

Election Emergencies and the Right to Vote in Florida



A Report of the
Florida Advisory Committee to the
U.S. Commission on Civil Rights

December 2025

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states, the District of Columbia, and five U.S. Territories. The committees are composed of local residents who serve without compensation. The committees advise the Commission of civil rights issues in their state, district, or territory that are within the Commission's jurisdiction. They are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Florida Advisory Committee to the U.S. Commission on Civil Rights

The Florida Advisory Committee to the U.S. Commission on Civil Rights submits this report regarding voting rights during times of natural disaster or other public emergency in Florida. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during two public meetings held via videoconference in April of 2025. The Committee also includes related testimony submitted in writing during the relevant period of public comment.

This report begins with a brief background of the issues to be considered by the Committee. It then presents primary findings as they emerged from this testimony, as well as recommendations for addressing areas of civil-rights concerns. This report is intended to focus on civil rights concerns regarding state voting procedures during times of natural disaster or other public emergency. Specifically, the Committee sought to examine the impact of state emergency management procedures as related to eligible citizens' right to vote, regardless of race, color, or national origin. While additional important topics may have surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion.

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FLORIDA ADVISORY COMMITTEE**

**ELECTION EMERGENCIES
AND THE RIGHT TO VOTE IN FLORIDA**

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INTRODUCTION

Election systems must balance three equally important principles. First, most basically, each eligible citizen must have a reasonable opportunity to safely exercise their fundamental right to cast a ballot. Second, states must minimize the possibility of mistakes, fraud, irregularities, accidents, and violations of applicable election rules in order to ensure the integrity of the election. Finally, states must promote public confidence and trust in the electoral process, so that the election is not only conducted fairly, but *appears* to be conducted fairly.

Election emergencies such as natural disasters, pandemics, and other unexpected crises can pose a serious risk to the integrity of an election system. Such contingencies may impede qualified citizens from being able to cast a ballot or pose serious risks in doing so. These burdens may be especially challenging for disabled voters and members of other disadvantaged communities and people whose homes or communities have been devastated by a disaster. States must ensure their electoral systems have sufficient flexibility to enable election officials to respond to a wide range of unexpected crises. When responding to such situations, however, election officials must ensure they have sufficient legal authority to act, ensure adequate safeguards exist to preserve election integrity, and maintain public confidence in election results by avoiding any appearance of partisanship. Even in a disaster, a state must continue to balance facilitating voter access, preventing problems, and promoting public trust in the system.

Florida is currently one of the nation's leaders in election emergency laws, and over the past several decades has responded well to a range of disasters that threatened voting rights in major elections. Nevertheless, the legislature can consider protecting the right to vote by clearly specifying the types of actions that the Secretary of State may implement during a declared state of emergency that occurs during, or shortly before, a voting period commences, rather than relying

on *ad hoc* authorization from the Governor in executive orders. Just as importantly, the legislature should consider establishing election emergency “redlines”: measures that, even in the course of a declared emergency, the Governor and Secretary of State are not authorized to implement. Adopting a clear, thorough, well-considered election emergency system can help alleviate the need for emergency litigation, often conducted in harried proceedings with scant evidence by partisan actors, before generalist judges who are unfamiliar with the intricacies of conducting an election.

A range of other, more practical steps can also help ensure Florida is even better prepared to address future election emergencies. Planning and preparation are central to ensuring an orderly, effective response. The legislature should consider providing funding to the Secretary of State’s office to acquire backup equipment to provide to counties whose voting systems are unexpectedly damaged shortly before Election Day. The state should systematically ensure that state and local election officials take advantage of training opportunities presented by the U.S. Election Assistance Commission (“EAC”) to prepare for emergencies through tabletop games, discussions, and other exercises. Election officials should notify voters about last-minute changes in election locations, times, or procedures due to emergencies through e-mail, automated phone calls, and text messaging. State law should ensure that the specialized needs of handicapped and other disabled voters are specifically considered in election emergency planning. And the law should further be amended to clarify that extending or postponing the period for voting in an election, particularly for elections impacting multiple counties, may be implemented only if other measures would be insufficient to allow voters a reasonable opportunity to cast their ballots safely. Through measures such as these, Florida can further bolster its institutional infrastructure for addressing election emergencies and ensure that the fundamental right to vote is upheld regardless of the circumstances.

FEDERAL AND FLORIDA LAWS GOVERNING ELECTION EMERGENCIES

1. **The State's Primary Role in Addressing Election Emergencies**—Florida legislators and election officials are primarily responsible for ensuring that the state has the legal, regulatory, and administrative infrastructure in place to protect the fundamental constitutional right to vote in the face of natural disasters, pandemics, emergencies, and other such crises. The U.S. Supreme Court has held that state legislatures and election officials must ensure their electoral systems have the flexibility needed to respond to emergencies: “[T]he Constitution principally entrusts politically accountable state legislatures, not unelected federal judges, with the responsibility to address the health and safety of the people” during emergencies such as the COVID-19 pandemic.¹ “[A] State legislature’s decision to either keep or to make changes to election rules to address” emergencies “ordinarily ‘should not be subject to second-guessing by an unelected federal judiciary which lacks the background, competence, and expertise to assess public health and is not accountable to the people.’”²

Federal courts’ deference to decisions made by a state’s policymakers underscores the importance of having thorough, comprehensive election emergency statutes to ensure people have adequate opportunity to vote safely despite natural disasters and other crises. When a plaintiff challenges enforcement of a particular requirement in the midst of a crisis, that rule typically is “just one aspect of a primary and general election system facing a wide variety of challenges in

¹ *Democratic Nat’l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 32 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay).

² *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay) (quoting *S. Bay United Pentacostal Church v. Newsom*, 140 S. Ct. 1613, 1613-14 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief)); *see also Dem. Nat’l Comm. v. Wis. State Legis.*, 141 S. Ct. 28 (2020) (Gorsuch, J., concurring in denial of application to vacate stay) (explaining that although “conducting a national election amid a pandemic poses serious challenges,” judges may not “improvise with their own election rules in place of those the people’s representatives have adopted”); *Wis. State Legis.*, 141 S. Ct. at 32 (Kavanaugh, J., concurring in denial of application to vacate stay).

the face of the [emergency].”³ Accordingly, courts must “accord sufficient weight to the State’s discretionary judgments about how to prioritize limited state resources across the election system.”⁴ Moreover, much litigation concerning election emergencies necessarily occur fairly close to Election Day. Justices have applied the so-called *Purcell* Principle⁵ to hold that lower federal courts may not issue orders changing the rules governing elections shortly before voting begins or during the voting period.⁶ State officials, in contrast, are not bound by *Purcell*, meaning legislatures, election officials, and even state courts may act in response to a crisis under circumstances where federal courts are precluded from doing so.⁷

2. Federal Law—Since elections are regulated primarily at the state level, federal law contains very few provisions expressly addressing election emergencies. The main federal statutes addressing election emergencies concern the timing of federal elections. Federal law requires Presidential,⁸ U.S. Senate,⁹ and U.S. House¹⁰ elections to be held on the first Tuesday after the first

³ *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020) (Roberts, C.J., concurring in grant of stay).

⁴ *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020) (Roberts, C.J., concurring in grant of stay).

⁵ See *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam).

⁶ See, e.g., *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay) (“[F]ederal courts ordinarily should not alter state election rules in the period close to an election.” (citing *Purcell*, 549 U.S. 1)); see also *Dem. Nat’l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 30 (2020) (Gorsuch, J., concurring in denial of application to vacate stay) (“Last-minute changes to longstanding election rules risk . . . inviting confusion and chaos and eroding public confidence in electoral outcomes.”); *Wis. State Legis.*, 141 S. Ct. at 30-31 (Kavanaugh, J., concurring in denial of application to vacate stay).

⁷ See, e.g., *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 386 (Pa. 2020) (requiring election officials to accept absentee ballots that were postmarked by Election Day or had illegible postmarks but were received within three days afterwards), *stay denied*, *Republican Party v. Boockvar*, 141 S. Ct. 643 (2020), *motion to expedite denied*, 141 S. Ct. 1 (2020), *cert. denied sub nom. Trump v. Boockvar*, 141 S. Ct. 1044 (2021).

⁸ 3 U.S.C. § 1.

⁹ A state must hold a U.S. Senate election whenever one of its Senator’s terms is expiring at the same time as its U.S. House election. 2 U.S.C. § 1.

¹⁰ *Id.* § 7.

Monday in November. Federal law further specifies, however, that states may hold congressional House elections—and, by extension, Senate elections¹¹—on an alternate day when there has been a “failure to elect at the time prescribed by law.”¹² Such a failure to elect may arise from a natural disaster or other such emergency that materially interferes with or precludes voting on Election Day.¹³ Similarly, for presidential elections, “election day” includes not only the default date, but any modified “period of voting, as necessitated by force majeure events that are extraordinary and catastrophic,” as provided by state law.¹⁴

3. Florida Law—Florida law deals with election emergencies through three main sets of statutory provisions. *First*, during a declared state of emergency, the Governor may “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance . . . would in any way prevent, hinder, or delay necessary action in coming with the emergency.”¹⁵ Florida Governors have generally relied on this provision to issue executive orders suspending or modifying particular election-related rules in response to hurricanes and other such disasters (i.e., COVID-19).

Second, the Election Emergency Act allows the Governor to “suspend or delay any election” during a declared state of emergency.¹⁶ The Governor may unilaterally issue the order, or may do so at the request of the Secretary of State, a county Supervisor of Elections, or a

¹¹ *Id.* § 1.

¹² *Id.* § 8(a).

¹³ *Public Citizen, Inc. v. Miller*, No. 93-8273, 1993 U.S. App. LEXIS 13641, at *28 (June 14, 1993); *see also* Michael T. Morley, *Postponing Federal Elections Due to Election Emergencies*, 77 WASH. & LEE L. REV. ONLINE 197, 200-03 (2020).

¹⁴ 3 U.S.C. § 21(1).

¹⁵ FLA. STAT. § 252.36(6)(a).

¹⁶ FLA. STAT. § 101.733(1).

municipal clerk from an affected area.¹⁷ A delayed election must be rescheduled within ten days “or as soon thereafter as is practicable.”¹⁸ The affected counties must provide notice on their websites or through the newspaper, as well as through television and radio public service announcements.¹⁹ The Act requires the Department of State to adopt a statewide “elections emergency contingency plan” for implementing such delays.²⁰ The plan must contain procedures for notifying the public and impacted officials about the delay, conducting the rescheduled election, coordinating with emergency management officials to determine the safety of polling places, and certifying election results.²¹ An emergency for purposes of this Act is any actual or threatened occurrence, “whether accidental, natural, or caused by human beings,” that may cause “substantial injury or harm to the population” or substantial property damage, and will prevent election officials from “conduct[ing] a safe and orderly election.”²²

The Department of State adopted its most recent plan on February 21, 2018.²³ Supervisors of Election are required to notify the Department of State about any changes they make to their anticipated times or locations for conducting early voting or Election Day voting.²⁴ When a

¹⁷ *Id.*; *see also* FLA. ADMIN. CODE § 1S-9.004(1).

¹⁸ FLA. STAT. § 101.733(2).

¹⁹ *Id.*

²⁰ *Id.* § 101.733(3).

²¹ *Id.* § 101.733(3)(a)-(c). The Department must also ensure its polling place procedures manual contains “[p]rocedures for handling emergency situations.” *Id.* § 102.014(5)(h).

²² FLA. STAT. § 101.732(3).

²³ *See* FLA. ADMIN. CODE § 1S-9.005.

²⁴ *Id.* § 1S-9.005(2)(b)(2)-(4).

multicounty or statewide county is suspended or delayed, supervisors must “withhold returns for affected races” until results from the rescheduled elections are certified.²⁵

A federal district court has held that the Governor’s power to suspend or delay elections implies that he may not extend the voter registration deadline.²⁶ “Under Florida’s statutory framework, there is no provision that extends the voter registration deadline in the event of an emergency such as provided for a suspension or delay of the election date.”²⁷ The Florida Supreme Court, however, has not addressed whether the Elections Emergency Act serves to limit the Governor’s general state of emergency authority.

Third, the election code contains several narrow provisions which authorize specific responses to particular types of problems. For example, Florida law allows for the extension of certain deadlines due to emergencies, including the deadlines for third-party voter registration organizations to return completed registration forms,²⁸ initiative sponsors to return signed petition forms,²⁹ counties to provide canvassing returns to the Elections Canvassing Commission,³⁰ and people to request vote-by-mail ballots (although even in an emergency, they must do so prior to the close of polls on Election Day).³¹ Election officials may relocate polling locations that are destroyed, inaccessible, or otherwise unusable due to an emergency³² or establish temporary vote-

²⁵ *Id.* § 1S-9.005(9).

²⁶ *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1255 (N.D. Fla. 2016).

²⁷ *Id.* at 1257.

²⁸ FLA. STAT. § 97.0575(5)(b).

²⁹ *Id.* § 100.371(7)(b).

³⁰ *Id.* § 102.112(4).

³¹ *Id.* § 101.62(3)(d)(5).

