," *New York Times*, May 27, 2020, at https://www.nytimes.com/article/2020-campaign-primary-calendar-coronavirus.html/.

[62] See Ballotpedia, "Changes to election dates, procedures, and administration in response to the coronavirus (COVID-19) pandemic, 2020," at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020.

[63] See CRS Insight IN11356, *Mail Voting and COVID-19: Developments and Potential Challenges*.

Four special elections to fill vacant U.S. House seats have been held to date amid COVID-19 concerns, in Maryland,[64] California,[65] Wisconsin,[66] and New York.[67] For three of these elections (in Maryland, California, and New York), officials provided expanded access to mail voting while maintaining some options to submit a ballot in person; the fourth state, Wisconsin, generally provides no-excuse mail ballots, by request, for eligible voters in any election.[68]

For these primary and special elections, states and localities have also generally made additional modifications, or issued guidance, related to voting processes that involve interpersonal contact.[69]

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[64] Maryland's 7th congressional district special election was held on April 28. On March 17, the governor of Maryland announced that the State Board of Elections would mail ballots to all voters. Maryland also provided limited in-person voting opportunities for those who could not vote by mail or who chose to vote in person. See Emily Opilo and Talia Richman, "Maryland primary moves to June amid coronavirus pandemic; voters to pick Cummings' replacement by mail in April," *Baltimore Sun*, March 17, 2020, at https://www.baltimoresun.com/coronavirus/bs-md-pol-coronavirus-primary-election-hogan-plan-20200317-x5ppxxzyrjbyvnmj3dw2ygxnd4-story.html; Emily Opilo, "Limited in-person voting to be offered April 28 for Maryland's 7th Congressional District special election," *Baltimore Sun*, April 13, 2020, at https://www.baltimoresun.com/coronavirus/bs-md-pol-coronavirus-election-7th-district-vote-center-20200413-ugbabb4j65aazgozvyl2cf4upq-story.html; and Maryland State Board of Elections, "Special Congressional District 7 Election Information April 28, 2020," at https://elections.maryland.gov/elections/2020/special_election_CD7.html.

[65] California's 25th congressional district special election was held on May 12. On March 20, the governor of California issued an executive order requiring counties to mail every voter a ballot for the special election. Some in-person voting centers for early voting were also available, in keeping with the state's existing early voting practices. See Ballotpedia, "California's 25th Congressional District special election, 2020," at https://ballotpedia.org/California%27s_25th_Congressional_District_special_election,_2020; Governor Gavin Newsom, *Executive Order N-34-20*, March 20, 2020, at https://www.gov.ca.gov/wp-content/uploads/2020/03/3.20.20-N-34-20.pdf; Tammy Murga, "Vote-by-mail ballots mailed for 25th special election," *The Santa Clarita Valley Signal*, April 15, 2020, at https://signalscv.com/2020/04/vote-by-mail-ballots-mailed-for-25th-special-election/; Jennifer Medina, "A Bitter Battle for a California House Seat Unfolds in Quarantine," *New York Times*, May 6, 2020, at https://www.nytimes.com/2020/05/05/us/politics/california-christy-smith-mike-garcia-trump.html; Los Angeles County Registrar-Record/County Clerk, "May 12, 2020: Congressional District 25 Special General Election," at https://lavote.net/docs/rrcc/media/Factsheet-05122020.pdf; and National Conference of State Legislatures, *State Laws Governing Early Voting*, August 2, 2019, at https://www.ncsl.org/research/elections-and-campaigns/early-voting-in-state-elections.aspx.

[66] Wisconsin's 7th congressional district special election was held on May 12, 2020. The governor of Wisconsin announced on April 29 that there would not be any significant election administration changes for this race, which was held as scheduled with in-person and mail voting opportunities for voters. See "Seventh Congressional District Election to Proceed as Planned," WSAU—Wisconsin Radio Network, April 29, 2020, at https://wsau.com/news/articles/2020/apr/29/seventh-congressional-district-election-to-proceed-as-normal/1012673/; and Ballotpedia, "Wisconsin's 7th Congressional District special election, 2020," at https://ballotpedia.org/Wisconsin%27s_7th_Congressional_District_special_election,_2020. The governor reportedly had previously considered moving the date of the election; see Associated Press, "Governor Evers might move date of May 12 special election," April 10, 2020, at https://fox6now.com/2020/04/10/gov-evers-might-move-date-of-may-12-special-election/. Wisconsin also held a primary election on April 7; see Elena Moore, "Wisconsin Election Held Amid Virus Fears: Here's What You Need To Know," NPR, April 7, 2020, at https://www.npr.org/2020/04/07/828055678/wisconsin-election-held-amid-virus-fears-heres-what-you-need-to-know.

[67] New York's 27th congressional district special election was held on June 23, postponed from April 28, due to COVID-19 concerns. For this special election and the primary held the same day, New York suspended requirements for mail voting, automatically sent mail ballot applications to all voters, and allowed ballot submission to occur by mail or in person through the date of the election. See Governor of the State of New York (Andrew M. Cuomo), *Executive Order No. 202.12*, March 29, 2020, at https://www.governor.ny.gov/news/no-20212-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency; and New York State Board of Elections, "Executive Orders—COVID-19," at https://www.elections.ny.gov/Covid19ExecOrders.html.

[68] See Wisconsin Elections Commission, "I want to vote absentee," at https://elections.wi.gov/voters/absentee.

[69] For examples of these, see state press releases compiled in National Association of Secretaries of State, "Issue Briefing: Election Emergencies & COVID-19," at https://www.nass.org/resources/issue-briefing-election-emergencies-covid-19.

The Centers for Disease Control and Prevention (CDC) has also issued recommendations for election workers and voters, including providing signage or floor markings to encourage social distancing, disinfecting surfaces and voting equipment, and providing protections for people at increased risk for illness.[70] To provide for social distancing at voting sites, some jurisdictions have expanded early voting options, relocated voting sites to larger facilities, or offered voting options that reduce interpersonal contact, such as curbside voting. For example, Texas provided 10 days of early voting instead of 5 in its primary runoff election, and election officials encouraged use of curbside voting.[71] Louisville, KY, used a single voting location at the state fair ground exposition center building for its primary election.[72] Some states, including Florida and Ohio, have also relocated polling places from nursing homes or senior centers to new locations.[73]

In addition to personal safety measures, some states have also expanded poll worker recruitment efforts to ensure that available voting sites have a sufficient number of election workers. In Wisconsin, for example, 250 Wisconsin National Guard members were available to serve at polling places during the special election, and the state worked with municipalities to provide personal protective equipment for poll workers and cleaning supplies.[74] Some states are also expanding efforts to recruit poll workers, particularly among high school or college students.[75]

States have generally taken steps to provide personal protective equipment and other supplies to help ensure the health and safety of voters and election workers for the remaining 2020 elections.[76] Selected examples of other state actions to date related to voting in the November 2020 general election are provided below.

