

# POLICY ESSAY

## A STORM IN CONGRESS: HOW PARTISANSHIP IMPACTS DISASTER RESPONSE

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*A week before the presidential election of 2012, Superstorm Sandy presented lawmakers with the challenge of putting politics aside in order to quickly respond to one of the largest natural disasters in the nation's history. It was surprising that this situation was a partisan issue, as natural disaster relief funding was traditionally immune to politicization. With the U.S. economy still recovering from the financial crisis of 2008 and pressure mounting on lawmakers to cut spending, a normally routine vote was delayed ninety-one days as lawmakers negotiated how to fund the Sandy recovery efforts. Divisions stemming from geography and from political and economic ideology played central roles in the development of the final spending measure. This Essay examines the political economics of legislating Sandy's disaster recovery and finds that opportunities for bipartisan cooperation in Congress are evolving away from a tradition of comity, towards confrontation. The Essay concludes by calling for a return to common sense practices when funding disaster assistance.*

### I. INTRODUCTION

It was October 29, 2012, just seven days before the presidential election. Democrats and Republicans had attended their party's conventions, selected candidates, and rallied voters nationally around each party's agenda. Just as the candidates employed their winning strategy, honed their final messages, and scheduled appearances to enhance their chances, Mother Nature halted their plans. Hurricane Sandy, later dubbed a "Frankenstorm," was not just any hurricane or "tropical storm." Sandy was an entirely unique event.<sup>1</sup> Sandy's considerable size and the specific lunar alignment formed a meteorological "black swan" unlike any storm seen in the North Atlantic

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<sup>1</sup> See Jason Hanna & Mariano Castillo, *How Sandy was Dubbed 'Frankenstorm'*, CNN (Oct. 26, 2012), <http://news.blogs.cnn.com/2012/10/26/how-sandy-was-dubbed-frankenstorm/> [<https://perma.cc/8WW2-2NCW>].

region.<sup>2</sup> Sandy caused damage that well exceeded the expectations of the best-trained experts,<sup>3</sup> including those who developed the nation's 100-year flood map estimates.<sup>4</sup>

The full moon on that ominous October evening resulted in tides swelling twenty percent higher than normal and amplified Sandy's storm surge.<sup>5</sup> Streets were flooded, trees and power lines were knocked down, and the Rockaway boardwalk was ripped apart. Along the New Jersey shore, people were left stranded in their homes and waited for emergency search teams to rescue them. One hundred twenty-two homes were destroyed in one fire in Queens.<sup>6</sup> Rampant flooding and ninety-four separate fires, mostly resulting from surging sea water coming in contact with power lines, left businesses decimated and residents homeless throughout the greater New York metropolitan area.<sup>7</sup> On December 6, 2013, in Washington, D.C., over a year after Sandy devastated the Northeast region, an analysis of data provided by the Federal Emergency Management Agency ("FEMA") showed that fewer than half of those affected who requested disaster recovery assistance actually received it. At that time, 30,000 residents of New York and New Jersey remained displaced.<sup>8</sup>

The effort to rebuild after a major natural disaster, like Hurricane Katrina or Superstorm Sandy, is a test of the nation's democratic institutions. Disasters of this size and scope require the coordination of countless local, state, and federal agencies and officials. In addition, the role of Congress, which serves as both an appropriator and a monitor of federal assistance, could not be more significant to the overall disaster relief effort.

<sup>2</sup> See Bryan Walsh, *Frankenstorm: Why Hurricane Sandy Will Be Historic*, TIME (Oct. 29, 2012), <http://science.time.com/2012/10/29/frankenstorm-why-hurricane-sandy-will-be-historic/> [<http://perma.cc/NHS3-9LVN>]; Tariq Malik, 'Frankenstorm' Full Moon: Hurricane Sandy's Impact Amplified by Lunar Event, SPACE.COM (Oct. 29, 2012), <http://www.space.com/18260-hurricane-sandy-full-moon-frankenstorm-surge.html> [<http://perma.cc/V7WR-5YFW>].

<sup>3</sup> Cf. Thomas Kaplan & Raymond Hernandez, *Cuomo, in Aid Appeal, Cites Broad Reach of Storm*, N.Y. TIMES (Nov. 26, 2012), <http://www.nytimes.com/2012/11/27/nyregion/governor-cuomo-says-hurricane-sandy-was-worse-than-katrina.html?mtref=www.nytimes.com&gwh=BE71FD2E8C90253F7802A14AE08B9086&gwt=pay> [<https://perma.cc/2GZZ-5CZ9>].

<sup>4</sup> See Malik, *supra* note 2.

<sup>5</sup> Tim Sharp, *Superstorm Sandy: Facts About the Frankenstorm*, LIVESCIENCE (Nov. 27, 2012), <http://www.livescience.com/24380-hurricane-sandy-status-data.html> [<https://perma.cc/VCM6-TYQZ>].