³² *Id.* § 101.71(3), 101.74.

by-mail ballot sites (i.e., secure ballot intake locations or drop boxes).³³ Likewise, if a county is unable to tabulate its own ballots, it may do so elsewhere.³⁴ During an emergency, a Supervisor of Elections may also allow any Florida voter to serve as an election official in their county, not just county residents.³⁵

In addition, state law contains special emergency provisions for particular groups of voters. Emergency responders providing assistance in response to a declared emergency may obtain vote-by-mail ballots on Election Day.³⁶ If they are providing emergency assistance outside their home county, that county's supervisor may fax or e-mail them vote-by-mail ballots, which those electors may return by fax.³⁷ Likewise, if it is "impossible or unreasonable" for election officials to substantially comply with the rules governing overseas voters due to armed conflict or mobilization of the Armed Forces, the Elections Canvassing Commission may adopt emergency rules establishing "special procedures or requirements necessary to facilitate absentee voting" by eligible citizens who are "direct affected."³⁸

³³ See FLA. ADMIN. CODE § 1S-9.005(5)(a).

³⁴ *Id.* § 1S-9.005(6)(b), (8)(c).

³⁵ *Id.* § 1S-9.005(4)(c).

³⁶ *Id.* § 1S-9.005(5)(b).

³⁷ *Id.*

³⁸ FLA. STAT. § 101.698.

LITIGATION OVER FLORIDA ELECTION EMERGENCIES

Over the past several decades, the judiciary has considered a range of cases seeking to either reschedule elections or modify the rules governing the electoral process due to emergencies such as hurricanes, a global pandemic, and a crash of the statewide voter registration website. The earliest case on record appears to stem from 1992, but it is likely that earlier rulings are unavailable in online legal databases. In recent years, most litigation arising from election emergencies in Florida has been filed in federal court. As Florida has continued to adopt more expansive election emergency laws, the need for litigation has likely diminished. The state has a substantial interest in allowing legislators and election officials to determine the best policies for conducting elections in the midst or aftermath of major emergencies, rather than having judges redesign the rules in the context of litigation on an emergency basis at the behest of partisan litigants.

1. **Hurricane Andrew (1992)**—Hurricane Andrew made landfall in Homestead (Dade County), Florida during the morning of August 24, 1992. It was a Category 5 storm with gusts as high as 174 mph.³⁹ According to the U.S. Army Corps of Engineers:

The hurricane cut a broad path of destruction 22-miles wide, devastating the areas from Biscayne Bay to the Everglades. It leveled thousands of homes and other buildings, destroyed public utilities, ripped up trees, and left millions of cubic yards of debris. Its fierce winds tore down most of south Florida's power lines, leaving 1.4 million customers without electricity. It was one of the worst natural disasters of the century, killing twenty people and leaving a quarter of a million people homeless.⁴⁰

Florida's primary elections were scheduled for September 1, 1992. Three lawsuits were filed in the Circuit Court of the Eleventh Judicial Circuit to delay the primary election in Dade

³⁹ *Hurricane Andrew: 31 Years Since Monster Category 5 Storm Devastated South Dade*, CBS News (Aug. 24, 2023), <https://www.cbsnews.com/miami/news/hurricane-andrew-31-years-since-monster-category-5-storm-devastated-south-dade/>; see also FEMA, BUILDING PERFORMANCE: HURRICANE ANDREW IN FLORIDA 5 (Feb. 1993).

⁴⁰ U.S. Army Corps of Engineers, *The Corps Came to the Aid of Florida in the Aftermath of Hurricane Andrew* Aug. 2002), <https://www.usace.army.mil/About/History/Historical-Vignettes/Relief-and-Recovery/055-Hurricane-Andrew/>.

County due to the hurricane.⁴¹ The court enjoined the primary in Dade County and ordered that it be held on September 8, instead, “extending all relevant actions required with respect to the election.”⁴² It also prohibited state officials from announcing results from anywhere else in the state for the U.S. Senate race, as well as congressional and state senate races that included both Dade County and at least one other county.⁴³ On August 31, 1992, the Florida Supreme Court affirmed the circuit court’s decision to reschedule the election and make other conforming adjustments.⁴⁴ It overturned the lower court’s prohibition on publishing or announcing “the results of elections outside of Dade County,” however. The court’s opinion did not contain any analysis or explanation.

2. Hurricane Matthew (2016)—Hurricane Matthew traveled along Florida’s eastern coast starting on approximately October 7, 2016, causing “hurricane-force/Category 1 winds” in coastal areas as well as “devastating flooding.”⁴⁵ “Port Canaveral, FL, recorded an observed wind gust of 107 mph, causing damage at the Kennedy Space Center Walt Disney World resort closed for only the fourth time in its history.”⁴⁶ Storm surge along the coasts of Flagler, St. Johns and Duval Counties reached five to seven feet above ground level.⁴⁷ More than 1.2 million people

⁴¹ *State v. Dade Cnty.*, No. 80388, 1992 Fla. LEXIS 1563 (Fla. Aug. 31, 1992).

⁴² *Id.* at *1.

⁴³ *Id.* at *1-2.

⁴⁴ *Id.* at *2.

⁴⁵ U.S. Dep’t of Comm., Nat’l Oceanic & Atmospheric Admin. (“NOAA”), *Service Assessment: October 2016 Hurricane Matthew* 3-4 (Aug. 2017); Stacy R. Stewart, National Hurricane Center, *Tropical Cyclone Report*, 4 (Apr. 7, 2017).

⁴⁶ NOAA, *supra* note 45, at 4.

⁴⁷ Stewart, *supra* note 45, at 9.

across the state lost power.⁴⁸ Much of northeast Florida experienced “downed trees, trees falling onto homes, roof damage, and downed powerlines”; cars were swept away and thousands of homes were damages or destroyed.⁴⁹ Many Floridians were forced to “evacuate or, at a minimum, hunker down in shelters or their homes.”⁵⁰

Florida’s voter registration deadline for the 2016 general election was only a few days later, on Tuesday, October 11.⁵¹ “Hurricane Matthew not only forced many [Floridians] to evacuate the state, but also foreclosed the only methods of registering to vote: in person or by mail.”⁵² On October 10, Judge Mark E. Walker of the U.S. District Court for the Northern District of Florida entered a temporary restraining order requiring the Secretary of State to direct Supervisors of Elections to “extend the . . . voter registration deadline to Wednesday, October 12, 2016, at 5:00 p.m.”⁵³ Although the Southern District of Florida held that the state’s registration deadline was generally valid,⁵⁴ Judge Walker concluded that the state lacked a valid interest in enforcing its registration deadline—especially since other states allowed Election Day registration.⁵⁵ He also declared, contrary to evidence that was later introduced into the record,⁵⁶ that the burden of

⁴⁸ *Id.* at 15.

⁴⁹ *Id.* at 15-16.

⁵⁰ *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1254 (N.D. Fla. 2016).

⁵¹ *Id.* at 1254.

⁵² *Id.* at 1257.

⁵³ *Id.* at 1259.

⁵⁴ *Diaz v. Cobb*, 541 F. Supp. 2d 1319 (S.D. Fla. 2008).

⁵⁵ *Scott*, 215 F. Supp. 3d at 1257

⁵⁶ *See Fla. Democratic Party v. Scott*, No. 4:16-cv-626-MW/CAS, 2016 U.S. Dist. LEXIS 146468, at *3 n.2 (N.D. Fla. Oct. 12, 2016) (“[T]his Court heard testimony from the Leon County Supervisor of Elections, Ion Sancho, that storms of this magnitude impose ‘tremendous strain’ on election offices.”).

allowing voter registration in the aftermath of the hurricane would be “de minimis” for election officials.⁵⁷ After holding a hearing on the morning of the 12th, Walker ruled that “[n]othing has changed since Monday, when this Court issued the [TRO].”⁵⁸ He nevertheless entered a preliminary injunction extending the voter registration deadline until October 18 at 5:00 P.M.⁵⁹

3. Hurricane Michael (2018)—Hurricane Michael was “the third-most intensive hurricane to make landfall in the United States.”⁶⁰ It landed in the Florida Panhandle as a Category 5 hurricane⁶¹ and winds exceeded 155 mph on October 10, 2018.⁶² Towns in the Panama City area suffered “catastrophic damage.”⁶³ The voter registration deadline for that year’s election was October 9, as Michael approached the Gulf Coast.⁶⁴ Some counties in Florida were under mandatory evacuation orders at the time.⁶⁵

The Florida Secretary of State issued an emergency directive extending the voter registration deadline, but only for people delivering hard copies of their voter registration forms

⁵⁷ See *Scott*, 215 F. Supp. 3d at 1253; see also *League of Women Voters of Fla., Inc. v. Fla. Sec’y of State*, 716 F. Supp. 3d 1236, 1242 n.6 (N.D. Fla. 2024) (discussing *Scott*).

⁵⁸ *Fla. Democratic Party v. Scott*, No. 4:16-cv-626-MW/CAS, 2016 U.S. Dist. LEXIS 146468, at *3 n.2 (N.D. Fla. Oct. 12, 2016).

⁵⁹ *Id.*

⁶⁰ Nat’l Oceanic & Atmospheric Admin., Nat’l Weather Serv., *Tropical Storm Michael, October 11-12, 2018*, <https://www.weather.gov/mhx/Michael2018>.

⁶¹ John L. Beven II, et al., Nat’l Hurricane Ctr., *Hurricane Michael, October 7-11, 2018* (May 17, 2019), https://www.nhc.noaa.gov/data/tcr/AL142018_Michael.pdf#&intcmp=fxw_extreme-weather_article_main-content_article-body_2_2.

⁶² See NOAA, *supra* note 45.

⁶³ Aaron Barker, *Hurricane Michael Devastated the Florida Panhandle 4 Years Ago*, FOX WEATHER (Oct. 10, 2022), <https://www.foxweather.com/extreme-weather/category-5-hurricane-michael-florida-panhandle-2018>.

⁶⁴ *Fla. Democratic Party v. Detzner*, No. 4:18-cv-463-RH-CAS, 2018 U.S. Dist. LEXIS 174528, at *1 (N.D. Fla. Oct. 10, 2018).

⁶⁵ *Id.*

directly to a Supervisors' office.⁶⁶ In *Florida Democratic Party v. Detzner*, the Florida Democratic Party sought a one-week extension of voter registration by any means, including personal delivery, mail, and online registration, throughout the entire state.⁶⁷ The federal district court rejected the party's motion for a temporary restraining order, holding there was "no justification" for such relief.⁶⁸ It pointed out that the Secretary had already authorized relief for areas affected by the hurricane, and there was no need to extend the deadline in other parts of the state. The court added that there was no reason to believe any supervisors in the affected counties would decline to extend their deadline.⁶⁹ *Detzner* reflects the challenges posed in attempting to modify the rules governing an election as little as possible while still providing relief when election emergencies occur.

4. **COVID-19 and Internet Failure (2020)**—The COVID-19 pandemic swept across the United States in early 2020 as presidential preference contests were occurring. President Donald J. Trump declared a national emergency on March 13.⁷⁰ Over the following weeks, most states and localities throughout the country issued stay-at-home orders, generally prohibiting people from working, shopping, eating in restaurants, or attending school. As of late April, the United States had over a million confirmed COVID-19 cases;⁷¹ that figure would triple by July.⁷²

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ President Donald J. Trump, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19)*, Proc. No. 9994 (Mar. 13, 2020), reprinted in 85 Fed. Reg. 15,337 (Mar. 18, 2020).

⁷¹ Steve Almasy, et al., *US Coronavirus Cases Surpass 1 Million and the Death Toll is Greater Than US Losses in Vietnam War*, CNN (Apr. 28, 2020), <https://www.cnn.com/2020/04/28/health/us-coronavirus-tuesday/index.html>.

⁷² Callaghan O'Hare & Lisa Shumaker, *U.S. Tops 3 Million Known Infections as Coronavirus Surges*, REUTERS (July 8, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa/u-s-tops-3-million-known-infections-as-coronavirus-surges-idUSKBN2482JQ/>; see also Bill Chappell & Rob Stein, *U.S. Hits 2 Million Coronavirus Cases*

By the end of the year, over 350,000 deaths in the United States alone had been attributed to the virus.⁷³

In response to the pandemic, states modified their electoral systems in a variety of ways. The most frequent changes were expanding access to absentee voting and modifying the procedures governing in-person voting to reduce the risk of virus transmission.⁷⁴ They adopted these changes through a variety of mechanisms, including the adoption of new statutes or emergency regulations, issuance of executive orders, and invocation of existing election emergency laws.⁷⁵ Plaintiffs in many states argued that state officials had not gone far enough in modifying the rules governing the electoral process to address the risks posed by COVID-19, ultimately filing hundreds of cases in federal and state courts throughout the nation.

The U.S. Supreme Court stayed numerous orders granting emergency relief that lower federal courts had issued, emphasizing that the federal judiciary must generally defer to determinations by states' politically accountable officials concerning the best way to address COVID-19.⁷⁶ The U.S. Court of Appeals for the Eleventh Circuit, which has jurisdiction over

as *Many States See a Surge of Patients*, NPR (June 10, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/06/10/873473805/u-s-hits-2-million-coronavirus-cases-as-many-states-see-a-surge-of-patients>.

⁷³ Meredith S. Shiels, et al., *Leading Causes of Death in the US During the COVID-19 Pandemic, March 2020 to October 2021*, 182 JAMA INTERNAL MEDICINE 883 (Aug. 2022), https://jamanetwork.com/journals/jamainternalmedicine/articlepdf/2794043/jamainternal_shiels_2022_id_220019_1_658163837.82349.pdf.

⁷⁴ See generally Michael T. Morley, *Election Emergencies: Voting in Times of Pandemic*, 81 WASH. & LEE L. REV. 1153 (2024).

