

The Case for Declaring a State of Emergency to Locate and Rescue American Children from Imminent Harm

National Association to Protect Children White Paper

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In 1987, millions of Americans watched as Texas first responders worked for 58 hours to pull “Baby Jessica” McClure from the bottom of a well in her Midland backyard. Nobody questioned whether to respond to that 911 call, or what the cost would be. A child was in urgent danger so rescuers were dispatched, and it was as simple as that.

But what if first responders had not been dispatched? Texas officials could have simply said, “We don’t have the personnel to send out to the McClure property. The child will have to stay down in that well.”

That is the situation now facing hundreds of thousands of American children. The existence, *and in many cases the actual location*, of children being raped, sexually exploited or trafficked is now known to law enforcement, thanks to technological advances that allow authorities to identify, track and locate their abusers online.

Yet, the vast majority of these children wait for a rescue that will never come, because local, state and federal governments have not dedicated resources and first responders to help them. As a direct result, thousands of American children are raped, tortured and re-abused daily, in entirely predictable and preventable attacks.

A Texas Wildfire Sparks Emergency Action

In December 2010, Texas Governor Rick Perry declared a “state of disaster” in response to raging wildfires.

The Governor cited two specific provisions in the Texas government code as justification for his action: his power to waive any state agency’s “regulatory statute” if it would “prevent, hinder, or delay necessary action in coping with a disaster,” and his right to use “all resources of state government... reasonably necessary to cope with a disaster.”¹

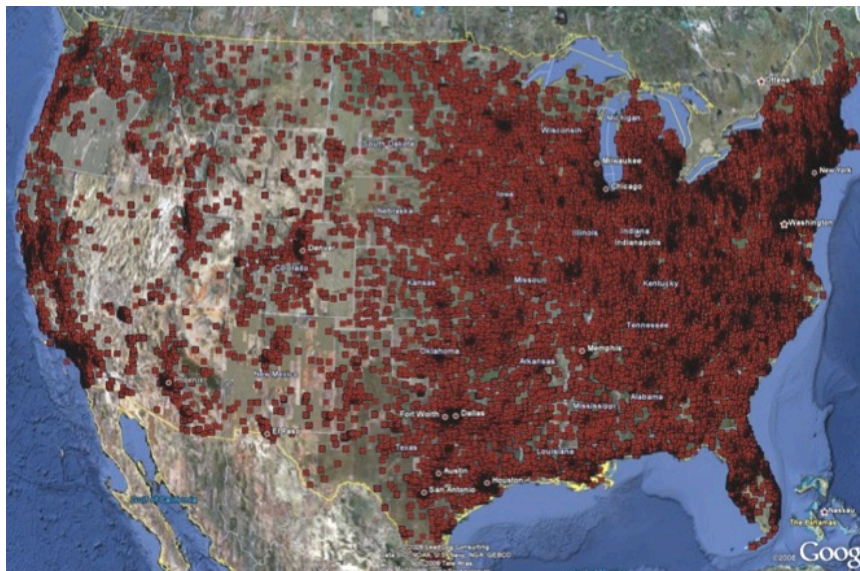
Four months later, Texas wildfires were still raging, and Perry wrote to President Barack Obama, asking him to issue his own *federal* “major disaster declaration.” In June, Perry repeated his plea to Obama for aid, which he said, “Texans deserve.” Obama took that action in September 2011.²

An Invisible Texas “Forest Fire” Gets No First Responders

Five years earlier, another Texan, Congressman Joe Barton, called upon the Bush administration to take extraordinary action against another type of “fire.”

Barton, as Chairman of the U.S. House Committee on Energy and Commerce, had conducted a series of hearings throughout the spring on the exploding crisis of child sexual exploitation within the United States. During Barton’s hearings, the U.S. Justice Department, FBI and other law enforcement officials shocked the Committee with testimony that there were “hundreds of thousands” of criminals in the U.S. engaged in the sexual exploitation of children.

Even more alarming, Barton’s committee learned that law enforcement had pinpointed and mapped the locations of these suspects *and many of their child victims*. For the first time in history, law enforcement knew where huge numbers of individuals sexually preying on children were and had the means to stop them. This entirely new development was made possible by technology that enabled police to track criminals online, as they trafficked in video and crime scene photos of young children being raped.



