

Presidents, Disasters and Policy

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The President's Emergency Powers

In the United States, presidential emergency powers are referred to the authority and actions that the president may exercise in extraordinary circumstances: terrorist attack, epidemic, labor strike, natural disaster, etc. Although no specific emergency powers were included in the U.S. Constitution, the president's oath of office requires him to "preserve, protect, and defend" the Constitution and to uphold its provisions. In times of crisis, presidents may declare that the Constitution authorizes them to exercise powers usually granted to the legislative or judicial branches of government, thus fusing all governmental power in the executive branch for the duration of the crisis. However, a crisis warranting this action would have to constitute a tremendous state of emergency and the presidential action would be subject to possible judicial challenge by the U.S. Supreme Court. The terror attacks of 9/11/01 may have "constituted a tremendous state of emergency" and arguably a "state of war." Presidential emergency powers exercised in capturing and incarcerating alleged terrorists who were part of the organizations that committed the terror attacks of 9/11/01, denying those individuals (even if U.S. citizens) right to counsel and right to trial, has already drawn judicial review by federal courts and the Supreme Court itself. The U.S. Patriot Act of 2002 was passed by Congress and signed by the President to provide legitimation of, and set limits to, the range of counter-terrorism authority the executive branch of government could exercise.

The principal authorization of emergency powers for the president resides in Article II, Section 3 of the Constitution, which states in part that "he shall take care that the laws be faithfully executed," and Section 2, which grants him power as Commander-in-Chief of the armed forces. President Lincoln justified the actions he took after the outbreak of the Civil War by claiming that that emergency made it necessary for him to exercise legislative powers until he could call Congress back into session. During World War II, President Franklin Roosevelt declared that unless Congress repealed a certain provision in a war-related economic measure, he would treat the law as if it had been repealed for the duration of the emergency, in effect threatening Congress with the loss of its legislative powers.

Actual disasters and emergencies through history have helped to develop, refine, and expand the range of presidential emergency powers. In democracies, catastrophes, major disasters, and emergencies tend to centralize power within executive for various periods of time. When decisions must be made with great speed in order to react to crisis circumstances, most citizens and their elected representatives either encourage or tolerate a centralization of great decision making authority in the national chief executive. The National Emergency Powers Act of 1976 sought to limit past emergency powers granted to the president via precedent, however, presidents continue to hold vast emergency powers. Presidents, as mentioned, may exercise emergency powers but are subject to checks by Congress or the Supreme Court. The American system of "checks and balances" discourages presidents from abusing their emergency powers.

Presidential Declarations of Major Disaster or Emergency

A PRESIDENTIAL DECLARATION of major disaster or emergency has far reaching consequences because it opens the door to federal assistance. The declaration specifies one or more political jurisdictions; it delineates exactly who is eligible for relief in the first place. The presidential declaration also contains an initial statement about the kinds of assistance people may request. This is extremely important because it determines whether disaster victims will receive direct cash grants, housing supplements, emergency medical care, disaster unemployment assistance, etc. It also specifies whether or not state and local governments themselves are eligible to receive federal disaster assistance to replace or repair public facilities and infrastructure. Certain non-profit organizations may also qualify for federal disaster aid of various types.

A presidential declaration is also vitally important to those directly affected by the disaster or emergency. It confers on them an "official" VICTIM STATUS needed to qualify for federal aid. To the public, including those not directly affected by the disaster, the president's declaration significant for other reasons. At a basic level, a declaration signifies that a major event has occurred, requiring the attention and resources of the federal government. The content of the presidential declaration structures popular perceptions about the nature and scope of the disaster.

Declaration Process

Under customary procedure, a governor must ask the president to declare a major disaster or emergency. However, the Stafford Act of 1988 and several preceding laws, empower the president to declare a major disaster or emergency before a governor asks for one or in the absence of a governor's request altogether. History demonstrates that since the first presidential disaster declaration was issued in May 1953, until December 2001, about 1 in every 3 governor requests have been turned down by the president. The record since 1988, following adoption of the Stafford Act, demonstrates that governors have about a 1 in 4 chance that their request will be denied. In other words, since 1988, the odds a governor's request is approved by the president have risen. Certainly, the broader authority to judge what is or is not a disaster under the Stafford Act has provided presidents since 1988 with more latitude to approve unusual or "marginal" events as disasters or emergencies. This may be one reason for the higher rate of governor request approvals since 1988.

The term, "White House Package" conveys some useful information about the process and about the information the president may choose to consider before deciding whether to "approve" or "turndown" a governor's request for a declaration.

