

Testimony of

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on

Election Contingency Plans: What Have We Learned and Is America Ready?

**before the
Subcommittee on Elections
of the
Committee on House Administration
of the
United States House of Representatives**

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Madame Chairwoman Lofgren and distinguished Members of the Subcommittee, thank you for your invitation to testify on election contingency plans. My name is Dawn Roberts and I submit this written testimony as Florida's Assistant Secretary of State and Chief of Staff for the Florida Department of State. Prior to serving in my present capacity, I was the Director for the Division of Elections in Florida during the 2004 and 2006 election cycles. In Florida, the Division of Elections is a program area within the Department of State.

Under Florida law, the Secretary of State is the chief election officer of the state and, as such, has various responsibilities under the Florida Election Code (Chapters 97 – 106, Florida Statutes). One of the primary responsibilities of the Secretary is to obtain and maintain uniformity in the interpretation and implementation of the elections laws. The Florida Legislature has granted the Secretary of State with broad rule-making authority in order to provide "uniform standards for the proper and equitable interpretation and implementation of the requirements of chapters 97-102 and chapter 105 of the Election Code." (section 97.012, Florida Statutes). The Division of Elections (the Division) works on a daily basis to provide assistance and direction to the 67 supervisors of elections in the state. Sixty-six of these supervisors are elected constitutional officers and one is an appointed official. By providing consistent guidance to the supervisors of elections, the Department of State (the Department) strives to ensure uniformity in the application of the election laws throughout the state.

I have been asked to describe the contingency plans that were in place for the 2004 Presidential Election prior to the landfall of Hurricane Charley and what lessons were learned. I have also been asked to describe the contingency plans in place for the 2008 Presidential Election. In order to put things in perspective, it is important to go back further than 2004.

On August 24, 1992, approximately 10 weeks before the General Election, Hurricane Andrew made landfall in South Florida causing extraordinary devastation. In the chaos brought about by Hurricane Andrew, Miami-Dade County filed a lawsuit against the State in an effort to postpone the statewide primary election. The county took the position that the primary election should be postponed statewide and questions arose as to whether the Governor had the authority to suspend the primary. On August 31, 1992, the Florida Supreme Court affirmed the final order of the Circuit Court in Dade County, et. al. v. State of Florida, et. al., and cases consolidated therewith, delaying until September 8, 1992, the first primary election scheduled in Miami-Dade County for September 1, 1992.

Interestingly enough, the 1992 Florida Legislature had passed legislation creating the Florida Elections Emergency Act (sections 101.731 – 101.74, Florida Statutes), but the law was not in effect for the 1992 fall elections. The law was contingent upon the passage of a proposed amendment to the State Constitution by the electors at the general election to be held in November 1992 expanding the authority of the Governor to suspend or delay elections in emergency situations. The amendment passed. (Article VI, Sec. 5, Florida Constitution).

The 2004 Elections and Hurricanes Charley, Frances, Ivan and Jeanne

2004 Primary – Tuesday, August 31, 2004 2004 General – Tuesday, November 2, 2004

The 2004 Hurricane Season was challenging, to say the least. Florida was hit by four hurricanes in approximately a six-week period. Hurricane Charley made landfall just north of Captiva Island on Friday, August 13, 2004, just two weeks before the Florida 2004 Primary to be held on Tuesday, August 31, 2004. Hurricane Frances made landfall at Hutchinson Island, south of Port St. Lucie, on Sunday, September 5, 2004. Hurricane Ivan made landfall at Gulf Shores, Alabama, on Thursday, September 16, 2004, ravaging Pensacola, Florida and other areas in the Florida Panhandle. The fourth hurricane, Hurricane Jeanne, made landfall near Stuart on Saturday, September 25, 2004.

By all accounts, Florida was certainly more prepared in 2004 than it was in 1992 from an emergency management perspective, but were we really prepared for the 2004 hurricane season from an elections contingency perspective? The Florida Elections Emergency Act had been on the books for twelve years. The Division of Elections adopted rules setting forth an election emergency contingency plan in 1994. (Chapter 1S-9 Elections Emergency Contingency Plan, Florida Administrative Code). The Department had a Continuity of Operations Plan (COOP) on file with and approved by the Florida Division of Emergency Management. From an elections contingency perspective, the simple answer was that we weren't as prepared as we thought.