<sup>6</sup> See Barry Paddock, *Hurricane Sandy's 21 Most Serious Fires Caused by Sea Water Hitting Electrical Systems: FDNY*, N.Y. DAILY NEWS (Jan. 29, 2015), <http://www.nydailynews.com/new-york/sea-water-surge-behind-serious-sandy-fires-fdny-article-1.1226891> [<https://perma.cc/3VWD-NNZ7>].

<sup>7</sup> See *id.*; see also *Iconic New York Chocolate Company 'Madelaine' Finds New Life After Sandy*, CBS N.Y. (Jan. 29, 2015), <http://newyork.cbslocal.com/2015/01/29/iconic-new-york-chocolate-company-madelaine-finds-new-life-after-sandy/> [<https://perma.cc/M6AC-PBZ6>].

<sup>8</sup> See Patrick McGeehan & Griff Palmer, *Displaced by Hurricane Sandy, and Living in Limbo*, N.Y. TIMES (Dec. 6, 2013), [http://www.nytimes.com/2013/12/07/nyregion/displaced-by-hurricane-sandy-and-living-in-limbo-instead-of-at-home.html?\\_r=0](http://www.nytimes.com/2013/12/07/nyregion/displaced-by-hurricane-sandy-and-living-in-limbo-instead-of-at-home.html?_r=0) [<https://perma.cc/L7X8-6WRF>].

This Essay discusses the challenges faced by lawmakers to assist disaster survivors. Part II highlights the political climate surrounding massive disaster assistance appropriations measures. Part III focuses on solutions to the challenge of legislating relief and provides recommendations for future legislators to consider should the nation confront in the future an act of God comparable to the size and measure of Sandy and Katrina. Part IV concludes with recommendations for how Congress can proceed.

## II. THE POLITICAL CLIMATE SURROUNDING THE RESPONSE TO SANDY

For most of the last decade, national and political priorities have been focused on recovering from the most significant economic crisis since the Great Depression. The Great Recession and the politics of the recovery dominated the last two election cycles.<sup>9</sup> At the start of the 112th Congress in 2010, Republicans had their largest majority since 1947.<sup>10</sup> A new coalition of Republicans, buoyed by arguments for limited government, became a powerful faction within the greater Republican membership.<sup>11</sup>

Republicans lost some seats in the 2012 election, but Representative Boehner was reelected as Speaker of the House. This situation provided impetus for Republicans to reprioritize supply-side fiscal controls across government spending while freezing tax rates at historically low levels.<sup>12</sup> The arguments against raising the debt and raising taxes were so influential that in 2011 Congress cut government spending by nearly a trillion dollars over the next decade.<sup>13</sup> In just its first year—in 2013, just after Sandy hit—the sequestration resulted in about \$85 billion in cuts.<sup>14</sup>

The advancement of austerity in Congress was very apparent during the aftermath of Superstorm Sandy. The galvanizing effect of the storm led some to suggest that Sandy had influenced the outcome of the presidential election.<sup>15</sup> While Congress has been divided on broader fiscal issues, it has historically been responsive to the needs of the nation during times of disas-

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<sup>9</sup> See Ben Casselman, *The Big Issues of the 2016 Campaign: The Economy*, FIVETHIRTYEIGHT (Nov. 19, 2015, 7:00 AM), <http://fivethirtyeight.com/features/year-ahead-project/> [https://perma.cc/FME6-UP3T].

<sup>10</sup> See Kristina Peterson, *House Republicans Achieve Largest Majority in Decades*, WALL STREET J. (Nov. 5, 2014), <http://www.wsj.com/articles/house-republicans-achieve-largest-majority-in-decades-1415208289> [https://perma.cc/A4GM-2QLU].

<sup>11</sup> See Drew DeSilver, *What is the House Freedom Caucus, and Who's in It?*, PEW RES. CTR. (Oct. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/10/20/house-freedom-caucus-what-is-it-and-whos-in-it/> [http://perma.cc/8JUW-727Q].

<sup>12</sup> Press Release, Office of the Speaker of the House, Speaker Boehner: Budget Control Act Meets 'Cut-More-Than-You-Hike' Standard & Has No Tax Hikes (July 31, 2011), <http://www.speaker.gov/press-release/speaker-boehner-budget-control-act-meets-%E2%80%99cut-more-you-hike%E2%80%99-standard-has-no-tax-hikes> [https://perma.cc/2EKL-6PQE].

<sup>13</sup> See Budget Control Act of 2011, 2 U.S.C.A. § 901a (West 2015).

<sup>14</sup> 159 CONG. REC. H957 (daily ed. Mar. 5, 2013) (Statement of Rep. Kildee).