Law enforcement map introduced into evidence before the U.S. Senate Judiciary Committee in 2008. Red dots represent the locations of computers or clusters of computers seen trafficking in child abuse images. The U.S. Justice Department, FBI and other law enforcement witnesses testified there are hundreds of thousands of individuals in the U.S. trafficking in child pornography. Conservative estimates indicate at least 1 in 3 of these suspects is a hands-on offender with local child victims. Abundant evidence indicates which ones they are, enabling law enforcement to zero in on the locations of child victims.

A clearly frustrated Barton pleaded with Bush administration officials to ask Congress for massive increases in funding: “We’re fighting a forest fire with a can of aerosol spray,” Barton said. “If we’re serious about this, let’s put some

real muscle [into it]... If I've got to put out a major forest fire, I don't send one firefighter. I mobilize the entire operation."

From 2006-2011, the "forest fire" Barton warned about spread across Texas faster and with far more devastating consequences than the 2010-2011 Texas brush fires. By 2008, law enforcement task forces had identified thousands of Texas criminals with a sexual interest in children, directly or indirectly locating untold thousands of their child victims.

Texas law enforcement officers, like its firefighters, were overwhelmed by the magnitude of the disaster on their hands. But unlike the firefighters—who were battling a threat no politician could ignore—*police were being deprived of the personnel and resources to respond.*

By May 2011, one law enforcement officer was so desperate for state action he gave a Texas House committee unprecedentedly honest testimony about the inevitable consequences of government inaction. The officer told lawmakers that a routine decision not to arrest a dangerous suspect in October 2009 had led to the entirely preventable, brutal rape of a five-year old Houston girl.³ He pleaded for help.

In Austin, as in Washington five years earlier, help was not forthcoming. Texas first responders watched helplessly as ever greater numbers of children in their state were raped and sexually exploited.

That situation is repeated every day, in every state of the union.

The Need for Emergency Action by the Executive Branch

Both of these crises—out of control wildfires and exploding child sexual exploitation—prove the need for extraordinary executive action of the kind that can only be marshaled through the declaration of a state of emergency or disaster.

Action from state legislatures and Congress is necessary in the face of this threat, but not sufficient. Whether faced with a child at the bottom of a well or neighborhoods on fire, it is simply not a rational response to call for incremental increases to the fire and rescue budget for the next fiscal year.

When conditions endangering public safety reach the point where government, through normal operations, cannot respond adequately—either in terms of speed or resources—the executive branch must have the power to take extraordinary action temporarily. *That is the universally acknowledged basis for all declarations of emergency or disaster,* and similar action is necessary if there is to be any hope for a rapid mobilization to locate and rescue children now in the hands of known child predators.

Below are the most important reasons why conditions now exceed the ability of existing government budgets and bureaucracies to cope:

- **The Need for Additional First Responders:** The first barrier to rescuing child victims is a lack of sworn officers dedicated to the task. It is simply not feasible to increase the ranks of existing Internet Crimes Against Children (ICAC) task forces (the lead entities investigating these crimes) enough to make these arrests quickly. Emergency powers are needed to mobilize and deploy personnel from other law enforcement agencies, state police, U.S. Marshalls and federal law enforcement agencies.
- **The Need for Additional Technical and Forensic Support:** With substantial increases in arrests will come increased demands on already overwhelmed digital forensic capacity. Currently, forensic backlogs of 6-12 months are common for law enforcement agencies at the local, state and federal level. Emergency powers are necessary to mobilize and deploy all state digital forensic labs, personnel and resources, as well as additional civilian resources for state use. This would include the use of crime-scene technologies by all first responders to search for evidence on-scene that could lead to victim identification and rescue.
- **The Need for Additional Prosecutorial Resources:** With major increases in cases initiated will come a heavy demand for greater prosecutorial resources. Currently, expertise in and commitment to prosecuting child exploitation cases varies widely by jurisdiction. But even the most motivated offices will need increased numbers of dedicated prosecutors to handle this expansion. Emergency powers are necessary to reassign and coordinate prosecutor resources.
- **The Need for Increased Social Services and Foster Care:** With large increases in arrests of child pornography producers, distributors and collectors will come large increases in child victims identified and rescued. Approximately half or more of these children will be victims in their own homes, and over ninety percent will be victims of adults in a custodial or supervisory position. All of these children will need psychological and/or medical help, and many will need the help of the social service and foster care systems. Just as responders to a wildfire disaster coordinate the delivery of assistance to families burned out of their homes, so too should there be an extraordinary response on behalf of children rescued from sexual abuse and exploitation. Emergency powers are necessary to ensure that existing social services are supplemented, that social workers are given extra support and that bureaucracies are monitored and held accountable.

