



Office for Democratic Institutions and Human Rights

# UNITED STATES OF AMERICA

## MID-TERM CONGRESSIONAL ELECTIONS 6 November 2018

### ODIHR Limited Election Observation Mission Final Report



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**I. EXECUTIVE SUMMARY**

Following an invitation from the government of the United States of America, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) to observe the 6 November 2018 mid-term congressional elections. The ODIHR LEOM assessed compliance of the election process with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. On election day, the ODIHR LEOM was joined by a delegation of the OSCE Parliamentary Assembly to form an International Election Observation Mission (IEOM).

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 7 November concluded that the elections “were highly competitive and contestants could campaign freely, with media presenting a wide array of information and views, enabling voters to make an informed choice. However, campaign rhetoric was often intensely negative and, at times, intolerant, including on social networks. The fundamental right to suffrage was undercut in places by disenfranchisement of some groups of citizens and lack of full representation in Congress. Campaign finance rules do not guarantee full transparency. While the elections were largely administered in a professional manner and voters turned out in high numbers, decisions on important aspects of the electoral process were often politicized”.

Elections were held for 35 of 100 seats in the Senate and all 435 seats in the House of Representatives, primarily through first-past-the-post contests. Concerns persisted about the drawing of boundaries of certain electoral districts for the House. While districts are generally equal in population size, there are widespread concerns that the delineation of boundaries is often driven by partisan considerations, resulting in a number of uncompetitive contests. In these elections, 42 candidates for the House ran unopposed.

The electoral legal framework is complex and diverse. The Constitution establishes a broad framework for federal elections, but there are few nationwide requirements for procedural uniformity and detailed rules are found only at the state and sub-state level. Prior to these elections, some states amended their laws to facilitate voter registration, early voting, and voting rights of ex-prisoners, partly addressing prior ODIHR recommendations. However, fundamental deficiencies remain in law, particularly in respect of disenfranchisement of citizens. A lack of agreement in Congress to adopt a new formula to enforce a key aspect of the Voting Rights Act diminished its effectiveness in safeguarding against discrimination on racial or linguistic grounds.

Elections are administered at state level, with duties often delegated to some 10,500 jurisdictions. Election officials were competent, performing their tasks transparently and in accordance with rules and established deadlines. While stakeholders overall had confidence in the administration of elections, chief election officials of some states were candidates in the elections they supervised, leading to conflicts of interest and raising questions about the independence of the election administration. The bipartisan Election Assistance Commission (EAC) provided valuable support to election officials, but further support from Congress is necessary to maintain its long-term role.

Federal and state authorities launched multiple initiatives to secure election technologies, including from cyber-threats. After the designation of elections as critical infrastructure, a sector-specific agency was designated to share information and good practice to prevent and respond to attacks. The EAC expeditiously disbursed USD 380 million that Congress allocated to replace and improve voting technologies. The robust technical support and co-ordination mechanisms greatly enhanced preparedness for cyber-attacks, but nevertheless large parts of the election infrastructure remained insufficiently protected. There were no public reports of verified cyber-attacks on election infrastructure before, on or after election day. Despite advancements, challenges remain in respect of co-ordination among federal and state bodies, replacement of aging voting equipment, security of voter registration webpages, and requirements for vendors to upgrade systems.

Legislation and practice effectively disenfranchised around 11 million otherwise eligible voters. Some 4.7 million citizens residing in the District of Columbia and in US territories lack full representation in Congress. An estimated 6.1 million persons with criminal convictions, half of whom have served their sentences, are disenfranchised, with racial minorities disproportionately affected. Voting rights of persons with intellectual disabilities vary across the country and, in many states, such persons are deprived of the vote without individual assessment of capacity. These restrictions contravene OSCE commitments and international standards with regard to universal and equal suffrage.

Voter registration is active and implemented at state level, with minimum conditions set by federal law. The total number of citizens of voting age is estimated to be above 250 million, of which an estimated 50 million remain unregistered, for various reasons. A number of states enhanced their efforts to facilitate voter registration, including online and automatic registration, and increased the sharing of state-wide databases to enhance the integrity of voter registers. At the same time, some decisions and initiatives related to voter list maintenance and integrity effectively limited access to the vote for some citizens. A number of ODIHR LEOM interlocutors noted in places that low-income voters, racial and linguistic minorities, Native Americans, and citizens with disabilities faced greater obstacles in registering as voters.

Voter identification is a politically divisive issue, and rules vary by state. In these elections, 34 states required voters to show some form of identification, with 17 of them requiring photo identification. Voter identification rules in some states can present obstacles, particularly for certain vulnerable groups of the population. While measures to ensure electoral integrity are important, they should be designed in such a manner as to not disenfranchise eligible voters.

A total of 1,262 candidates ran for a seat in Congress, providing voters with a variety of choice. Requirements for registration vary by state and, in many cases, are unduly burdensome for smaller parties and independent candidates. The variations in state registration requirements resulted in different conditions for citizens to be registered as candidates for the same federal body.

Fundamental freedoms were overall respected in a campaign that engaged a high number of voters across the country. The campaign was dominated by the two main parties and marked by often divisive and intolerant rhetoric, including several incidents with sexist, homophobic, racist and anti-Semitic connotations. Several serious security-related incidents in the final weeks of the campaign cast a shadow over the pre-election period. Concerns were raised regarding online disinformation, from domestic and foreign sources, as well as the transparency of online advertising.

Although record numbers of women stood as candidates and were elected, women remain underrepresented in Congress. A number of grassroots movements raised the profile of issues related to women's rights, promoting a wide range of views. There was an increased number of candidates

from other historically underrepresented groups, including persons with disabilities, Native Americans, and openly LGBT persons.

Campaign finance is regulated by federal law, with rules enforced by the Federal Election Commission (FEC). There are few limits on donations and none on expenditure, including by so-called Super PACs. Financial reports were submitted to the FEC and published expeditiously. However, some non-profit organizations that campaign on issues are not required to disclose their donors, undermining an otherwise transparent system and at odds with international obligations. These were the most expensive mid-term elections in US history, estimated at USD 5.2 billion, with most spending on behalf of the two main parties.

The media is pluralistic, diverse and vibrant, offering voters a wide range of opportunities to inform themselves, but is increasingly polarized. The legal framework provides for limited regulation and few rules for broadcast media during elections, while print and online media are unregulated. The repeal of 'net neutrality' rules raised concerns over potentially reduced access to online news information. Continuous verbal attacks on journalists and news media by senior officials, as well as bomb threats, raised concerns over the safety of journalists and undermined the essential role of media in a democratic society. Cable TV editorial coverage reflected the existing political polarization. The public broadcasters offered balanced news coverage of the two main parties.

There are several administrative and judicial avenues through which electoral disputes may be pursued. Access to the courts is open, but legal costs can be prohibitive. Temporary injunctions are readily available, but final determinations of cases may take years to achieve. This undermines access to timely and effective remedies, contrary to OSCE commitments and international obligations. In the run-up to these elections, cases were before the courts concerning voter registration, proof of citizenship requirements, voter identification, early voting, criminal disenfranchisement, absentee ballots and redistricting. A range of litigation continued until election day, potentially causing uncertainty for voters and electoral stakeholders. Cases were also initiated regarding election results.

Election observation is regulated by states. Eleven states placed restrictions on election day observation by international observers. While the federal authorities supported and facilitated the work of the ODIHR LEOM, political and electoral authorities in several states declined to meet with ODIHR LEOM observers, and in one state prevented the mission from observing altogether. Such restrictions are contrary to OSCE commitments undertaken by the US Government. Voting was observed extensively by parties and civil society, providing oversight and transparency.

It is estimated that more than 39 million voters voted early, either in person or by post, with rules varying from state to state. Overseas voters could request an absentee ballot, with many states allowing voters to return it electronically. In some instances, this required voters to waive the secrecy of their vote, at odds with OSCE commitments.

The use of new voting technologies (NVT) is extensive and varies considerably across the country. While there is a trend to return to paper-based voting, voting machines without a voter-verified paper trail were used in 15 states, with 5 states relying on them exclusively, contrary to good practice. In some states, outdated voting machines known to have serious usability issues were used. Notwithstanding, in line with prior ODIHR recommendations, efforts to strengthen public confidence in the accuracy of election results were introduced in many jurisdictions, including through certification of NVT and post-election audits.

Election day was orderly and calm overall. Poll workers in the limited number of polling stations observed by the IEOM were knowledgeable, helpful and well-prepared to administer the voting

process smoothly and efficiently. Prescribed procedures were generally followed, although conditions did not always ensure the secrecy of the vote, especially where ballot scanners were used. Most polling stations visited by the IEOM were accessible to persons with disabilities, including through the use of specialized NVT. Where observed, the closing of polling stations and the transmission and tabulation of results was transparent and efficient. However, results were not usually announced at the polling station, which lessened the transparency of this crucial part of the process. While unofficial results were announced quickly, the counting of absentee and provisional ballots as well as legal disputes delayed the final results in some jurisdictions, including Florida and North Carolina.

This report offers a number of recommendations to support efforts to bring elections in the United States of America closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to voting rights, the drawing of electoral district boundaries, campaign finance, the media, cyber security, and international observers. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

## **II. INTRODUCTION AND ACKNOWLEDGMENTS**

Following an invitation from the government of the United States of America to observe the 6 November 2018 mid-term congressional elections and the conduct of a Needs Assessment Mission from 21 to 25 May, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 3 October. The ODIHR LEOM led by Tana de Zulueta, consisted of a 14-member core team based in Washington D.C. and 36 long-term observers, who observed in 47 of the 50 states. The ODIHR LEOM remained in country until 13 November to follow post-election day developments.

For election day, the ODIHR LEOM joined efforts with an 83-member delegation of the OSCE Parliamentary Assembly to form an International Election Observation Mission (IEOM). The OSCE PA President, Mr. George Tsereteli, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observer mission. Ms. Isabel Santos headed the OSCE PA delegation. In total, the IEOM deployed 136 observers from 34 OSCE participating States and one Partner for Co-operation.

The ODIHR LEOM assessed compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, as well as with national legislation. This final report follows a Statement of Preliminary Findings and Conclusions which was released at a press conference in Washington D.C. on 7 November 2018.<sup>1</sup>

The ODIHR LEOM wishes to thank the authorities of the United States for the invitation to observe the elections, and the Department of State, the National Association of Secretaries of States, and the National Association of State Election Directors for their assistance. They also express their appreciation to other federal and state institutions, political parties, media and civil society organizations, and international community representatives for their co-operation.

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<sup>1</sup> See all previous [ODIHR election-related reports on the United States](#).

### III. BACKGROUND

The US is a federal presidential republic comprising 50 states, the District of Columbia, and a number of overseas territories.<sup>2</sup> The president holds executive power, serving as head of state and government, with legislative power vested in the bi-cameral Congress, consisting of the Senate and the House of Representatives. The states exercise wide authority relative to the federal government and have their own governors, constitutions, laws, legislatures, and courts.

On 6 November 2018, elections were held for 35 of the 100 Senators and all 435 members of the House.<sup>3</sup> Several social groups were underrepresented in the outgoing Congress. Women held some 20 per cent of seats and 25 per cent of all leadership positions, minorities and Native Americans held 19 per cent of seats, and few persons with disabilities held seats in the outgoing Congress.<sup>4</sup>

The elections took place in a highly polarized political environment with entrenched partisan gridlock in Congress and federal bodies. The pre-election period was marked by a series of legal and congressional investigations regarding cyber security threats and foreign interference in US elections.<sup>5</sup> In January 2017, the Department of Homeland Security (DHS) designated elections as part of the nation's critical infrastructure (see *Cyber Security* section).