<sup>15</sup> See Michael Barbaro & Michael Shear, *Storm Pushes Aside Presidential Politics, Mostly*, N.Y. TIMES (Oct. 30, 2012), <http://www.nytimes.com/2012/10/31/us/politics/storm-pushes-presidential-race-from-spotlight.html> [http://perma.cc/5A3E-7LGK].

ter.<sup>16</sup> From the days following the horrific events of September 11, 2001, to the congressional response to Hurricane Katrina, in times of crisis Congress has typically found a way to put the American public's interest ahead of political gamesmanship. It took Congress only seven days to appropriate funds in response to the attacks of September 11, 2001.<sup>17</sup> In 2003, Hurricane Isabel caused approximately \$5 billion in damage across the eastern seaboard.<sup>18</sup> Congress responded with disaster assistance within twelve days.<sup>19</sup> The first measure to appropriate funds for Hurricane Katrina, our nation's largest natural disaster, took only three days for Congress to rally behind. However, it took Congress ninety-one days to reach agreement on a response to Superstorm Sandy.<sup>20</sup>

Why was Sandy's response so different from other natural disasters? Many of my constituents wondered aloud if the Republican Congress balked at providing assistance to mainly Democratic-leaning states. I believe, however, the answer to this question is more likely that there had been a fundamental shift in the perspective of key lawmakers, regarding the responsibility of the federal government to provide aid to states in times of crisis. The strongest opponents of providing relief for Sandy were Republican lawmakers who were new to Congress, more than fifty percent of whom had served fewer than six years in Congress.<sup>21</sup> They were also fiscal conservatives who were elected to Congress on campaigns focused on reigning in "out of control" government spending. Their constituencies were comprised of activists who would hold them immediately accountable if they did not strictly adhere to fiscally conservative principles. Lastly, most had little to no experience with a natural disaster like Katrina or Sandy, which decimate local economies far outside the breadth and reach of state government's capacity to respond.<sup>22</sup>

These new Republican members hindered the passage of a bipartisan relief bill. On January 2, 2013, Speaker Boehner brought a \$60 billion spending measure to the floor only to see support for the measure crumble in a matter of minutes.<sup>23</sup> Surprised and outraged by the objections raised by

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<sup>16</sup> See BRUCE R. LINDSAY & FRANCIS X. MCCARTHY, CONG. RESEARCH SERV., CONSIDERATIONS FOR A CATASTROPHIC DECLARATION: ISSUES AND ANALYSIS 8 (2011), <https://www.fas.org/sgp/crs/homesecc/R41884.pdf> [<https://perma.cc/GV6P-5565>].

<sup>17</sup> See *id.*

<sup>18</sup> See DONALD L. EVANS, NAT'L OCEANIC & ATMOSPHERIC ADMIN., DEP'T OF COMMERCE, *Service Assessment: Hurricane Isabel, September 18-19, 2003*, at 2 (2004), <http://www.nws.noaa.gov/os/assessments/pdfs/isabel.pdf> [<https://perma.cc/SF9X-QQLP>].

<sup>19</sup> See LINDSAY & MCCARTHY, *supra* note 16.

<sup>20</sup> See Raymond Hernandez, *Congress Approves \$51 Billion in Aid for Hurricane Victims*, N.Y. TIMES (Jan. 28, 2013), <http://www.nytimes.com/2013/01/29/nyregion/congress-gives-final-approval-to-hurricane-sandy-aid.html> [<http://perma.cc/7557-6D5C>].

<sup>21</sup> DeSilver, *supra* note 11.

<sup>22</sup> See *id.*

<sup>23</sup> Lauren Fox, *House Speaker John Boehner Punts on Sandy Relief Legislation*, U.S. NEWS & WORLD REP. (Jan. 2, 2013), <http://www.usnews.com/news/articles/2013/01/02/house-speaker-john-boehner-punts-on-sandy-relief-legislation> [<http://perma.cc/J87U-EVLM>].

members of his own party, New York Representative Peter King urged political donors not to give money to the Republican majority.<sup>24</sup> His fellow Republican, Governor Chris Christie of New Jersey, accused House Republican leadership of “duplicity, and selfishness” and stated that “[the stalled funding measure] is why the American people hate Congress.”<sup>25</sup>

Earlier in the session, Speaker Boehner angered some House Republicans by calling for a vote on a tax measure, already approved by the Democrat-controlled Senate, that did not sufficiently cut spending.<sup>26</sup> Certain members of the party wanted party leadership to adhere to the Hastert Rule. The Hastert Rule, named for former Speaker Dennis Hastert, requires that any bill brought to the floor of the House have the support of the majority of the majority (in this case, Republican) membership.<sup>27</sup>

The Hastert Rule is, more broadly, an impediment to addressing our nation’s most pressing budgetary and social issues. At times, it can prevent bills with overwhelming bipartisan support from coming to the floor. While Republican lawmakers tout adherence to the Hastert Rule, there have been several notable departures from strict adherence to the Rule, especially when the political pressure of Republican leadership was great. The recent reauthorization of the Export-Import Bank,<sup>28</sup> the passage of the Electrify Africa Act of 2014,<sup>29</sup> and the passage of the Temporary Debt Limit Extension Act<sup>30</sup> are examples of cases in which the Hastert Rule was broken. The most notable exception to the Hastert Rule resulted in 2013’s budget compromise, which ended the first government shutdown in seventeen years.<sup>31</sup> This was the third longest<sup>32</sup> government shutdown in the history of our nation, lasting sixteen days, and was responsible for the furlough of as many as 850,000 government employees each day.<sup>33</sup>