A state of emergency or disaster can be declared by the President, in at least two ways, or by a Governor. These options are discussed below.

Federal Disaster Declarations

President Obama’s declaration of a “major disaster” in the case of the Texas wildfires was authorized under the 1988 Stafford Act, which facilitates federal disaster and emergency assistance to the states via the Federal Emergency Management Agency (FEMA), now a component of the U.S. Department of Homeland Security.⁴

The Stafford Act, like FEMA’s operations in general, is primarily intended to address natural disasters, such as those caused by hurricanes, tornadoes and floods. The vast majority of FEMA aid is for natural disasters.⁵

However, FEMA also recognizes other types of disasters, including terrorism, technological, public health and industry hardship. The table below highlights selected examples.

Selected FEMA Disaster Declarations

Source: FEMA.gov

Year	Disaster
1980	Red Tide Algae Bloom in Maine
1981	Sewer Explosion in Kentucky
1994	Salmon Industry Hardship in Washington State
1995	Oklahoma City Bombing
1996	Major Water Line Break in Rhode Island
1998	Grain Elevator Explosion in Kansas
2000	West Nile Virus Outbreak in New York and New Jersey
2001	World Trade Center Attack
2003	Power Outages in Michigan, Ohio, New Jersey and New York
2007	Minnesota Bridge Collapse

Federal Emergency Powers

Beyond the relatively specific powers delegated by the Stafford Act, the president also has broad “national emergency powers” that can be exercised in the event of a crisis.

In a 2007 Congressional Research Service study, analyst Harold Relyea writes that a president’s power to declare a national emergency “may be stated explicitly or implied by the Constitution, assumed by the Chief Executive to be permissible constitutionally, or inferred from or specified by statute.”⁶

These powers “are not limited to military or war situations,” writes Relyea, and some “are continuously available to the President with little or no qualification.”

Relyea cites four key criteria that characterize “an emergency condition” from the normal pressing business of government:

1. Temporal character (“sudden, unforeseen”)⁷
2. Potential gravity (“dangerous and threatening to life and well-being”)⁸
3. Government’s awareness of the crisis, and
4. Presence of extraordinary conditions which “cannot always be ‘dealt with according to rule.’”⁹

Whereas much of the academic and abstract discussion of national emergency powers revolves around potentially extreme actions such as the suspension of civil liberties, the use of emergency powers has been more mundane. The table below, from the Relyea report, highlights selected “declared national emergencies” from 1976-2007.

Selected National Emergencies

Source: Congressional Research Service, News Reports

Year	Declared Emergency
1985	Blocking “Yugoslav Government” Property and Property of the Governments of Serbia and Montenegro
1990	Chemical and Biological Weapons Proliferation
1996	Regulation of the Anchorage and Movement of Vessels With Respect to Cuba
2001	Prohibiting the Importation of Rough Diamonds from Sierra Leone
2001	Declaration of National Emergency by Reason of Certain Terrorist Attacks
2003	Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq has an Interest
2003	Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe
2006	Blocking Property of Certain Persons Contributing to the Conflict in Côte d’Ivoire
2006	Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo
2009	H1N1 Influenza Pandemic
2010	Lebanon-Democratic Processes and Institutions (continuation)

Selected National Emergencies

Continued

Year	Declared Emergency
2010	Somali Pirates
2011	Blocking Property of Transnational Criminal Organizations
2011	Belarus- Democratic Processes and Institutions (continuation)
2011	Somali Pirates (continuation)
2011	Libya