The Florida Elections Emergency Act and the Elections Emergency Contingency Plan set forth the procedures to follow when the Governor issues an executive order declaring a state of emergency or impending emergency, and the determination has been made to *suspend or delay* an election. As we approached the 2004 elections, the Department did not have a plan in place if the determination was made not to suspend or delay the election after a declaration of a state of emergency.

Southwest Florida, and particularly Charlotte, Desoto, and Hardee counties received the worst devastation of the season. In the aftermath of Hurricane Charley, the Department in coordination with the State EOC developed the Elections Emergency Contingency Plan for Counties Affected by Hurricane Charley, and the missions in support of the plan were entered into the State EOC database. A planning committee was convened with members from the Governor's staff, Division of Elections, Division of Emergency Management, Division of Forestry and Florida Department of Law Enforcement. It should be noted that all of the State agencies were committed to ensuring an uninterrupted elections process and to working cooperatively within the framework of a unified effort of all state and local partner agencies. The planning committee developed an Incident Action Plan and that plan was presented to the supervisors in the affected counties.

The Governor directed the Secretary to activate the Elections Emergency Contingency Plan for those counties affected by Hurricane Charley to provide for flexibility of early voting, modified existing filing deadlines for candidates and campaigns as well as poll watchers, and to allow members of the Florida National Guard deployed to the affected counties to submit their absentee ballots by fax. The Department worked closely with the State Emergency Operations Center (EOC) to marshal considerable resources through the Federal Emergency Management Agency (FEMA) by concentrating our efforts on assessing needs and determining where resources could be put to best use. Despite the tremendous challenges, the determination was made at both the State and local level that if at all possible, every effort was to be made to go forward with the August 31st primary as scheduled.

Department personnel were assigned to the State EOC to act as liaisons for staff members deployed to the affected counties. We were in constant contact with the supervisors to ascertain election readiness. As Director for the Division of Elections, I toured the affected counties with the Secretary to gain first hand knowledge of what their unique needs and challenges were, and what technical assistance to provide. The counties most impacted by Hurricane Charley were Charlotte, DeSoto, Hardee and Polk Counties. The three major issues identified as most critical with respect to election readiness were what we began referring to as the three "P's": (1) Precinct/Polling Place Availability; (2) Power Restoration; and (3) Poll Worker Availability. With our staff assisting, all four supervisors modified their Election Day plans to meet their specific need including combining polling places where necessary to ensure access to voters.

Some of the technical assistance provided by the Department and the Division of Elections included, but was not limited to the following:

- Assisted the county supervisors of elections in identifying which precinct building facilities and/or locations in the affected counties could not be utilized for the primary election.

- In coordination with the county supervisors of elections identified precincts to be included in a super precinct and the locations, whether a permanent building or a temporary facility.
- Developed a plan for notifying voters of the continuation of the primary election process and changes to polling place locations.
- Coordinated with state and local emergency officials and other state agencies to provide power generators and tents where needed.
- Produced Public Service Announcements distributed in the affected areas and neighboring counties to recruit poll workers.
- Provided an aerial service that flew an informational banner over the impacted regions that read, *Vote, Aug. 31 INFO 1-866-308-6739*.
- Distributed handouts in the impacted counties that included voter hotline information.
- Provided technical equipment and staff support in Charlotte, DeSoto, Hardee and Polk counties.
- In Charlotte County, a base of operations was established in rented Recreational Vehicle Campers from the supervisor of elections office. A team of three Department employees, a retired supervisor of elections, and a former supervisor of elections were based in the county to provide assistance.
- In Hardee County, the supervisor of elections passed away shortly after the storm and the supervisor's office was nearly destroyed. The Department arranged for a former supervisor of elections to assist the newly appointed supervisor in conducting the election. The supervisor of elections for Citrus County offered assistance with poll worker training.
- Contracted vendor support.

Southeast Florida suffered two hurricanes, Frances and Jeanne, 19 days apart. Palm Beach, Martin, St. Lucie and Indian River counties were the worst hit. There was longer time to prepare for the November 2, 2004 General Election than when Hurricane Charley hit Southwest Florida and the damage was not as concentrated. In addition, these larger counties had more infrastructures in place for disaster recovery. The Department assisted the counties with assessing precinct/polling place availability and with power restoration.