⁷⁵ *Id.*

⁷⁶ See, e.g., *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423 (2020) (per curiam) (staying lower court order allowing absentee ballots to be completed and returned up to a week after Wisconsin's 2020 primary election due to COVID-19); *Little v. Reclaim Idaho*, 140 S. Ct. 2616, 2617 (2020) (Roberts, C.J., concurring in grant of stay) (concurring in grant of a stay pending appeal of a preliminary injunction which required the state to either reduce the number of signatures required to include an initiative on the ballot, or extend the deadline and allow digital submissions, due to COVID-19 (citing *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam))); *Andino v. Middleton*, 141 S. Ct. 9, 10 (2020) (Kavanaugh, J., concurring in grant of stay) (concurring in grant of a stay pending appeal of a preliminary injunction which prohibited the state from applying its witness requirement for absentee ballots

Florida, likewise stayed lower court decisions that would have banned Alabama from enforcing its witness and identification requirements for absentee ballots in the 2020 general election⁷⁷ and required Georgia to accept completed absentee ballots that election officials received after Election Day.⁷⁸

Florida was involved in several election-related cases over COVID-19. The state's presidential preference primary was scheduled for Tuesday, March 17, 2020. Early voting and vote-by-mail had been ongoing for several weeks beforehand. At 11:16 P.M. on March 16, a coalition of progressive groups sued seeking a temporary restraining order against holding the election as scheduled.⁷⁹ They argued that “[g]oing to the polls may risk infection of individual polls workers and voters and thus may advance the spread of the disease”⁸⁰ The court denied the motion the following morning, holding that “[t]he national healthcare emergency is not a basis to cancel the election.”⁸¹ The court added that the public interest supported allowing the election

due to COVID-19 on both substantive and *Purcell* grounds); *Merrill v. People First*, 141 S. Ct. 25 (2020) (granting a stay pending appeal of a permanent injunction against the Secretary of State's prohibition of curbside voting due to COVID-19); *Dem. Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 32-34 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (declining to vacate stay of a preliminary injunction which had extended the deadline for returning absentee ballots beyond Election Day due to COVID-19); *Merrill v. People First*, 141 S. Ct. 190 (2020) (staying preliminary injunction which had prohibited the Alabama Secretary of State from requiring voters to include a copy of their identification with absentee ballot requests and having their absentee ballots either witnessed or notarized).

⁷⁷ *People First of Ala. v. Sec'y of State*, 2020 U.S. App. LEXIS 33371 (11th Cir. Oct. 13, 2020), *stay granted*, 141 S. Ct. 25 (2020) (staying the district court's injunction against the Secretary of State's ban on curbside voting).

⁷⁸ *New Ga. Proj. v. Raffensperger*, 976 F.3d 1278 (11th Cir. 2020).

⁷⁹ *Williams v. DeSantis*, No. 1:20-cv-67-RH-GRJ, 2020 U.S. Dist. LEXIS 212950, at *12 (N.D. Fla. Mar. 17, 2020).

⁸⁰ *Id.*

⁸¹ *Id.* at *13.

to continue.⁸² Shortly thereafter, the plaintiffs renewed their request and the court summarily rejected it.⁸³

The case was then consolidated with other pending litigation and the plaintiffs sought relief concerning elections upcoming later that year. In June, the district court held that the Twenty Fourth Amendment's prohibition on poll taxes did not require the state to provide postage on the return envelopes for their absentee ballots.⁸⁴ It similarly concluded that Florida's Election Day deadline for the return of vote-by-mail ballots was constitutional, even in the midst of COVID-19.⁸⁵ Finally, counties were permitted to have different policies on both prepaid postage and the location of secure ballot intake locations (i.e., dropboxes).⁸⁶ After denying the plaintiffs' motions for preliminary injunctions,⁸⁷ the court dismissed those claims.⁸⁸

The deadline for registering to vote in Florida's 2024 election was October 5 at 11:59 P.M.⁸⁹ That day, the Secretary of State's website for online voter registration crashed for several hours.⁹⁰

⁸² *Id.*

⁸³ *Williams v. DeSantis*, No. 1:20-cv-67-RH-GRJ, 2020 U.S. Dist. LEXIS 212952 (N.D. Fla. Mar. 18, 2020).

⁸⁴ *Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF, 2020 U.S. Dist. LEXIS 171773, at *27 (N.D. Fla. June 24, 2020); *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261, 1268 (N.D. Fla. 2020); *see also Black Voters Matter Fund v. Sec'y of State for Ga.*, 11 F.4th 1227, 1229 (11th Cir. 2021).

⁸⁵ *Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF, 2020 U.S. Dist. LEXIS 171773, at *27 (N.D. Fla. June 24, 2020); *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261, 1268 (N.D. Fla. 2020).

⁸⁶ *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261, 1268 (N.D. Fla. 2020).

⁸⁷ *Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF, 2020 U.S. Dist. LEXIS 171773, at *27 (N.D. Fla. June 24, 2020); *see also Nielsen v. DeSantis*, No. 4:20-cv-236-RH-MJF, 2020 U.S. Dist. LEXIS 173158, at *13-14 (N.D. Fla. July 2, 2020) (denying preliminary injunction on claim that the state was required to adopt a method to allow blind voters to cast secret ballots).

⁸⁸ *Nielsen v. DeSantis*, 469 F. Supp. 3d 1261, 1268-69 (N.D. Fla. 2020).

⁸⁹ *Namphy v. DeSantis*, 493 F. Supp. 3d 1130, 1135 (N.D. Fla. 2020) (citing FLA. STAT. § 97.0525(1)).

⁹⁰ *Id.*

Secretary of State Laurel Lee issued an emergency directive extending the deadline to October 6 at 7:00 P.M. for voter registration through any means, including in-person, mail, and online, as well as an accompanying press release to notify the public about it.⁹¹ Judge Walker held that the website crash burdened the right to vote by preventing some people from registering. Based on a comparison with previous voter registration records, the court estimated 21,722 Floridians may have been impeded from registering at the last minute.⁹² The effects of the crash, however, were “unquestionably mitigated” by Secretary Lee’s directive.⁹³ Moreover, the Secretary shows that extending the deadline would force election officials to divert their attention from processing vote-by-mail requests, conducting early voting, and preparing for Election Day, all in the midst of a pandemic.⁹⁴ The evidence “paint[ed] a disturbing picture of overworked elections staff, incomplete voter rolls, and election day mayhem.”⁹⁵ Thus, despite its harsh, unusually ad hominem, and unwarranted personal attacks against the Secretary of State, the court declined to grant a preliminary injunction.⁹⁶

5. Hurricane Helene (2024)—Hurricane Helene, a Category 4 hurricane, made landfall in Florida’s Big Bend region on September 26, 2024.⁹⁷ It was “one of the deadliest hurricanes in the United States, at least since the emergence of modern weather forecasting,” with

⁹¹ *Id.* (citing Sec’y of State Laurel Lee, “Extension of Voter Registration Deadline,” Directive 2020-02 (Oct. 6, 2020)).

⁹² *Id.* at 1144.

⁹³ *Id.* at 1143.

⁹⁴ *Id.* at 1145.

⁹⁵ *Id.*

⁹⁶ *Id.* at 1146-47.

⁹⁷ See Michael T. Morley, “Election Emergencies: Hurricane Helene and the 2024 Election,” ELECTION LAW BLOG 1 (Oct. 7, 2024), <https://electionlawblog.org/wp-content/uploads/morley-helene.pdf>.

windspeeds hitting 140 mph and storm surges along the coast exceeding fifteen feet.⁹⁸ States of emergency were declared in sixty-one out of Florida's sixty-seven counties.⁹⁹ Several communities were devastated, highways completely blocked, and bridges collapsed.¹⁰⁰

The voter registration deadline that year was October 7, 2024. The day after it expired, plaintiff groups sued seeking an extension. The U.S. District Court for the Northern District of Florida denied their motion for a temporary restraining order and preliminary injunction without written opinion,¹⁰¹ and the plaintiffs dismissed their suit after the election.

FLORIDA EXECUTIVE ORDERS **ADDRESSING ELECTION EMERGENCIES**

When hurricanes and other disasters have threatened Florida elections, the state has generally relied on executive orders from the Governor pursuant to the state's general state-of-emergency statute which modify particular rules governing the process. When natural disasters have threatened primary or local elections, Florida Governors have been more willing to delay the election pursuant to the state Election Emergency Act. This dichotomy in approaches is appropriate because, as the U.S. Supreme Court has explained, modifying the rules governing an election is a less extreme form of relief than changing or extending the period for voting. Allowing voting to extend for additional days "fundamentally alters the nature of [an] election."¹⁰²

⁹⁸ *Id.* (quoting Dan Stillman, *Helene Has Become One of the Deadliest Hurricanes of the Modern Era*, WASH. POST (Oct. 4, 2024)).

⁹⁹ Gov. Ron DeSantis, <https://x.com/GovRonDeSantis/status/1839055250298122751>.

¹⁰⁰ Morley, *supra* note 97.

¹⁰¹ *League of Women Voters of Fla. v. DeSantis*, No. 4:24-cv-412-RH-MJF (N.D. Fla. Oct. 9, 2024), <https://www.democracydocket.com/wp-content/uploads/2024/10/21-2024-10-09-order-denying-tro.pdf>.

¹⁰² *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 424 (2020) (per curiam); see also Michael T. Morley, *Election Emergencies: Voting in the Wake of Natural Disasters and Terrorist Attacks*, 67 EMORY L.J. 545, 616 (2018).

1. **Hurricane Georges (1998)**—On September 25, 1998, Hurricane Georges swept across Florida, causing “significant wind and rain damage” in Monroe County and knocking out both electricity and phone service throughout much of that area.¹⁰³ The county had declared a state of emergency due to the “heavy rainfall, high tides, gale-force winds, and flooding.”¹⁰⁴ Three days later, Governor Lawton Chiles issued Executive Order 98-240 to reschedule the October 1 primary elections in (only) Monroe County to Thursday, Oct. 8.¹⁰⁵

2. **Hurricanes Charley, Frances, Ivan, and Jeanne (2004)**—Hurricane Charley struck on August 13, 2004, “devastat[ing] communities in the southwestern and central portions of the state.”¹⁰⁶ Twenty-three people died across the state because of the storm, and approximately two thousand people relocated to shelters.¹⁰⁷ Governor Jeb Bush declared a state of emergency and provided for evacuations.¹⁰⁸ Three counties—Charlotte, De Soto, and Hardee—were left without power and telephone service and the sites of several polling locations were destroyed. The storm also destroyed about one-third of Charlotte County’s six hundred electronic voting machines.¹⁰⁹ Other counties experienced similar difficulties on a more limited scale.¹¹⁰

¹⁰³ Gov. Lawton Chiles, Fla. E.O. 98-240 (Sept. 28, 1998).

¹⁰⁴ *Id.* § 1; *see also* Gov. Lawton Childs, Fla. E.O. 98-232, ¶ 3 (Sept. 22, 1998).

¹⁰⁵ E.O. 98-240, § 2.

¹⁰⁶ Gov. Jeb Bush, “Emergency Management,” E.O. 04-206, ¶ 2 (Aug. 10, 2004), *as amended* Gov. Jeb Bush, “Emergency Management,” E.O. 04-208 (Sept. 12, 2004).

¹⁰⁷ *Death Toll: State Officials Said Thursday That 23 People Haver Died*, TALLAHASSEE DEMOCRAT, at A3 (Aug. 20, 2004).

¹⁰⁸ Gov. Jeb Bush, “Emergency Management,” E.O. 04-182 (Aug. 10, 2004).

¹⁰⁹ Marcus Franklin, *Votes Cast Proudly in Storm-Tossed Terrain*, ST. PETERSBURG TIMES (Sept. 1, 2004).

¹¹⁰ Lucy Morgan, *Late Voting Possible in Some Counties*, ST. PETERSBURG TIMES (Aug. 17, 2004).

Early voting for Florida's primary elections was scheduled to start only a few days later on Monday, August 16. Most counties were able to begin on time, though four started a few days late.¹¹¹ The primary itself was scheduled for August 31. For that election, Charlotte County "consolidate[d] 80 precincts into 22 voting stations, with some housing up to 11 precincts each."¹¹² The county Supervisor of Elections posted information about these changes on her website, ran public service announcements over the radio, and even flew airplanes with banners containing a phone number to call for information.¹¹³ "[M]any residents" nevertheless "complained they didn't know where to go."¹¹⁴ DeSoto County similarly consolidated its twelve polling locations into six.¹¹⁵ The hardest hit counties also obtained portable backup generators in case they were needed to provide electricity to polling places, and erected tents to conduct voting in the hardest hit areas.¹¹⁶ Despite these challenges, the primary was held on August 31 throughout the entire state.¹¹⁷

A few weeks later, on September 5, Hurricane Frances "came ashore as a Category 2 hurricane and devastated communities in the central, eastern and northeastern portions of State."¹¹⁸

¹¹¹ *Charley, August 31, and Florida: A Critical Test of the Vote*, ABC NEWS (Aug. 17, 2004), <https://abcnews.go.com/Politics/NotedNow/story?id=120330>; see also *Lee Voters Can Cast Their Ballots on Wednesday*, NEWS-PRESS (FORT MYERS), at 16A (Aug. 17, 2004); Jerome R. Stockfish, *Storm not Expected to Delay Primaries*, TAMPA TRIB. (Aug. 18, 2004); Jeremy Wallace, *Aug. 31 Primary to Go On as Planned in Charlotte*, SARASOTA HERALD TRIB., at BMS8 (Aug. 19, 2004).