State Emergency Powers

While the constitution and federal statutes allow bold *federal* action in response in a wide range of crises, state laws give Governors similar broad powers.¹⁰ In a 1965 law review article, F. David Trickey reviewed “The Constitutional and Statutory Bases for Governors’ Emergency Powers.”¹¹ “State chief executives have frequently been given substantial discretionary authority in the form of emergency powers,” writes Trickey, and “the provisions of state constitutions from which executive emergency powers are derived display a marked uniformity.” Two types of power are common specifically:

1. The power to suspend normal state agency regulations (“red tape”) that could delay swift action
2. The power to use all resources of state government, as needed to cope with the emergency (thus circumventing limited budgets)

The following table shows examples of actions by Governors to declare states of emergency in non-natural disaster conditions:

Selected State Emergencies Declared for Non-Natural Disasters

State	Governor	Issue	Purpose
New Mexico	Richardson	Border	Four counties “devastated by the ravages and terror of human smuggling, drug smuggling, kidnapping, murder, destruction of property and the death of livestock.” ¹²
Arizona	Napolitano	Border	Drug activity and illegal immigration ¹³
California	Schwarzenegger	Salmon Fishing	“By proclaiming a state

			of emergency, we are helping the fishermen and communities recover from the hardship and economic loss caused by the severely restricted salmon season." ¹⁴
Idaho	Legislature/Otter	Gray Wolves	"to bring law enforcement to bear against any wolf threats to humans or livestock." ¹⁵
Kentucky	Beshear	Gas Prices	To protect consumers from gas gouging." ¹⁶
Georgia	Perdue	Threats of Violence in six counties	Potential violence at G8 summit. AP Report: action would "align the Georgia Army National Guard, state law enforcement and public health agencies under one office." ¹⁷
Kansas	Graves	Grain Storage	"to help ease the grain storage problems created by good harvests." ¹⁸
Colorado	Ritter	Harvests, Trucking	To waive trucking regulations to move surplus crop." ¹⁹
New Mexico	Martinez	Fireworks in Dry Season	"to increase staffing of officers and coordination with local law enforcement agencies." ²⁰
Michigan	Granholt	Gas Prices	"temporary suspension of the rules" to "provide the state with flexibility to meet any additional problems." ²¹
California	Davis	Power Blackouts	Emergency power to use state Funds to buy electricity" ²²
Maine	Baldacci	Diesel Fuel	AP: Gov. "has declared a civil emergency over the impact of high diesel fuel prices on Maine's forest products industry." ²³
South Carolina	Hodges	Nuclear Waste	State troopers and emergency personnel mobilized to stop DOE

Illinois	Blagojevich	University Shootings	shipments of plutonium from entering state ²⁴ Making state funds available to local governments to respond to crisis." ²⁵
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Can it be Done?

The examples of state and federal action given above make it clear that emergency powers *could be legitimately exercised* in response to the rampant sexual exploitation, abuse and trafficking of children in the United States.

When governors claim emergency powers to deal with the threat of wolves, price gouging, firework hazards and grain storage logistics, *there is no defensible argument for excluding* the protection of children from the list of allowable reasons for declaring a state of emergency.

Similarly, the president has invoked national emergency powers for crises far less severe than the safety of American children. More to the point perhaps, presidential emergency declarations have been made on behalf of the human rights of foreign citizens in Zimbabwe, Lebanon, Yugoslavia, Cuba, Sierra Leone and other nations. They have been issued in response to terrorist threats as well, and child activists must aggressively make the case that the most dangerous form of terrorism is one that targets children exclusively.

Of all the examples of emergency declarations reviewed here, the closest and best parallels are the border security emergencies declared in Arizona and New Mexico by Governors Janet Napolitano and Bill Richardson.

The neighboring governors declared states of emergency in concert with one another, and explained that they were reacting to what Richardson (who once served as U.S. Ambassador to the United Nations) called communities “devastated by the ravages and terror of human smuggling, drug smuggling, kidnapping, murder, destruction of property, and the death of livestock.”²⁶

In other words, their emergency response was *not to an unforeseeable event of clearly short duration, but to a crisis that had been recognized and growing for many years*. As in the case of exploding child exploitation, conditions had overcome the capability of normal government operations to address, and thus required the mobilization of extraordinary resources and funding.