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[70] See, generally, Centers for Disease Control and Prevention, "Considerations for Election Polling Locations and Voters," June 22, 2020, at https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html.

[71] Shaun Rabb, "Texans shatter early voting record numbers for primary runoff election," Fox 4—KDFW, July 11, 2020, at https://www.fox4news.com/news/texans-shatter-early-voting-record-numbers-for-primary-runoff-election; and Wes Rapaport, "Could Texas see increase in curbside voting as primary runoff voting period begins?" KXAN NBC, June 29, 2020, at https://www.kxan.com/news/your-local-election-hq/texas-may-see-increase-in-curbside-voting-as-primary-runoff-voting-period-beings/.

[72] Phillip M. Bailey and Joe Sonka, "A historic Kentucky primary defied the naysayers. Then in the last 5 minutes, chaos struck," *Louisville Courier Journal*, June 24, 2020, at https://www.courier-journal.com/story/news/politics/elections/kentucky/2020/06/23/kentucky-primary-election-day-marked-covid-19-suppression-claims/3244169001/.

[73] For example, see Benjamin Siegel, Meg Cunningham, and Luke Barr, "Polling places moved from nursing homes; other changes amid coronavirus concerns," ABC News, March 13, 2020, at https://abcnews.go.com/Politics/states-scramble-move-polling-places-nursing-homes-stock/story?id=69587292.

[74] Brenda Ordonez, "Over 69,000 Wisconsin voters return absentee ballots for May 12 Special Election," WFRV-TV CBS Local 5, May 8, 2020, at https://www.wearegreenbay.com/coronavirus/more-than-69000-wisconsin-voters-return-absentee-ballots-for-may-12-election/; and Todd Richmond, "Wisconsin clerks ready for special congressional election," AP News, April 17, 2020, at https://apnews.com/8b01e819253b20ef032b5f6ea7de8cf4.

[75] For example, see comments from Director of Hamilton County [Ohio] Board of Elections Sherry Poland at the U.S. Election Assistance Commission, *Public Hearing: U.S. Election Assistance Commission Lessons Learned from the 2020 Primary Elections*, July 8, 2020, at https://www.eac.gov/events/2020/07/08/public-hearing-us-election-assistance-commission-lessons-learned-2020-primary; and Al Pefley, "Places normally used as polling precincts cancel as coronavirus cases spike," CBS12—WPEC, June 30, 2020, at https://cbs12.com/news/local/supervisor-of-elections-needs-polling-places-for-august-primary.

[76] See, for example, New Hampshire Secretary of State Bill Gardner, "Re: Personal Protective Equipment, September 8, State Primary; November 3, General Election," at https://www.nhpr.org/sites/nhpr/files/202007/election_officials_on_ppe_july_6__2020__005_.pdf.

- Arkansas and New Hampshire officials have stated that COVID-19 concerns could serve as a reason to request an absentee ballot, and Massachusetts and Missouri have extended eligibility for mail voting to all qualified voters.[77]
- Missouri waived the notarization requirement for mail voting-eligible voters who have contracted or are at risk of contracting COVID-19, and North Carolina reduced the requirement for witness signatures for mail ballots from two to one.[78]
- Connecticut, Delaware, Illinois, Maryland, Massachusetts, Michigan, and Wisconsin announced that all voters would automatically receive mail ballot applications, and New Mexico authorized county clerks to automatically send mail ballot applications.[79]
- Illinois and Massachusetts also announced that they would expand early voting hours, and Illinois will permit curbside voting.[80]
- California's governor signed legislation requiring all counties to mail voters ballots and issued an executive order permitting counties to consolidate polling places under certain conditions.[81]

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[77] John Moritz, "Virus OK as excuse for voting absentee in Arkansas, Hutchinson says," *Arkansas Democrat-Gazette*, July 3, 2020, at https://www.arkansasonline.com/news/2020/jul/03/virus-ok-as-excuse-for-voting-absentee/; New Hampshire Secretary of State William M. Gardner and New Hampshire Attorney General Gordon J. MacDonald, "Elections Operations During the State of Emergency," memorandum, April 10, 2020, at https://www.nhpr.org/sites/nhpr/files/202004/covid-19_elections_guidance.pdf; Massachusetts Secretary of the Commonwealth of Massachusetts, "COVID-19 Elections Updates," at https://www.sec.state.ma.us/ele/covid-19/covid-19.htm; Governor Mike Parson, "Governor Parson Takes Security Measures to Safeguard Election Process, Protect Missouri Voters During COVID-19," press release, June 4, 2020, at https://governor.mo.gov/press-releases/archive/governor-parson-takes-security-measures-safeguard-election-process-protect.

[78] Governor Mike Parson, "Governor Parson Takes Security Measures to Safeguard Election Process, Protect Missouri Voters During COVID-19," press release, June 4, 2020, at https://governor.mo.gov/press-releases/archive/governor-parson-takes-security-measures-safeguard-election-process-protect; and Associated Press, "North Carolina Gov. Cooper signs law making mail-in absentee ballots easier, elections safer because of COVID-19," June 12, 2020, at https://www.wxii12.com/article/north-carolina-cooper-law-mail-in-absentee-ballots-election/32855736#.