¹¹² Patrick Whittle, *Charley Leaves Its Mark on Charlotte Primary*, HERALD-TRIB. (Aug. 31, 2004), <https://www.heraldtribune.com/story/news/2004/09/01/charley-leaves-its-mark-on-charlotte-primary/28822025007/>.

¹¹³ Jeremy Wallace, *County Makes Plans for Elections*, SARASOTA HERALD TRIB., at B9 (Aug. 25, 2004).

¹¹⁴ Whittle, *supra* note 112.

¹¹⁵ Jeremy Wallace, *supra* note 113.

¹¹⁶ Morgan, *supra* note 110; Wallace, *supra* note 113.

¹¹⁷ Franklin, *supra* note 109.

¹¹⁸ Gov. Jeb Bush, "Emergency Management," E.O. 04-206, ¶ 4 (Aug. 10, 2004), *as amended* Gov. Jeb Bush, "Emergency Management," E.O. 04-208 (Sept. 12, 2004).

Governor Bush declared another state of emergency, preparing for evacuations in response to that new threat, as well.¹¹⁹ This order allowed the Director of the Division of Emergency Management to “suspend” statutes, rules, ordinances, and orders during the emergency if “literal compliance” would be “inconsistent with the timely performance of disaster response functions.”¹²⁰

Within a week, the Governor issued yet another emergency declaration as Hurricane Ivan approached the state as a Category 4 hurricane with winds exceeding 140 mph.¹²¹ It contained similar authorization for the Director to suspend state, regional, or local laws or ordinances that may interfere with “vital emergency response functions.”¹²² Ivan struck near Pensacola, causing at least 23 deaths across the state.¹²³ Evacuation orders were issued for residents of coastal and low-lying areas in nearly half of the state’s counties.¹²⁴ Governor Bush also issued an executive order granting additional time for Supervisors of Election in the 19 counties impacted by the storm to mail absentee ballots to overseas voters.¹²⁵

Shortly thereafter, in late September, Hurricane Jeanne left most of Palm Beach County without electricity and severely damaged many people’s homes.¹²⁶ It went on to sweep through

¹¹⁹ Gov. Jeb Bush, “Emergency Management,” E.O. 04-192, § 1 (Aug. 10, 2004), <https://edocs.dlis.state.fl.us/fldocs/governor/orders/index.htm>.

¹²⁰ *Id.* § 3(F) (citing FLA. STAT. §§ 252.36(5)(a), 252.46(2) (2004)).

¹²¹ Gov. Jeb Bush, “Emergency Management,” E.O. 04-206, ¶ 6 (Aug. 10, 2004), *as amended* Gov. Jeb Bush, “Emergency Management,” E.O. 04-208 (Sept. 12, 2004).

¹²² *Id.* § 3(F) (citing FLA. STAT. §§ 252.36(5)(a), 252.46(2) (2004)).

¹²³ *The Cape Canaveral Air Force Station Skid Strip*, TALLAHASSEE DEMOCRAT, at A3 (Sept. 26, 2004).

¹²⁴ *Jeanne Came Ashore on the Southern Tip of Hutchinson Island near Stuart Just Before Midnight with 120-mph Winds*, TALLAHASSEE DEMOCRAT, at A2 (Sept. 27, 2004).

¹²⁵ *Id.*

¹²⁶ David Fleshler, *Take by Storm*, SUN SENTINEL (Aug. 8, 2014), <http://interactive.sun-sentinel.com/2004storms/>.

central Florida, leaving six people dead and millions without power.¹²⁷ Yet again, election officials were forced to relocate polling places that had been damaged or destroyed, though they had time to mail individualized notices to voters.¹²⁸

3. **Hurricane Wilma (2005)**—Hurricane Wilma hit south Florida on October 24, 2005. The primary elections for local offices in Miami and Hialeah were scheduled for November 1; general elections for Miami Beach and Hialeah were scheduled for November 15.¹²⁹ Due to the hurricane, the Miami-Dade County Supervisor of Elections reported that the county lacked sufficient precinct clerks and some voting sites still lacked power.¹³⁰ Governor Bush issued an executive order declaring a state of emergency¹³¹ and issued a notice to the Secretary of State declaring, “I find that an elections emergency does exist to justify a postponement of the elections presently scheduled for Nov. 1, 2005, and Nov. 15, 2005.”¹³²

4. **Hurricane Irma (2017)**—Hurricane Irma struck the Florida Keys as a Category 4 hurricane on Sunday, September 10, with sustained winds of 130 miles per hour.¹³³ Later that day,

¹²⁷ Anthony Brooks, *Hurricane Jeanne Kills Six, Millions Without Power*, NPR (Sept. 27, 2004), <https://www.wusf.org/2004-09-27/hurricane-jeanne-kills-six-millions-without-power>.

¹²⁸ George Bennett & Dara Kam, *4 Storms Muddle Election Outlook*, PALM BEACH POST (Oct. 3, 2004); Steve Mraz, *Hurricane Ivan Uproots Some Polling Sites*, PENSACOLA NEWS JOURNAL, at 1A (Sept. 29, 2004); Aaron DeSlatte, *Unions Challenge Ballots*, FLA. TODAY, at 10 (Oct. 14, 2004).

¹²⁹ Shelly Sigo, *Wilma Forces Florida Election Officials to Postpone Some Upcoming Votes*, BOND BUYER, Vol. 354, Issue 32,250 (Nov. 1, 2005), <https://go.gale.com/ps/i.do?id=GALE%7CA138160222&sid=sitemap&v=2.1&it=r&p=AONE&sw=w&cookieConsent=true&cookieConsent=true&cookieConsent=true&analyticsOptout=false&analyticsOptout=false&analyticsOptout=false&aty=shibboleth&enforceAuth=true&linkSource=delayedAuthFullText&oweAuth=true&userGroupName=tall85761>.

¹³⁰ *Id.*

¹³¹ Gov. Jeb Bush, E.O. 05-219 (Oct. 19, 2005).

¹³² Sigo, *supra* note 129.

¹³³ Nat’l Weather Serv., Nat’l Oceanic & Atmospheric Admin., *Hurricane Irma 2017*, <https://www.weather.gov/tac/irma2017>.

it made a second U.S. landfall over Marco Island as a Category 3 hurricane with sustained winds reaching 115 miles per hour.¹³⁴ Over the next day, it slowly traveled northwest across the state, decaying to a tropical storm by the next morning.¹³⁵ Irma caused the deaths of 123 people across the state and triggered a “massive evacuation of an estimated 6.8 million Floridians, displacing roughly a third of residents and visitors.”¹³⁶ As it crossed the state, Irma downed trees and powerlines and caused substantial flooding “from storm surge and heavy rainfall.”¹³⁷ The “greatest impacts were across the eastern portion of the [state] near the I-75 corridor.”¹³⁸ Over 6.5 million customers in Florida were left without power.¹³⁹

Even before the hurricane hit the state, on September 4, Governor Rick Scott declared a state of emergency allowing the Director of the Division of Emergency Management to suspend any state statutes, rules or orders that would “in any way prevent, hinder, or delay any mitigation, response, or recovery action necessary to cope with this emergency.”¹⁴⁰ He mobilized the entire

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Melissa Feito, *Assessing Hurricane Irma's Impact, Five Years Later*, WUFT (Sept. 9, 2022), <https://www.wuft.org/weather/2022-09-09/assessing-hurricane-irmas-impact-five-years-later>.

¹³⁷ Nat'l Weather Serv., *supra* at note 133.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ Gov. Rick Scott, E.O. 17-235, § 2(E) (Sept. 4, 2017), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2017/17-235.pdf>.

Florida National Guard to assist with disaster response efforts.¹⁴¹ Two dozen counties issued mandatory evacuation orders.¹⁴²

Although no federal or other statewide elections were scheduled to be held that fall, the Cities of Fort Myers and Cape Coral in Lee County; the Village of Virginia Gardens in Miami-Dade County, and the Town of Bronson in Levy County were scheduled to hold municipal elections on September 12.¹⁴³ “[T]he Supervisors of Elections and/or Municipal Clerks” in those areas “requested a suspension or delay of their respective municipal elections and other applicable deadlines” due to the hurricane.¹⁴⁴ Governor Scott agreed that “storm conditions in one or more of these areas may make it unsafe for voters to travel to polling locations during this period,” and county and local officials who would help with the election may instead be involved in emergency management activities.¹⁴⁵

Accordingly, Governor Scott declared that “an existing and continuing possibility of an emergency” existed “before and during the scheduled municipal elections” in Lee, Levy, and Miami-Dade Counties.¹⁴⁶ In order to “maximize citizen participation,” “provide a safe and orderly [voting] procedure,” minimize voters’ “exposure to danger,” and “protect the integrity of the

¹⁴¹ WFTV Web Staff, *State of Emergency: More National Guard Mobilized Ahead of Hurricane Irma*, WFTV (3:55 P.M., Sept. 5, 2017), <https://www.wftv.com/weather/eye-on-the-tropics/state-of-emergency-more-national-guard-mobilized-ahead-of-hurricane-irma/603566403/>.

¹⁴² Gov. Rick Scott, Press Release, *Gov. Scott Issues Updates on Hurricane Irma Preparedness* (Sept. 9, 2017), <https://web.archive.org/web/20180125015640/https://www.flgov.com/2017/09/09/gov-scott-issues-updates-on-hurricane-irma-preparedness-10/>.

¹⁴³ Gov. Rick Scott, E.O. 17-236, ¶ 4 (Sept. 6, 2017), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2017/17-236.pdf>.

¹⁴⁴ *Id.* ¶ 6.

¹⁴⁵ *Id.* ¶ 5.

¹⁴⁶ *Id.* § 1.

electoral process,”¹⁴⁷ he rescheduled those elections to be held two weeks later, on September 26, 2017.¹⁴⁸ He directed the affected Supervisors of Election and Municipal Clerks to notify the Secretary of State about their contingency plans for securing and removing voting equipment, provisional ballots, and ballot boxes from polling locations.¹⁴⁹ Any ballots that had already been cast were to be retained and “given full legal effect.”¹⁵⁰ The Governor further authorized the Secretary of State to modify or suspend any deadlines relating to those elections, and “waive any statutory requirements for the provision of vote-by-mail ballots to members of the Florida National Guard activated to assist in response to Hurricane Irma.”¹⁵¹

Election officials in the impacted counties subsequently requested a further postponement of their elections due to Irma’s impact.¹⁵² Accordingly, on September 15, Governor Scott issued another order to delay those elections for an additional week until Tuesday, October 3.¹⁵³ In the meantime, Secretary of State Ken Detzner exercised his discretion under the Governor’s executive order to extend the deadline for filing campaign finance disclosure reports for state, county, and municipal elections from Monday, September 11 to Friday, September 22.¹⁵⁴

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* § 2.

¹⁴⁹ *Id.* § 4.

¹⁵⁰ *Id.* § 5.

¹⁵¹ *Id.* § 6.

¹⁵² Gov. Rick Scott, E.O. 17-244, ¶ 6 (Sept. 15, 2017), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2017/17-244.pdf>.

¹⁵³ *Id.* § 2.

¹⁵⁴ Sec’y of State Ken Detzner, Emergency Order No. 17-1, § 2 (Sept. 15, 2017), <https://files.floridados.gov/media/698272/emergency-order-17-1.pdf>.

5. **Hurricane Michael (2018)**—Hurricane Michael hit the Florida panhandle on October 10, 2018, as an “unprecedented Category 5” hurricane with maximum sustained wind speeds of 161 miles per hour.¹⁵⁵ It was “the most powerful storm to impact the Florida panhandle in recorded history.”¹⁵⁶ Storm surges ranged from four to fourteen feet.¹⁵⁷ Over 3,000 structures were destroyed and 50,000 damaged throughout the Panhandle, western Big Bend, and adjacent areas of neighboring states.¹⁵⁸ Almost 100% of customers throughout the central panhandle lost power, with some outages “lasting weeks.”¹⁵⁹ Seven Floridians died as a result of the hurricane, and an additional 43 indirect deaths were attributed to it.¹⁶⁰ Several counties issued mandatory evacuation orders.¹⁶¹

Three days before the hurricane hit, on October 7, Governor Rick Scott declared a state of emergency in more than two dozen counties and delegated authority to the Director of the Division of Emergency Management to suspend any state laws, rules, or orders that could interfere

¹⁵⁵ Nat’l Weather Serv., Nat’l Oceanic & Atmospheric Admin., *Catastrophic Hurricane Michael Strikes Florida Panhandle October 10, 2018*, <https://www.weather.gov/tac/hurricanemichael2018>.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.; see also John L. Beven II, et al., Nat’l Hurricane Ctr., *Hurricane Michael 10* (May 17, 2019), https://www.nhc.noaa.gov/data/tcr/AL142018_Michael.pdf.