WHITE HOUSE PACKAGE refers to the documents prepared for the President's action on a Governor's request for a major disaster or emergency declaration. The package includes the governor's request. That request contains a memorandum from the FEMA Director to the president that summarizes significant aspects of the event, presents statistics relative to damage and losses, outlines the contributions made by federal, state, local and private agencies, highlights unmet needs for which the governor seeks federal assistance, and presents a recommended course of action for the president. The package also contains appropriate letters and announcements related to the

action, including the FEMA director's recommendation to the president regarding whether to approve or deny the governor's request.

A TURNDOWN is referred to as the action authorized by the president and signed by the Director of FEMA, which denies a governor's request for a major disaster or emergency declaration. When the president approves a governor's request for a major disaster or emergency, that notification comes from the President directly. However, when the president turns down a governor's request for a declaration of major disaster or emergency, that information is passed back to the director of FEMA (today within the Department of Homeland Security) who then officially notifies the governor that his or her request has been turned down by the president. Governors have the choice of appealing the turn down. A small fraction of these appeals yield presidential approvals, but the vast majority of appeals are denied.

Criteria and Declarations

The Federal Emergency Management Agency has developed a general set of criteria by which the president may judge gubernatorial requests for declarations of major disasters or emergencies. However, the president is NOT BOUND to use or follow those criteria.

Usually the process begins when a governor, assisted by his or her state emergency manager officials, petition the president for a declaration. This request goes through FEMA region offices (with region officials making their own recommendation), then to FEMA headquarters, where the FEMA Director and his staff examine the request and form their recommendation to the president. Each governor requesting a declaration is expected to demonstrate to FEMA and the president that the disaster or emergency, of whatever nature, is beyond the state's ability to adequately respond so that federal assistance is needed.

However, it is difficult, and sometimes impossible, for FEMA officials to ascertain that an event warrants a presidential declaration unless Preliminary Damage Assessments (PDAs) are first conducted and analyzed or unless media coverage of the event makes it obvious a major disaster has occurred. Moreover, it is difficult to judge whether state and local areas are capable of recovering on their own if disaster damage has not been assessed beforehand. Consequently, sometimes the president issues declarations of major disaster or emergency without documentary evidence that the disasters have met FEMA's criteria.

The Disaster Relief Act of 1970 expanded the definition of disaster to include not only major disasters but also EMERGENCIES. In 1988, the Stafford Act added new categories of emergency. Today, under federal disaster management, "emergency" applies to any event determined by the president to require federal assistance as stipulated by the Disaster Relief and Emergency Assistance Amendments of 1988 (The Stafford Act). Some emergencies are of less magnitude and scope than major disasters, however, emergency requests are usually predicated on the need for either pre-event mobilization or for immediate use of federal resources for life safety, rescue, or the protection of property during an ongoing disaster. In addition, the president may issue emergency declarations to address ongoing events that the president later approves as declarations of major disaster. For example, President Clinton immediately approved the Governor of

Oklahoma's request for an emergency declaration for the Murrah Office Building bombing in 1995 and with White House approval a major disaster declaration was issued for the event later in the same day of the bombing.

According to former FEMA Director James Lee Witt, each event or incident is evaluated individually on its own merits. Criteria set forth in the Stafford Act for evaluation are:

- (1) The severity and magnitude of the incident;
- (2) The impact of the event; and
- (3) Whether the incident is beyond the capabilities of the State and affected local governments.

For many years, elements of the process and criteria have been purposely left flexible and subjective to allow the President discretion to address a wide range of events and circumstances. FEMA Director Witt once remarked that there are no definitive objective evaluators that could be used in the declaration process, although he recommended that FEMA endeavor to establish some. Without more explicit criteria, governors and their state disaster officials have little to guide them in estimating whether to go ahead with a request for presidential declaration of major disaster or emergency. Often governors have little basis for concluding in advance whether their petition for a presidential declaration of major disaster or emergency will be approved or denied. However, as long as a governor or other state officials know that the state can afford to shoulder the 25% share of the 75/25 federal aid formula contained in a presidential disaster declaration, they have an incentive to request a federal declaration. Some have alleged that State officials logically minimize their own capacity and capability to address disaster in petitioning for federal help by crying poor. However, in fairness, in the absence of explicit criteria that set forth deservedness for a presidential declaration of major disaster or emergency, governors and other state officials have only the precedents of presidential approvals and turndowns to guide them as to what the president may approve or turn down.