Northwest Florida probably received the second worst devastation of the season. Hurricane Ivan caused catastrophic damage to the coastal areas. With 47 days prior to the General Election, most of their election contingency needs were able to be handled through the local EOC's. The Department assisted Escambia and Santa Rosa counties with precinct/polling place assessment and power restoration.

Lessons Learned

The first disaster is the emergency itself, whether natural or caused by human beings. The second disaster can occur if you don't have a plan to deal with the first disaster. The first disaster may not be preventable but the second disaster is. Florida was successful in conducting the 2004 Primary and General elections as scheduled. It took a tremendous amount of effort and we were fortunate to have such a skilled emergency management team within the Division of Emergency Management and a state of the art State Emergency Operations Center.

Cooperative partnership with the county supervisors of elections is critical to the successful implementation of an elections contingency plan. After the 2004 hurricane season, the Department scrutinized the administration of the elections from an emergency management perspective. We began an active dialogue with the county supervisors of elections and their association, the Florida State Association of Supervisors of Elections (FSASE), on best practices for an elections contingency plan. The importance of regular communication between the Department and the supervisors of elections in the preparation for a statewide election cannot be overstated.

Elections are conducted at the local level and the supervisors of elections are the experts. Therefore, a successful elections contingency plan must begin at the local level. Our job at the Department is to increase awareness and share what we learned from the 2004 hurricane season; to provide technical assistance; to have a continuity of operations plan with clearly defined mission essential functions; and to regularly assess election preparedness.

Are We Ready for the 2008 Elections?

As a result of the lessons learned during the 2004 hurricane season, election preparedness has become a top priority of the Division of Emergency Management. Elections literally have a "seat at the table" at the State Emergency Operations Center. In every drill conducted, the question is asked – is there a scheduled election anywhere in the state that could be impacted by the mock emergency and if so, what issues need to be addressed should the Governor issue an Executive Order declaring an emergency.

The Department has an overall continuity of operations plan and each Division, including the Division of Elections, has a continuity of operations plan. In addition, the Division of Elections has developed and implemented a Regional Response Plan for elections. The mission of the Division of Elections Regional Response Plan (DOERRP) is to support and assist the 67 county

supervisors of elections through coordination with the State and local emergency management organizations, the United States Department of Justice and other critical stakeholders to ensure that the supervisors of elections have the resources and instruction necessary from the State to open polling facilities; verify voter status; and conduct elections without delay in the event of a disaster.

The purpose of the DOERRP is to provide guidelines, establish protocols, develop operational concepts, identify tasks, list responsibilities, and provide logistical support in an efficient and effective manner necessary for a coordinated regional response in support of an emergency incident occurring prior to, during or immediately following a general election. The DOERRP applies to the 67 counties supervisors of elections that have signed the plan and it is intended to provide a framework for the state in its effort to respond and recover from a catastrophic incident. Finally, the supervisors of elections have entered into memorandums of understanding to provide election assistance to one another in the event of an emergency.

As previously stated, communication between state and local election officials is critically important in preparing for a statewide election. Prior to every General Election, regularly scheduled conference calls are conducted between the Department and the supervisors of elections to discuss election preparedness and election-related issues. For this election cycle, the Department has already held numerous conference calls with all 67 supervisors of elections and will continue to do so as we approach the fall elections. In addition, Florida Secretary of State Kurt S. Browning and Division of Elections' staff have been conducting site visits and meeting with county supervisors of elections and touring their facilities, with particular focus on those counties converting from touch screen voting systems to optical scan voting systems. As always, the Department stands ready to assist our local election officials in anyway necessary to ensure a successful 2008 Primary and General election.

In conclusion, Madam Chairwoman, I would like to take this opportunity to thank this committee for conducting this hearing today on such an important topic. Election preparedness and election contingency planning should be on the minds of every election official in this country. It is a top priority of Governor Crist, Secretary Browning and our 67 supervisors of elections. Florida is well-prepared for the 2008 Primary and General Elections.

Thank you for allowing me to testify, and I look forward to answering any questions you might have.