### IV. ELECTORAL SYSTEM

The broad outline of the electoral system is set out in the Constitution. The election cycle for federal office is comprised of general elections (every four years) and mid-term elections (halfway between general elections). One third of senators and all members of the House of Representatives are elected during each general and mid-term election.

The Senate is comprised of 100 members, with each state represented by two Senators who serve six-staggered year terms, with no state's two senators scheduled to be elected in the same election. The House is comprised of 435 members, with each state represented in the House by at least one representative, with remaining seats allocated to states proportional to their population. Representatives' term in office is two years. Senators and representatives are elected directly, primarily in 'first-past-the-post' contests.<sup>6</sup>

While electoral districts for the Senate are the entire state, Representatives are elected from single-member districts. The district boundaries were last drawn by states after the 2010 census. Districts must be drawn with approximately equal population sizes, in order to fulfill the principle of an equal

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<sup>2</sup> American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Puerto Rico, Virgin Islands, and Wake Island.

<sup>3</sup> Thirty-three Senate seats were contested in regular elections and two (Minnesota and Mississippi) in special elections.

<sup>4</sup> For women's representation in Congress, see data from the [Center for American Women and Politics](#). On minority and Native American representation, see data from the [Pew Research Center](#). On persons with disabilities, see data from the [National Council on Independent Living](#). The number of openly LGBT members the outgoing Congress was also reported to be low (see data from the [Victory Fund](#)).

<sup>5</sup> See the 8 May 2018 Senate Select Committee on Intelligence Summary of Initial Findings and Recommendations on "[Russian Targeting of Election Infrastructure During the 2016 Election](#)", and the 22 March 2018 House Select Committee on Intelligence Report on "[Russian Active Measures](#)" (redacted). There is an ongoing investigation by a [Special Counsel](#) appointed by the Attorney General in May 2017 to investigate "Russian interference with the 2016 presidential election and related matters."

<sup>6</sup> In the House, vacancies arising between elections are filled through by-elections. In the Senate, vacancies may be filled temporarily by Governors, except Oregon where a special election is required.

weight of the individual vote.<sup>7</sup> While districts generally have an equal population size, a range of lawsuits have alleged that district boundaries were drawn on political or racial grounds, violating guarantees of the equality of the vote.<sup>8</sup> The Supreme Court dealt with four cases on redistricting in 2018, but in none was there a substantive ruling on the matter.<sup>9</sup> There is also concern that partisan redistricting leads to uncompetitive races and, in these elections, 42 candidates for the House ran unopposed. Positively, in recent years, several states have introduced independent redistricting commissions to minimize the risks of partisan districting.<sup>10</sup>

*States should consider establishing independent bodies to draw district boundaries. Districting should respect the equality of the vote, not discriminate against any group, and be free from political influence. Districts should be determined well in advance of an election, following broad public consultations and allowing adequate time for potential judicial review.*

## V. LEGAL FRAMEWORK

The Constitution establishes the broad framework for federal elections. A discrete body of federal law focuses on protecting the voting rights of racial and linguistic minorities, military and overseas citizens, and persons with disabilities, as well as providing minimum standards for new voting technologies (NVT) and comprehensive regulation of campaign finance.<sup>11</sup> Detailed rules are to be found only at the state and sub-state level, resulting in an electoral framework which is complex and diverse, with few requirements of uniformity of practice.<sup>12</sup> Federal and state court decisions also form an integral part of the legal framework.

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<sup>7</sup> In 2016, the Supreme Court in [Evenwel v. Abbott](#) held that the principle of “one-person one-vote” is complied with if states use the total population as a baseline, rather than the number of eligible voters.

<sup>8</sup> See, for example, [League of Women Voters of Michigan v. Johnson](#) (partisan), [Bethune-Hill v. Virginia State Board of Elections](#) (racial), and [Georgia State Conference of the NAACP v. Georgia](#) (partisan and racial). In January 2018, the Pennsylvania Supreme Court struck down the 2011 congressional map as unconstitutional and, after the state legislature failed to revise the map, adopted a new map which was in effect for the 2018 mid-term elections. Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits OSCE participating States to guarantee “universal and equal suffrage to adult citizens”. Paragraph 21 of the UN Human Rights Committee (CCPR) General Comment No. 25 on the ICCPR states that “the drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group”. Section I.2.2 of the 2002 Council of Europe’s Venice Commission Code of Good Practice on Electoral Matters recommends that districting be impartially by a commission, “the majority of whose members are independent”.

<sup>9</sup> See [Abbott v. Perez](#), [Benisek v. Lamone](#), [Gill v. Whitford](#) and [Rucho v. Common Cause](#). In *Gill*, the court returned the case to the district court, requiring the plaintiffs to demonstrate standing; the same course of action was followed by the court in *Rucho*. In *Benisek*, the court declined to disturb the district court decision; while, in *Abbott*, the court reversed the lower court’s finding of discriminatory intent, applying a presumption of legislative good faith.

<sup>10</sup> Independent redistricting commissions were in place ahead of these elections in Arizona, California, Hawaii, Idaho, Montana, New Jersey, and Washington. Ballot initiatives to facilitate independent redistricting were passed in April 2018 in Ohio and on 6 November in Colorado, Michigan, Missouri and Utah.

<sup>11</sup> Federal legislation includes: the 1965 Voting Rights Act ([VRA](#)), which protects the rights of racial and linguistic minorities; [the 1986 Uniformed and Overseas Citizens Absentee Voting Act](#) and the 2009 Military and Overseas Voting Empowerment Act ([MOVE](#)), which facilitate out-of-country voting; [the 1984 Voting Accessibility for the Elderly and Handicapped Act](#) and the 1990 Americans with Disabilities Act ([ADA](#)), which promote access to the polls for people with disabilities; the 1993 National Voter Registration Act ([NVRA](#)), which facilitates voter registration; [the 1971 Federal Electoral Campaign Act](#) and [the 2002 Bipartisan Campaign Reform Act](#), which regulate campaign finance; and the 2002 Help America Vote Act ([HAVA](#)), which provides standards for new voting technologies (NVT), state-wide voter registration, provisional ballots, and access for voters with disabilities.

<sup>12</sup> This was reaffirmed by the Supreme Court in 2013 in [Arizona v. Inter Tribal Council of Arizona](#).



The US is a party to some major international and regional instruments related to democratic elections.<sup>13</sup> The US ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992, with a number of reservations, understandings, and declarations.<sup>14</sup> The US has signed, but not ratified, the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>15</sup>

While several bills were submitted in the outgoing Congress, including proposals that would have addressed a number of prior ODIHR recommendations, federal election law remained unchanged for these elections, primarily due to a lack of bipartisanship.<sup>16</sup> Many states, however, introduced amendments, principally to facilitate voter registration, early voting, and restoration of voting rights for ex-prisoners. Several of these legislative initiatives addressed ODIHR recommendations at the state level.

*In line with OSCE commitments, consideration should be given to ratifying CEDAW and CRPD as a means to further protect and promote the electoral rights of women and persons with disabilities.*

Responsibility for the enforcement of federal electoral law is vested in the Department of Justice (DoJ), which can bring enforcement suits in instances of suspected non-compliance. Under the 1965 Voting Rights Act (VRA), the DoJ may initiate proceedings against jurisdictions which discriminate on the grounds of race or color, or language status. Section Five of the VRA also provides that jurisdictions in which there is a history of discrimination must obtain federal pre-clearance of changes to electoral law from either the DoJ or the federal district court in the District of Columbia.<sup>17</sup> There is, however, an enforcement gap in the VRA since the Supreme Court in 2013 struck down the formula determining the jurisdictions to be subject to pre-clearance requirements, holding that it was outdated.<sup>18</sup>

At odds with a prior ODIHR recommendation, and despite several legislative initiatives, Congress has yet to adopt an alternative formula. As a result, no jurisdiction is presently required to pre-clear electoral changes, with three exceptions that are covered by court orders.<sup>19</sup>

The absence of preclearance requirements removes a longstanding, timely and effective safeguard against discrimination on racial or linguistic grounds, challenging constitutional guarantees, OSCE

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<sup>13</sup> Including the 1966 ICCPR; the 1965 Convention on the Elimination of all forms of Racial Discrimination (CERD); the 2003 UN Convention against Corruption (UNCAC); and the 2004 Council of Europe Convention on Cybercrime. The US is also a member of the Council of Europe's Group of States against Corruption (GRECO) and European Commission for Democracy through Law (Venice Commission).

<sup>14</sup> In particular, the Senate declared that "the provisions of Article 1 through 27 of the Covenant are not self-executing". Under international law, the responsibility to ensure compliance with obligations under ratified international instruments lies with the federal government, see Paragraph 4 of the 2004 [UN CCPR General Comment No 31](#) on the ICCPR. On 19 June 2018, the US announced its intention to withdraw from the UN Human Rights Council, and was replaced on 13 July 2018.

<sup>15</sup> Paragraph 13.2 of the 1989 OSCE Vienna Document commits participating States to consider acceding to international human rights treaties, with paragraph 15 referencing CEDAW. See also, paragraph 40.2 of the 1991 OSCE Moscow Document and paragraphs 5.20 and 5.21 of the 1990 OSCE Copenhagen Document. Additionally, the US is also not a party to the American Convention on Human Rights and the Indigenous and Tribal People's Convention.

<sup>16</sup> Election-related legislation tabled in the outgoing Congress includes the [Voting Rights Advancement Act](#), [Voter Empowerment Act](#), [Honest Ads Act](#), [Secure Elections Act](#), and [Native American Voting Rights Act](#).

<sup>17</sup> Section 5 has an expiration date, which, in 2006, was reauthorized by Congress until 2031.

<sup>18</sup> See [Shelby County v Holder](#). The Supreme Court did not rule on the constitutionality of Section 5 itself.

<sup>19</sup> Charles Mix County (South Dakota), Evergreen City (Alabama), and from 2017, as the first 'bail-in' since 2013, [Pasadena City](#) (Texas). Apart from these three, restraint is possible only through the initiation of court cases. Of note, many orders are in place stipulating the protection of language rights under Section 2 of the VRA.

commitments and international obligations.<sup>20</sup> Concerns have also been expressed by many ODIHR LEOM interlocutors that the DoJ is failing to use its enforcement powers in an effective manner.<sup>21</sup>

*In order to ensure the right and opportunity to vote for all citizens, Congress should, without further delay, establish the formula for determining jurisdictions to be subject to Section Five of the Voting Rights Act, in line with the ruling in Shelby County v. Holder.*

## VI. ELECTION ADMINISTRATION

The election administration is highly decentralized, with no federal body mandated to oversee the entire electoral process. States are responsible for administering elections, with duties often delegated to some 10,500 jurisdictions across the country. Around 185,000 polling stations were established for these elections, but their number and size varied from state to state. At least 13 states established vote centres, where voters could vote regardless of their residential address within a given jurisdiction.