[79] Connecticut Secretary of State Denise W. Merrill, "Secretary Merrill Releases Connecticut's Election Plan in the Face of COVID-19," press release, May 4, 2020, at https://portal.ct.gov/SOTS/Press-Releases/2020-Press-Releases/Secretary-Merrill-Releases-Connecticuts-Election-Plan-in-the-Face-of-COVID19; Governor John Carney, "Governor Carney Signs Vote By Mail Legislation," press release, July 1, 2020, at https://news.delaware.gov/2020/07/01/governor-carney-signs-vote-by-mail-legislation/; Associated Press, "Massive expansion of vote-by-mail approved in Illinois," June 16, 2020, at https://wgntv.com/news/massive-expansion-of-vote-by-mail-approved-in-illinois/; Governor Larry Hogan, "Governor Hogan Directs State Board of Elections to Conduct November General Election With Enhanced Voting Options," press release, July 8, 2020, at https://governor.maryland.gov/2020/07/08/governor-hogan-directs-state-board-of-elections-to-conduct-november-general-election-with-enhanced-voting-options/; Massachusetts Secretary of the Commonwealth of Massachusetts, "COVID-19 Elections Updates," at https://www.sec.state.ma.us/ele/covid-19/covid-19.htm; Michigan Secretary of State Jocelyn Benson, "Benson: All voters receiving applications to vote by mail," press release, May 19, 2020, at https://www.michigan.gov/sos/0,4670,7-127-93094-529536—,00.html; Adam Levy and Chandelis Duster, "Wisconsin approves measure to send absentee ballot applications to voters," CNN, May 28, 2020, at https://www.cnn.com/2020/05/28/politics/wisconsin-absentee-voting-applications/index.html; and Governor Michelle Lujan Grisham, "Governor establishes Civil Rights Commission; signs election protections, solvency measures into law," press release, June 26, 2020, at https://www.governor.state.nm.us/2020/06/26/governor-establishes-civil-rights-commission-signs-election-protections-solvency-measures-into-law/.

[80] Office of Illinois Governor J.B. Pritzker, "Gov. Pritzker Signs Legislation to Expand Vote by Mail, Promote Safe Participation in the 2020 Election," press release, June 16, 2020, at https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=21690; and Massachusetts Secretary of the Commonwealth of Massachusetts, "COVID-19 Elections Updates," at https://www.sec.state.ma.us/ele/covid-19/covid-19.htm.

[81] Governor Gavin Newsom, "Governor Newsom Signs Legislation 6.18.20," press release, at https://www.gov.ca.gov/2020/06/18/governor-newsom-signs-legislation-6-18-20/; and Governor Gavin Newsom, *Executive Order N-67-20*,

- South Carolina will provide prepaid return postage for absentee ballots.[82]

As states have implemented or announced election administration changes related to COVID-19, a number of legal challenges have also been filed and are pending in various states.[83] Such litigation is beyond the scope of this report.

What are some of the challenges that have emerged for voters and election administrators in 2020 to date?

In jurisdictions that have chosen to expand mail voting in response to COVID-19, election administrators and voters have had to respond quickly to new procedures for distributing, casting, and counting ballots—or at least to a larger number of mail ballots than normal. The increased volume of mail ballots, and, in some cases, ballots that did not reach voters before the election, posed high-profile disruptions in some jurisdictions.

Pennsylvania, for example, reported that 1.8 million voters applied for and were approved for mail and absentee ballots for its June 2, 2020, primary elections, 17 times greater than commensurate figures for the 2016 presidential primary.[84] Similar challenges occurred elsewhere.

In the District of Columbia and Maryland, for example, although many voters cast ballots by mail successfully, there also were widespread reports of delayed ballots. In the District, according to media coverage, the Board of Elections "struggled to fulfill more than 92,000 requests for mail-in ballots, instead of the 6,000 or so it receives in most elections. Then, thousands of people turned out to vote in person" at a reduced number of polling places after their ballots did not arrive.[85] Board officials decided to hand deliver ballots to some voters who had not received requested mail ballots and permit some voters to cast their votes by email.[86]

In Georgia, the secretary of state's office reported before the June 9 primary election that "more than 800,000 Georgians [had] submitted absentee ballots by mail so far, more than 20 times the 37,000 who voted that way in 2016 [and] another 223,561 have cast their ballots in person" before Election Day.[87] According to media reports, some voters who appeared at polling places

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June 3, 2020, at https://www.gov.ca.gov/wp-content/uploads/2020/06/6.3.20-EO-N-67-20-text.pdf.

[82] Jamie Lovegrove, "SC election officials agree to provide prepaid postage for absentee ballots," *The Post and Courier*, July 9, 2020, at https://www.postandcourier.com/politics/sc-election-officials-agree-to-provide-prepaid-postage-for-absentee-ballots/article_5fbc3fc2-c1ed-11ea-a66c-835742fd1988.html.

[83] For a discussion of some of these issues, see CRS Legal Sidebar LSB10470, *Election 2020 and the COVID-19 Pandemic: Legal Issues in Absentee and All-Mail Voting*. For additional examples of pending litigation, see "Relevant litigation," Ballotpedia, at https://ballotpedia.org/Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020#Relevant_litigation.

[84] Pennsylvania Department of State, "Secretary of State Reports Smooth Election Amid Historic Circumstances," press release, June 2, 2020, https://www.media.pa.gov/Pages/State-Details.aspx?newsid=388.

[85] Julie Zauzmer, Jenna Portnoy, and Erin Cox, "Anger at Vote Problems in D.C., Md.," *The Washington Post*, June 4, 2020, p. B1. The quoted material appears on p. B4. See also Julie Zauzmer and Fenit Nirappil, "Mail-In Ballot Woes Snarl D.C. Primary Vote," *The Washington Post*, June 3, 2020, p. B1.

[86] Julie Zauzmer, "Voters report difficulty getting mail-in ballots for D.C.'s Tuesday primary," *The Washington Post*, June 1, 2020, at https://www.washingtonpost.com/local/dc-politics/voters-report-difficulty-getting-mail-in-ballots-for-dcs-tuesday-primary/2020/06/01/cfc78bda-a3fe-11ea-bb20-ebf0921f3bbd_story.html; and Alexa Corse, "D.C. Lets Voters Submit Ballots by Email After Mail Problems," *The Wall Street Journal*, June 3, 2020, at https://www.wsj.com/articles/d-c-letsvoters-submit-ballots-by-email-after-mail-problems-11591211518.