¹⁶¹ Kim Haddad, *List of Mandatory Evacuation Zones in Florida Ahead of hurricane Michael*, CLICK ON DETROIT (Oct. 10, 2018), <https://www.clickondetroit.com/weather/2018/10/10/list-of-mandatory-evacuation-zones-in-florida-ahead-of-hurricane-michael/>.

with the state's efforts to respond to the emergency.¹⁶² The next day, as the hurricane intensified on its approach to Florida, he extended that declaration to nine additional counties.¹⁶³

On October 18, after the hurricane struck, Governor Scott issued an executive order specifically addressing the upcoming elections.¹⁶⁴ He noted that the hurricane had hit eight panhandle counties, including Bay County, particularly hard “with reports of severe damage to infrastructure, extended power outages, and telecommunications disruptions,” as well as “damage to public roads and highways.”¹⁶⁵ Many people had evacuated the damaged areas.¹⁶⁶ Consequently, the order allowed Supervisors of Elections in those counties to designate additional early voting sites, “geographically located so as to provide all voters in the Affected County an equal opportunity to cast a ballot, insofar as is practicable.”¹⁶⁷ Supervisors were also permitted to conduct additional days of early voting by extending it through Election Day.¹⁶⁸

Supervisors were also given similar authority to “relocate or consolidate” Election Day polling places. At least two small counties merged their precincts into “mega-centers” where any county voters could cast their ballots.¹⁶⁹ The order also allowed Supervisors to accept written or

¹⁶² Gov. Rick Scott, E.O. 18-276, §§ 1, 2(E) (Oct. 7, 2018), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2018/18-276.pdf>.

¹⁶³ Gov. Rick Scott, E.O. 18-277, § 1 (Oct. 8, 2018), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2018/18-277.pdf>.

¹⁶⁴ Gov. Rick Scott, E.O. 18-283 (Oct. 18, 2018), <https://edocs.dlis.state.fl.us/fldocs/governor/orders/2018/18-283.pdf>.

¹⁶⁵ *Id.* ¶¶ 2, 3.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* § 1(a).

¹⁶⁸ *Id.* § 1(b).

¹⁶⁹ Ray Sanchez & Keenan Willard, *Hurricane Michael Forces Florida to Ease Voting Rules in Hard-Hit Counties*, CNN POLITICS (Oct. 21, 2018), <https://www.cnn.com/2018/10/18/politics/florida-panhandle-hurricane-voting>.

telephone requests to send vote-by-mail ballots, by forwardable mail, to a place other than an elector's official address.¹⁷⁰ They may also provide vote-by-mail ballots in person to a voter or their immediate family members on Election Day without requiring an affidavit attesting to an emergency.¹⁷¹ The deadline for the appointment of poll watchers was also extended.¹⁷²

The order directed the Secretary of State to coordinate efforts among Supervisors of Election to ensure vote-by-mail ballots were delivered to people assisting with the hurricane recovery efforts, as well as nursing home and hospital patients who had been “evacuated to facilities outside their counties of residence.”¹⁷³ It also instructed Supervisors to “wide[ly] disseminat[e]” information about any changes made pursuant to the rules governing the election “through print and broadcast media, website postings, and posted signate at polling locations.”¹⁷⁴ The Secretary of State issued a separate order extending various campaign finance filing deadlines.¹⁷⁵

6. COVID-19 (2020)—This report discussed the tragic impact of the COVID-19 pandemic in 2020.¹⁷⁶ On March 1, 2020, Governor Ron DeSantis issued an executive order directing the Florida Surgeon General to declare a public health emergency and requiring a

¹⁷⁰ E.O. 18-283, *supra* note 164, at § 2(a)-(b).

¹⁷¹ *Id.* § 2(c).

¹⁷² *Id.* § 4.

¹⁷³ *Id.* § 5.

¹⁷⁴ *Id.* § 6.

¹⁷⁵ Sec'y of State Ken Detzner, Emergency Order No. 18-01 (Oct. 25, 2018), <https://files.floridados.gov/media/700205/emergency-order-18-01.pdf>.

¹⁷⁶ See *supra* notes 70-96 and accompanying text.

fourteen-day quarantine period for people who tested positive for the virus.¹⁷⁷ About a week later, on March 9, the Governor issued another executive order declaring a state of emergency in Florida due to the pandemic.¹⁷⁸

The following June, at the request of the Florida Association of Supervisors of Election, Governor DeSantis promulgated an executive order specifically focused on both the forthcoming primary on August 18 and general election on November 3.¹⁷⁹ Due to social distancing and the risk of virus transmission, election officials expected a historic deluge of vote-by-mail ballots. Accordingly, the Governor authorized election officials to begin pre-canvassing them immediately upon the conclusion of Logic and Accuracy Testing of tabulation equipment, rather than waiting until 22 days before the election.¹⁸⁰ The order also lifted various restrictions to make it easier for state employees to serve as poll workers due to the likelihood that many of the senior citizens who usually operated polling locations would decline to do so because of their special vulnerability to the COVID-19 virus.¹⁸¹ Supervisors were required to “ensure proper social distancing and cleaning procedures” at early voting location and Election Day polling locations.¹⁸² These measures included “spacing out voting stations,” erecting “physical barriers for poll workers interacting with voters,” and providing personal protective equipment (PPE) to poll workers.¹⁸³

¹⁷⁷ Gov. Ron DeSantis, E.O. 20-51, §§ 1, 6-7 (Mar. 1, 2020), <https://edocs.dlis.state.fl.us/fldocs/governor/orders/2020/20-51.pdf>.

¹⁷⁸ Gov. Ron DeSantis, E.O. 20-52, § 1 (Mar. 9, 2020), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2020/20-52.pdf>.

¹⁷⁹ Gov. Ron DeSantis, E.O. 20-149 (June 17, 2020), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2020/20-149.pdf>.

¹⁸⁰ *Id.* § 1 (citing Fla. Stat. § 101.68(2)(a)).

¹⁸¹ *Id.* § 2(A).

¹⁸² *Id.* § 3(A).

¹⁸³ *Id.*

The Director of the Division of Emergency Management would provide PPE, hand sanitizer, and cleaning products to Supervisors of Election who needed them.¹⁸⁴

The order encouraged school superintendents to close their schools on the date of the primary and general election so that they could be used as polling locations without exposing students to a risk of exposure.¹⁸⁵ It further directed supervisors to “timely provide notice to the public regarding any changes in voting locations or procedures in a manner designed to ensure widespread dissemination.”¹⁸⁶ Required methods of publication included “print and broadcast media, website and social media postings,” and “signage at polling locations.”¹⁸⁷

7. **Hurricane Ian (2022)**—Hurricane Ian was one of the deadliest hurricanes to hit the United States in the past two decades, killing 148 Floridians.¹⁸⁸ It struck Fort Myers Beach as a Category 4 storm, destroying much of the community.¹⁸⁹ It destroyed Sanibel Island’s electric system and severely damaged its sewer system,¹⁹⁰ and the only bridge leading to the island was washed away.¹⁹¹ The hurricane swept eastward across the Central Florida peninsula to the Atlantic

¹⁸⁴ *Id.* § 5(A).

¹⁸⁵ *Id.* § 4(A).

¹⁸⁶ *Id.* § 5(B).

¹⁸⁷ *Id.*

¹⁸⁸ John Schuppe, *Ian Was One of the Most Lethal Hurricanes in Decades. Many of the Deaths Were Preventable*, NBC NEWS (Nov. 22, 2022), <https://www.nbcnews.com/news/us-news/hurricane-ian-florida-death-toll-rcna54069>.

¹⁸⁹ *See the Devastating Toll of Hurricane Ian in Florida*, TIME (Sept. 30, 2022), <https://time.com/6218192/hurricane-ian-photos>.

¹⁹⁰ Brad Brooks & Jonathan Drake, *After Hurricane Ian’s Deadly Wrath, Florida, Carolinas Begin Recovery*, REUTERS (Oct. 1, 2022), <https://www.reuters.com/world/us/florida-carolinas-count-cost-one-worst-us-hurricanes-2022-10-01>.

¹⁹¹ W.J. Hennigan, *Massive Hurricane Recovery Effort Underway in Florida Amid “Substantial Loss of Life,”* TIME (Sept. 29, 2022), <https://time.com/6218305/hurricane-ian-biden-desantis-aid>.

Coast. Winds exceeded 155 miles per hour and storm surges were as tall as 15 feet.¹⁹² Over 1.2 million homes and businesses throughout the state lost power,¹⁹³ and 2.5 million people were subject to evacuation orders.¹⁹⁴

On September 23, 2022, Governor DeSantis declared a state of emergency in two dozen counties that Hurricane Ian was expected to impact.¹⁹⁵ The following day, he expanded the state of emergency to the entire state.¹⁹⁶ About two weeks after the hurricane hit the state, the Governor issued another executive order concerning the impending elections.¹⁹⁷ The order explained that the Supervisors of Elections for Lee, Charlotte, and Sarasota Counties reported that “a significant number of early voting sites or polling locations have been damaged or otherwise rendered unusable, that a significant number of voters have been displaced, and that a significant number of poll workers may be unavailable.”¹⁹⁸ It further noted that, due to the hurricane’s effects, strictly complying the Election Code in those counties may interfere with recovery efforts and deny people an “adequate opportunity to vote.”¹⁹⁹

¹⁹² Greg Allen, *After Hurricane Ian, Fort Myers Beach Struggles to Become “a Functional Paradise,”* NPR (Mar. 28, 2023), <https://www.npr.org/2023/03/28/1165410279/hurricane-ian-fort-myers-beach-slow-rebuilding>.

¹⁹³ Brooks & Drake, *supra* note 190.

¹⁹⁴ Brad Brooks & Brendan O’Brien, *Hurricane Ian Batters Florida’s Gulf Coast with Catastrophic Fury*, REUTERS (Sept. 20, 2022), <https://www.reuters.com/world/us/millions-urged-evacuate-florida-gulf-coast-braces-hurricane-ian-2022-09-28>.

¹⁹⁵ Gov. Ron DeSantis, E.O. 22-218, § 1 (Sept. 23, 2022), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2022/22-218.pdf>.

¹⁹⁶ Gov. Ron DeSantis, E.O. 22-219, § 1 (Sept. 24, 2022), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2022/22-219.pdf>.

¹⁹⁷ Gov. Ron DeSantis, E.O. 22-234 (Oct. 12, 2022), <http://edocs.dlis.state.fl.us/fldocs/governor/orders/2022/22-234.pdf>.

¹⁹⁸ *Id.* ¶¶ 4-7.

¹⁹⁹ *Id.* ¶ 12.

In response to these emergency conditions, the Governor authorized the Supervisors of Elections in Lee, Charlotte, and Sarasota Counties to designate new early voting locations, secure ballot intake stations (i.e., drop boxes), and Election Day polling locations.²⁰⁰ It also gave those supervisors discretion to extend early voting through Election Day.²⁰¹ Election Day polling places could be consolidated or relocated to other precincts.²⁰² Advance training for poll workers and county residency restrictions for members of election boards in the affected counties were suspended.²⁰³ Additionally, the order granted state employees up to 26 hours of administrative leave for state employees to receive training and serve as poll workers there.²⁰⁴

Furthermore, Supervisors were permitted to send vote-by-mail ballots by forwardable mail, upon request, to an address other than the domicile at which a voter was registered.²⁰⁵ The order specified however that, notwithstanding the emergency, a voter still had to provide their driver's license number, state identification card number, or the last four digits of their social security number to receive a vote-by-mail ballot.²⁰⁶ Supervisors were required to publicly announce any changes to the election laws throughout the affected counties, including through newspapers, broadcast media, social media, website postings, and signs at polling locations.²⁰⁷

²⁰⁰ *Id.* §§ 1, 2, 4.

²⁰¹ *Id.* § 1.

²⁰² *Id.* § 4.

²⁰³ *Id.* § 5.

²⁰⁴ *Id.* § 6.

²⁰⁵ *Id.* § 3.

²⁰⁶ *Id.*

²⁰⁷ *Id.* § 8.

The order also delegated to the Secretary of State the Governor’s authority to suspend state regulatory laws establishing procedures for the conduct of state business, as well as the Department of State’s rules and orders, if they would “in any way prevent, hinder or delay necessary action in coping with the emergency.”²⁰⁸ Secretary of State Cord Byrd extended the filing deadlines for certain campaign finance reports by a week.²⁰⁹ The following January, due to the widespread damage that remained in Lee County, Secretary Byrd issued another order making it easier for voters in Lee County to request that vote-by-mail ballots be sent to alternate addresses for municipal elections to be held in early 2023.²¹⁰

8. Hurricanes Helene and Milton (2024)—Hurricane Helene, a Category 4 Hurricane, made landfall in Florida’s Big Bend region on September 26, 2024.²¹¹ “Windspeeds hit 140 miles per hour, with storm surges along areas of the Florida coast exceeding fifteen feet. Approximately five-and-a-half million customers lost power during the disaster, with almost 700,000 still waiting to have service restored. States of emergency were declared in 61 out of Florida’s 67 counties,” and large parts of several communities in the state were almost entirely washed away.²¹² On October 3, 2024, Governor DeSantis issued an executive order largely mirroring his order concerning the 2022 elections in the wake of Hurricane Ian, limited to the

²⁰⁸ *Id.* § 9.

²⁰⁹ Sec’y of State Cord Byrd, Emergency Order No. 22-01, § 1 (Sept. 30, 2022), <https://files.floridados.gov/media/705930/emergency-order-22-01.pdf>.

²¹⁰ Sec’y of State Cord Byrd, Emergency Order No. 23-01, § 1 (Jan. 25, 2022), <https://files.floridados.gov/media/706221/dos-emergency-order-23-01.pdf>.

²¹¹ Nat’l Envtl. Satellite, Data, and Info. Serv., U.S. Dep’t of Commerce, *Hurricane Helene Makes Landfall in Florida* (Sept. 27, 2024), <https://www.nesdis.noaa.gov/news/hurricane-helene-makes-landfall-florida>.