Napolitano, who as the U.S. Secretary of Homeland Security is now the nation’s top national security officer, told PBS that she was “forced to step in where the federal government would not.” She also described well the unique role of a

state of emergency in addressing the extraordinary demands of emergency or disaster conditions, where “operational control” is often nonexistent:

“We are really targeting the crime that facilitates illegal immigration -- automobile theft, identity theft, human trafficking -- we want to work with the sheriffs, the county attorneys, assist them, you know, help with overtime, help with cleanup expenses, all the other sorts of things that are associated with the fact that this border is lacking operational control.”²⁷

The Politics of Inaction

Whether in Rick Perry’s Texas or any of the other 49 states facing the child exploitation crisis, the root cause of government inaction is not legal, it is simple politics. Wildfire gets media attention and affects taxpayers and voters, so inaction is unthinkable.

Of course, if hundreds of thousands of American children were being held in captivity by Al Qaeda terrorist cells, there would be tanks in the streets and jet fighters in the skies. But the rape and abuse of children in their own homes and communities has brought only silence and inaction.

There might be hope if news of these victims were coming in via public 911 hotlines. But it arrives silently by cable modem, and disappears out of sight into databases. They are not on the board as unsolved crimes. They are *unacknowledged* crimes.

Conclusion

“You’ll know a hero from a coward,” sang country music star Randy Travis, “when you see which way they run.” When a child is at the bottom of a well, heroes grab ladders and ropes and run to rescue. Cowards run in the other direction, turning their backs not only on the child, but on the very existence of an emergency.

There can be no serious doubt that federal and state governments have the legal authority necessary to exercise emergency powers on behalf of child protection, nor that this is necessary to save American children. The only thing lacking is the motivation to do so.

Activists calling for a state of emergency must be prepared for negative responses from political and government insiders who may quickly dismiss the proposal as unserious. Insiders will likely characterize calls for a state of emergency as extreme or naïve. But it must be noted that *the vast majority of them will certainly have little or no direct experience* with this area of law or politics, and they are reacting in much the same way that a layperson would, conjuring up visions of martial law or believing that disaster declarations apply only to major hurricanes or tornadoes.

By contrast, only a very small niche in government has expertise in, and experience with, emergency declarations at the state or federal level.

Activists should also remember that as they discuss and debate the issue of emergency powers with those in politics and government, there is always another hidden “negotiation” going on beneath the surface. For political practitioners, the real issue *will never be* about the legal and technical matter of declaring emergencies or disasters. It will be about the politics of the thing, and those will always be on the side of child rescue activists, provided they fight long and hard enough to make themselves politically relevant.

Since 2006, PROTECT has conducted legislative campaigns to secure anti-child exploitation resources in California, Virginia, Texas and Tennessee. We have testified on the issue of child exploitation before Congress on four occasions. We also initiated the landmark PROTECT Our Children Act of 2008, which was sponsored by current Vice President Joe Biden and current DNC Chair Debbie Wasserman Schultz, as well as a wide range of Republicans, including Rep. Joe Barton and Sen. Orrin Hatch. We’ve secured dedicated state funding, driven up federal funding for ICAC task forces and federal law enforcement agencies and won a variety of statutory changes such as increased penalties and administrative subpoenas. Our commitment to legislative action speaks for itself.

However, it is now clear that legislative action alone is not enough, nor is it an appropriately urgent response to this emergency.

If activists for the protection of children truly expect a governmental response with any hope of rescuing the children who could be located and rescued *right now*—the only strategy is to demand that the President and Governors declare formal states of emergency and use the powers afforded to them to act.

The mass rape, torture and exploitation of American children is an emergency, and it now must be treated as one.

¹ Texas Government Code, Sections 418.016 and 418.017. The law Perry invoked also gives him the right to “commandeer” private resources for emergency use.

² President Obama used his authority under the federal Stafford Act, triggering the release of FEMA funds to Texas.

³ Testimony of Lt. Matt Gray, Houston Internet Crimes Against Children Task Force, before the Texas House Committee on Criminal Jurisprudence, April 5, 2011. Case of Rodney Williams.

⁴ 42 U.S.C. 5121

⁵ A list of all FEMA “major disaster declarations” and “emergency declarations” can be found on their website at <http://www.fema.gov/news/disasters.fema>

⁶ *National Emergency Powers*. CRS Report for Congress. Congressional Research Service, Harold C. Relyea, 2007.