[87] See Office of the Georgia Secretary of State, "Georgia Voting Adapts: Surges Past 1 Million Vote Milestone," press release, June 4, 2020, https://sos.ga.gov/index.php/elections/

encountered hours-long voting lines in the state, problems with a new voting system, and poll worker absences due to COVID-19 concerns. Other states with June 9 primaries also reportedly encountered problems related to changes in election procedures responding to COVID-19.[88]

In addition to COVID-19 disruptions, protests concerning race and policing, and related curfews, affected some June 2020 primaries. In the District of Columbia, for example, Mayor Muriel Bowser imposed curfews in Washington, DC, including on Election Day. Although the curfew began at 7:00 p.m. on June 2, those voting until 8:00 p.m., or working the polls, were exempt.[89] In Pennsylvania, Governor Tom Wolf issued an executive order extending the deadlines for mail ballots to be postmarked and received for voters in six counties. Wolf determined that "the volume of applications in the six counties caused by the COVID-19 crisis combined with the recent civil disturbance make it necessary to extend the deadline for the counties to receive completed civilian absentee and mail-in ballots. Curfews, travel restrictions and other unforeseen circumstances have made returning ballots more difficult in these counties."[90]

Recent Legislative Developments

What has happened most recently in Congress?

As explained below, as of this writing, two 116th Congress bills relevant for election emergencies, particularly the response to COVID-19, have become law. The House has passed a third bill. Both chambers also have considered other legislation.

Enacted Legislation

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136, H.R. 748) was enacted on March 27, 2020, and provides $400 million for payments to states, territories, and DC. This funding is "to prevent, prepare for, and respond to coronavirus" during the 2020 federal election cycle.
- Following reports of attempted foreign interference in the 2016 elections, Congress included $425 million in the Consolidated Appropriations Act, 2020 (P.L. 116-93) for payments to states, territories, and DC for general improvements to the administration of federal elections. Guidance issued by the EAC clarified that this funding—as well as $380 million Congress provided for similar payments in the Consolidated Appropriations Act, 2018 (P.L. 115-141)

georgia_voting_adapts_surges_past_1_million_vote_milestone.

[88] For media coverage of June 9 primary election administration, see, for example, Amy Gardner et al., "Stumbles in Ga. Fuel Fears About Nov. Vote," *The Washington Post*, June 10, 2020, p. A1; and Mark Niesse, "Vote Counting Continues After Problems in Georgia's Primary," *Atlanta Journal-Constitution* online, June 10, 2020, https://www.ajc.com/news/state—regional-govt—politics/vote-counting-continues-after-problems-georgia-primary/fKGdKvpG5Y93iKCwguzamJ/.

[89] Bowser made the announcement at a June 1, 2020, press conference. See, for example, Rachel Kurzius, "D.C. Imposes 7 P.M. Curfew Tonight and Tomorrow in Preparation for More Protests," wamu.org, June 1, 2020, https://wamu.org/story/20/06/01/mayor-bowser-says-d-c-is-preparing-for-more-protests/.

[90] Office of the Governor of Pennsylvania, "Gov. Wolf Signs Executive Order Extending Mail Ballot Deadline in Six Counties to June 9," press release, June 1, 2020, https://www.governor.pa.gov/newsroom/gov-wolf-signs-executive-order-extending-mail-ballot-deadline-in-six-counties-to-june-9/. See also Governor of the Commonwealth of Pennsylvania (Tom Wolf), *Extension of Deadline for Receipt of Absentee and Mail-In Ballots in Certain Counties*, executive order 2020-02, June 1, 2020, https://www.governor.pa.gov/wp-content/uploads/2020/06/20200601-EO-Deadline-Extention.pdf.

and some other funds previously appropriated for election administration-related payments—may be used to cover certain elections costs incurred as a result of the COVID-19 pandemic.[91]

Legislation That Has Passed One Chamber

The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800),[92] passed by the House (208-199) on May 15, 2020, contains two sets of elections provisions:

- Title III would provide $3.6 billion for "contingency planning, preparation, and resilience of" federal elections and revise some elections-related provisions of the CARES Act, such as the requirements that CARES Act payment recipients provide a 20% match for federal funds and report on their spending within 20 days of each election in the 2020 federal election cycle.
- Division P of the bill contains the American Coronavirus/COVID-19 Election Safety and Security (ACCESS) Act, which would set certain requirements for states related to elections contingency planning, voter registration, early voting, and mail voting and authorize payments to help states, territories, and DC meet those requirements and conduct risk-limiting audits.

Other Introduced Legislation

Other legislation that would require certain changes to federal election administration in 2020 and for subsequent emergency situations has been introduced in Congress in response to COVID-19. To date, none of these bills has advanced beyond introduction and committee referral. These bills include the following:

- H.R. 7118 (introduced June 4, 2020), Vote From Home America Act of 2020 (see also H.R. 6847 [introduced May 12, 2020]);
- H.R. 7068/S. 3725 (introduced June 1, 2020, and May 13, 2020), VoteSafe Act of 2020 (see also H.R. 6807 [introduced May 12, 2020]);
- H.R. 6853 (introduced May 13, 2020), Undertaking National Initiatives to Tackle Epidemic (UNITE) Act;
- H.R. 6777 (introduced on May 8, 2020), Secure Our Elections Act;
- H.R. 6673 (introduced May 1, 2020), Federal Election Failsafe Act;
- H.R. 6512 (introduced on April 14, 2020), Voter Notification of Timely Information about Changes in Elections (NOTICE) Act;
- H.R. 6379 (introduced on March 23, 2020), Take Responsibility for Workers and Families Act, which, in Division L, contains the American Coronavirus/COVID-19 Election Safety and Security (ACCESS) Act (see also Division P of H.R. 6800 noted above);

[91] U.S. Election Assistance Commission, *Guidance on Use of HAVA Funds for Expenses Related to COVID-19*, https://www.eac.gov/election-officials/guidance-use-hava-funds-expenses-related-covid-19. See also CRS In Focus IF11356, *Election Security: States' Spending of FY2018 and FY2020 HAVA Payments*, by Karen L. Shanton.

[92] HEROES is a widely used acronym referring to the bill, although it is not capitalized as an acronym in bill text as passed by the House.