²¹² Michael T. Morley, *Election Emergencies: Hurricane Helene and the 2024 Election*, ELECTION LAW BLOG (Oct. 7, 2024), <https://electionlawblog.org/?p=146105>.

thirteen counties most impacted by Helene.²¹³ He authorized the establishment of new early voting locations, including at locations that would otherwise violate statutory restrictions; authorized the designation of new drop box locations, allowed voters to request that vote-by-mail ballots be sent to an alternate address without submitting a signed writing, and permitted supervisors to transmit ballots through forwardable mail.²¹⁴ The order also contained materially identical provisions concerning relocation and consolidation of Election Day polling places, suspension of poll worker restrictions, administrative leave for state employees to serve as poll workers, and public notice of changes to the rules of the election.²¹⁵ It also delegated authority to suspend other election laws to the Secretary of State.²¹⁶

RECENT BILLS

During the most recent legislative session, the Florida legislature considered two main bills to amend Florida's statutes concerning election emergencies. Neither of them was enacted into law.

1. **H.B. 1535 – Emergencies** – This bill empowered the Secretary of State to authorized Supervisors of Election to implement certain emergency measures during declared emergencies.²¹⁷ With the Secretary's permission, supervisors could:

- (i) change the location of early voting sites after the statutory deadline,
- (ii) establish early voting locations at places that do not meet the general statutory criteria,
- (iii) conduct early voting until the day before Election Day,

²¹³ Gov. Ron DeSantis, E.O. 24-212 (Oct. 3, 2024).

²¹⁴ *Id.* §§ 1-3.

²¹⁵ *Id.* §§ 4-6, 8.

²¹⁶ *Id.* § 9.

²¹⁷ FL H.B. 1535, § 3 (establishing FLA. STAT. § 101.7325(1)).

- (iv) allow voting on Election Day at early voting locations,
- (v) designate additional secure ballot intake locations (i.e., drop boxes) after the statutory deadline,
- (vi) send vote-by-mail ballots via forwardable mail to an address other than a voter's official address of record without a written request,
- (vii) appoint poll workers who have not satisfied statutory training requirements so long as they received training within the previous two years, and
- (viii) appoint any registered Florida voter as an election inspector, even if they live in a different county.²¹⁸

Second, the bill tweaked existing statutory requirements for a statewide election emergency contingency plan,²¹⁹ and required each supervisor to develop a local election emergency contingency plan, as well.²²⁰ **Finally**, this bill requires newly elected Supervisors of Election and “critical staff” to undergo “election emergency training.”²²¹ Every other year, the Secretary of State must convene a workgroup consisting of at least ten Supervisors of Election to develop best practices for addressing election emergencies to incorporate into the state’s election emergency contingency plan.²²² This group also must participate in “tabletop exercises” simulating such emergencies.²²³

²¹⁸ *Id.*

²¹⁹ *Id.* § 4 (establishing FLA. STAT. § 101.735(1)).

²²⁰ *Id.* § 4 (establishing FLA. STAT. § 101.735(2)).

²²¹ *Id.* § 5 (establishing FLA. STAT. § 101.736(2)).

²²² *Id.* § 5 (establishing FLA. STAT. § 101.736(3)(a), (4)(a)).

²²³ *Id.* § 5 (establishing FLA. STAT. § 101.736(3)(b)).

This bill was favorably reported by the House Natural Resources & Disasters Subcommittee, Transportation & Economic Development Budget Subcommittee, and State Affairs Committee.²²⁴ It was tabled on the floor of the House of Representatives.²²⁵

2. H.B. 1317 / S.B. 1486 – Emergencies – This bill sought to codify particular required responses to election emergencies. It provided that, in any county that is either designated by FEMA as eligible for emergency assistance or declared to be in a state of emergency by the Governor, various election-related rules either are automatically modified, or may be modified by election officials without further authorization.²²⁶ Some of these provisions appear to have been taken from executive orders that Governors have issued over the years in response to hurricanes, but others went far beyond anything that Governors of either political party had authorized in the past.

First, the bill specified permitted voters to request by phone, e-mail, or in writing that vote-by-ballots be sent to an address other than their address of record, without using the state’s official form.²²⁷ Voters could request such ballots after the statutory deadline for doing so expired, and return them to any polling place or Supervisor of Elections office for any county in the state.²²⁸ Supervisors could distribute such ballots via forwardable mail.²²⁹ Perhaps more controversially, the statute would have required election officials to accept such ballots so long as they are

²²⁴ <https://www.flsenate.gov/Session/Bill/2025/1535>.

²²⁵ *Id.*

²²⁶ FL S.B. 1486, 2025 Sess., § 1 (adopting FLA. STAT. 101.733(4)).

²²⁷ *Id.* (adopting FLA. STAT. 101.733(4)(a)).

²²⁸ *Id.* (adopting FLA. STAT. 101.733(4)(c)-(e)).

²²⁹ *Id.* (adopting FLA. STAT. 101.733(4)(b)).

“postmarked by or on election day and received within 2 days after election day,”²³⁰ and give voters up to 4 days after election day to cure any defects.²³¹

Second, the bill would have required the Department of State to create a webpage and hotline through which any voter in an affected county can request a vote-by-mail ballot.²³² It also directed the Division of Emergency Management to create its own webpage containing voting information, updated in real time, with specific instructions for voters in each affected county²³³—seemingly duplicating the work of Supervisors of Elections.²³⁴ Supervisors of Election, in turn, were mandated to notify voters if an election was rescheduled not only through mass communications such as their websites, but social media, e-mails, telephone calls, and text messages, as well.²³⁵

Third, the bill extended the mandatory early voting period from 8 to 12 hours each day in affected areas—a questionable idea since Supervisors already face the prospect of staffing shortages when hurricanes destroy people’s homes, force evacuations, and leave roads impassable.²³⁶ Election officials also must be able to conduct early voting starting 15 days before Election Day and continue it straight through Election Day.²³⁷ During that time, they must operate up to three early voting sites that would otherwise not meet statutory requirements, use mobile

²³⁰ *Id.* (adopting FLA. STAT. 101.733(4)(f)).

²³¹ *Id.* (adopting FLA. STAT. 101.733(4)(g)).

²³² *Id.* (adopting FLA. STAT. 101.733(5)(a)).

²³³ *Id.* (adopting FLA. STAT. 101.733(5)(e)).

²³⁴ *Id.* (adopting FLA. STAT. 101.733(4)(h), (5)(f), (8)).

²³⁵ *Id.* (adopting FLA. STAT. 101.733(2)).

²³⁶ *Id.* (adopting FLA. STAT. 101.733(5)(c)).

²³⁷ *Id.* (adopting FLA. STAT. 101.733(7)(a), (g)).

polling locations, and allow secure ballot intake stations (i.e., drop boxes) to operate outside of statutorily permitted hours.²³⁸ **Fourth**, the bill required the Secretary of State to establish “at least three strategic elections equipment reserves of voting systems” in various parts of the state to use if a county’s equipment is destroyed.²³⁹

The House version of this bill was referred to the Government Operations Committee, where it was indefinitely postponed and withdrawn from consideration.²⁴⁰ The Senate companion was indefinitely postponed and withdrawn in the Senate Ethics and Elections Committee.²⁴¹

VOTING RIGHTS IN ELECTION EMERGENCIES

Preparing for election emergencies is a “key part” of election administrators’ responsibilities.²⁴² Such emergencies may arise from a wide variety of circumstances, including hurricanes, earthquakes, widespread power outages, and even pandemics.²⁴³ In Florida alone, during the last two federal election cycles “five severe hurricanes hit different parts of the state, counties lost polling locations, voters were displaced from their homes, [and] infrastructure was severely diminished.”²⁴⁴ Disasters that occur shortly before, or during, the voting period may not only impede people from voting, but potentially impact an election’s outcome.²⁴⁵ There is no one-

²³⁸ *Id.* (adopting FLA. STAT. 101.733(7)(b)-(f)).

²³⁹ *Id.* (adopting FLA. STAT. 101.733(6)).

²⁴⁰ <https://www.flsenate.gov/Session/Bill/2025/1317/?Tab=BillHistory>.

²⁴¹ <https://www.flsenate.gov/Session/Bill/2025/1486>.

²⁴² Tr. 4/8/25, at 4 (statement of Comm’r Palmer).

²⁴³ *Id.*; Tr. 4/9/25, at 4 (statement of Sec. Byrd).

²⁴⁴ Tr. 4/9/25, at 4 (statement of Sec. Byrd).

²⁴⁵ Tr. 4/8/25, at 10 (statement of Ms. Patrick).

size-fits-all approach to addressing election emergencies because states' election codes and political cultures vary greatly.²⁴⁶ Measures that are effective in certain contexts or during certain types of disasters may fail in others. For example, while some advocates contend that secure ballot intake locations (i.e. drop boxes) can facilitate the return of vote-by-mail ballots, states cannot necessarily count on them following a storm surge or flood if they are “under 10 feet of water.”²⁴⁷

This Committee heard testimony from several witnesses with extensive firsthand experience in grappling with election-related crises. The Chair of the U.S. Election Assistance Commission, Donald Palmer, discussed the importance of addressing election emergencies and the range of resources the EAC offers to enable states to do so. Tammy Patrick, CEO for Programs at the Election Center, emphasized the need for election officials to have sufficient resources to respond to the range of crises they may face—particularly hurricanes and other extreme weather events. Karen Bell, the Executive Director of the North Carolina State Board of Elections, shared her state's experience in successfully conducting the 2024 presidential election in the wake of Hurricanes Helene and Milton. Florida Secretary of State Cord Byrd and Duval County Deputy Supervisor of Elections Justin Gicalone likewise testified about the resilience of Florida's electoral system following those disasters. The committee also received written testimony from several groups emphasizing that the electoral system must remain open and accessible to all voters despite the unusual obstacles natural disasters and similar crises can pose. Several key principles emerged from this testimony. ***First***, advance planning is necessary to enable election officials at all levels of government to respond effectively to election emergencies.²⁴⁸ States must have guidelines

²⁴⁶ Tr. 4/8/25, at 5 (statement of Comm'r Palmer).

²⁴⁷ Tr. 4/8/25, at 8 (statement of Ms. Patrick).

²⁴⁸ Tr. 4/8/25, at 8 (statement of Ms. Patrick); Tr. 4/8/25, at 26 (statement of Dir. Bell).

ensuring that county and municipal emergency plans—which should be in writing—are sufficiently thorough to address all relevant aspects of “preparedness and response.”²⁴⁹ Even when a disaster does not directly impact election-related personnel or equipment, emergency response efforts may impede administrators’ ability to conduct an election. For example, in one area hit by a hurricane, disaster response personnel commandeered all of the rental vans that election officials typically used to transport voting machines to polling places.²⁵⁰ Election officials were forced to find minivans and alternate means of transportation to prepare polling places for Election Day.

Planning can be facilitated through continuity-of-operations (“COOP”) resources offered by the U.S. EAC, such as tabletop simulations, trainings, and an “election scenario test deck” that allows officials to assess potential responses to various crises. Florida law already requires the Secretary of State to develop a statewide election emergency plan.²⁵¹ County officials in the state must similarly develop COOP plans which cover elections.²⁵²

Second, states must have a statutory framework to empower election officials to modify aspects of an impending or ongoing election to respond to emergencies while preserving the integrity of the process and public confidence in the outcome.²⁵³ When dealing with a crisis, election officials must act within the confines of the law, including any legally authorized

²⁴⁹ Tr. 4/8/25, at 4 (statement of Comm’r Palmer).

²⁵⁰ Tr. 4/8/25, at 9 (statement of Ms. Patrick).

²⁵¹ Fla. Stat. § 101.733(3); *see also id.* § 252.365(3).

²⁵² Tr. 4/9/25, at 7 (statement of Dep. Gicalone); *see also* Fla. Stat. § 252.38(1).

²⁵³ Tr. 4/8/25, at 5, 18, 21 (statement of Comm’r Palmer); Tr. 4/8/25, at 17-18 (statement of Dir. Bell).

emergency measures. They do not have “carte blanche to just make up their own rules depending on the disaster.”²⁵⁴

For example, Florida election officials have never been permitted to accept ballots returned by e-mail or fax (except for certain military and overseas voters), even during hurricanes.²⁵⁵ The Bay County Supervisor of Elections ran afoul of this principle during the 2018 election cycle following Hurricane Michael. The Florida Department of State had issued a press release emphasizing this restriction. It declared, “In the hardest hit areas, communication via phone, fax and email remains challenging and would be an unreliable method for returning ballots. Additionally, past attempts by other states to allow voters impacted by natural disasters to fax or email ballots have been rife with issues.”²⁵⁶

Due to the hurricane, the Bay County election office had “lost a section of its roof and the building flooded. . . . Critical servers were taken apart, dried by sunshine and cleaned with toothbrushes.”²⁵⁷ Because the hurricane rendered the county’s designated polling locations unusable, Supervisor Mark Anderson designated five Election Day “supercenters,” including two churches, open to all of the county’s voters regardless of their precinct.²⁵⁸ He also accepted 147

²⁵⁴ Tr. 4/9/25, at 14 (statement of Sec. Byrd).

²⁵⁵ *Id.*

²⁵⁶ Fla. Dep’t of State, Press Release, *Secretary Detzner Outlines Plan for Voters in Counties Severely Impacted by Hurricane Michael* (Oct. 18, 2018), <https://dos.fl.gov/communications/press-releases/2018/secretary-detzner-outlines-plan-for-voters-in-counties-severely-impacted-by-hurricane-michael/>.