The overall authority to administer elections at the state level varies considerably. In 26 states, the chief election official (CEO) is the elected secretary of state or lieutenant governor, while other states use a combination of politically appointed CEOs and commissions. A similar variety of electoral authorities exists at the sub-state level. While stakeholders overall voiced confidence in the administration of elections, in some states, CEOs were contestants in the elections they supervised, potentially leading to conflict of interest and raising questions about the independence of the administration.<sup>22</sup>

*To safeguard the impartiality of the election administration, officials should not be allowed to stand as candidates in contests that they are directly supervising.*

The bipartisan Election Assistance Commission (EAC) is a national advisory body that provides guidance on meeting HAVA requirements and serves as a clearinghouse for information about election administration. The EAC proactively supported states and local jurisdictions to prepare for the elections, including by providing guidance on voter registration, cyber security training, and certification of new voting technologies (NVT). All ODIHR LEOM interlocutors positively assessed the work of the EAC. However, concerns were expressed that its lack of a decision-making quorum meant that it could not adopt new guidelines, including on the testing and certification of NVT, which reduced its ability and effectiveness to respond to current and emerging challenges.<sup>23</sup>

*The capacity of the Election Assistance Commission should be strengthened to ensure effective support to states and jurisdictions in the conduct of elections. In particular, the authorities should ensure that any future vacancies in the Commission's membership are promptly filled.*

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<sup>20</sup> In particular, Article 2 of the CERD requires that all public authorities, national and local, shall pursue policies of eliminating racial discrimination, while Article 5(c) guarantees the right to participate in elections on the basis of universal suffrage. See also paragraph 5.9 of the 1990 OSCE Copenhagen Document.

<sup>21</sup> See, for example, Congressional Black Caucus [Letter to Attorney General Jeff Sessions](#). Also, see US Commission on Civil Rights, [An Assessment of Minority Voting Rights Access](#) in the US, 2018 Statutory Enforcement Report. See, also, [Statement](#) by the US Commission on Civil Rights from 18 August 2017.

<sup>22</sup> CEOs ran for office in 20 states, including the Secretaries of State of Georgia and Kansas, who ran for governor. See a [letter](#) by former President Jimmy Carter to Georgia Secretary of State Brian Kemp. Paragraph 20 of the 1996 UN Human Rights Committee (CCPR) General Comment 25 states that “an independent electoral authority should be established to supervise the electoral process”.

<sup>23</sup> After four years of functioning with three of four commissioners, in March 2018 one of the commissioners left, leaving the EAC without a quorum. Following the 2018 mid-term elections, two new commissioners were nominated by the president and then confirmed by the Senate on 3 January 2019, ensuring all four commissioners are in place. At the same time, a proposed [Election Assistance Commission Termination Act](#) is in Congress.

In May 2017, a Presidential Commission on Election Integrity (PCEI) was established to identify vulnerabilities in voter registration and voting processes used in federal elections. After most states refused to share voter registration data with the PCEI, and after several court cases initiated against the commission, the president terminated the PCEI in March 2018.<sup>24</sup> There is no public record of the PCEI's work and many ODIHR LEOM interlocutors criticized the commission as being overly politicised.

Election officials met with by the ODIHR LEOM were competent and performed their tasks transparently and in accordance with rules and established deadlines. Some officials indicated difficulties in recruiting and training poll workers, as well as a reduced capacity of some poll workers related to NVT. The DHS, state officials and non-profit organizations provided trainings in electoral security as a priority for election administrators tasked to be managers of information systems.

State and sub-state election officials widely used their websites to provide information to voters on a variety of topics, as well as guidance and training materials. Positively, this information was provided in minority languages, where needed. However, some ODIHR LEOM interlocutors mentioned that sufficient information was not always provided to voters in case of legal changes or new procedures, as well as for prisoners and ex-prisoners. Various initiatives to increase voter turnout were undertaken by civil society groups and political parties. However, at times, the information they provided was inaccurate or purposefully misleading.<sup>25</sup>

Federal legislation prohibits discrimination and ensures equal opportunity for persons with disabilities in political and electoral life.<sup>26</sup> It is estimated that one seventh of the voting-age population has some type of disability.<sup>27</sup> The EAC provided guidance to election administrators on accessible voting. As required by the VRA and HAVA, the authorities undertook numerous efforts to provide information materials in formats accessible for persons with disabilities.

## VII. CYBER SECURITY

In line with prior ODIHR recommendations, federal and state authorities launched a number of initiatives to help secure election technologies, including from cyber-threats. Following the DHS designation of elections as critical infrastructure, a sector-specific agency (SSA) was designated to share information and good practice to prevent and respond to attacks, particularly in respect of cyber security.<sup>28</sup> In January 2018, Congress allocated USD 380 million to enhance technology and security in the election administration. The funds were distributed in their entirety by the EAC to all 50 states, the District of Columbia, and the US territories, and were used to replace outdated voting machines,

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<sup>24</sup> See Presidential [Executive Order](#) on the PCEI establishment and Presidential [Executive Order](#) on its termination.

<sup>25</sup> For example, incorrect information about the deadline for submitting absentee ballots was sent on behalf of the Republican party candidates to thousands of voters in New York and Missouri.

<sup>26</sup> See [guidance](#) provided by the DoJ.

<sup>27</sup> The US [Bureau of Census](#) found that overall one in five Americans have a disability, [while 10.6 per cent of people between 18–64 and 35.2 per cent of people of age 65 and older, have disabilities](#). The National Conference of State Legislatures (NCSL) [estimates](#) that one in seven Americans of voting age has a disability.

<sup>28</sup> The SSA comprises the Government Coordinating Council (GCC) and the Sector Coordinating Council (SCC), which serve as collaborative forums where federal, state and local government officials, as well as the private sector, can share information and good practice to prevent and respond to attacks on election infrastructure, particularly in respect of cyber security.

strengthen the existing computer and network infrastructure, and build cyber-security capacity.<sup>29</sup> However, more investment is needed to replace aging voting equipment and to maintain security.<sup>30</sup>

*The federal and state governments should provide sufficient and sustainable funding mechanisms to replace aging voting equipment and to improve cyber security.*

After the DHS designation, Information Sharing and Analysis Centers (ISACs) were established to assist states and jurisdictions to defend against cyber-attacks.<sup>31</sup> ISACs organized cyber security training and simulation exercises, which helped several states to improve overall cyber awareness and cyber hygiene among election staff. DHS granted the necessary security clearances to around 100 election staff, including CEOs of all states, to be briefed on classified information pertaining to a potential cyber-attack. ISACs also supported the broad deployment of so-called ‘Albert sensors’, which allowed the DHS and ISACs to collect, consolidate, and analyze suspicious network traffic and determine the best course of action to mitigate cyber-attacks.<sup>32</sup>

The robust technical support and co-ordination mechanisms introduced by the DHS greatly enhanced the authorities preparedness for cyber-attacks. There were no public reports of verified cyber attacks on election infrastructure prior to, on, or after election day. However, large parts of the US election infrastructure remain unprotected and vulnerable and do not provide mechanisms of accountability. This includes, for example, insecure voter registration systems in use in several states, the use of wirelessly networked laptop computers by polling station staff to identify voters, the use of digital media to transfer critical information to and from vulnerable voting machines, or election officials who are, often in co-operation with vendors, not adequately trained for configuring voting machines.<sup>33</sup> Unprepared jurisdictions lack basic cyber-defense capabilities and the capacity to undertake comprehensive feasibility studies that include clear procurement and maintenance plans.<sup>34</sup> An ODIHR LEOM analysis showed that more than 30 per cent of jurisdictions provided insecure online resources for voters, and only 1,300 of around 10,500 jurisdictions are ISAC members that receive cyber security updates. Cyber-security misconceptions remain widespread among election officials.<sup>35</sup> In addition, some NVT vendors are not contractually obliged to react to advisories issued by the authorities, or to inform them about new vulnerabilities or security breaches.

*Information Sharing and Analysis Centers and the Election Assistance Commission could broaden their training efforts to build cyber security capacity at state and sub-state level. Special efforts could be made to dispel cyber security misconceptions and train officials on how to mitigate cyber security risks through feasibility studies, procurement documents and contingency plans.*

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<sup>29</sup> California received the largest amount (USD 35.5 million), but no state received less than USD 3 million. See the [HAVA funds chart view](#).

<sup>30</sup> See, for example, Chapters VII and VIII of the Council of Europe’s Committee of Ministers [Recommendation CM/Rec\(2017\)5](#) on standards for e-voting.

<sup>31</sup> The Multi-State ISAC and the Election-Infrastructure ISAC provide central resources for gathering information on cyber threats to critical infrastructure and enable communication between the public and private sector.

<sup>32</sup> The Albert sensor is an intrusion-detection system designed to identify malicious network traffic.

<sup>33</sup> For example, some ODIHR LEOM interlocutors shared concerns that vulnerabilities in Georgia’s online voter registration systems could be misused by anyone with minimal hacking experience to access, change, and cancel registration information of voters. Thirteen other states use similar systems by the same vendor.

<sup>34</sup> Including cyber-defense against social engineering, malware (distributed via USB flash drives), spear-phishing, rogue access point, man-in-the-middle, zero-day, or insider attacks.

<sup>35</sup> Common misconceptions among ODIHR LEOM interlocutors included, for example, that kiosk-based voting systems and other election technologies are secure because they are not connected to the Internet, that cyber security is a purely technical challenge, and that cyber security can be achieved through non-disclosure and closed source programming.

Weaknesses in the election infrastructure and allegations of cyber hacking can potentially reduce public confidence in the accuracy of voter registers and even the integrity of election results.<sup>36</sup> Shortly after the elections, the Cybersecurity and Infrastructure Agency was created within the DHS to help better secure, among others, the election infrastructure.

*The Cybersecurity and Infrastructure Agency and the Election Assistance Commission could be tasked with creating cyber security standards for election technologies across all jurisdictions. These standards should require accountable mechanisms for all administrative processes and election technologies, including voter registration, the casting of votes, and tabulation and transmission of results. The standards should also require that the cyber security of any certified technology is continuously kept up to date.*

## VIII. VOTING RIGHTS

US citizens who are at least 18 years of age and resident in a state are eligible to vote in federal elections. However, contrary to longstanding ODIHR recommendations, there are many instances of disenfranchisement by law, affecting around 11 million otherwise eligible voters.

Some 4.7 million citizens resident in US territories and in the District of Columbia, have no voting representation in Congress.<sup>37</sup> The lack of full representation contravenes principles of universal and equal suffrage.<sup>38</sup>

*Citizens resident in the District of Columbia and US overseas territories should be provided with full representation rights in Congress.*

Despite several states introducing amendments to restore the voting rights of ex-prisoners, state laws disenfranchise an estimated 6.1 million persons with criminal convictions, half of whom have served their sentences.<sup>39</sup> Laws vary considerably, meaning that citizens from different states, who have committed the same crime, have their voting rights affected differently. In Maine and Vermont, those convicted are not disenfranchised at any stage. However, in a few states, prisoners and ex-prisoners permanently lose their right to vote unless pardoned by the state governor, while in many states, persons on parole are prohibited from voting. Further, even for those who are not legally deprived of the right to vote, voting facilities are rare in jails and prisons and information on how voting rights are

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<sup>36</sup> In Georgia, the secretary of state's office accused the Democratic party of hacking the voter registration system only days before the elections.

<sup>37</sup> There are non-voting delegates in the House from the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the US Virgin Islands. A resident commissioner represents Puerto Rico. They may not vote in plenary session of the House, although they may vote in committees.