- S. 4033 (introduced on June 22, 2020), Natural Disaster and Emergency Ballot Act of 2020 (see also S. 3529 [introduced on March 18, 2020]);
- S. 3961 (introduced on June 15, 2020), Pandemic Democracy for All Act;
- S. 3822 (introduced on May 21, 2020), DemocracyCorps Act;
- S. 3778 (introduced on May 20, 2020), State Elections Preparedness Act; and
- S. 3440/H.R. 6202 (introduced on March 11, 2020), Resilient Elections During Quarantines and Natural Disasters Act of 2020.

Several other election-related bills have been introduced in the 116th Congress, beginning with H.R. 1 in January 2019. These bills address a range of topics related to election security, accessibility, and administration that some Members may find relevant in the current context.

Oversight Hearings Focusing on Elections and COVID-19

The Committee on House Administration and the Senate Rules and Administration Committee are the primary committees of jurisdiction in federal elections policy. The House and Senate Judiciary Committees have primary jurisdiction over voting rights issues.[93] These and other congressional committees have held several oversight hearings related to elections issues during the 116th Congress. **Table 1** highlights hearings devoted specifically to elections and COVID-19. Thus far in the 116th Congress, committees have not held oversight hearings focusing on non-COVID election emergencies issues as discussed in this report.[94]

Table 1. 116th Congress Oversight Hearings Focusing on Elections and COVID-19

Chamber	Committee	Hearing Title	Date
House	Judiciary; Subcommittee on the Constitution, Civil Rights, and Civil Liberties	"Protecting the Right to Vote During the COVID-19 Pandemic"	06/03/2020
House	House Administration; Subcommittee on Elections	"The Impact of COVID-19 on Voting Rights and Election Administration: Ensuring Safe and Fair Elections"	06/11/2020
House	Intelligence	"Emerging Trends in Online Foreign Influence Operations: Social Media, COVID-19, and Election Security"	06/18/2020

Sources: CRS analysis of 116th Congress hearing activity; and of hearing results from CRS Proquest Congressional keyword searches for the 116th Congress.

Notes: See the "Scope of Report" section of this report for additional discussion of the *election emergencies* definition used herein. Hearings devoted primarily to other topics also could contain relevant discussion. The table does not reflect closed hearings. It also excludes appropriations, legislative, and nominations hearings. For additional discussion of the related issue of campaign and election security, including written committee reports, see CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

[93] For additional information, see Table 3 in CRS Report R45302, *Federal Role in U.S. Campaigns and Elections: An Overview*, by R. Sam Garrett.

[94] On election security legislative activity, including hearings, see CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

What does current legislation addressing COVID-19 and elections, or other elections emergencies, propose?

Bills related specifically to elections and COVID-19, or to elections and emergencies that could include COVID-19, vary in scope, but to date would generally require states (or territories) to provide voters with additional options for casting ballots in federal elections. This legislation typically has included expanding access to mail voting. The bills introduced to date differ in the extent to which they would

- apply proposed changes to only specific circumstances, such as declared emergencies, or to all federal elections;
- authorize or appropriate federal funding to assist federal agencies, states, and territories in complying with the new requirements;
- specify the number and details of required voting methods, such as mail voting versus early voting (e.g., at polling places, especially centralized ones known as "vote centers"), and the dates or times of such voting;
- require states to proactively send mail ballots to all registered voters or only to those who were active during recent elections or who request ballots;
- specify the degree of discretion afforded to states regarding voter eligibility and election processes, such as registration requirements, voter identification, and timelines for ballot processing; and
- address other elections issues (e.g., foreign interference).

Potential Policy Considerations for Congress

What are some of the overarching issues that Congress might find relevant when considering legislation related to election emergencies?

Some disagreement exists within and outside Congress about whether additional legislation such as that described above, or otherwise, is needed. Specific policy options range, for example, from maintaining the status quo, to expanding or restricting mail voting, to expanding or restricting voter identification requirements for new voter registrations. The discussion below provides an overview of some of the overarching factors that could affect how or whether Congress decides to pursue legislation, whatever the specifics of that legislation might be. Additional discussion of specific policy proposals appears elsewhere in this report and in other CRS products cited herein.

Federalism

The scope of the federal role in any new requirements or funding surrounding election emergencies could play a significant role in the debate over which options Congress chooses, if any, and how states, territories, and localities react to those choices. States, territories, and the District of Columbia have primary responsibility for administering elections in the United States, but Congress retains authority over the time, place, and manner of federal elections. Congress could, therefore, choose to require through legislation that states undertake certain actions, such

as expanded mail voting requirements.[95] States, territories, and the District of Columbia generally favor additional federal funding to support federal election administration, but might reject new federal requirements as an infringement on their authority to conduct elections or new funding that comes attached to such requirements. As noted above, some Members of Congress could support placing such requirements on states or providing funding, whereas other Members could prefer to maintain the status quo or otherwise defer to states and territories to determine their own needs and provide their own funding.

In addition, as noted in the "Gulf Coast, Hurricanes Katrina and Rita, 2005-2006" example above, the absence of the VRA preclearance requirement could make it faster for election officials to make administrative and voting changes to respond to election emergencies. The lack of preclearance also removes a VRA safeguard for protecting racial and language minority groups from discrimination at the polls.[96]

Participation and Security

Even in routine elections, policymakers can face competing, but not necessarily mutually exclusive, participation and security goals.[97] Election emergencies can heighten these concerns as policymakers and election officials determine how to ensure that voters can access the ballot even when their health or safety might be at risk. Voter participation generally is a shared policy goal, but debate typically concerns whether expanded registration or voting options are neutral accommodations during extraordinary circumstances or whether they would unfairly advantage or disadvantage particular parties, candidates, or groups of voters.[98] Advocates for voters with disabilities, for example, although not necessarily opposing alternative forms of voting, have raised concerns about whether mail ballots could compromise the ability of voters with visual impairments to vote privately and independently.[99] In addition to privacy concerns, some scholars and election officials have raised questions about established or potential security breaches with any form of voting other than ballots cast in person at the polls.[100]

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[95] For additional discussion, see, for example, 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 RL30747, *Congressional Authority to Direct How States Administer Elections*, by Kenneth R. Thomas.

[96] For additional discussion, see CRS Testimony TE10033, *History and Enforcement of the Voting Rights Act of 1965*, by L. Paige Whitaker.

[97] For additional discussion, see CRS Report R46146, *Campaign and Election Security Policy: Overview and Recent Developments for Congress*, coordinated by R. Sam Garrett.