²⁵⁷ Steve Contorno, *Florida Elections Official Who Allowed Hurricane Michael Survivors to Vote by Email Stands by Decision*, TAMPA BAY TIMES (Dec. 5, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/12/05/how-did-floridas-panhandle-pull-off-an-election-after-a-hurricane-a-ground-zero-election-official-explains>.

²⁵⁸ Supervisor of Elections Mark Anderson, *Hurricane Michael Voting Information – Bay County 2018 General Election – Election Day Voting*, <https://files.floridados.gov/media/700213/election-day-bay-polling-sites.pdf>.

ballots by fax and 11 by e-mail.²⁵⁹ Voters in other counties devastated by the hurricane were not given those opportunities.²⁶⁰ The fax and e-mail votes were included in both the initial unofficial tallies as well as the recount results.²⁶¹

“Democratic gubernatorial candidate Andrew Gillum . . . expressed outrage that some voters in hurricane-ravage Bay County had been allowed to vote by email against state rules.”²⁶² Democratic Senator Bill Nelson, who lost re-election that year, sued Anderson for copies of those ballots,²⁶³ but the case was dismissed for failure to prosecute without the court making any substantive rulings.²⁶⁴ The likelihood of such controversies recurring in the future can be reduced by a state statute expressly prohibiting election officials from adopting emergency measures which contravene other statutory or regulatory restrictions, even during an emergency, unless expressly

²⁵⁹ Samantha J. Gross, *Bill Nelson Sues for Fax, Email Voting Records from Bay County*, TAMPA BAY TIMES (Nov. 14, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/11/14/bill-nelson-sues-over-florida-hurricane-victims-fax-email-voting/>; Kate Sullivan, *Florida County Hit by Hurricane Accepted Votes by Email and Fax, Contrary to State Rules*, CNN POLITICS (9:47 EST, Nov. 12, 2018), <https://www.cnn.com/2018/11/12/politics/florida-bay-county-vote-by-email-fax-hurricane>.

²⁶⁰ Elizabeth Koh, *Top Election Official in Hurricane-Ravaged Bay County Allowed Some “Displaced” People to Vote by Email, Fax*, THE LEDGER (Nov. 13, 2018), <https://www.theledger.com/story/news/politics/elections/state/2018/11/13/top-election-official-hurricane-ravaged-bay-county-allowed-some-displaced-people-vote-by-email-fax/8385768007/>.

²⁶¹ See Collin Breaux, *Andersen Defends Email Ballots, Office Finishes Recount*, PANAMA CITY NEWS HERALD (Nov. 12, 2018), <https://www.newsherald.com/story/news/politics/elections/2018/11/12/bay-county-soe-defends-email-ballots-after-hurricane-michael-finishes-recount/8394039007/>; see also Supervisor of Elections, Bay County, Florida, *Election Historical Records – 2010 to 2019* (General Election, November 6, 2018, Election Results & Manual Recount Results), <https://www.bayvotesfl.gov/research-data/election-historical-records>.

²⁶² *Florida County, Devastated by Hurricane Michael, Allowed Voting by Email*, FOX 13 TAMPA BAY (Nov. 13, 2018), <https://www.fox13news.com/news/florida-county-devastated-by-hurricane-michael-allowed-voting-by-email>; see also *Florida Elections: Andrew Gillum Upset Over 150 People Displaced by Hurricane Michael Voting by Email*, ASSOC. PRESS (Nov. 12, 2018), <https://www.tcpalm.com/story/news/politics/elections/2018/11/12/florida-elections-150-people-displaced-hurricane-michael-vote-email/1982829002/>.

²⁶³ Gross, *supra* note 259; see also <https://law.osu.edu/electionlaw/litigation/documents/Nelson-11-14-18%20complaint.pdf>.

²⁶⁴ *Bill Nelson for US Senate v. Bay County Supervisor of Elections Office*, <https://trellis.law/case/12005/18001038ca/bill-nelson-for-us-senate-vs-bay-county-supervisor-elections-office>.

authorized to do so pursuant to the state's election emergency laws. Likewise, state law should clearly identify particular actions that, even in response to a natural disaster or other election emergency, may not be authorized or performed by the Governor, Secretary of State, county supervisor of elections, state judge, or other official. Examples of such prohibited actions may include allowing domestic voters to receive or return ballots by e-mail or fax, suspending requirements for voters to confirm their identities at polling places or when submitting requests for vote-by-mail ballots, automatically distributing vote-by-mail ballots (as opposed to ballot request forms) to all people in the voter database, and using emergency write-in ballots (which are effectively blank pieces of paper).

More broadly, states can ensure their election systems are sufficiently robust to withstand many kinds of disasters by offering a range of secure voting methods and allowing voting over a limited period of multiple days, rather than focusing almost exclusively on in-person voting occurring on a single day.²⁶⁵ States that offer multiple different voting procedures should generally encourage in-person voting for people who are physically able to appear at polling places because it eliminates the potential for disputes concerning the loss, delayed return, or validity of absentee or mail ballots, and facilitates quicker determination of election results.²⁶⁶

By establishing election emergency laws in advance of a crisis, legislatures can identify the particular official or agency they trust to address unexpected disasters and the types of responses they wish to authorize or prohibit.²⁶⁷ State election emergency laws can authorize relocation of polling locations, suspend residency or advance training requirements for poll

²⁶⁵ See Tr. 4/8/25, at 7 (statement of Ms. Patrick).

²⁶⁶ See Richard H. Pildes, *Election Law in an Age of Distrust*, 74 STAN. L. REV. ONLINE 100, 112 (2022).

²⁶⁷ Tr. 4/8/25, at 5, 18 (statement of Comm'r Palmer).

workers, adjust canvassing procedures, extend the period for early voting, authorize additional methods for the return of absentee or mail ballots, allow the use of vote centers rather than precinct polling places for Election Day voting, or provide other opportunities for people to securely vote.²⁶⁸ When a disaster destroys polling locations or otherwise renders them unusable, election officials should be required to ensure, to the extent reasonably possible under the circumstances, that replacement locations are accessible to elderly and disabled voters.²⁶⁹ The new facilities should also be secure enough to both protect election officials and prevent tampering with the ballots or other voting-related materials to preserve the integrity of the election.²⁷⁰ Additionally, election officials must be prepared to “go old school” by using printed materials when electricity, Internet service, or cellular service is unavailable.²⁷¹

Transparency can help prevent emergency authority from being used in a partisan manner.²⁷² Election emergency statutes should allow the extension or postponement of elections or voting periods only when no other potential rule modifications would be sufficient to allow an election to substantially proceed.²⁷³

States must provide adequate opportunity to vote for first responders who are primarily responsible for dealing with election-related crises. This includes both states that are themselves hit by disasters, as well as states whose emergency personnel are dispatched to other jurisdictions

²⁶⁸ Tr. 4/8/25, at 5 (statement of Comm’r Palmer); Tr. 4/8/25, at 17, 20 (statement of Dir. Bell); Tr. 4/9/25, at 4-5 (statement of Sec. Byrd).

²⁶⁹ Tr. 4/8/25, at 10 (statement of Ms. Patrick); Tr. 4/8/25, at 15, 22 (statement of Dir. Bell).

²⁷⁰ Tr. 4/8/25, at 8 (statement of Ms. Patrick).

²⁷¹ Tr. 4/8/25, at 16 (statement of Dir. Bell).

²⁷² Tr. 4/8/25, at 20 (statement of Ms. Patrick).

²⁷³ See *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam); see also Morley, *supra* note 102, at 616.

to deal with disasters there.²⁷⁴ Florida is relatively well-situated in this respect. State law allows a voter or their designee to obtain a vote-by-mail ballot in person after the deadline for such requests if an emergency arises that prevents the voter from appearing at an early voting location or their Election Day polling place.²⁷⁵

Third, communication is an essential element of a state's election emergency response.²⁷⁶ Election officials must update voters about all changes concerning voter registration, the requirements for requesting vote-by-mail ballots, early voting availability, and Election Day polling place locations.²⁷⁷ Because voters may not have Internet access in the aftermath of an emergency, election officials should be prepared to use alternate means of communication like sandwich boards, AM radio, and door hangers.²⁷⁸ Election officials may also work with disaster assistance personnel to convey information about voting opportunities to displaced populations who have been temporarily relocated to shelters.²⁷⁹ Florida's Supervisors of Election provide voters with emergency-related information in multiple languages and formats tailored to disabled voters.²⁸⁰ The Florida Department of State also provides information during emergencies through social media and a voter hotline.²⁸¹

²⁷⁴ Tr. 4/8/25, at 5 (statement of Comm'r Palmer).

²⁷⁵ Fla. Stat. § 101.62(3)(d)(5).

²⁷⁶ Tr. 4/8/25, at 4 (statement of Comm'r Palmer); Tr. 4/8/25, at 25 (statement of Ms. Patrick); Tr. 4/9/25, at 8 (statement of Dep. Gicalone); Tr. 4/8/25, at 16 (statement of Dir. Bell) (advocating "over-communicat[ing]").

²⁷⁷ Tr. 4/9/25, at 8 (statement of Dep. Gicalone).

²⁷⁸ Tr. 4/8/25, at 15, 31 (statement of Dir. Bell); Tr. 4/9/25, at 19 (statement of Dep. Gicalone).

²⁷⁹ Tr. 4/8/25, at 22-23 (statements of Dir. Bell and Comm'r Palmer).

²⁸⁰ Tr. 4/9/25, at 19-20 (statement of Sec. Byrd).

²⁸¹ Tr. 4/9/25, at 6 (statement of Sec. Byrd); Tr. 4/9/25, at 8 (statement of Dep. Gicalone).

It is likewise important for election officials at all levels of government to remain in contact with each other to determine how to best allocate resources and restructure the electoral process.²⁸² Open communications lines with the post office and local law enforcement,²⁸³ emergency services personnel, IT services, the National Guard, local fire departments, the vendors who sold and maintain the voting machines and other election-related equipment, and “federal partners like CISA and the EAC and the FBI” can reduce friction and maximize the possibility of eligible citizens participating in an election.²⁸⁴ One of the most important messages for election officials to convey to emergency services personnel is that voting in most jurisdictions generally starts well in advance of Election Day.²⁸⁵ Communications may occur through a variety of mechanisms including periodic huddles, hubs, conventions, and stand-ups.²⁸⁶ In case computer systems become inaccessible during a disaster, election officials should have hard-copy lists of addresses and phone numbers for both workers in their own jurisdictions and colleagues in other counties.²⁸⁷ It may even be necessary for county officials to travel in person to the homes of polling place workers to communicate with them if telephone service is unavailable.²⁸⁸

Fourth, election offices vary in terms of their personnel and resources, so horizontal cooperation among Supervisors of Election is often a critical component of conducting elections

²⁸² Tr. 4/8/25, at 25 (statement of Ms. Patrick).

²⁸³ See Tr. 4/9/25, at 8, 10 (statement of Dep. Gicalone).

²⁸⁴ Tr. 4/8/25, at 15 (statement of Dir. Bell); Tr. 4/8/25, at 10 (statement of Ms. Patrick).

²⁸⁵ Tr. 4/8/25, at 15 (statement of Dir. Bell).

²⁸⁶ Tr. 4/8/25, at 12 (statement of Dir. Bell).

²⁸⁷ Tr. 4/8/25, at 17 (statement of Dir. Bell).

²⁸⁸ Ibid.

in the wake of a disaster.²⁸⁹ When such mutual aid fails, state officials should have the resources to temporarily replace “electronic pollbooks, . . . election management systems, and voting systems” for impending elections.²⁹⁰ The North Carolina State Board of Elections, for example, has “response kits” which are effectively mobile offices for county election officials. They include equipment to provide an Internet connection via satellite as well as laptops and other election-related technology.²⁹¹ Dedicated state funding can help ensure election officials have the resources necessary to prepare for, and respond to, emergencies.²⁹²

Fifth, recruiting and retaining competent, experienced election officials in the wake of disasters can be challenging. Election officials themselves can be impacted by a natural disaster, including both personal injury as well as the destruction of their homes.²⁹³ Approximately one-third of jurisdictions, particularly small rural areas, lack a full-time employee for their election office, meaning their election administrator may simultaneously be involved in disaster response.²⁹⁴ These staffing challenges are exacerbated by the fact that half of election officials report that they know a colleague who has left the field due to threats of physical violence.²⁹⁵ The lack of experienced election officials, whether due to a disaster, threats of violence, or otherwise, makes it harder for localities to effectively respond to election emergencies.²⁹⁶

²⁸⁹ See Tr. 4/8/25, at 16 (statement of Dir. Bell); Tr. 4/9/25, at 18 (statement of Sec. Byrd).

²⁹⁰ Tr. 4/8/25, at 6 (statement of Comm’r Palmer); Tr. 4/8/25, at 7 (statement of Ms. Patrick).

²⁹¹ Tr. 4/8/25, at 17 (statement of Dir. Bell).

²⁹² Tr. 4/8/25, at 25 (statement of Comm’r Palmer); Tr. 4/8/25, at 11, 26, 28 (statement of Ms. Patrick); Tr. 4/8/25, at 17, 20-21, 28 (statement of Dir. Bell).

²⁹³ Tr. 4/8/25, at 9 (statement of Ms. Patrick).

²⁹⁴ Tr. 4/8/25, at 11 (statement of Ms. Patrick).