<sup>38</sup> Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits participating States to "guarantee universal and equal suffrage to adult citizens". Article 25 of the 1966 ICCPR states that "every citizen shall have the right and the opportunity...to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage...". Paragraph 1 of the 1996 UN CCPR General Comment No.25 on the ICCPR states that "...the Covenant recognizes and protects the right of every citizen to... vote and to be elected... the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects...". See also, the 2003 Inter-American Commission on Human Rights (IACHR) decision in [Statehood Solidarity Committee v US](#) and the 5 October 2018 [Case before the IACHR](#).

<sup>39</sup> The Sentencing Project – [6.1 million lost voters](#). Since the last elections Alabama, California, Delaware, Iowa, Louisiana, Maryland, Nevada, New York, Virginia and Wyoming have amended their laws to liberalize access to the vote for former prisoners. A new measure to restore the voting rights of former prisoners was passed by ballot initiative in November 2018 in Florida. Primarily, this concerns 'ex-felons'. In the US, a felony is typically defined as a serious crime punishable by a term of imprisonment of at least one year.



restored is not always clear.<sup>40</sup> These laws and practices have a disproportionate impact on racial minorities, who are overrepresented in the penitential system.<sup>41</sup> Such restrictions on voting rights contravene the commitment to ensure proportionality in the restriction of rights, as provided in the 1990 OSCE Copenhagen Document.<sup>42</sup>

*Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate and that rights be restored upon completion of sentences. Guidance should be clearly and systematically communicated to those affected by any limitations. Pre-trial detainees should be afforded with the means to vote.*

Protection of the voting rights of persons with intellectual disabilities and those in guardianship varies across the country, with no official data available on the numbers of people disenfranchised.<sup>43</sup> Forty states impose disqualifications based on competency requirements, just five of which have adopted a best practice model in the assessment of capacity. State practices are not always in line with US legislation and international standards requiring individualized assessment of capacity.<sup>44</sup>

*States should review their laws and practices to ensure that deprivation of the right to vote for persons with intellectual disabilities or those under guardianship is based on individualized assessment and not subject to blanket disenfranchisement. Data on guardianship and deprivation of voting rights should be collated on an ongoing basis to ensure oversight.*

## IX. VOTER REGISTRATION

Voter registration is active and implemented at state level, with minimum conditions set by HAVA and NVRA. There is no centralized voter register. According to the Census Bureau, the total number of citizens of voting age is estimated to be above 250 million, while the total number of unregistered voters, based on data from state registers, is estimated at around 50 million. There was no consolidated official information available on the total number of registered voters across the country before the elections. State reports on the number of voters were partly available online but lacked a unified approach in presenting voter registration information. A lack of information about the accuracy of voter lists and the number of registered voters could potentially affect the transparency of the electoral process and efficiency of polling station administration.

*Authorities should develop clear procedures for the collection, aggregation and dissemination of information regarding the number of eligible and registered voters, updates made to the voter lists, and other relevant voter registration and participation figures at the national level before election day.*

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<sup>40</sup> The five-year sentence imposed on [Crystal Mason](#) in Texas for voting in the 2016 elections while on parole has highlighted the prevailing confusion about the law.

<sup>41</sup> The Sentencing Project – [Report on Racial Disparities in the US Criminal Justice System](#), April 2018. See also [UN CCPR “Concluding observations on the fourth periodic report of the United States of America” \(2014\), CCPR/C/USA/CO/4](#), para. 24.

<sup>42</sup> Paragraph 24 of the 1990 OSCE Copenhagen Document states that “...any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law”. Paragraph 14 of 1996 UN CCPR General Comment No. 25 to the ICCPR states that grounds for the deprivation of voting rights should be “objective and reasonable.”

<sup>43</sup> Bazelon Center for Mental Health Law – [guardianship rules on a state by state basis](#).

<sup>44</sup> The 1990 American with Disabilities Act provides that the right to vote cannot be taken away without an individual assessment. The Convention does not support deprivation of legal capacity with respect to the right to vote following an individualized assessment. See Articles 12 and 29 of the 2006 CRPD, and subsequent CRPD [treaty interpretation](#).

In line with the law, registration of voters was open until at least 7 October. In many states, the process continued after that date, allowing later registration for absentee and early voting. Voters could register in person, by post, or through an authorized third party. States are required to make their driver license application form also serve as a voter registration application, while the EAC is mandated to provide a federal postal registration form that states must accept. HAVA requires first-time voters that register by post to provide proof of identity. Numerous state and nationwide associations and groups played an active role in registering new voters.<sup>45</sup> Seventeen states allowed same-day voter registration before and on election day, while North Dakota did not require any registration.<sup>46</sup> Proof of citizenship was not required to register in federal elections.<sup>47</sup> States are required to co-ordinate and match their voter registration databases with state and federal databases, but laws and procedures for maintaining voter lists vary.<sup>48</sup>

Several initiatives were undertaken to facilitate voter registration, in line with prior ODIHR recommendations. Online registration was used in 37 states, while automatic registration was provided in 10 states. At the same time, an increased number of states participated in inter-state projects to identify duplicate records and inaccuracies, to ensure the integrity of voter registers.<sup>49</sup>

*States not already participating in inter-state projects should consider doing so, to improve the accuracy of state voter registers across the country.*

Despite some improvements to facilitate voter registration, the high number of unregistered citizens, coupled with concerns that marginalized groups face undue obstacles in registering, underline a need for greater efforts by the authorities to improve voter registration and the accuracy of voter registers across the country.<sup>50</sup> In June 2018, the Supreme Court ruled that removals from voter lists due to inactivity, as practiced in Ohio, do not violate federal election law.<sup>51</sup> The application of Georgia's legislation on voter registration resulted in the suspension of the registration of some 50,000 citizens, the majority of whom are African American, because of mismatches in their documents.<sup>52</sup> A number of ODIHR LEOM interlocutors noted that low-income voters, racial and linguistic minorities, Native Americans, and persons with disabilities face greater obstacles in registering as voters and have below-average registration rates.

*Authorities should review existing measures to further reduce the number of unregistered voters, including removing undue obstacles and burdensome procedures faced by marginalized sections of*

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<sup>45</sup> In October, on the National Voter Registration Day supported by the National Association of Secretaries of State and the National Association of State Election Directors, over 800,000 voters were registered across all 50 states.

<sup>46</sup> In Florida, voter registration was extended by one day because of hurricane Michael in the 35 worst-affected counties. In Georgia, the voter registration was extended for a week in four affected counties.

<sup>47</sup> [Arizona](#) allows voters who failed to present their proof of citizenship to vote only in federal elections.

<sup>48</sup> Databases used include the states' databases of the motor vehicle authority and the federal database of the Social Security Agency, as well as state records of deceased people and prisoners.

<sup>49</sup> Currently, 24 states and the District of Columbia participate in the Electronic Registration Information Center ([ERIC](#)), and 30 states participate in the Interstate Voter Cross-Check Program ([IVCP](#)). While IVCP is limited to providing lists of suspected duplicates to participating states, ERIC provides comprehensive assistance to identify various types of inaccurate voter list entries. If a potential duplicate record is identified, most states require that an attempt is made to contact the individuals concerned before they are removed from the voter list.

<sup>50</sup> Paragraph 11 of the 1996 UN CCPR General Comment 25 provides that "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. When registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed".

<sup>51</sup> See [Husted v. Randolph](#). However, on 31 October, a federal appeals court ordered Ohio to allow voters who had been removed from voter lists in the last six years to cast provisional ballots in the mid-term elections.

<sup>52</sup> The Congressional Black Caucus cited the racially disparate impact of the system in its [letter to Attorney General Jeff Sessions](#).

*the population. Clear and accessible civic education programmes aimed at inclusive voter registration should be in place.*

## **X. VOTER IDENTIFICATION**

Requirements for voter identification vary widely. Thirty-four states required voters to show some form of identification before voting, while in 16 states identification of voters is most often based on verification of signatures or conducted by asking for personal information. The number and type of identification documents accepted for voting purposes differed across states. Seventeen states required photo identification.<sup>53</sup>

While provisional ballots can be provided to voters who believe they are registered at a locality but cannot be found on the voter list or cannot present the required identification document, state regulations and deadlines for verifying and counting provisional ballots vary widely.

On 9 October, the Supreme Court upheld a North Dakota voter identification law that requires a residential address on an ID to vote and does not accept a post office box address, except with supplementary proof of a residential address.<sup>54</sup> Several organizations claimed that this law disproportionately restricts the rights of Native Americans who do not have a residential address. Despite the short time available, measures taken by Native American tribes and by advocacy groups reportedly allowed most eligible Native Americans to vote.

While there have been only a few legal changes to identification requirements since 2016, voter identification remains a highly charged issue, divided along partisan lines. Republicans emphasize strict voter identification as key to protecting electoral integrity, while Democrats underscore that the risk of fraud is minimal and that such requirements can disenfranchise marginalized groups. Measures to ensure electoral integrity are important, but they should be designed in such a manner as not to disenfranchise eligible voters.

*States should refrain from introducing voter identification requirements that have or could have a discriminatory impact on voters. Consideration should be given to establishing federal standards for voter identification for both in-person and postal voting, to avoid possible discrimination and to comply with the Voting Rights Act.*

## **XI. CANDIDATE REGISTRATION**

Candidacy requirements are established by the Constitution. Candidates for the Senate must be at least 30 years old and a citizen for at least nine years, while candidates for the House must be at least 25 years old and a citizen for at least seven years. All candidates are required to be residents of the states they wish to represent. Detailed registration requirements are established by state law, often with considerable variations. All states offered the possibility for ‘recognized’ parties to nominate candidates, although the definition of ‘recognized’ party varied depending on the number of registered voters declaring their association with the party or the number of votes that the party received in previous elections. In a majority of cases, third parties and independent candidates are required to

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<sup>53</sup> According to the [NCSL](#), these states are: Alabama, Arkansas, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Rhode Island, South Dakota, Tennessee, Texas, Virginia, and Wisconsin.

<sup>54</sup> See [Brakebill v Jaeger](#). The law, introduced in 2013, was not in effect until these elections due to a court stay.



collect a certain number of supporting signatures.<sup>55</sup> A majority of states allowed for voters to ‘write-in’ candidates on election day.

In some states, prospective candidates were required to obtain signatures from more than one per cent of eligible voters, which is contrary to good practice.<sup>56</sup> Several ODIHR LEOM interlocutors noted that, in some states, meeting these requirements proved challenging for smaller parties or independent candidates who have more limited financial and human resources. The wide variations in candidate registration requirements resulted in significant differences in the conditions for citizens from different states to become candidates for the same national body.

*The number of supporting signatures for nomination of independent or third-party candidates should not exceed one per cent of registered voters, in line with good practice. States should ensure that definitions of “recognized parties” are inclusive and do not present unfair obstacles to register.*

Some 1,262 candidates stood in these elections, providing voters with a variety of electoral choices. The elections witnessed the participation of record numbers of candidates from historically underrepresented groups. There are no legal measures to promote women candidates, but 23 women ran for the Senate and 235 for the House. A record total of 126 women will serve in the 116<sup>th</sup> Congress, increasing the overall percentage of women from 20 to 24 per cent.<sup>57</sup> Yet despite this increase, women still remain underrepresented in Congress.<sup>58</sup> A record total of 43 women from racial minorities were elected to the House, out of 80 who stood as candidates.<sup>59</sup> A record number of 28 openly LGBT candidates stood for Congress, of whom 10 were elected.<sup>60</sup> For the first time, two Native American women were elected to the House, joining two Native American men who were reelected. All 12 candidates who self-identified as having a disability won their respective electoral races.