Many "emergency" declarations, more than major disaster declarations, are likely to stretch the rule that states must lack the capacity to recover on their own to qualify for a presidential declaration. In times when state and local budgets are tight or in deficit, and some incident occurs, emergency offers governors a flexible path for securing federal help. FEMA records disclose that snowstorms, windstorms, minor flooding, and drought are the most common types of emergency declarations. Emergencies also allow politically subjective determinations to come into play.

The following extended quotation provides an illuminating snapshot of FEMA's ongoing effort to develop criteria helpful in recommending Presidential Disaster Declarations. This recommendation is aimed at governors and other parties involved in the declaration request process. FEMA officials hope that governors and others will consider the FEMA criteria. They want governors to make requests for declarations consistent with their criteria. FEMA officials anticipate that this advice, if heeded by governors, will reduce the probability that a governor will request a Presidential Declaration of Major Disaster or Emergency only to be turned down by the president. However, regardless of FEMA's recommendations to the president on any state request, the decision to approve or turn down a governor's request for a Presidential Declaration of Major

Disaster or Emergency is the president's alone. In other words, under existing law the president is free to approve a governor's request for a declaration whether the request conforms to FEMA's "recommended criteria" or not.

When a disaster is sufficiently large to overwhelm state and local resources, a governor may request a presidential disaster declaration in order to receive federal disaster assistance under the Robert T. Stafford Disaster Relief and Assistance Act. In such instances, the Federal Emergency Management Agency (FEMA) provides a recommendation to the president regarding whether federal disaster assistance is warranted [September 1, 1999, Federal Register, Vol. 64, No. 169, pp. 47697-47699]. FEMA issued a final rule that establishes the factors it will consider when evaluating a governor's request.

Noting that this rule does not affect presidential discretion in declaring disasters and does not change published regulations and policies established under the Stafford Act, the agency announced that the rule will be used by the agency to evaluate requests as they apply to its Public Assistance Program and its Individual Assistance Program. Under the Public Assistance Program, FEMA will examine the estimated cost of the assistance, using such factors as the cost per capita impact within the state. They have used a figure of \$1 per capita (county level loss) as an indicator that the disaster is of sufficient magnitude to warrant federal assistance. Owing to inflation and other considerations, the threshold has risen to \$2.50 per capita county level loss. This figure will be adjusted annually based on the Consumer Price Index. In addition, FEMA established a minimum threshold of \$1 million in public assistance damage per disaster, because the agency believes that even the least populated states can cover that level of damage.

FEMA will also evaluate the impacts of a disaster at the county, local government, and tribal level, particularly if critical facilities are involved; the amount of insurance coverage in force; the degree of hazard mitigation undertaken prior to the disaster; recent disaster history; and the availability of other federal assistance.

Under the Individual Assistance Program, factors FEMA will consider include:

- * Concentration of damage
- * Degree of trauma
- * Impacts on special populations, such as low-income people, the elderly, or the unemployed
- * Assistance received from voluntary agencies
- * Amount of insurance coverage
- * Average amount of individual assistance by state

Copies of the ruling can be found in the Federal Register or on-line at <http://www.access.gpo.gov> <<http://www.access.gpo.gov>>.

The word "overwhelmed" is subject to different interpretation. It is extremely difficult to determine whether a municipality, county or state is "overwhelmed" by a disaster or emergency.

The word overwhelmed connotes “incapacity.” A dictionary definition of "overwhelm" is to turn over or cover up, to upset or overthrow, to cover over completely, to submerge, to overcome by superior force or numbers, and to overpower in thought or feeling (Webster's Dictionary, 1988: p. 842). Presumably, if a municipality, county or state can respond to and recover from a disaster or emergency using their own resources, they are NOT overwhelmed. However, the term "overwhelmed" is not easily defined within the realm of intergovernmental relations. Even the worst disasters seldom terminate or suspend the operation of state and local government. In many disasters, state and local governments suffer significant economic losses and government aid to disaster victims is fully justified and deserved, but state and local governments are rarely overwhelmed.

Therefore, "overwhelm" is a disputatious term. Some governors have requested presidential declarations of disaster on the grounds that they must maintain a balanced budget or because they have no "rainy day" money to pay for the recovery costs. Municipalities and counties have grown accustomed to having huge public employee overtime costs and debris removal paid for by the federal government under presidential declarations. Governors are tempted to ask for declarations in advance of the onset of disaster because they reason that county and municipal disaster response will be more robust if federal subsidization of response costs is assured ahead of time. Senators and congress people have frequently sought to intercede at the presidential level in hope of helping their respective governors win approval of their presidential declaration requests.