²⁹⁵ Tr. 4/8/25, at 7 (statement of Ms. Patrick).

²⁹⁶ *Ibid.*; Tr. 4/8/25, at 26 (statement of Dir. Bell).

FINDINGS AND RECOMMENDATIONS

Findings

#1. Natural disasters, pandemics, power or internet failures, and other such emergencies can create substantial impediments to voting and threaten the fundamental constitutional right to vote. Senior citizens, the disabled, and others may face special burdens and hurdles in attempting to vote under such circumstances.

#2. The record does not contain any evidence to suggest that members of communities impacted by natural disasters faced racial disparities in voting in the aftermath of an election emergency.

#3. Florida election officials have successfully conducted elections despite a wide range of election emergencies, ranging from four hurricanes during a single election season to a global pandemic. Responses to election emergencies have been implemented in a professional, non-partisan manner.

#4. Florida has several statutes addressing election emergencies, but relies primarily on executive orders issued by Governors on a case-by-case basis during declared emergencies that modify or suspend certain statutory provisions which otherwise govern the electoral process.

#5. The election system will be more stable, predictable, and capable of inspiring public confidence if the state is able to rely on election emergency plans, statutes, and regulations rather than litigation to respond to natural disasters and other crises.

#6. The impact of natural disasters is magnified when a county's ballots, ballot marking devices, scanners, tabulators, e-books, or other equipment for polling places are damaged or destroyed.

#7. Flexibility and fairness are essential when responding to an election emergency. Because the nature of emergencies can substantially differ, the range of appropriate responses can likewise vary.

Recommendations

#1. *The Secretary of State should ensure that local election officials have adequate training in addressing potential election emergencies. He should also assess specific types of information or preparations that Supervisors of Election should include within their own emergency plans, and ensure that election officials throughout the state take full advantage of the resources offered by the U.S. Election Assistance Commission.*

#2. *The state legislature should consider appropriating funds to the Secretary of State to allow the purchase of backup election equipment in case the equipment in one or more counties is damaged or destroyed.*

#3. *Whenever possible, election officials should address unusual substantial burdens or risks caused by an election emergency through modifying particular rules governing the electoral process, rather than rescheduling, delaying, or extending the period for voting in an election. Postponing or extending elections are extreme remedies of last resort. The legislature should consider amending Florida's Election Emergency Act to reflect this principle, particularly for primary or general elections for state or federal office.*

#4. *When the Governor, Secretary of State, or other authorized officials change or modify the rules governing an election, the Supervisors of Elections for the affected counties should notify voters of these changes not only through the Internet and mass media announcements, but also, to the extent feasible under the circumstances, pre-recorded phone calls, texts, social media messages, and/or e-mails to voters based on contact information in voters' registration records.*

#5. *The legislature should identify minor, technical, specific measures that election officials may take during a declared emergency, such as suspending residency or training requirements for polling place workers or authorizing the late designation of early voting locations, without the need for express authorization in an emergency-specific Executive Order. More serious, discretionary, or potentially partisan seeming measures, such as the suspension of requirements intended to preserve the security or integrity of the election, should be prohibited unless specifically authorized by the Governor or Secretary of State.*

#6. *The legislature should consider expressly identifying particular election-related measures that neither the Governor, Secretary of State, nor Supervisors of Election may unilaterally authorize even as a response to a declared state of emergency (absent a change to state law). Potential election emergency "redlines" to consider may include prohibitions on: Internet and fax voting for domestic voters, completely suspending voter self-identification requirements when requesting vote-by-mail ballots or presenting at a polling location, automatically mailing vote-by-mail ballots without request to all records in the registration database, third-party vote gathering (sometimes colloquially referred to in the press as "ballot harvesting"), or other similar measures that may either create risks to the integrity of the election or undermine public perception as to the fairness of the process.*

#7. *The legislature should authorize a study of how particular past disasters impacted voter turnout in the affected regions to identify additional potential ways of mitigating the burdens and facilitating voting by affected populations. Additionally, the legislature should direct the Secretary of State's office to adopt regulations to ensure that turnout in elections conducted during future declared emergencies is measured and the efficacy of various responses determined.*

#8. *When modifying the rules governing the electoral process, the Governor, Secretary of State, and election officials, as appropriate, should ensure all eligible citizens have a reasonable opportunity to safely cast their ballots while avoiding unnecessary, or unnecessarily extensive, changes to the generally applicable rules.*

#9. *The legislature should consider adopting rules specifically regarding the impact of natural disasters or other such crises on candidate qualifying periods and state campaign finance*

restrictions (i.e., additional fundraising and/or spending may be necessary if an election period is unexpectedly delayed or extended due to a disaster).

#10. The Secretary of State should work with other Secretaries of State, both directly as well as through national organizations of election officials, to identify best practices for responding to election emergencies and, as appropriate, recommend to the legislature any changes to state law necessary to adopt such practices in Florida.

APPENDICES

Records relating to this study are available here:

<https://usccr.box.com/s/fph1d2ia9jvyeyaoiarn213732ohwmfbj>

A. Briefing materials

- i. Transcripts
- ii. Agenda
- iii. Minutes
- iv. Panelist presentations

B. Written testimony

- i. All Voting is Local
- ii. Common Cause Florida
- iii. Disability Rights Florida
- iv. Southern Poverty Law Center

C. Committee member statements

- i. Zack Smith, Brad McVay, and Debbie Maken joint statement

Appendix C: Committee Member Statements

U.S. COMMISSION ON CIVIL RIGHTS
Florida Advisory Committee

REPORT ON ELECTION EMERGENCIES AND THE RIGHT TO VOTE IN FLORIDA

STATEMENT OF ZACK SMITH, BRAD McVAY, and DEBBIE MAKEN CONCURRING

Another year. Another report.¹ Making sure citizens—and only citizens—are able to vote after an emergency (such as a natural disaster) should be uncontroversial. Ditto for the idea that a state’s legislature, as the primary promulgator of election rules and procedures, should set guardrails on when a state’s governor may declare an election-related emergency and what actions the governor and other officials may take after such a declaration.

Florida Officials Doing Fine Under Current Guidelines

To that end, much of the Committee’s current report proves to be uncontroversial. Though we wouldn’t have phrased all ideas in exactly the same way the Committee chose to (for example, it’s unclear who qualifies as part of “disadvantaged communities” referenced in the report),² we largely agree—or at least don’t object to—the Committee’s recommendations. But as the Committee’s Findings show, and the Report itself admits, there’s no “evidence to suggest that members of communities impacted by natural disasters faced racial disparities in voting in the aftermath of an election emergency.”³ Moreover, the Committee found that “Responses to election emergencies have been implemented in a professional, non-partisan manner.”⁴ This means that

¹ Report on Election Emergencies and the Right to Vote in Florida, Florida Advisory Committee to the U.S. Commission on Civil Rights (Aug. 2025) [hereinafter Majority Report].

² Majority Report at 1.

³ Ibid. at 48 (Finding #2)

⁴ Ibid. (Finding #3).

Florida officials are already doing well, operating within the guidelines and parameters the Legislature has established.⁵

Accurate and Up-to-Date Voter Rolls Are Crucial

One area that received no attention in the Committee’s Report is the important role that up-to-date and accurate voter registration lists play in helping election officials respond after a disaster. The Committee heard testimony, and commonsense says, that accurate voter registration lists play a vital role in helping officials respond after an emergency.⁶ Florida’s Secretary of State, Cord Byrd, made clear that accurate voter rolls are “important . . . in fair weather, but they’re even more important when we have a natural disaster.”⁷ He explained that “knowing who the available pool of voters are . . . [i]t’s just an added security measure to know the pool of the electorate prior to election day as opposed to some states that allow for same-day registration.”⁸ He also explained that accurate voter rolls help election administrators quickly contact voters after an emergency to provide crucial information.⁹

⁵ Zack Smith, Statement for the Record, Voting in America: Access to the Ballot in Florida, House Committee on Administration (Jun. 12, 2022), <https://www.heritage.org/testimony/voting-america-access-the-ballot-florida>.

⁶ Zack Smith, Testimony, House Bill 1264 Would Make Indiana’s Elections More Secure, House Committee on Elections and Apportionment, Indiana General Assembly, <https://www.heritage.org/election-integrity/report/house-bill-1264-would-make-indianas-elections-more-secure> (stating that “Maintaining accurate voter rolls is one of the most essential tasks necessary for safe and secure elections”).

⁷ Transcript of Florida Advisory Committee Briefing No. 2 (Apr. 9, 2025) (Testimony of Florida Secretary of State Cord Byrd), at 15.

⁸ Ibid.

⁹ Ibid.

Florida Has Taken Many Key Steps to Maintain Accurate Voter Registration Lists

Fortunately, Florida has been at the forefront of implementing commonsense measures to maintain accurate voter registration lists.¹⁰ Among other actions, state officials:

- compare statewide voter registration lists with DMV lists¹¹;
- compare statewide voter registration lists with state correction department lists (for felons who remain ineligible to vote)¹²;
- compare statewide voter registration lists with state vital records¹³;
- compare statewide voter registration lists with the Social Security Administration death record¹⁴;
- compare and verify the residence address on all new voter registration forms with county tax records or other residential address databases to ensure that the address is not actually commercial or industrial in nature, or a vacant or undeveloped lot in a residential area¹⁵;
- investigate the registrations of individuals registered at the same address with only slight discrepancies in their name¹⁶;

¹⁰ See, e.g., State Scorecard: Florida, Election Integrity Scorecard, The Heritage Foundation (last visited Aug. 27, 2025).

¹¹ Fla. Stat. Ann. §§ 97.053(6), 98.093(2)(g).

¹² Fla. Stat. Ann. §§ 98.075(5), 98.093(2)(f).

¹³ Fla. Sta. Ann. §§ 98.075(3)(a)(1), 98.093(2)(a).

¹⁴ Fla. Stat. Ann. § 98.075(3)(a)(1).

¹⁵ Fla. Stat. Ann. §§ 98.015(12), 98.045(4).

¹⁶ Fla. Admin. Code Ann. R. 1S-2.039(3).

- regularly report on voter registration maintenance procedures¹⁷;
- use the U.S. Postal Service’s National Change of Address (NCOA) system to find voters who have moved from their registered address¹⁸;
- share voter registration information with multiple other states to compare its voter registration data to remove or put in suspense individuals who are registered in multiple states;
- ask on the state voter registration form for registrants to identify their previous address of registration;
- notify the previous registration office of an applicant’s new registration¹⁹;
- make voter registration lists available to candidates, political parties, nonprofits organizations, and the public; and
- limit the state’s online voter registration only to individuals who have a state driver’s license or nondriver’s license photo ID issued by the DMV.²⁰

Additionally, state agencies routinely report to the Florida Department of State evidence of non-citizenship, such as when a person indicates non-citizen status in response to a state-issued jury notice or when law enforcement discovers during the course of an investigation that a non-citizen has registered to vote. Moreover, Florida’s Department of Highway Safety and Motor Vehicles (DHSMV) provides weekly updates to the Florida Department of State and includes information

¹⁷ County election officials must certify biannual list maintenance activities to the Florida Department of State. *See* Fla. Stat. Ann. § 98.075(8)(a).

¹⁸ Fla. Stat. Ann. § 98.065(2). All Florida counties currently use NCOA information throughout the year for list maintenance purposes. There is a 90-day window before a federal election when they do not.

¹⁹ Fla. Stat. Ann. §§ 98.045(2)(b), 97.073(2).

²⁰ Fla. Stat. Ann. § 97.0525.

identifying those persons who during the preceding week presented evidence of non-United States citizenship to the DHSMV. The Florida Department of State then uses the federal Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) database to confirm that the person is not a U.S. citizen. Once confirmed, the Florida Department of State then forwards that information to the appropriate local supervisor of elections to remove that individual from the voter rolls.

Further Steps Florida Officials Should Consider

And while Florida does many things very well to maintain the accuracy and integrity of its voter registration lists, Florida officials might consider taking several additional actions.²¹ Where necessary, the Legislature should pass appropriate legislation and, otherwise, officials should:

- compare statewide voter registration lists with state welfare and public assistance agencies to find information relevant to registration such as address changes, deaths, citizenship status, or other factors affecting eligibility;
- check to see how many individuals are registered at an address to find any anomalies, such as large number of individuals registered at a single-family home;
- use commercially available data such as from credit card agencies to verify voter registration information;
- use electronic poll books, which include photographs of the registered voters; and
- pass a state law that conditions requests from federal courts for the state's voter registration or DMV lists to use for federal juries on an agreement by the federal courts to notify state election officials if an individual on that list is found to be disqualified because of a felony conviction or non-citizenship.

²¹ See, e.g., State Scorecard: Florida, Election Integrity Scorecard, The Heritage Foundation (last visited Aug. 27, 2025).

While state officials currently use DHS's SAVE database to verify the citizenship of those who register to vote, the Florida Legislature should pass legislation codifying this requirement that state officials utilize that database to confirm an individual's citizenship when that person submits a voter registration application before the individual is added to the voter rolls.

Conclusion

All-in-all, the findings of the Committee confirm that Florida officials have done well working within the current framework when responding in the aftermath of emergencies impacting elections. In many ways, Florida continues to be a leader in making sure citizens can exercise their right to vote while also maintaining the safety and integrity of the election process.

For the foregoing reasons, we concur in the Committee's Report.

**Florida Advisory Committee to the
United States Commission on Civil Rights**



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