*Building upon the recent good practice of some political parties, consideration could be given to introducing special measures to promote women candidates. This could include sustained legal and other measures, with benchmarks and concrete timetables, to increase the representation of women in Congress.*

## **XII. ELECTION CAMPAIGN**

Despite the increasingly polarized political environment, the campaign unfolded in an open atmosphere with overall respect for fundamental freedoms of expression, assembly, and association. However, a series of security-related and terrorist incidents cast a shadow over the campaign period.

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<sup>55</sup> See [Anderson v. Celebrezze](#) and [Burdick v. Takushi](#). The rationale of the courts to permit such requirements include the avoidance of voter confusion, overly long ballots, or frivolous candidacies.

<sup>56</sup> In 21 states, the thresholds are set over the level of one per cent. The 2002 Venice Commission Code of Good Practice in Electoral Matters, Section 1.3 (ii) recommends that “the law should not require collection of the signatures of more than one per cent of voters in the constituency concerned”.

<sup>57</sup> In these elections, 102 women were elected to the House and 14 women were elected to the Senate, with 10 women already serving in the Senate.

<sup>58</sup> Paragraph 3 of the OSCE Ministerial Council Decision 7/09 calls on participating States to “encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender balanced representation in elected public offices at all levels of decision-making”. See also Article 32 of CEDAW General Recommendation No. 23, which encourages political parties “to adopt effective measures, including the provision of information, financial and other resources, to overcome obstacles to women’s full participation and representation and ensure that women have an equal opportunity in practice to serve as party officials and to be nominated as candidates for election”.

<sup>59</sup> See data from the [Center for American Women and Politics](#).

<sup>60</sup> Two were elected to the Senate and eight to the House. See data from the [Victory Fund](#).

On 27 October, a mass shooting at a synagogue in Pittsburgh left 11 people dead and 6 injured.<sup>61</sup> From 22 to 29 October, 15 improvised explosive devices were mailed to senior Democratic party leaders and other public figures and bodies known to be critical of the White House and the Republican party.<sup>62</sup> Despite politicians from all sides calling for reduced partisan tensions in the aftermath of these events, both parties swiftly returned to using polarizing language for the rest of the campaign.

The rhetoric used during the campaign was often divisive, confrontational and intolerant, with much of it emanating from the national level.<sup>63</sup> In particular, language of a sexist, homophobic, or racist nature was often observed.<sup>64</sup> In a number of cases, anti-Semitic rhetoric or conduct was also noted.<sup>65</sup> The Senate confirmation process for a Supreme Court justice nominee was seen to further amplify and harden existing divisions. The campaign also witnessed a range of negative TV adverts to attack political opponents, and concerns persisted over the truthfulness of political statements made.<sup>66</sup> Such rhetoric, coupled with the inability of the parties to sustain a reasoned level of discourse, restricted the space for substantive debate on public policy.<sup>67</sup>

*Public officials, political parties, their candidates and supporters should refrain from making statements during the campaign that constitute incitement to discrimination, hostility or violence.*

The campaign was highly competitive between both main parties, with candidates speaking freely with voters and presenting a wide array of information and views. With very few exceptions, third-party and independent candidates received little attention. The campaign focused on undecided voters in a significant number of so-called ‘battleground’ seats for the House and Senate. Most ODIHR

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<sup>61</sup> The [ODIHR Director](#) and the [OSCE Parliamentary Assembly](#) condemned the attack and called on political leaders to speak out against anti-Semitism and all forms of intolerance and discrimination.

<sup>62</sup> Addressees included former President Barack Obama, former Vice President Joe Biden, former Secretary of State Hillary Clinton, philanthropist George Soros, and CNN offices in Atlanta and New York City. The FBI referred to these cases as ‘domestic terrorism’.

<sup>63</sup> For example, on 2 October, in a rally in Mississippi, President Trump mocked the testimony of one woman who had claimed that the Supreme Court nominee had sexually assaulted her. On 6 October, in a rally in Kansas, President Trump referred to Democratic Senator Elizabeth Warren as ‘Pocahontas,’ mocking her claim of Native American heritage. On 9 October, Ms. Clinton stated that you cannot be civil with a “party that wants to destroy what you stand for.” On 12 October, in Kentucky, former Vice President Biden criticized President Trump for “trashing American values.” On 20 October, President Trump said that the Democrats were “an angry, ruthless, unhinged mob determined to get power by any means necessary”. On 22 October, he stated that the Democrats were “on a ruthless mission to obstruct, resist, delay, demolish, and destroy.” On 23 October, the White House published a report comparing the policies of Democratic Senators with those of Mao Tse-tung. On 30 October, the independent Senate candidate in Vermont, Bernie Sanders, referred to the President as “the most racist, sexist, homophobic, bigoted president in history.”

<sup>64</sup> On 2 October, President Trump mocked the testimony of a woman who claimed that the Supreme Court nominee had sexually assaulted her at college. A local Republican official in Kansas described a Democratic House candidate as a “radical socialist kick boxing lesbian Indian.” Republican campaign adverts tried to link two Democratic House candidates to Islamist terrorism.

<sup>65</sup> On 16 October, a Republican Senate candidate publicly apologized after a swastika was seen in one of his campaign adverts. On 23 October, House Majority Leader [Kevin McCarthy](#) accused three Jewish Democratic donors of trying to ‘buy’ the elections. During the campaign, the National Republican Congressional Committee produced an advert portraying George Soros as a ‘puppet master’ controlling a Democratic House candidate.

<sup>66</sup> On 1 November, a controversial video produced by the Trump 2020 campaign and broadcasted by several cable channels linking Democrats to a convicted Mexican murderer of two US police officers, by saying “Democrats let him into our country. Democrats let him stay”. Ultimately, the cable networks decided to stop airing the commercial. Another advert attempted to link a Democratic candidate of Mexican-Palestinian descent to terrorism by describing him as a “security risk,” who was “trying to infiltrate Congress.” The Congressional Leadership Fund produced an advert that portrayed a Democratic House candidate in New Jersey as a terrorist sympathizer.

<sup>67</sup> Article 20.2 of the 1966 ICCPR states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

LEOM interlocutors highlighted how the elections were widely seen as a referendum on the policies and conduct of the president.<sup>68</sup> Senior figures from both parties played active roles. For the Republicans, this included President Donald Trump, former President George W. Bush and outgoing House Speaker Paul Ryan. For the Democrats, this included former President Barack Obama, former Vice President Joe Biden, former Secretary of State Hillary Clinton, former First Lady Michelle Obama, and House Minority Leader Nancy Pelosi.

A significant number of grassroots movements assumed a high public profile, speaking publicly on issues ranging from women's rights, racial equality, and gun control to the role of the federal government.<sup>69</sup> These movements played a pivotal role in influencing candidate and platform selection, ensuring that a wide range of information was presented to voters. In particular, those groups that promoted women were active in recruiting record numbers of women candidates and increasing voter registration for this group.

The main political issues discussed during the campaign were largely driven by the national political agenda, including the performance of the president, immigration, healthcare, the economy, terrorism, gun control, abortion rights, and social security, as well as a range of other issues relevant to each state.<sup>70</sup> Candidates focused on issues that would ensure that their respective electoral bases would turn out to vote. Although traditional campaign activities, such as media advertising, billboards, rallies, telephone banks and door-to-door canvassing remained popular, the use of social networks was an important means of communicating directly with voters.

Many ODIHR LEOM interlocutors highlighted a lack of transparency in online advertising. Congress introduced a bill requesting online search engines and social networks to maintain accessible databases of political adverts appearing on their platforms, but its adoption is pending.<sup>71</sup> In the absence of any federal-level guidance, a number of states developed their own policies.<sup>72</sup> Additionally, the main social networks and online search engines voluntarily launched a number of actions to strengthen transparency in political advertising, as well as to reduce possible levels of disinformation, including from foreign sources.<sup>73</sup> Nevertheless, concerns remained over verifying the identity of advertisers and whether an advert should be classified as 'political advertising'.<sup>74</sup>

*The authorities should consider measures for further strengthening the level of oversight of online political advertising, including strengthened sanctions.*

### XIII. CAMPAIGN FINANCE

Federal law regulates campaign finance for congressional elections. There are specific limits on the amounts of donations from individuals, political parties and Political Action Committees (PACs), while direct donations from trade unions and corporations, as well as foreign or anonymous donations, are forbidden. There are no expenditure limits, as such limitations have been deemed by the Supreme Court to constrain free speech, in violation of the First Amendment. The Court has also extended the right to "independent speech" to legal entities, including so-called Super PACs, allowing them too to

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<sup>68</sup> On 5 November, President Trump stated "Even though I'm not on the ballot, in a certain way I am on the ballot".

<sup>69</sup> Examples include: [#MeToo](#), [Emily's List](#), [Maggie's List](#), [Winning for Women](#), [Victory Fund](#), [Black Lives Matter](#), [March for Our Lives](#), [Americans for Prosperity](#), [American Action Network](#), and [Freedom Works](#).

<sup>70</sup> The ODIHR LEOM observed 54 campaign events in 24 of the 47 states where the ODIHR LEOM observed.

<sup>71</sup> See the [Honest Ads Act](#) introduced in Congress.

<sup>72</sup> In Maryland, the [Online Electioneering Transparency and Accountability Act](#) came into effect on 1 July, while on 26 September California passed a [Social Media Disclosure Act](#).

<sup>73</sup> Facebook, Google and Twitter established a searchable database of political adverts hosted on their platforms.

<sup>74</sup> See Article 13.1, (b) of the 2004 UN Convention Against Corruption.

spend without limit.<sup>75</sup> Donations may be made to a multiplicity of candidates and parties and are not aggregated, although limits per category of donation exist.<sup>76</sup> Candidates may also spend unlimited amounts from their own resources. There is no public funding for congressional elections.

The Federal Election Commission (FEC) has the responsibility to enforce federal campaign finance law. No more than three commissioners, out of a total of six, can represent the same political party, and membership has historically been balanced between the two main parties, complicating decision-making at times of intense partisanship. Due to the inability of Congress to appoint two FEC vacancies since 2016, decision-making by the sitting commissioners requires full consensus, resulting in effective paralysis with regard to policy making and the initiation of investigations.<sup>77</sup>

*To ensure effective oversight, federal legislation could be amended to reform the structure of the FEC. Such a reform could include appointing, in addition to an equal number of members from the two main parties, an odd number of independent members.*

The administrative reporting and disclosure functions of the FEC continue to operate efficiently.<sup>78</sup> Transparency of the campaign finance system is undermined, however, by the existence of so-called ‘dark money’, funds which flow from sources independent of the candidates, political parties, or their PACs. To be considered “independent”, legal entities cannot co-ordinate their campaigns with parties and candidates, but many ODIHR LEOM interlocutors noted gaps in enforcing this law. Non-profit groups, for whom political activity is not their primary purpose, may raise unlimited funds that can be spent on campaigning but their donors are not disclosed.<sup>79</sup> This diminishes an otherwise transparent system as these donors are not subject to the jurisdiction of the FEC, circumventing disclosure and oversight rules, which is at odds with international obligations.<sup>80</sup>

*Federal legislation should be amended to require disclosure of the sources of funding of all non-profit organizations that engage in campaign activities.*

*Stricter rules and checks governing co-ordination between candidates and external actors of spending for political purposes should be introduced, to ensure that spending by outside groups is genuinely independent.*

Overall expenditure on these elections was estimated at some USD 5.2 billion, making these the most expensive mid-term elections in US history.<sup>81</sup> The largest individual donor contributed over USD 110

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<sup>75</sup> See, respectively, [Buckley v. Valeo](#) and [Citizens United v. FEC](#).