The grip that pro-austerity arguments had on Speaker Boehner only broke when Democrats demanded that offsets for Sandy relief spending

<sup>24</sup> See Raymond Hernandez, *Stalling of Storm Aid Makes Northeast Republicans Furious*, N.Y. TIMES (Jan. 2, 2013), <http://www.nytimes.com/2013/01/03/nyregion/congressional-members-blast-house-for-ignoring-storm-aid-bill.html> [https://perma.cc/4PKK-Q8XG].

<sup>25</sup> *Id.*

<sup>26</sup> See *id.*

<sup>27</sup> See Molly Ball, *Even the Aide Who Coined the Hastert Rule Says the Hastert Rule Isn’t Working*, ATLANTIC (July 21, 2013), <http://www.theatlantic.com/politics/archive/2013/07/even-the-aide-who-coined-the-hastert-rule-says-the-hastert-rule-isnt-working/277961/> [https://perma.cc/7P6A-DT5N]. See generally *House Votes Violating the “Hastert Rule”*, N.Y. TIMES, <http://politics.nytimes.com/congress/votes/house/hastert-rule> [http://perma.cc/N6YH-W2MH].

<sup>28</sup> *House Votes Violating the “Hastert Rule”*, *supra* note 27.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> See CLINTON T. BRASS, CONG. RESEARCH SERV., SHUTDOWN OF THE FEDERAL GOVERNMENT: CAUSES, PROCESSES, AND EFFECTS 1 (2014), <https://www.fas.org/sgp/crs/misc/RL34680.pdf> [https://perma.cc/BB6Q-UN38].

<sup>32</sup> See Brett LoGiurato, *Obama to GOP: ‘Go Out There and Win an Election’*, BUS. INSIDER (Oct. 17, 2013, 11:34 AM), <http://www.businessinsider.com/obama-government-shutdown-debt-ceiling-crisis-end-2013-10> [https://perma.cc/44BA-L4ZP].

<sup>33</sup> See BRASS, *supra* note 31, at 16–17.

come from the Department of Defense.<sup>34</sup> These offsets were deemed an unpalatable alternative for the majority of Republicans and many Democrats who see funding national security as a non-negotiable priority. Ultimately, the House passed a \$50.5 billion dollar measure by a vote of 241 to 180.<sup>35</sup> In the end, 67 Republicans voted against the measure, while 161 Republicans voted with 193 Democrats to send the measure forward.<sup>36</sup> The final measure was signed by President Obama, on January 29, 2013, more than three months after Superstorm Sandy devastated twenty-four states.<sup>37</sup> With its signing, New York City, as well as surrounding communities in New York, New Jersey, Connecticut, and Pennsylvania—a region constituting seventeen percent of the nation's economy and including thirteen percent of its population—would be able to begin rebuilding.<sup>38</sup>

Sandy provided lawmakers with a golden opportunity to put partisanship aside, but the ninety-one days between Sandy and the congressional response was a public calamity that brought national attention to the ailing region's cries for assistance. New York Governor Andrew Cuomo said of the congressional response: "I believe [it] was a dereliction of duty. To leave New York and New Jersey and thousands of people in this holiday season on their own and abandoned is wrong, and disgraceful in a lot of ways. I think it was unprecedented."<sup>39</sup> Governor Cuomo, speaking on behalf of millions of survivors, was correct. Previous Congresses have routinely seized the opportunity to work together as a body to fund natural disaster relief. Most emergency disaster assistance measures prior to Superstorm Sandy had been voice voted in the House.<sup>40</sup> Voice voting is a parliamentary procedure that can only be employed when a measure receives unanimous support.<sup>41</sup> For example, the Bush administration requested \$51 billion of emergency assistance in response to Hurricane Katrina, a sum far larger than the post-Sandy request.<sup>42</sup> Congress voice voted the funding measure ten days after the hurri-

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<sup>34</sup> See Stephen Dinan & Sean Lengdell, *Sandy Funding Passes House; GOP is Denied Cost Offsets*, WASH. TIMES (Jan. 15, 2013), <http://www.washingtontimes.com/news/2013/jan/15/sandy-funding-passes-house-gop-denied-cost-offsets/> [<http://perma.cc/BF3L-92C7>].

<sup>35</sup> See *id.*

<sup>36</sup> H.R. 152 (113th): *Disaster Relief Appropriations Act, 2013*, GOVTRACK, <https://www.govtrack.us/congress/votes/113-2013/h23> [<https://perma.cc/9FSA-7T5B>].

