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Be Prepared

By Norman J. Ornstein

AEI's election watcher Norman J. Ornstein follows the fortunes of the presidential and congressional candidates, commenting daily on campaign strategies and policies. But he also writes and speaks regularly about an issue that many members of Congress have chosen to ignore: the possibility of disruption of our election process through a terrorist attack or a natural disaster. Ornstein believes the United States is wholly unprepared for any such scenario, and he has urged Congress to focus its attention on the potential problems. Muddling through has worked thus far, he notes in this article, but it is "flat-out irresponsible" to continue to pay so little attention to the issue.

There are many things to be concerned about with the presidential election coming up in November. But there is one large, uncomfortable issue in particular that needs to be raised, one Congress really should consider in the coming months: what happens if there is a serious disruption of the election itself?

I have raised this issue before—namely in the months leading up to the 2004 election—and got some serious pushback. Some of it was focused on the idea that by raising the prospect of a disruption, I was notifying terrorists that this was a great target—putting up a flashing neon sign to invite an attack. The assumption here—that the terrorists out there are naïve or unsophisticated enough that this would give them a new idea—is almost absurd on its face, but it should have been demolished entirely with al Qaeda's carefully timed attack to disrupt and influence the Spanish elections. Some of the response I got was simple bluster: we will never postpone or alter our election plans, no matter what!

A much harsher reaction went to DeForest Soares, former chairman of the Election Assistance Commission, who was attacked for trying to create

unnecessary fears for political purposes when he raised the issue in a 2004 letter to then–secretary of homeland security Tom Ridge. But Soares simply saw and raised a real issue: if anything happens in a local area, a state, or several states to create disruption in an election, our thoroughly decentralized election process—combined with election officials who are often visible partisans themselves—could create a major nightmare and allow one of these officials to determine, by fiat, the outcome of a presidential contest.

Consider a couple of scenarios. In one, a terrorist attack occurs in a state like Ohio; the top Ohio election official, the secretary of state, decides to stop voting in and around Cincinnati but keeps voting going throughout the day in Cleveland. That decision shapes the outcome in Ohio, which in turn decides the presidency.

In another, a series of small-scale assaults on individual voters resembling the D.C. sniper attacks occurs early on election day, followed by a statement from al Qaeda that more such attacks will take place throughout the rest of the day. Turnout drops precipitously in many places, leaving the election decided by absentee votes and those who showed up in the first couple of hours of voting. Either outcome would be unacceptable, but there is no plan or thinking in place to come

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up with options or alternatives to fit these or other scenarios, which can also, of course, include natural disasters like hurricanes.

There are many things to consider. One is the legal authority to postpone or alter an election. On September 11, 2001, New York's primary elections were scheduled to take place; then-governor George Pataki unilaterally cancelled them midday, an appropriate action but one taken without any clear direct legal authority. Who should make the decision, and how, if such a catastrophe occurs? A serious examination of the legal authority to postpone an election statewide, locally, or nationally is long overdue. Congress, which has the authority to regulate the time, place, and manner of federal elections, needs to step up to the plate.

What if a national postponement were warranted? Clearly, we do not want such a decision being made by a president with a stake in the outcome, or by an attorney general chosen by that president, especially if the decision is made not pursuant to explicit legal or constitutional authority but by fiat. Congress could act, given its constitutional authority, but will not be in session on election day—and in the face of a challenge so severe that it required a national postponement, it is doubtful that members of Congress could get back to Washington to deal with the issue.

Congress really needs to grapple with this issue now. One idea is to create a blue-ribbon commission with the authority to convene and decide whether any action is necessary if there is a significant disruption of a national presidential or congressional election. The members would

have to be nominated by the president and confirmed by the Senate. It would require people who have public profiles and broad credibility—who would be seen as clearly willing to put the national interest over any partisan impulses. The group does not need to be large, and it would only convene, in person or through secure remote communication, in the case of an emergency on election day.

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That is not the only issue. We need a plan to ensure that there are backups of voter registration records, backup voting machines (what if the electrical grid goes out after a disaster or an attack?), and alternative polling places—in other words, we need insurance and preventive plans in local areas and in states, and we need Congress to provide funding to enable this planning.

No one wants to think about problems of this sort. It is much easier to wish it all away. After all, muddling through has worked before. But the world is different in the age of terrorism, and recent history and experience suggest that this problem is real. It is flat-out irresponsible simply to ignore it.