[98] See, for example, Natasha Korecki and Christopher Cadelago, "Democrats Fear for November After Wisconsin Voting Spectacle," *Politico*, April 13, 2020, https://www.politico.com/news/2020/04/13/democrats-fear-november-wisconsin-voting-spectacle-179585?nname=playbook-pm&nid=0000015a-dd3e-d536-a37b-dd7fd8af0000&nrid=0000014e-f0ed-dd93-ad7f-f8edf56c0000&nlid=964328.

[99] See, for example, the written statement of Michelle Bishop, Disability Advocacy Specialist, National Disability Rights Network, "Protecting the Rights of Voters with Disabilities During the COVID-19 Pandemic," accompanying her testimony at U.S. Congress, House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, *Protecting the Right to Vote During the COVID-19 Pandemic*, June 3, 2020. As of this writing, the hearing record has not been published. Prepared testimony and video are available on the committee website, https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=2964.

[100] See, for example, David E. Sanger, Nicole Perlroth, and Matthew Rosenberg, "Amid Pandemic and Upheaval, New Cyberthreats to the Presidential Election," *The New York Times*, June 7, 2020, https://www.nytimes.com/2020/06/07/us/politics/remote-voting-hacking-coronavirus.html?smid=tw-nytpolitics&smtyp=cur.

Timeliness

If Congress determined that federal legislation would be beneficial to prepare for or respond to election emergencies, the calendar affects how useful such legislation might be. Congress may need time to debate legislation; and federal agencies and state, territorial, or local election jurisdictions may need time to implement any new requirements or prepare to utilize any new federal assistance. There is no "offseason" for election administration, as voting and elections occur throughout the year in one jurisdiction or another. Nonetheless, the spring and fall of even-numbered years (2020, 2022, etc.) are especially busy for federal primaries and general elections, which often coincide with state and local contests. If Congress is responding to an ongoing emergency, such as the aftermath of a natural disaster or pandemic, Members might elect to limit short-term assistance to options such as federal funding or support from federal agencies if the House and Senate determine that states do not have time to implement more expansive changes. On the other hand, Congress also could determine that more expansive changes, even if challenging to implement, are necessary to adequately respond to or prevent elections emergencies.

What funding has Congress appropriated recently for grants to states to assist with election emergencies?

Congress has provided funding in three recent appropriations acts for elections-related grants to states, territories, and DC, as shown in **Table 2** below.

Table 2. Recent Appropriations for Elections-Related Grants to States

Funding Type	Appropriations Act	Federal Appropriations	State Match Requirement
FY2018 Grants	Consolidated Appropriations Act, 2018 (P.L. 115-141)	$380 million	5%
FY2020 Grants	Consolidated Appropriations Act, 2020 (P.L. 116-93)	$425 million	20%
CARES Act Grants	Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)	$400 million	20%

Source: CRS, based on review of appropriations measures

As **Table 2** shows, as of this writing, Congress has appropriated funding for election administration-related grants to states, territories, and DC three times since FY2018. Congress specified different purposes for some of the grants than for others, but all could be used to respond to election emergencies of some kind. The FY2018 and FY2020 grants, which were funded following reports of attempted foreign interference in the 2016 elections, may be used for general improvements to the administration of federal elections. That might include measures to address both attacks on election systems and, following the emergence of the COVID-19 pandemic, COVID-19. The CARES Act grants are available specifically for preventing, preparing for, and responding to COVID-19 for the 2020 federal election cycle. For more on how each type of grant may be used, see the "What kinds of election emergency-related expenses might states cover with the FY2018, FY2020, and CARES Act grants?" section of this report.

All three of the above sets of grants are administered by the EAC and were available to the 50 states, DC, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. The 2020 grants

and CARES Act grants were also available to the Commonwealth of the Northern Mariana Islands (CNMI).[101] Funding for each grant was allocated according to a voting-age population-based formula specified in the Help America Vote Act of 2002 (HAVA),[102] with each eligible recipient guaranteed a minimum payment amount—$3 million for each of the 50 states and DC and $600,000 per eligible territory—for each grant.[103]

Grants for more general emergency and disaster preparedness and response may also be available for elections-related use in some cases. For example, New York received $7.9 million under FEMA's Public Assistance program for costs associated with canceling and rescheduling elections in response to the September 11, 2001, terrorist attacks,[104] and applicants for certain FY2020 homeland security grants from FEMA are required to include election security projects in their proposals.[105] For more on FEMA's Public Assistance program and homeland security grants, respectively, see CRS Report R41981, *Congressional Primer on Responding to and Recovering from Major Disasters and Emergencies*, by Bruce R. Lindsay and Elizabeth M. Webster; and CRS Report R44669, *Department of Homeland Security Preparedness Grants: A Summary and Issues*, by Shawn Reese.

What kinds of election emergency-related expenses might states cover with the FY2018, FY2020, and CARES Act grants?

Funding for the FY2018, FY2020, and CARES Act grants was appropriated under provisions of HAVA that authorize payments to states, territories, and DC for general improvements to the administration of federal elections.[106] Language in the CARES Act limits its grants to uses intended "to prevent, prepare for, and respond to the coronavirus, domestically or internationally, for the 2020 Federal election cycle." The FY2018 and FY2020 consolidated appropriations acts do not set similar limits on the FY2018 and FY2020 grants, although explanatory statements accompanying the acts list the following as possible purposes for which recipients may use the funds:

- replacing paperless voting machines;
- conducting post-election audits;
- addressing cyber vulnerabilities in election systems;
- providing election officials with cybersecurity training;

[101] The provisions of HAVA under which the funding for the grants was appropriated authorize payments to states. HAVA's definition of "state" does not include the Commonwealth of the Northern Mariana Islands, which did not have federal elections when HAVA was enacted, but language in the Consolidated Appropriations Act, 2020 and the CARES Act extended eligibility for the FY2020 and CARES Act grants to the territory.

[102] 52 U.S.C. §§20901-21145.

[103] 52 U.S.C. §20901.

[104] Federal Emergency Management Agency, "FEMA To Reimburse New York City For Cancelled And Rescheduled 9/11 Primarily Elections," press release, September 6, 2002, press release no. 1391-148, https://www.fema.gov/news-release/2002/09/06/fema-reimburse-new-york-city-cancelled-and-rescheduled-9/11-primarily.