<sup>37</sup> H.R. 152 (113th): *Disaster Relief Appropriations Act, 2013*, GOVTRACK, <https://www.govtrack.us/congress/bills/113/hr152> [<http://perma.cc/6DUP-H6EA>]; Alan Taylor, *Hurricane Sandy, Before and After, One Year Later*, ATLANTIC (Oct. 25, 2013), <http://www.theatlantic.com/photo/2013/10/hurricane-sandy-before-and-after-one-year-later/100616/> [<https://perma.cc/XA8M-QMHQ>].

<sup>38</sup> 159 CONG. REC. H100 (daily ed. Jan 15, 2013) (statement of Rep. Cole).

<sup>39</sup> See Hernandez, *supra* note 20.

<sup>40</sup> See, e.g., H.R. 3768 (109th): *Katrina Emergency Tax Relief Act of 2005*, GOVTRACK, <https://www.govtrack.us/congress/bills/109/hr3768> [<https://perma.cc/C8BL-9NB6>].

<sup>41</sup> See WILLIAM HOLMES BROWN ET AL., HOUSE PRACTICE: A GUIDE TO THE RULES, PRECEDENTS, AND PROCEDURES OF THE HOUSE 926 (2011).

<sup>42</sup> See Hernandez, *supra* note 20.

cane killed an estimated 1,800 people in 2005.<sup>43</sup> This vote was the first of several spending measures Congress approved that would ultimately total over \$60 billion in assistance for Hurricane Katrina's recovery funding.<sup>44</sup>

The notion that lawmakers had routinely put politics to the side in the past did not dissuade some Republicans from opposing the measure based on the principle of austerity. Review of the Sandy measure's vote showed that eighteen of the sixty-seven dissenters were first-term members, sworn in just days earlier.<sup>45</sup> Without the experience of previous responses to guide them, it may have been easy for these members to oppose Sandy's spending measure. However, of the forty-nine Representatives with a prior House record who opposed Sandy aid, at least thirty-seven had previously advocated for emergency aid following disasters that affected their own constituents.<sup>46</sup>

Among the most vocal advocates for austerity was Representative Mick Mulvaney of South Carolina. Having just completed his first term in Congress, Representative Mulvaney may have best summarized the pro-austerity position during debate of the Sandy spending measure when he stated:

In the United States of America, we do not have enough money to take care of our own citizens who need it. There's no rainy day fund. There's no savings. What ability we had to borrow money we blew through several years ago with trillion dollar deficits. We don't have enough money saved up to take care of our own people, and that's wrong. It's absolutely wrong.<sup>47</sup>

Similarly, his Republican colleague, Representative Tim McClintock, opposed the spending measure and stated, "A tragedy like Hurricane Sandy shouldn't be used for a grab-bag of spending."<sup>48</sup>

However, not all Republicans shared this sentiment. Representative Tom Cole from Oklahoma stated:

I think this is too often overlooked in this discussion, we have a national interest in getting this region on its feet as quickly as possible, not only because it's the right thing to do, and it certainly is that, but because it's the smart thing to do. Over 13 percent of our

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<sup>43</sup> See Lindsey Cook & Ethan Rosenberg, *No One Knows How Many People Died in Katrina*, U.S. NEWS & WORLD REP. (Aug. 28, 2015, 12:01 AM), <http://www.usnews.com/news/blogs/data-mine/2015/08/28/no-one-knows-how-many-people-died-in-katrina> [<http://perma.cc/Q7B4-LMY3>].

<sup>44</sup> Josh Wichert, *U.S. Sen. Menendez Says \$60 Billion Was Approved 10 Days After Katrina, But Sandy Aid Still Pending*, POLITIFACT (Jan. 3, 2013, 7:30 AM), <http://www.politifact.com/new-jersey/statements/2013/jan/03/robert-menendez/hurricane-sandy-aid-still-pending-us-sen-robert-me/> [<http://perma.cc/GL3J-U9AK>].

<sup>45</sup> Josh Israel, *37 Congressional Republicans Opposed Sandy Relief After Supporting Disaster Aid for Home States*, THINKPROGRESS (Jan. 7, 2013, 12:40 PM), <http://thinkprogress.org/economy/2013/01/07/1407641/37-congressional-republicans-opposed-sandy-relief-after-supporting-disaster-aid-for-home-states/> [<http://perma.cc/PJA4-766V>].

<sup>46</sup> *Id.*

<sup>47</sup> 159 CONG. REC. H125 (daily ed. Jan. 15, 2013) (statement of Rep. Mulvaney).