FEMA's deservedness criteria could provide a guide for governors, but only if the president makes declaration decisions in conformity with FEMA's recommendations. As noted, the president is not compelled to do so.

Assuming the president does generally follow the recommendations, governors may get the signal that asking for declarations when losses or damage are less than the recommendations runs the embarrassing risk of having a request turned down. Yet, most governors would not judge a turndown as great embarrassment, particularly in an era when presidential disaster declarations seem to be more freely issued and especially when the upside of requesting may provide significant federal benefits to the state.

Marginal Disasters

Important politically subjective determinations come into play in the matter of “marginal” disasters. Marginal disasters are those events that are of far less than catastrophic, that are not matters of national security, and that are near or within the response and recovery capacity of the state or states in which they occur. The analysis of 54 years of presidential disaster declarations discloses that there have been hundreds of marginal disasters, some granted a presidential declaration and some turned down. Specific case examples indicate that there are definite losers in the competition for presidential declarations.

The record of approvals and turndowns raises questions about how gubernatorial requests for presidential declarations are considered, particularly for marginal disaster denials. For many years there have been no objective criteria governing approvals and turndowns, and as stated above,

only the president who received the governor's request knows the basis upon which a request is approved or denied.

It is not possible to ascertain statistically from government records whether or not fatalities played a role in the president's decision. FEMA does not keep records of fatalities and injuries sustained in declared disasters or emergencies. Should one ask for such information, FEMA people routinely refer them to the American Red Cross.

The FEMA Director may make recommendations to the president that a request be turned down because it does not meet the Stafford Act's general criteria of eligibility, yet the ultimate decision resides with the president. This invites political subjectivity into presidential decision-making.

Governors sometimes seek presidential declarations for drought, crop failures, minor wildfires, small floods, beach erosion, mudslides, and a wide range of other calamities that cannot be considered catastrophes, major disasters, or emergencies under the "overwhelm" or "beyond the capability of the state/local government to adequately respond" condition. For all the gubernatorial requests for presidential declarations (including major disasters, emergencies, and fire suppressions), about 66.2% are approved and 33.8% are turned down. This covers the time span of presidential declarations from May 1953 to December 2003. Those records of approvals and turn-downs contain many possible candidates for marginal disaster declaration. (Sylves and Waugh, 1996, p. 33).

Media Coverage and Electoral Issues

Over the past 20 or more years, presidents have taken a greater interest in disasters, particularly major ones. President Carter issued a presidential disaster declaration while flying over Washington State's Mt. St. Helens volcanic eruption. President Reagan was once photographed shoveling sand into a gunnysack on the banks of a flooding Mississippi River not long after issuing a presidential declaration of major disaster. President George H.W. Bush was filmed commiserating with victims of the Loma Prieta earthquake in a heavily damaged San Francisco neighborhood, weeks after having issued a declaration for the quake. Television showed President Clinton at shelters and inspecting freeway damage in the days after he issued a declaration for the Northridge earthquake. Similarly, President George W. Bush visited the Pentagon and the World Trade Center "ground zero" in the days after the 9/11 terror attacks to exhibit compassion, concern, and resolve to prevent future events. Today, Americans expect their president to both dispatch federal disaster help and personally visit damaged areas. It is now customary for most of the president's cabinet, especially officials heading disaster-relevant departments, to visit major disaster sites.

Such visits have both political and administrative consequences. The G.H.W. Bush administration's awkward handling of the Hurricane Andrew disaster in south Florida, despite the benefit of a presidential visit to the devastated areas, was alleged to have nearly cost Bush Florida's electoral votes in the 1992 election. California, another state that has had a disproportionately large number of disasters and emergencies over the years, had at the time of the Northridge quake 54 electoral votes (more than any other state), one fifth the total needed to win the presidency. These

factors do not go unnoticed in the White House. How presidents manage disasters, and how responsive they are perceived to be to the needs of victims, have far-ranging political and electoral consequences. This underlines the importance of the role of the FEMA Director. How well the Director manages their agency's response to disaster is of great political importance to the President and his staff (Sylves and Waugh, 1996, p. 27).

The Clinton administration, like others before, appreciated the role the news media have in covering disasters. Both Pres. Clinton and FEMA Director James Lee Witt emphasized post-disaster public relations, in part because they believed the President's public image was at stake in disaster circumstances. The public requires reassurance that a president is doing all he can to help disaster victims. How the FEMA Director and their staff manage the federal response, and how they portray this effort to the media, shapes public opinion of both the presidency and the agency. Major disasters customarily pull the nation together, encourage a centralization of authority, and often improve the president's approval ratings in public opinion polls. Such activity promotes public awareness of the disaster across the state, nation, and world. It underscores the legitimacy of the government's response and it may convey a greater sense of urgency to responders and to those considering the offer of help.