⁷ Opponents will argue that child abuse, like other types of crime, has always been with us and, although it is terrible, is neither sudden nor unforeseen. Abuse and exploitation of children may be ancient, but so is fire. That does not mean that wildfires sweeping Texas in 2011 are not a sudden and unforeseen emergency. The fact is, the current crisis of child exploitation is “sudden, unforeseen, and of unknown duration” *to the children in its path right now*. See also the argument used by Governors Napolitano and Richardson to justify emergency action in the face of border crimes, which are a close parallel.

⁸ There is no argument worth disputing about the profound damage done by child sexual abuse or the permanent dissemination of child abuse crime scene recordings. Child advocates might wish to quantify the enormous economic and societal costs of child maltreatment, but it is more important for *child activists* to quantify the *political costs* for any public servant who minimizes the seriousness of these crimes.

⁹ Of the four conditions, this fourth is by far the most important for activists and their government allies to understand. Like uncontrollable wildfires in populated areas, the child exploitation crisis facing every state government *simply and absolutely exceeds the capability of those governments to handle without invoking emergency action*. Extraordinary executive action is literally the only way government will be capable of responding to the magnitude and seriousness of this crisis.

¹⁰ Florida’s legislature spelled out its broad vision of what constitutes an emergency in its state code. It foresaw a wide range of emergencies, including conditions “which threaten the life, health, and safety of its people; damage and destroy property; disrupt services and everyday business and recreational activities; and impede economic growth and development.” Kentucky defines emergency conditions not only to include natural disasters and civil disorder, but also power failure, energy shortages, transportation-related emergencies, hazardous material release and agricultural hazards.

¹¹ F. David Trickey, Michigan Law Review, December, 1965

¹² CNN, August 13, 2005 http://articles.cnn.com/2005-08-12/us/newmexico_1_ravages-and-terror-mexican-border-las-chepas?_s=PM:US

¹³ Voice of America <http://www.voanews.com/english/news/a-13-2005-08-16-voa37-66935037.html>

¹⁴ San Francisco Chronicle, June 6, 2006

¹⁵ Reuters, April 19, 2011. <http://www.reuters.com/article/2011/04/20/us-wolves-idaho-idUSTRE73J01120110420>

¹⁶ Hazard Herald, September 12, 2008 http://www.hazard-herald.com/view/full_story/1518588/article-Beshear-declares-state-of-emergency-to-prevent-price-gouging

¹⁷ Associated Press, May 22, 2004 <http://www.accessnorthga.com/detail.php?n=168249>

¹⁸ GrainNet.com, July 15, 1998.

http://www.grainnet.com/articles/kansas_governor_declares_grain_storage_emergency-1272.html

¹⁹ World Net Daily, August 24, 2007. <http://www.thesourcedaily.com/world-and-domestic-news/colorado-governor-declares-emergency-%E2%80%93-for-lack-of-trucks-huge-wheat-crop-demands-86000-18-wheelers/>

²⁰ Albuquerque Journal, June 29, 2011.

<http://www.abqjournal.com/main/2011/06/29/abqnewsseeker/state-cities-counties-have-limited-authority-to-ban-fireworks.html>

²¹ Statement of Michigan Governor Jennifer Granholm, August 31, 2005.

http://www.michigan.gov/granholm/0,4587,7-168-23442_21974-125392--,00.html

²² New York Times, January 18, 2001. <http://www.nytimes.com/2001/01/18/us/california-in-state-of-emergency-over-power.html?pagewanted=all&src=pm>

²³ Associated Press, November 30, 2007. <http://www.seacoastonline.com/articles/20071130-NEWS-71130069>

²⁴ Savannah Morning News. <http://savannahnow.com/stories/061502/LOCplutonium.shtml>

²⁵ Press Release, Office of the Governor of Illinois, February 14, 2008

²⁶ CNN, August 13, 2005 http://articles.cnn.com/2005-08-12/us/newmexico_1_ravages-and-terror-mexican-border-las-chepas?_s=PM:US

²⁷ PBS NewsHour, August 18, 2005