<sup>48</sup> 159 CONG. REC. H102 (daily ed. Jan. 15, 2013) (statement of Rep. McClintock).

citizens lived in the four most affected States that were damaged by Hurricane Sandy, and collectively, they produce over 17 percent of the wealth of this country. Having that area up, operational, and prosperous is critical to the prosperity of the entire country.<sup>49</sup>

Other prominent members of the Republican caucus shared Representative Cole's view, including Representative Hal Rogers of South Carolina, Chairman of the powerful House Appropriations Committee, who noted:

This is not the first major natural disaster nor unfortunately will it be the last. One of the great attributes of the American people has been our ability and willingness to come together time and time again to help victims of catastrophes recover. We've seen the havoc that Sandy has wrought on the residents of our Northeast region, and it is once again our duty to help our people get back on their feet.<sup>50</sup>

The primary opposition by House Republicans to the funding for Sandy relief focused on limiting the overall size of government and reducing federal spending that results from the "nationalization" of our natural disasters.<sup>51</sup> Republican lawmakers focused their ire on the bill's "out of control spending," which included \$10.78 billion for future public transportation resiliency projects, and \$135 million to improve weather forecasting.<sup>52</sup> Opponents labeled these investments pork spending and claimed that wealthy states were not footing their fair share of the bill.<sup>53</sup> It made no difference to those lawmakers that most of the states affected by Sandy are net providers of funding to the treasury.<sup>54</sup> The political climate and adherence to a policy of austerity led Congress to respond far too slowly to the victims of this disaster. With the Sandy funding measure, the once nonpartisan issue of emergency disaster spending measures had changed. So, what can be learned from this experience so that these issues can be adequately addressed in the future?

<sup>49</sup> 159 CONG. REC. H99 (daily ed. Jan. 15, 2013) (statement of Rep. Cole).

<sup>50</sup> 159 CONG. REC. H110 (daily ed. Jan. 15, 2013) (statement of Rep. Rogers).

<sup>51</sup> 159 CONG. REC. H119 (daily ed. Jan. 15, 2013) (statement of Rep. Hensarling).

<sup>52</sup> 159 CONG. REC. H101 (daily ed. Jan. 15, 2013) (statement of Rep. McClintock).

<sup>53</sup> Celeste Katz & Denis Slattery, *Ted Cruz claims he opposed Hurricane Sandy aid as bill was filled with pork*, N.Y. DAILY NEWS (May 29, 2015, 12:28 PM), <http://www.nydailynews.com/news/politics/ted-cruz-opposed-sandy-aid-bill-filled-pork-article-1.2239786> [<https://perma.cc/TL6N-B7SV>].

<sup>54</sup> *Federal Spending in the States 2004 to 2013*, PEW CHARITABLE TR. (Dec. 2, 2014), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2014/12/federal-spending-in-the-states> [<https://perma.cc/2JAF-CDGS>]; see also John S. Kiernan, *2015's States Most & Least Dependent on the Federal Government*, WALLETHUB, <https://wallethub.com/edu/states-most-least-dependent-on-the-federal-government/2700/> [<https://perma.cc/TQ3B-E4T4>].

## III. WHERE DO WE GO FROM HERE? LEGISLATE TOGETHER

The political reality of natural disasters is that they rarely affect only one political party. Even in austere times, storms, earthquakes, floods, and fires do not discriminate between red and blue homes, cities, or states. To address the needs of natural disaster victims, lawmakers in the past have shown a pattern of coming together and relying on the legislative process to improve our disaster response and address shortcomings in the administration of aid. In the 108th Congress, immediately preceding Hurricane Katrina, thirty-four bills were introduced related to FEMA. In the 114th Congress, there have been almost 100 bills proposed or passed addressing disaster assistance, representing a nearly three-fold increase.<sup>55</sup>

The challenges that FEMA, our nation's primary emergency response coordinator, must address in response to disasters often push the organization to its limits and test its legal authority to administer aid. For instance, following a natural disaster, identification, legal documents, and other important contracts are often damaged or destroyed.<sup>56</sup> As we saw during the response to Hurricane Katrina, first responders face additional challenges of needing to establish strong internal controls over disaster relief spending to combat fraud and abuse.<sup>57</sup>

FEMA had such difficulty distributing assistance efficiently in response to Hurricane Katrina—approximately thirty-five percent of individual assistance was incorrectly distributed<sup>58</sup>—that Congress passed language to waive victims' debts to FEMA for individual assistance overpayments.<sup>59</sup> The legislation authorizing this waiver was introduced by Representative Cedric Richmond of Louisiana and is known as the Disaster Assistance Recoupment Fairness Act ("DARFA") of 2011.<sup>60</sup> His language amended the Stafford Act to provide FEMA with the authority to waive over \$225 million of the \$643 million in aid distributed in the immediate aftermath of Hurricane Katrina. This waiver applied to approximately 76,000 survivors.<sup>61</sup> Congress-

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<sup>55</sup> See *Natural Disasters (114th)*, GOVTRACK, [https://www.govtrack.us/congress/bills/subjects/natural\\_disasters/6020](https://www.govtrack.us/congress/bills/subjects/natural_disasters/6020) [https://perma.cc/24RS-NNBE].

<sup>56</sup> See Rachel Racusen, *Improving the Recoupment Process*, FEMA BLOG (June 18, 2012, 12:09 PM), <http://www.fema.gov/blog/2011-01-05/improving-recoupment-process> [https://perma.cc/S7GP-ANS8].