White House Organization

The White House staff consists of key aides the president sees daily - the chief of staff, congressional liaison people, press secretary, national security advisor, and a few other political and administrative assistants. Actually there are about 600 people who work on the White House staff who the president rarely sees but who provide a wide range of services.

Most presidents rely heavily on their staffs for information, policy options, and analysis. Different presidents have different relations with, and means of organizing, their staffs. President Carter was a "detail man" toiling ceaselessly over memoranda and facts. President Reagan was the consummate "delegator" who entrusted tremendous responsibilities to his staff. President George H.W. Bush fell somewhere between the Carter and Reagan extremes and was considerably more accessible than President Reagan. President Clinton, like Carter, was a detail man, but someone who also ran an open White House with fluid staffing (Lineberry, 1995, pp. 312-313). President George W. Bush is a delegator who models a chief executive officer approach to management and who prefers a less open White House.

In any disaster or emergency, many of these offices are likely to engage in facilitating the president's work. Clearly, within the Political Offices, all units of the Communications office would be tasked, especially the Press Secretary. Intergovernmental Affairs and Public Liaison would also be heavily involved.

Also helping the president, within the Policy Offices domain, the Domestic Policy Council and Cabinet Affairs would most likely take on emergency or disaster management duties. Support Services would probably call on Scheduling and Advance if the president were to make arrangements to visit the disaster area. Secret Service, Military and Medical may also play roles.

Various White House offices and officials come and go with the passage of time and the change of president. In the past, the White House staff and other administration officials have stepped in to fill post-disaster power vacuums. For example, President GHW Bush assigned John Sununu, his White House Chief of Staff, the job of leading the federal government's response to the Loma Prieta earthquake in part because FEMA only had an acting Director at the time. Some three years later, President GHW Bush asked Transportation Secretary Andrew Card to lead federal response to Hurricane Andrew. Ironically, President GHW Bush's son, now President George W. Bush, appointed Andrew Card as his Chief of Staff. Who the president appoints to run FEMA, and now the Department of Homeland Security has major implications for federal management of disasters.

Presidents and FEMA Directors

President Clinton had a strong, close relationship his trusted friend, FEMA Director, James Lee Witt. President Clinton entrusted his former Arkansas emergency management director, Mr. Witt, with major federal emergency management responsibility. President George W. Bush assumed office in January 2001 and appointed Joseph Allbaugh as his FEMA director. Mr. Allbaugh served as a Bush presidential campaign director and as a staff director for Texas Governor, George W. Bush. Allbaugh too was a trusted disaster manager for President George W. Bush before and through the attacks of 9/11/01, but Allbaugh resigned the FEMA directorship just before FEMA was absorbed into the new Department of Homeland Security (DHS). Until recently, FEMA resided in the Emergency Preparedness and Response Directorate of DHS and was headed by Michael Brown. As of July 2005, Homeland Security Secretary Michael Chertoff reorganized his department such that FEMA has regained a limited degree of independence (outside any DHS directorate) and answers directly to the DHS Secretary. However, FEMA has lost some of its disaster mitigation programs and some preparedness functions.

In the 1990s, President Clinton officially added the FEMA Director to his Administration's weekly Cabinet meetings. This helped communicate to Cabinet officials that the President values emergency management and increased the FEMA Director's ability to coordinate government-wide support for disaster activities. This is crucial because before it was absorbed into the Department of Homeland Security in March 2003, FEMA, relative to many larger and more politically powerful federal departments and agencies had to lead through its ability to maintain presidential confidence and through its capacity to supervise and mediate the coordination of a host of federal, state and local organizations.

President George W. Bush, owing to the September 11, 2001 attacks, proposed melding FEMA, along with a variety of other federal agencies and offices, into the new Department of Homeland Security. Congress passed the Homeland Security Act of 2002 and by March 1, 2003, the Department of Homeland Security became a reality. DHS Secretary Tom Ridge, and today DHS Secretary Michael Chertoff, plays a major role, along with Michael Brown, in processing governor requests for presidential declarations of major disaster and emergency. DHS is a Cabinet level federal department and this gives the DHS Secretary and DHS itself considerably more political clout in managing declared disasters, and in coordinating disaster activities in conjunction with other federal agencies and officials.

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