[105] Federal Emergency Management Agency, *Fiscal Year (FY) 2020 Homeland Security Grant Program (HSGP) Frequently Asked Questions (FAQs)*, April 20, 2020, p. 6, https://www.fema.gov/media-library-data/1587400512465-c969296a8971db7ef27513cfb5448393/FY_2020_HSGP_FAQ_4_20_508AB.pdf.

[106] The relevant provisions of HAVA refer to payments to the 50 states, DC, American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. Language in the Consolidated Appropriations Act, 2020 and the CARES Act extended eligibility for the FY2020 and CARES Act grants to the Commonwealth of the Northern Mariana Islands.

- instituting election system cybersecurity best practices; and
- making other improvements to the security of federal elections.[107]

Following the onset of the COVID-19 pandemic, the EAC issued guidance clarifying that the FY2018 and FY2020 grants—as well as some other funds previously appropriated under HAVA[108]—may be applied to certain expenses associated with the pandemic.[109] Examples of such expenses, according to the EAC, include costs related to the health and safety of voters and election workers, such as cleaning supplies and training on polling place sanitization procedures, and costs related to increased demand for mail voting, such as printing and mailing extra ballots and upgrading state or local databases to accommodate online mail ballot requests. Additional specifics about permissible uses of the funds are available in the EAC guidance, a frequently asked questions document on the agency's website, and other grants documentation issued by the EAC.[110]

Select information about how recipients have used or planned to use the FY2018, FY2020, and CARES Act grants is also available from the EAC. The CARES Act requires recipients to report on their use of CARES Act grants within 20 days of an election in the 2020 federal election cycle, and the EAC asked recipients of all three sets of grants to submit spending plans with their grant funding requests. Those spending plans and reports, as well as annual spending reports for all of the grants, are generally posted on the EAC's website as they become available.[111]

How might the policy options under consideration in Congress affect state or local election administration?

Federal policy options related to state and local election administration typically can be broadly categorized as requirements, funding, or guidance (or a combination thereof). Traditionally, most aspects of election administration in the United States have been governed by state or local law, and a variety of practices exist across election jurisdictions as a result. States, for example,

[107] Rep. Rodney Frelinghuysen, "Explanatory Statement Submitted by Mr. Frelinghuysen, Chairman of the House Committee on Appropriations, Regarding the House Amendment to Senate Amendment on H.R. 1625," explanatory statement, *Congressional Record*, daily edition, vol. 164, part 50 (March 22, 2018), p. H2519; and U.S. Congress, House Committee on Appropriations, *Committee Print of the Committee on Appropriations, U.S. House of Representatives, on H.R. 1158/*P.L. 116-93, committee print, 116th Cong., 2nd sess., January 2020, H. Comm. Prt. 38-678 (Washington: GPO, 2020), p. 645.

[108] HAVA authorized a number of grant programs, including the general improvements grant program under which the funding for the FY2018, FY2020, and CARES Act grants was appropriated and a program to provide "requirements payments" to help recipients meet certain federal requirements for election administration. Congress provided funding under both of those grant programs prior to the FY2018 grants. That funding did not come with a spending deadline and recipients could keep and use any interest it generated, so some recipients still have some of the funds remaining.

[109] As noted in the guidance, expenses must generally follow federal grant regulations, such as the general cost principles for federal grants set out in 2 C.F.R. 200.400, Subpart E, Cost Principles. U.S. Election Assistance Commission, *Guidance on Use of HAVA Funds for Expenses Related to COVID-19*, https://www.eac.gov/election-officials/guidance-use-hava-funds-expenses-related-covid-19.

[110] U.S. Election Assistance Commission (EAC), *Guidance on Use of HAVA Funds for Expenses Related to COVID-19*; EAC, *2018 HAVA Funds*, https://www.eac.gov/payments-and-grants/2018-hava-funds; EAC, *2020 HAVA Funds*, https://www.eac.gov/payments-and-grants/2020-hava-funds; EAC, *2020 CARES Act Grants*, https://www.eac.gov/payments-and-grants/2020-cares-act-grants; and EAC, *2020 HAVA Coronavirus Aid, Relief and Economic Security (CARES) Act Grants*, April 6, 2020, p. 3, https://www.eac.gov/sites/default/files/paymentgrants/cares/CARESAwardInstructions.pdf.

[111] Some of the spending plans recipients have submitted might have been amended since they were submitted. For example, some states might have chosen to redirect some of the FY2018 or FY2020 grant funds they originally intended for other purposes to COVID-19 preparedness and response. The plans available on the EAC's website do not generally reflect such updates.

determine whether to have voter registration and, if they choose to have it, can opt for different voter registration requirements, deadlines, and methods. With regard to voting, jurisdictions can make decisions about when and how voters cast their ballots by setting polling hours and locations on Election Day, establishing voter identification requirements, and procuring certain types of voting equipment, as well as by providing early or mail voting options for some or all eligible voters.

Given this variation, federal election administration requirements placed on states or localities would likely be easier for certain jurisdictions to implement than others. Federal policy options related to election administration often mirror options already in use by certain states or localities; jurisdictions with similar existing election policies may find it easier to comply with federal requirements than other states or localities with no similar experiences. States also vary in how election policy is created; some changes in certain states may require state constitutional amendments, whereas other changes could be implemented through state statutes or executive or administrative decisions. Required changes to state or local election administration may also require certain states to change other, related election policies.

Federal funding for election administration has sometimes been made available to states, territories, and DC as grants under HAVA provisions authorizing a program to provide payments for general improvements to federal election administration, as discussed in the section above on "What funding has Congress appropriated recently for grants to states to assist with election emergencies?" This type of funding typically allows some flexibility for states or localities to spend election funds on areas they identify as needs. To provide incentives to states to adopt certain practices, Congress might specify particular uses for federal funding in legislative language or make adopting or rejecting certain election practices a condition or criterion for eligibility for federal grant funding.

What other funding issues might be part of the policy debate in the 2020 election cycle?

Funding issues related to the COVID-19 pandemic might be expected to continue to be part of the elections policy debate in the lead-up to the 2020 general election. Additional funding beyond the amounts provided to date has been proposed for grants to states, territories, and DC for elections-related COVID-19 preparedness and response and for appropriations to federal agencies, such as the United States Postal Service, that play a role in such preparations and responses.[112] Congress might consider whether to provide such funding, keep funding at existing levels, or defer decisions about funding pending additional information about funding use and needs.