<sup>57</sup> See generally DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GEN., *FEMA'S EFFORTS TO RECOUP IMPROPER PAYMENTS IN ACCORDANCE WITH THE DISASTER ASSISTANCE RECOUPMENT FAIRNESS ACT OF 2011* (Sept. 2012), [https://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-127\\_Sep12.pdf](https://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-127_Sep12.pdf) [https://perma.cc/CS9H-4VS3].

<sup>58</sup> DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GEN., *FEMA'S EFFORTS TO RECOUP IMPROPER PAYMENTS IN ACCORDANCE WITH THE DISASTER ASSISTANCE RECOUPMENT FAIRNESS ACT OF 2011*, at 4 (June 2013), [https://www.oig.dhs.gov/assets/Mgmt/2013/OIG\\_13-100\\_Jun13.pdf](https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-100_Jun13.pdf) [https://perma.cc/N8JN-XXEE].

<sup>59</sup> *Id.*

<sup>60</sup> Press Release, Rep. Cedric Richmond, *Richmond Introduces FEMA Recoupment Fairness Act* (June 22, 2011), <https://richmond.house.gov/press-releases/richmond-introduces-fema-recoupment-fairness-act> [https://perma.cc/MGZ4-97YJ].

<sup>61</sup> DEP'T OF HOMELAND SEC., *supra* note 58, at 2.

sional support for this initiative was strong, and the language was included in an annual spending measure known as the Consolidated Appropriations Act of 2012.<sup>62</sup>

Representative Richmond's legislation and the support it garnered provided tens of thousands of victims with relief from debt collection, and it is an excellent example of the type of bipartisan legislation that often goes unheralded. DARFA not only provided survivors relief, but prevented FEMA from initiating an expensive collection process that was unlikely to recapture the costs of collection,<sup>63</sup> and could potentially deter survivors from accepting disaster assistance after future natural disasters.

The swift passage of DARFA likely provided the agency with a short-lived but important boost in morale. By removing the agency from potential headlines depicting Katrina survivors at odds with the agency tasked to assist them, lawmakers were able to quell some of the outrage and reassure the public that FEMA was indeed working in survivors' best interests.

Unfortunately, the authority to waive debts under DARFA expired before Superstorm Sandy arrived.<sup>64</sup> As a result, late in 2014, vulnerable residents of places such as the Belle Harbor Manor, an assisted living facility in my district, began receiving collections notices from FEMA related to Sandy aid overpayments, similar to those made by FEMA Hurricane Katrina victims.<sup>65</sup> I recalled Representative Richmond's successful legislation and began discussing with community leaders my interest in re-addressing the recoupment issue. In consultation with my colleagues in the House and Senate, I found that FEMA had improved its internal controls tremendously since Hurricane Katrina. In fact, approximately two percent of Sandy's individual assistance funds had been disbursed as overpayments, compared to approximately thirty percent after Katrina.<sup>66</sup> Notwithstanding this significant improvement, many people who received collection notices earned under \$100,000 per year, an amount below the median income for a family of four in New York City,<sup>67</sup> and could scarcely afford to repay their debts.

It should come as no surprise that residents of New York wanted something done about the debts of Sandy's victims. However, concerns persisted because over two years had passed since the storm, and given the nature of the opposition to the Sandy funding measure, it was not unreasonable to

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GEN., FEMA'S EFFORTS TO RECOUP IMPROPER PAYMENTS IN ACCORDANCE WITH THE DISASTER ASSISTANCE RECOUPMENT FAIRNESS ACT OF 2011, at 4 (Mar. 2012), [https://www.oig.dhs.gov/assets/Mgmt/2012/OIG\\_12-62\\_Mar12.pdf](https://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-62_Mar12.pdf) [<https://perma.cc/UR96-XWVY>].

<sup>65</sup> *Queens Adult Home Residents Asked To Repay FEMA Aid*, CBS N.Y. (Nov. 9, 2014, 11:16 PM), <http://newyork.cbslocal.com/2014/11/09/queens-adult-home-residents-asked-to-repay-fema-aid/> [<http://perma.cc/H4VY-JF77>].

<sup>66</sup> DEP'T OF HOMELAND SEC., *supra* note 58, at 7.

<sup>67</sup> Ginger Adams Otis, *New York City has highest cost of living in U.S. for families: report*, N.Y. DAILY NEWS (July 5, 2013, 12:17 AM), <http://www.nydailynews.com/new-york/nyc-tops-new-living-expenses-article-1.1390134> [<http://perma.cc/9QKR-G3HP>].

think that there would be considerable opposition to any Sandy-related debt relief. In preparation for discussions with my colleagues, I formulated language to waive the debts owed by Belle Harbor Manor residents and thousands of Sandy victims. But I discovered that Republicans had prioritized austerity within the budgetary process in a unique manner. No measure would be considered by the Transportation and Infrastructure Committee that was not “budget neutral” and no additional reporting requirements would be considered without eliminating a reporting requirement within the same agency.