<sup>76</sup> See, [McCutcheon v. FEC](#). Individuals could contribute up to USD 2,700 per election to a candidate, USD 10,000 per calendar year to a state party, USD 33,900 per calendar year to a national party, and USD 5,000 per calendar year to a PAC. See the [FEC’s full breakdown on contribution limits](#).

<sup>77</sup> As of [30 September 2017](#), there were 20 unresolved complaints more than two years old before the FEC.

<sup>78</sup> New reporting rules applied to Senate candidates in these elections, requiring electronic filing of returns, facilitated expeditious disclosure.

<sup>79</sup> Section [501 \(c\) of the Internal Revenue Code](#) lists 29 conditions which characterize organizations that fit into this category. They include social welfare organizations and chambers of commerce.

<sup>80</sup> Article 7(3) and 13(1)b of the [2003 UN Convention against Corruption](#) requires states “...to consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office...”, and respectively, “ensuring that the public has effective access to information”. See also, the [2011 GRECO Evaluation Report on the US on the Transparency of Party Funding](#) and the [2016 GRECO Second Compliance Report on the US](#).

<sup>81</sup> See data from the [OpenSecrets.org–Center for Responsive Politics](#).

million in support of Republican candidates.<sup>82</sup> The overwhelming majority of money raised or spent during the electoral cycle was connected to the two main parties.<sup>83</sup> A number of ODIHR LEOM interlocutors assessed the high costs of campaigning as disadvantageous for new candidates, particularly women and other underrepresented groups.

These elections saw a steep rise in outside spending – expenditure that is independent of candidates – to USD 1.31 billion, the second-highest in any mid-term elections. A number of records for spending were set by candidates and by outside groups, including Super PACs and so-called ‘mega-donors’.<sup>84</sup> In the vast majority of cases, candidates with the most funds won their respective electoral races, with over 86 per cent of all congressional races won by the largest spender.<sup>85</sup> The non-existence of public funding, coupled with unlimited spending, can undermine the level playing field and distort the free choice of voters.<sup>86</sup>

*To level the playing field, consideration could be given to introducing a system of public financing for congressional elections, as well as introducing reasonable expenditure limits.*

## XIV. MEDIA

### A. MEDIA ENVIRONMENT

The media landscape is pluralistic and diverse, offering voters a wide range of opportunities to inform themselves, but at the same time increasingly polarized. It is also fragmented and mainly composed of local media outlets, with few media offering common nationwide news information and programming. Despite the high number of media outlets, there is a sizable concentration in media ownership. Major cable TV networks (such as FOX News, CNN and MSNBC) as well as local TV channels belonging to the main broadcast networks (such as ABC, NBC and CBS) dominate the consumption of political news.<sup>87</sup> While there is a high number of print publications, few have nationwide reach, and both national and local print media are facing challenges as the media market shifts to online media and digital platforms.<sup>88</sup>

Online-based media and social networks are increasingly used to access news information. Social networks, in particular, are the second most popular means of accessing media news, after local broadcasters. While the rise of social networks contributes to pluralism of media news in the general public discourse, there are concerns in the US political discourse that the structure of social networks

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<sup>82</sup> See [projections](#) by the Center for Responsive Politics, based on FEC data. According to these data, such donations amounted to around USD 295 million to Republican causes between 2012 and 2018. On 16 November, President Trump awarded The Presidential Medal of Freedom, the highest civilian award available to a US citizen, to one of these donors.

<sup>83</sup> According to the [Center for Responsive Politics](#), based on FEC data, it is projected that 93 per cent of all money spent during the 2018 electoral cycle will be by the two main parties.

<sup>84</sup> A Super PAC considered to be close to the Republican party, the Congressional Leadership Fund, spent the most ever by a Super PAC in mid-term elections with USD 137.5 million. The Senate Majority PAC, considered to be close to the Democratic party, was the second-highest Super PAC in terms of expenditure, with USD 113.1 million. See data from the [Center for Responsive Politics](#), based on FEC data.

<sup>85</sup> According to the [Center for Responsive Politics](#), based on FEC data.

<sup>86</sup> Paragraph 19 of the 1996 UN CCPR General Comment 25 states that “reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that... the democratic process [is not] distorted by the disproportionate expenditure on behalf of any candidate or party”.

<sup>87</sup> The broadcast media include 1,761 commercial and public television stations and more than 15,000 radio stations. See data from the [Federal Communications Commission](#).

<sup>88</sup> All traditional media have embraced digital convergence, with varying success, by publishing their content through online news portals and social networks.



can contribute to further polarization of political discussion and facilitate the dissemination of disinformation.<sup>89</sup>

The two main public broadcast networks, the Public Broadcasting Service (PBS) and National Public Radio (NPR), are composed of a network of private non-profit media outlets partly subsidized by federal funding through the Corporation for Public Broadcasting (CPB).<sup>90</sup> Despite limited federal funding, PBS and NPR have seen their audience grow in recent years, and they reportedly enjoy bipartisan appreciation for the quality of their programmes (see *ODIHR LEOM Media Monitoring*).<sup>91</sup>

*Consideration should be given to increase public funding for public broadcasters to support fair and balanced news programmes, including election-related reporting.*

Ahead of the mid-term elections, journalists and news media were the subject of several verbal attacks by high-level officials, who labeled them, among others, as “enemy of the people” and “fake news”.<sup>92</sup> Less than two weeks before election day, packages containing explosive material were addressed to a prominent news TV channel.<sup>93</sup> Such attacks raised concerns about the safety of journalists and undermined public trust in the media and its essential role in a democratic society.<sup>94</sup>

*Effective measures should be taken to ensure the safety of journalists and media, including protection against threats, intimidation and violence.*

## **B. LEGAL FRAMEWORK**

The First Amendment guarantees freedom of the press and expression. Overall, the media legal framework provides for limited regulation, favouring self-regulation. Over the years, attempts to draw up more defined media regulation have been rejected by Supreme Court decisions upholding the First Amendment, stating that no limits should constrain freedom of speech and of the press, unless it specifically incites violence or is intended to do so. The 1934 Communications Act, the 1996 Telecommunications Act, and Federal Communications Commission (FCC) regulations provide the

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<sup>89</sup> See, for example, PEW “[Research on political polarization on social media and the U.S. Congress](#)”.

<sup>90</sup> PBS is composed of nearly 350 local TV channels, and NPR of almost 1,000 local radio stations. On average, federal funding accounts for 10–15 per cent of a public TV channel’s or radio station’s budget. Federal funding allocated to the CPB has remained the same for the last ten years (around USD 445 million), despite a request by the CPB to increase the amount appropriated for public broadcasting.

<sup>91</sup> Paragraph 16 of the 2011 UN CCPR General Comment No. 34 to Article 19 of the 1966 ICCPR provides that states “should guarantee [public broadcaster] independence and editorial freedom. They should provide funding in a manner that does not undermine their independence”. See also the [Public Broadcasting Fact Sheet](#), by PEW Research Center.

<sup>92</sup> At a Republican rally in Montana on 18 October, President Trump praised an unprovoked assault on a journalist by state Congressman Greg Gianforte. The president also verbally attacked journalists and news media while participating in Republican rallies and via Twitter. On 7 November, President Trump during a press conference attacked CNN journalist Jim Acosta as an “enemy of the people”. The White House later withdrew Mr. Acosta’s press pass, claiming he mishandled an intern during the event. A CNN lawsuit against the White House to have Mr. Acosta’s press pass restored was joined by other media outlets. On 16 November, a court ruled that the White House decision had likely violated Mr. Acosta’s right to due process and freedom of speech, obliging the White House to return his press pass.

<sup>93</sup> See also the OSCE Representative for Freedom of the Media (RFoM) [statement](#) from 25 October 2018.

<sup>94</sup> In paragraph 6 of the 2010 OSCE Astana Document, participating States acknowledged “the important role played by civil society and free media in helping us to ensure full respect for human rights, fundamental freedoms, democracy, including free and fair elections, and the rule of law”. Paragraph 23 of the 2011 UN CCPR General Comment No. 34 to Article 19 of the 1966 ICCPR provides that states “should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression”. Paragraph 7 of the 2012 UN Human Rights Council, General Assembly Resolution 19/36 “calls upon States to ensure a safe and enabling environment for the media, including for journalists, media workers and associated personnel”.

basic regulatory framework for broadcasters, including provisions pertaining to election periods. Print and online media are not bound by statutory requirements.

In line with a general US tendency toward media deregulation, the FCC repealed the 2015 Open Internet Order, which barred providers from blocking, ‘throttling’ or introducing paid prioritization of Internet content. The December 2017 repeal of the so-called ‘net neutrality’ rules, which went into effect in June 2018, was met with criticism from national and international organizations, who raised concerns that this could lead to unequal treatment of content and users, and possibly reduce access to information. Several states responded to the repeal of the Open Internet Order by initiating or enacting legislation to reinstate net neutrality at the state level.<sup>95</sup>

*To uphold the right to access to information, provisions allowing blocking, throttling or introducing paid prioritization of Internet content should be revised.*

The media are bound by few regulations for the election period. Public broadcasters are forbidden from endorsing candidates and from airing political advertising. There are no legal provisions requiring commercial broadcasters to provide fair and balanced coverage of the contestants in their editorial programmes, but in the 60 days prior to election day, they are subject to certain regulations, including obligations to offer ‘reasonable access’ and an ‘equal opportunity’ to all federal candidates who request to purchase airtime.<sup>96</sup>

There are no limits on the amount of paid advertising, but commercial broadcasters are required to clearly indicate the sponsorship of any advertisement. They are also required to maintain and upload to the FCC website ‘political files’ containing information on each request to purchase airtime.<sup>97</sup> ODIHR LEOM interlocutors raised concerns regarding the transparency of third-party advertisement (see *Campaign Finance section*), as well as about the consistency of the information published by broadcasters on the FCC website and the fact that this information is not readily searchable.<sup>98</sup> The FCC oversees broadcast media regulations but does not conduct systematic media monitoring. The FCC did not receive official complaints during these elections.

*The Federal Communications Commission could develop a standardized online form for broadcasters to submit all necessary information on political advertising and organize them more clearly in a publicly accessible searchable database.*

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<sup>95</sup> Legislators in 30 states have introduced over 72 bills requiring Internet service providers to ensure various net-neutrality principles. California, Oregon, Vermont and Washington have enacted net neutrality-related legislation. See the OSCE RFoM [statement](#) from 5 December 2017. Paragraph 1.h.iii of the Joint Declaration on Universality and the Right to Freedom of Expression of the UN, OSCE, OAS and ACHPR provides that states should “actively promote universal access to the Internet regardless of political, social, economic or cultural differences, including by respecting the principles of net neutrality”. See also paragraph 43 of the 2011 UN CCPR General Comment No. 34 to Article 19 of the 1966 ICCPR.