Congress might also consider whether to provide further funding to help address other potential election emergencies, such as foreign attacks on state election systems. Interference efforts like the ones reported in the 2016 election cycle are ongoing, according to the U.S. Intelligence Community.[113] Congress might consider whether to provide new funding to address such threats.

[112] See, for example, the Take Responsibility for Workers and Families Act (H.R. 6379) and the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800). See also, for example, CRS Insight IN11384, *U.S. Postal Service Financial Condition and Title VI of the CARES Act*, by Meghan M. Stuessy and Raj Gnanarajah; and CRS Report R44603, *Reforming the U.S. Postal Service: Background and Issues for Congress*, coordinated by Michelle D. Christensen.

[113] See, for example, Federal Bureau of Investigation, "Joint Statement from DOJ, DOD, DHS, DNI, FBI, NSA, and CISA on Ensuring Security of 2020 Elections," press release, November 5, 2019, https://www.fbi.gov/news/pressrel/press-releases/joint-statement-from-doj-dod-dhs-dni-fbi-nsa-and-cisa-on-ensuring-security-of-2020-elections; and

The FY2021 Financial Services and General Government appropriations bill ordered reported by the House Appropriations Committee on July 15, 2020, for example, would provide $500 million for payments to states, territories, and DC for replacing direct-recording electronic (DRE) voting machines and other elections-related purposes.

Congress might also consider assessing whether there is a need to replace any previously appropriated funding. As noted in the "What funding has Congress appropriated recently for grants to states to assist with election emergencies?" section of this report, Congress provided funding for elections-related grants to states, territories, and DC following reports of efforts to interfere in the 2016 elections. Grant recipients initially reported planning to use most of those FY2018 and FY2020 grants to help secure their election systems against further interference efforts,[114] but some have since redirected some of the funds to COVID-19 preparedness and response.[115] Congress might consider assessing how much of the funding provided in response to the 2016 interference efforts has been used for COVID-19-related costs and, if significant funds have been redirected, whether the remaining funding is sufficient to meet the election interference-related needs it was initially intended to address.[116]

Questions about the structure of existing or proposed grant programs might also be part of the policy debate in the 2020 election cycle. The elections-related grants funded by the CARES Act came with requirements to provide a 20% match for federal funds, report on grant spending within 20 days of an election in the 2020 federal election cycle, and obligate or spend grant funds by December 31, 2020. The National Association of Secretaries of State has said that such provisions might make it difficult for some states to access the funds,[117] and proposals have been offered to waive some or all of the requirements.[118] Trade-offs like the one illustrated by this example—between cost-sharing and oversight on one hand and time-sensitivity and administrative burdens on the other—might continue to be subjects of debate as Members develop or evaluate election emergency-related funding proposals.

Olivia Gazis, "Top U.S. Election Security Official Says Adversaries Have 'Sharpened' Interference Tools Ahead of 2020," CBS News, January 14, 2020, https://www.cbsnews.com/news/top-u-s-election-security-official-says-adversaries-have-sharpened-interference-tools-ahead-of-2020/.

[114] For more information on proposed spending of the FY2018 grants, see CRS In Focus IF11356, *Election Security: States' Spending of FY2018 and FY2020 HAVA Payments*, by Karen L. Shanton. The initial spending plans grant recipients submitted with their requests for FY2018 and FY2020 grant funding are available at https://www.eac.gov/payments-and-grants/2018-hava-funds and https://www.eac.gov/payments-and-grants/2020-hava-funds, respectively.

[115] Matthew Vann, "Some Cash-Strapped States Turn to Election Security Funds to Fight COVID-19," ABC News, April 6, 2020, https://abcnews.go.com/Politics/cash-strapped-states-turn-election-security-funds-fight/story?id=69940136.

[116] See, for example, Federal Bureau of Investigation, "Joint Statement from DOJ, DOD, DHS, DNI, FBI, NSA, and CISA on Ensuring Security of 2020 Elections," press release, November 5, 2019, https://www.fbi.gov/news/pressrel/press-releases/joint-statement-from-doj-dod-dhs-dni-fbi-nsa-and-cisa-on-ensuring-security-of-2020-elections; and Olivia Gazis, "Top U.S. Election Security Official Says Adversaries Have 'Sharpened' Interference Tools Ahead of 2020," CBS News, January 14, 2020, https://www.cbsnews.com/news/top-u-s-election-security-official-says-adversaries-have-sharpened-interference-tools-ahead-of-2020/.

[117] Letter from Paul Pate, President of the National Association of Secretaries of State, to Rep. Zoe Lofgren and Rep. Rodney Davis, April 2, 2020, https://republicans-cha.house.gov/sites/republicans.cha.house.gov/files/documents/4.2.20%20NASS%20CARES%20Funding%20Letter%20to%20House%20Admin%5B4%5D.pdf.

[118] See, for examples, the HEROES Act, the Secure Our Elections Act, and the State Elections Preparedness Act.

Concluding Comments

Although several aspects of the 2020 cycle are unique, others remain unchanged. Perhaps most notably, as Congress considers whether or how to pursue legislation or oversight, the federal government may continue to play a supporting role to states, territories, and localities. In addition, during any election, the basic task of election administration remains ensuring that all eligible voters can cast valid ballots and that those ballots will be counted accurately. Political campaigns still face familiar tasks of mobilizing voters, and those voters still decide whether and how to participate. Election emergencies can make each of those tasks more difficult. State and local election jurisdictions retain most responsibility for choosing whether to retain the status quo or implement policy changes, and if so, which ones. As is always the case, the more substantial the policy change, the more likely it will take time and money to implement, perhaps with controversy.

The COVID-19 pandemic's policy implications arise amid a unique combination of events that have the potential to disrupt normal elections operations. These include, for example, potential foreign attacks on election systems or domestic cyberattacks; COVID-19; and effects from civil unrest in some jurisdictions during the June 2 primary. COVID-19 also affects the entire country—albeit with varying severity—unlike typical natural disasters. As noted previously, any substantial change in election processes or participation that increases the volume of participation or how that participation occurs can make administering elections more challenging.

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