Within these constraints, I began drafting a bill, along with Representatives Peter King and Jerold Nadler, both of New York, which was originally introduced in the 113th Congress and then reintroduced in the 114th Congress, known as H.R. 797, the Disaster Assistance Recoupment Fairness Act of 2015. This bill waives debts owed to FEMA due to non-fraudulent overpayment made without error on the victim’s part.<sup>68</sup>

My efforts to steer political support in favor of Belle Harbor Manor residents were enhanced by a series of timely news articles and online videos exposing the plight of these survivors in the *New York Times*<sup>69</sup> and the *New York Daily News*.<sup>70</sup> Articles with titles like “FEMA Wants a Superstorm Sandy Refund Already” were published in *New York Magazine*, and focused attention on FEMA’s shortcomings, making congressional action more likely.<sup>71</sup> Television news programs, like *60 Minutes*, featured the stories of Belle Harbor residents,<sup>72</sup> while online efforts, like those of comedian Russell Brand, drove public sentiment on the nation’s responsibility to the victims of Sandy.<sup>73</sup> On February 3, 2015, FEMA announced that it would exercise a rarely utilized authority and waive the debts of the Belle Harbor Manor residents.<sup>74</sup> There were, however, still thousands more facing collection actions if legislation extending FEMA’s authority was not approved.

<sup>68</sup> H.R. 797, 114th Cong. (as introduced in House, Feb. 5, 2015).

<sup>69</sup> Eric Lipton & Michael Schmidt, *Distribution of Billions in Aid to Storm Victims Will Test FEMA*, N.Y. TIMES (Oct. 30, 2012), <http://www.nytimes.com/2012/10/31/us/federal-aid-authorized-for-storm-victims-in-new-york-and-new-jersey.html> [https://perma.cc/DZ7W-L9A3].

<sup>70</sup> Bill Hutchinson, *Queens adult home residents asked to repay FEMA aid*, N.Y. DAILY NEWS (Nov. 9, 2014, 8:47 PM), <http://www.nydailynews.com/new-york/queens/nyc-adult-home-residents-asked-repay-fema-aid-article-1.2004893> [http://perma.cc/N2GP-RENV].

<sup>71</sup> Katie Zavadski, *FEMA Wants a Superstorm Sandy Refund Already*, N.Y. MAG.: DAILY INTELLIGENCER (Nov. 10, 2014, 10:23 AM), <http://nymag.com/daily/intelligencer/2014/11/fema-wants-a-superstorm-sandy-refund-already.html> [https://perma.cc/2HHG-UGU6].

<sup>72</sup> *After Sandy: Devastation and determination in Belle Harbor*, CBS NEWS ‘60 MINUTES’ (Nov. 11, 2012), <http://www.cbsnews.com/news/after-sandy-devastation-and-determination-in-belle-harbor/> [https://perma.cc/9BFY-Z5T9].

<sup>73</sup> Russell Brand, *Disabled Residents Told To Repay Hurricane Aid: The Trews (E186)*, YOUTUBE (Nov. 10, 2014), <https://youtu.be/GzLUi8XXCog> [https://perma.cc/SP8T-HT2V].

<sup>74</sup> See Lisa Conangelo, *Belle Harbor Manor residents no longer have to repay FEMA funds distributed after Hurricane Sandy*, N.Y. DAILY NEWS (Feb. 3, 2015, 7:36 PM), <http://www.nydailynews.com/new-york/queens/belle-harbor-manor-residents-no-longer-repay-fema-article-1.2102315> [http://perma.cc/9X43-UG3J].

The legislative process presents a critical opportunity to advance bipartisan cooperation to help Americans in need. Rather than engage in polarizing (and often zero-sum) debates on the House floor, the deliberate work of collaborating with other members of Congress often yields far more substantive returns for the country.

#### IV. CONCLUSION

Our communities are too important and too vulnerable to disasters of all types to allow partisanship to prevent the best legislative ideas from advancing. If anything was learned from past experiences with disasters, it is that Congress can and must move swiftly, in a determined manner to assist our neighbors regardless of where they reside, or for whom they cast their vote. If partisanship is allowed to take hold, the lives and dreams of American residents will be put in jeopardy, and the risk of mortal damage to the very institutions designed to protect residents will increase.

Touring the destruction of Superstorm Sandy in my district while walking with my neighbors, I asked myself a fundamental question: how does Congress break out of the pattern of brinkmanship over budgetary and fiscal issues? The first thing we must do is put the vulnerable first. Moreover, as our world becomes more intertwined and our economy and geography become more interconnected, we must continue to craft sensible legislation to forge more modern and flexible institutions, including our disaster response agency, to address the increasingly complicated logistical challenges facing our nation in times of crisis. Without a firm commitment to build these institutions we can never fully achieve a response worthy of our great nation.

Ultimately, some issues need to be put above politics. Disaster relief response is one of those issues. Congress must respond to its constituents and those in need by promptly and adequately giving them assistance, without expectation of repayment: it is our duty to the American people.