<sup>96</sup> These rules apply to candidates, but not to their supporters. The ‘equal opportunity’ rule stipulates that if a candidate for public office purchases airtime or is granted other channel’s facilities, other candidates in that contest must be afforded equal conditions.

<sup>97</sup> FCC regulations include a prohibition for commercial broadcasters to censor candidates’ advertisement content and the obligation to sell the advertising space at the lowest commercial rate charged for a comparable advertisement on a channel-by-channel basis.

<sup>98</sup> Paragraph 19 of the 2011 UN CCPR General Comment No. 34 to Article 19 of the 1966 ICCPR requires that, “[t]o give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective, and practical access to such information”.



### C. ODIHR LEOM MEDIA MONITORING

The national media coverage of these elections was dominated by the national political scene, with limited coverage given to congressional races.<sup>99</sup> Besides the most prominent policy issues and coverage of campaign events, the controversies on voter registration process in some states emerged as a topic in the national media. Overall, the media devoted most of their coverage to the president, which contributed to framing these elections as a referendum on his policies and performance.

The cable TV networks reflected and further exacerbated the overall polarization of political discourse, with generally highly partisan coverage. CNN news coverage focused on the president, who received 64 per cent of the total coverage, mostly in a negative tone. FOX News also focused its coverage on the president, who received 40 per cent of the total coverage, mostly in a neutral tone, while it devoted 37 per cent to the representatives and supporters of the Democratic party, with a clearly negative tone.<sup>100</sup> MSNBC concentrated 44 percent of its political coverage on the president and 23 per cent on the Republican party, in both cases with a negative tone. The three commercial networks ABC, CBS and NBC covered the legislative races in their local TV channels, including through candidate debates for the most competitive races, while in their evening news programmes that are broadcast nationwide the coverage of the election was minimal. All commercial broadcast media were widely used for airing paid political advertisements.

The public broadcasters PBS and NPR positively fulfilled their public-service role by offering in their main news programmes balanced and impartial coverage of the Democratic and Republican parties, who each received 22 per cent, while the president attracted 56 per cent of their coverage. Similar to commercial broadcast media, print media mainly focused their coverage on national policies and on President Trump, reflecting either a clearly positive or negative editorial line towards the current administration.

Among online news media, *Politico* provided mostly impartial and original reporting, with in-depth analysis of political developments. *Breitbart* and *The Daily Caller* published a high volume of articles but mostly originated from other sources. Both showed a bias in favor of the President's policies or Republican candidates.<sup>101</sup> *The Huffington Post* and *Vox* published mostly original articles; both offered a critical coverage of the President, in particular *Vox*, but with a very limited coverage of congressional and state races.

## XV. COMPLAINTS AND APPEALS

There are several administrative and judicial avenues through which electoral disputes may be pursued. The DoJ is responsible for monitoring the compliance of states with provisions of federal law, including the VRA and HAVA, and may initiate legal action. Campaign finance complaints are

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<sup>99</sup> The ODIHR LEOM conducted quantitative and qualitative media monitoring from 17 October to 5 November 2018. The sample of the media monitoring included programmes of the public broadcasters *PBS* and *NPR*; three television networks – *ABC*, *CBS* and *NBC*; and three cable television channels – *CNN*, *FOX News* and *MSNBC*. The ODIHR LEOM also conducted a qualitative assessment of two newspapers – *New York Times* and *USA Today*, as well as of five online media – *Politico.com*, *HuffingtonPost.com*, *Vox.com*, *Breitbart.com* and *TheDailyCaller.com*. In addition, the ODIHR LEOM followed state-level and local media.

<sup>100</sup> During a rally in Missouri on 5 November, President Trump invited on the stage a FOX News host, Sean Hannity, who gave a speech supporting the president and labelling journalists attending the campaign event as “fake news”.

<sup>101</sup> For example, *Breitbart* harshly and negatively covered issues regarding migrants approaching the US-Mexico border.



handled by the FEC and media complaints by the FCC. Individuals, political parties, and civic groups may file suits in state or federal courts. Access to the courts is open, but legal costs can be prohibitive. Temporary injunctions are readily available, but final determinations of cases may take years to achieve. This can undermine access to timely and effective remedies, contrary to OSCE commitments and international obligations.<sup>102</sup>

During this electoral cycle, cases were before the courts in several states concerning voter registration, proof of citizenship requirements, voter identification, early voting, criminal disenfranchisement, absentee ballots, and redistricting. Cases were also initiated regarding the results, among others, of elections to the Senate in Arizona and Florida. The facility to request a recount is not universally available in all states, while procedures to initiate recounts are not uniform across the country.<sup>103</sup> In some states, recounts may be requested from the state election board or the courts, in some of which the complainant is required to pay the costs of the recount, with the possibility of reimbursement only if the election results are reversed. Some states provide for an automatic recount in case of a very close result. In some state states there is no deadline set for recounts, while in others the law does not establish recount procedures. In several states, the grounds for requesting and granting recounts lack clarity. The lack of clarity on recount procedures can negatively impact the right to effective legal remedy.<sup>104</sup>

*The possibility to initiate a recount should be provided by all states, subject to reasonable conditions. States could enact laws to provide for automatic recounts when the margin between candidates is very close, as well as discretionary recounts that can be requested by candidates when results are outside this margin. Reasonable financial costs and deadlines should be imposed for discretionary recounts, in order to make the opportunity to challenge results meaningful.*

## **XVI. ELECTION OBSERVATION**

In line with its OSCE commitments, the US Government invited ODIHR to observe the mid-term congressional elections. Federal government departments and agencies supported and facilitated the work of the ODIHR LEOM. However, election observation is regulated by state law, which usually does not explicitly provide for international observers.<sup>105</sup> California, Missouri, New Mexico and the District of Columbia provide for international observers by law, and four additional states have statutory language that is inclusive of many types of observers, which may include international observers.<sup>106</sup> At least eight states allow the public to observe elections, while other state laws are silent on observation, leaving it to the discretion of election officials. Restrictions on observation of voting by international observers are in place in 11 states.<sup>107</sup> Since the 2017 designation of elections

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<sup>102</sup> In paragraph 13.9 of the 1989 OSCE Vienna Document, participating States engaged to ensure that “effective remedies as well as full information about them are available to those who claim that their human rights and freedoms have been violated”. Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have an effective means of redress against administrative decisions”. See also Article 2.3(a) of the 1966 ICCPR.

<sup>103</sup> The [NCSL found](#) that, in many states, recounts could be obtained only at the direction of a court, not through the election administration body.

<sup>104</sup> Paragraph 20 of the 1996 UN CCPR General Comment No. 25 to the 1966 ICCPR states that there should be “access to judicial review or other equivalent procedures so that electors have confidence in the security of the ballot and the counting of the votes”. See also, paragraph 5.10 of the 1990 OSCE Copenhagen Document.

<sup>105</sup> A National Association of Secretaries of State 2015 resolution welcomes “OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law”.

<sup>106</sup> Hawaii, North Dakota, South Dakota and Virginia.

<sup>107</sup> According to the [NCSL](#), international observation is explicitly prohibited or restricted in Alabama, Alaska, Arizona, Connecticut, Florida, Louisiana, Mississippi, Ohio, Oklahoma, Tennessee, and Texas. Election officials in most of these states met with the ODIHR LEOM before election day.

as critical infrastructure, concerns regarding the presence of international observers were raised, and political and electoral authorities of several states declined to meet with LEOM observers, and in one state prevented observation by the ODIHR LEOM altogether.<sup>108</sup> Such restrictions on the activities of election observers breach OSCE commitments undertaken by the US Government.<sup>109</sup>

*Legislation should be amended to guarantee access to international observers invited by the US authorities for all stages of the electoral process, to ensure full compliance with OSCE commitments.*

Election day was observed throughout the country by political parties and civil society, which was widely seen as adding an important layer of oversight and transparency. Many of these groups provided immediate legal support in case of disputes. The DoJ deployed monitors to 35 jurisdictions in 19 states. Monitors were deployed in particular to the counties which encountered difficulties during voter registration or early and absentee voting. In addition, the DoJ opened a hotline for the public to report concerns on election day.

## **XVII. EARLY VOTING**

It is estimated that more than 39 million voters cast their ballot prior to election day, either in person or by post.<sup>110</sup> Early voting modalities and deadlines vary from state to state. All states provided voters with the option to cast a postal ballot, most of them upon request, with 27 states not requiring a reason for such requests. State laws and practice required that the secrecy of the ballot be ensured by the usage of secrecy envelopes. Colorado, Oregon and Washington conducted elections entirely by postal ballot. In person early voting was conducted at specific locations in 37 states and the District of Columbia, with the early voting period in various states starting between 46 and 7 days before election day.

Most ODIHR LEOM interlocutors expressed confidence in the election authorities administering early and absentee voting. Election officials encouraged early voting as a measure against long queues on election day. Election officials took measures, including training and clear guidelines, to ensure secure overnight storage of cast ballots and prevent unauthorized access to election materials. Early voting sites visited by the ODIHR LEOM were accessible and the process appeared to be organized in a transparent and professional manner. However, long queues and minor incidents during early voting were reported by ODIHR LEOM interlocutors and media.

For postal voting, additional measures, such as special training for mail processing employees and improvement of communication channels, were taken by the US Postal Service to ensure the timely delivery of ballots. However, in some jurisdictions, a considerable number of absentee ballots were received close to the legal deadline, which delayed the certification of election results. The processing of postal ballots in many states required election officials to compare a voter's signature with existing records before they were accepted and counted. This process proved to be time-consuming and error-

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<sup>108</sup> CEOs in Kentucky, Louisiana, Montana, Nevada, Ohio, Pennsylvania, Tennessee, and West Virginia declined to meet with the ODIHR LEOM. Additionally, the Secretary of State of Indiana informed the ODIHR LEOM that its observers were not welcome in the state at all.

<sup>109</sup> Paragraph 8 of the 1990 OSCE Copenhagen Document provides that "the participating State consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States... who may wish to do so to observe the course of national election proceedings, to the extent permitted by law". See also, paragraph 25 of the 1999 OSCE Istanbul Document, paragraph 10 of the 2006 OSCE Ministerial Council Decision 19/06, and paragraph 12 of the 2005 Declaration of Principles for International Election Observation.

<sup>110</sup> See the [United States Elections Project](#). More than 36 million voters requested or were sent a postal ballot and 60 per cent of these ballots were returned. An estimated 40 per cent of total early voting was done in person.

prone and reportedly led to the rejection of some ballots due to the different procedures applied to identify mismatches.

