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## Commentary

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# Tornadoes, Coronavirus and the 2020 Elections



By [Jerry H. Goldfeder](#)

**It is not paranoia to prepare for a disrupted presidential election. Particularly now, when the prospect of ongoing quarantines from the coronavirus may jeopardize voting in November, it is especially irresponsible not to consider contingency plans.**

**T**he devastating tornado in Tennessee on the eve of the presidential primary last week killed two dozen people and destroyed untold number of homes, sending election regulators scrambling as to how to conduct the state's voting. It's the kind of issue I think about because I am an election lawyer, representing candidates up and down the ballot. Naturally enough, then, I focus on the unpredictability of weather or terrorist attacks on voting rights and election outcomes.

The tornado's impact on the primary underscored my worry about how the coronavirus might affect the November election. What happens if the illness ravages the elderly population of southern Florida immediately before election day next November, preventing thousands of Democratic voters from casting a ballot? Or if it strikes at the heart of rural Pennsylvania, quarantining huge numbers of Republican residents from voting? Will the Republican governor in Florida or the Democratic governor in Pennsylvania allow the vote to proceed in the rest of the state, thus ensuring victory for their respective candidates? Or should the election in the affected

states be postponed, allowing them to cast ballots after the rest of the country has voted? Although presidential elections are state-run affairs—with each jurisdiction having its own laws relating to registration, voter ID, mail-in ballots or early voting—a national health emergency requires a national plan. Without any federal guidance or directive, decisions by governors in swing states might be based upon political considerations, thus rendering the result subject to challenge and the legitimacy of the ultimate winner called into question.

My interest in election disasters dates back to 9/11. It was the day of a statewide primary in New York, and I was the campaign lawyer for the leading candidate for mayor. *Bush v. Gore* had been decided the previous year, so we mobilized hundreds of lawyers to watch the polls to prevent any funny business. As prepared as we were, there were no contingency plans in case the election was interrupted. After the second tower fell, the governor simply suspended voting. Several days later the legislature re-scheduled the primary, allowing those who had voted on that awful morning to cast another ballot. Although the political landscape had obviously changed, those who had voted by mail were stuck with their original vote.

After 9/11, one would think the federal government might have formulated plans if another terrorist attack disrupted an election, especially one where the presidency was on the ballot. They haven't so far. In fact, in 2004, the House passed a resolution, by a whopping margin of 419-2, that a presidential election will “never” be postponed because of a terrorist attack—it “would demonstrate weakness, not strength, and would be interpreted as a victory for the terrorists.” While this is certainly a defensible sentiment, it was clearly ostrich-like.

Of course, as Tennesseans now know, it is not just a terrorist attack that could disrupt an election. Much like my hypothetical scenarios, a week before the presidential election in 2012, Super Storm Sandy pummeled the east coast of the United States, destroying a wide swath of homes in the New York metropolitan area. Eleven years after 9/11, there was still no plan for those unable to vote for president at their regular polling stations. As a result, the governors of New York and New Jersey had to improvise, the latter allowing Internet and fax voting. In 2020, there is still no “Plan B” if voting on election day is interrupted.

Obviously, one cannot predict when a tornado or earthquake will hit—did you know that there is a fault line underneath Philadelphia that stretches through New Jersey to New York?—or when an early-winter blizzard or late-season hurricane will strike. So it is not paranoia to prepare for a disrupted presidential election. When the prospect of ongoing quarantines from the coronavirus may jeopardize voting in November, it is especially irresponsible not to consider contingency plans.

Congress has the authority and obligation to tackle this. It can either enact a national set of protocols for emergency situations, or create a bipartisan commission to do so, including representatives of the two major parties, state election administrators, election lawyers and academics. These suggestions are neither perfect nor free from political challenges, but Americans cannot afford a disrupted presidential election with no set rules in place. It could very well compromise the integrity of the outcome.

The question, then, is whether there is sufficient political will to ensure this year's presidential election is held in an orderly and fair manner. Perhaps the Tennessee tornado and the looming pandemic will persuade Congress to step up to the plate. It should.

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