*Standardized regulations for processing and verifying postal ballots should be developed, ensuring sufficient time and transparency. Specialized training on postal voting administration should be provided to election officials.*

The Federal Voting Assistance Program (FVAP), under the Department of Defense, supports states to administer out-of-country voting by facilitating voter registration and ballot requests, as well as providing information to voters and election officials.<sup>111</sup> This included efforts to overcome restrictions on Internet traffic imposed by some states as part of their efforts to ensure the security of election technologies. In line with the law, states distributed ballots to voters abroad at least 45 days prior to election day. If a ballot was not received in time to return it before election day, voters could use a ‘back-up’ Federal Write-In Absentee Ballot. Thirty-one states allowed voters to return their absentee ballot through a web portal, email, fax, or mobile voting applications. In some instances, this required voters to waive the secrecy of their vote, contrary to OSCE commitments.<sup>112</sup>

*Federal authorities should create conditions to allow out-of-country voters to cast their ballots in secrecy, while providing sufficient time for requesting and returning ballots.*

## **XVIII. NEW VOTING TECHNOLOGIES**

The use of NVT is extensive and varies considerably across and within states and jurisdictions. Most states use more than one type of voting machine, because of variations between counties, or to accommodate voters with disabilities or language needs. There is a broad return to paper-based voting, and 42 states and the District of Columbia used optical or digital scanners in conjunction with paper ballots in these elections. Direct Recording Electronic (DRE) voting machines without a voter-verified paper audit trail (VVPAT) were used in 15 states, with 5 states relying on them exclusively.<sup>113</sup> Using equipment that does not allow the results to be audited is contrary to good practice.<sup>114</sup> DREs with a VVPAT were used in 17 states. Despite concerns of cyber-attacks, new ballot return technologies for voters overseas were piloted and old voting machines known to have serious usability issues were used in some states.<sup>115</sup>

*To help address security and reliability concerns of aging equipment, the authorities should upgrade or replace existing NVT. Such equipment should support a voter-verified paper audit trail and a secondary results verification method. Procurement of NVT should follow best practices compiled by the EAC.*

Federal and state authorities made various efforts to strengthen public confidence in the accuracy of election results. Many jurisdictions have implemented a secondary results verification method to

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<sup>111</sup> The FVAP estimates the total number of out-of-country voters to be above 3 million.

<sup>112</sup> Paragraph 7.4 of the 1990 OSCE Copenhagen Document commits participating States to “ensure that votes are cast by secret ballot or by equivalent free voting procedure”.

<sup>113</sup> NVTs in use that do not produce a VVPAT include Diebold’s AccuVote TSX, Sequoia’s AVC Advantage and AVC Edge, DS&S’ iVotronic, and Hart InterCivic’s eSlate model.

<sup>114</sup> DRE voting machines without VVPAT are exclusively in use in Delaware, Georgia, Louisiana, New Jersey, and South Carolina. The 2002 Venice Commission’s [Code of Good Practice in Electoral Matters](#), section 3.2 iv, recommends that “voters should be able to obtain a confirmation of their votes”.

<sup>115</sup> West Virginia piloted a mobile phone-based Internet voting system with limited security features. According to [West Virginia’s Secretary of State](#), 144 voters used this system to vote from 31 countries. Hart InterCivic’s eSlate voting system without VVPAT is still in use in Indiana, Kentucky, Pennsylvania, Tennessee, and Texas.

check the accuracy of results, complementing the primary results transmission and tabulation methods. There is an emerging trend away from traditional post-election audits and towards risk-limiting audits (RLA) as a secondary results verification method.<sup>116</sup> Thirty states required some form of traditional post-election audit, while Colorado, Rhode Island and Virginia required RLAs, and other jurisdictions piloted RLAs.

*All jurisdictions using NVT should require post-election audits as a secondary results verification method. In particular, consideration could be given to using Risk Limiting Audits.*

Around 1,300 jurisdictions in 30 states certified their NVT using the EAC's Voluntary Voting System Guidelines (VVSG). The VVSG continue to be developed by the EAC, in co-operation with the National Institute of Standards and Technology, as well as leading international computer security and election experts. While standards such as the VVSG establish a uniform minimum security baseline across all certified NVTs, they do not allow for security updates without breaking certification, thereby diminishing their value in responding to new and emerging security threats, including recognised Common Vulnerabilities and Exposures (CVEs). In addition, the VVSG do not cover other sensitive election technologies, such as voter registration systems, electronic poll books and results transmission systems.

*The Election Assistance Commission's mandate on certification of voting machines could be broadened to include the authority to decertify voting technologies based on new and emerging cyber threats. The Commission's mandate on certification should be extended to online and offline voter registration systems, electronic poll books, and results transmission systems.*

## **XIX. ELECTION DAY**

IEOM observers visited a limited number of polling stations on election day. The atmosphere in and around the polling stations visited was orderly, calm and peaceful overall. Polling stations visited by IEOM observers were generally accessible, including for voters with disabilities, and their setup was generally appropriate for voting. Voters turned out in high numbers, and while IEOM observers generally reported a good flow of voters, queues were noted especially in the morning.

*Additional measures could be taken by the election administration to avoid queues, including through better planning and queue management, installation of additional voting equipment in polling stations, or increasing the number of the polling stations in densely populated areas.*

In most polling stations observed by the IEOM, there were sufficient poll workers, who were knowledgeable, helpful and well-prepared to administer the voting process smoothly and efficiently. Prescribed procedures were generally followed, although conditions did not always ensure the secrecy of the vote, especially where ballot scanners were in use. Adequate assistance was provided to voters who requested it. Most of the polling stations observed by ODIHR LEOM observers during early voting and on election day were accessible to persons with various types of disabilities. Curb-side voting was an additional measure allowing voters with disabilities to cast their vote in the immediate vicinity of a polling station, without having to leave their vehicles. In line with prior ODIHR recommendations, an increased number of jurisdictions utilized specialized equipment to facilitate voting by persons with disabilities.<sup>117</sup> Notwithstanding, disability rights organizations shared concerns

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<sup>116</sup> An RLA is a procedure for manually checking a sample of ballots or voter-verifiable paper records from an electronic voting device that will have a large, prespecified chance of correcting an erroneous election outcome.

<sup>117</sup> Touch-screen ballot-marking technologies producing a paper-based record were widely used to assist persons with disabilities.

that some polling stations remained inaccessible. They also noted that the switch to voting equipment which requires the use of paper ballots may create obstacles for the participation of persons with disabilities, in particular for visually impaired persons.<sup>118</sup>

*Continued efforts should be made to make the voting process more accessible to persons with disabilities. Organizations of persons with disabilities should be consulted when new voting technologies are introduced, to ensure the necessary balance between security and accessibility of the electoral process for persons with disabilities.*

All necessary election materials were present at polling stations visited on election day, but IEOM observers reported isolated cases of malfunctioning voting machines or ballot scanners, which may be partly attributed to outdated equipment and inadequate testing procedures, and partly to weather conditions, which caused optical scanners to jam due to humidity and wet ballot papers.<sup>119</sup>

Some IEOM observers reported instances of voters' names not being found on the voter list. In most such cases, affected voters were issued provisional ballots. Where election day registration was possible, voters availed themselves of this opportunity, at times in significant numbers. IEOM observers did not observe and were not informed about challenges to voters' eligibility, nor did they observe instances of voters being turned away due to problems related to identification.

Where observed, the closing of polling station and the transmission and tabulation of results was transparent, orderly and efficient, although the process appeared complex in some jurisdictions. Results were not usually announced at the polling station, which lessened the transparency of this crucial part of the process.<sup>120</sup> As there is no authority at the national level in charge of compiling election results, or of reporting the number of provisional and absentee ballots received and processed, media or academia provided these data unofficially.

*To enhance transparency, jurisdictions should consider promptly publishing results by polling station. When reporting preliminary results, election officials should also include available information on how many provisional and absentee ballots have yet to be processed. State authorities should publish preliminary and final election results.*

## **XX. POST-ELECTION DEVELOPMENTS**

Election certification deadlines and procedures vary from state to state. While unofficial election results were announced quickly and were widely discussed in the press, jurisdictions conducted canvassing of absentee and provisional ballots. Although this process was carried out within legal deadlines, in some jurisdictions the size of the ballot paper and the necessity to verify votes slowed down the process.

In particular, the counting process for the Senate race in Florida was highly disputed, becoming protracted and marred by a number of legal and political battles, amid accusations of malfeasance by both political sides. The process included President Trump being publicly rebuked by several

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<sup>118</sup> Article 4 paragraph 3 of the 2006 [UN CRPD](#) states that "...in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities...".

<sup>119</sup> There were numerous media reports about problems with electronic voting equipment in several states. In Georgia, several voting machines were allegedly sequestered, leaving polling stations under-equipped, which led to long lines of voters.

<sup>120</sup> See paragraph 34 of the 2011 UN CCPR General Comment 34 to the 1966 ICCPR.



Democrat leaders for appearing to interfere in the electoral process in Florida by accusing the Democrats of attempting to “steal” the election. A mandatory state-wide machine recount was conducted in Florida from 10 to 15 November as the margin of victory was within 0.5 per cent, which was followed by a manual recount as, following the machine recount, the margin was under the threshold of 0.25 per cent.<sup>121</sup> During this period, a considerable number of issues related to absentee ballots that were lost, or arrived late or on the last day of the legal deadline, were reported by election officials and voters. Some voters initiated lawsuits over the rejection of their ballots based on signature mismatches. Due to technical problems, the two largest counties did not meet the machine-recount deadline and were not allowed by a federal judge to extend it. More than 54,000 ‘undervote’ and ‘overvote’ ballots were subject of the manual recount, which was finished within the set deadline of 18 November.<sup>122</sup> On 20 November, the results were certified and Republican candidate Rick Scott was declared the winner, with a final victory margin of 0.12 per cent over his Democratic rival Bill Nelson.

In Arizona, Democratic candidate for Senate, Krysten Sinema, defeated her Republican counterpart Martha McSally by some 55,000 votes out of 2.3 million votes cast following the count of all postal ballots cast.<sup>123</sup> In Mississippi, a runoff between the two leading candidates – Republican Cindy Hyde Smith and Democrat Mike Espy – was required after no candidates won a majority, as required by Mississippi law. The runoff took place on 27 November and resulted in a win for the Republican nominee. On 30 November, the North Carolina State Board of Elections decided not to certify the initial results of the House race in the 9<sup>th</sup> congressional district between Republican Mark Harris and Democrat Dan McCready because of claims of irregularities and fraudulent activities involving absentee ballots. The results were not certified and, on 4 February, the new State Board of Elections set the hearing for 18 February.

## XXI. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in the United States of America and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with prior ODIHR recommendations, which remain to be addressed.<sup>124</sup> ODIHR stands ready to assist the authorities of the United States of America to further improve the electoral process and to address the recommendations contained in this and previous reports.

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<sup>121</sup> Before the machine recount, the Republican candidate, Rick Scott, led incumbent Democratic candidate Bill Nelson by 12,562 votes, or 0.15 per cent. After the machine recount, the margin increased slightly, to 12,603 votes (0.15 per cent).

<sup>122</sup> An ‘undervote ballot’ is a ballot on which a voter has marked less than the minimum number of choices required for a contest, or a ballot without a selection made for a single-choice contest. An ‘overvote ballot’ is a ballot on which a voter has marked more than the maximum number of choices allowed in a contest, resulting in a spoiled ballot.

<sup>123</sup> The Republican party filed a lawsuit against Maricopa and Pima Counties in Arizona which allowed voters to address issues with their postal ballots up to five days after election day if there was a disparity between the signature on their voter registration and the signature on the ballot envelope.

<sup>124</sup> In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of recommendations from the ODIHR final report on the 2016 general elections is assessed by ODIHR as follows: recommendation 31 is fully implemented. The recommendations 13, 26 and 27 are mostly implemented. The recommendations 1, 3, 5, 9, 12, 13, 15, 17, 23, 29 and 30 are partly implemented.

**A. PRIORITY RECOMMENDATIONS**

1. In order to ensure the right and opportunity to vote of all citizens, Congress should, without further delay, establish the formula for determining jurisdictions to be subject to Section Five of the Voting Rights Act, in line with the ruling in *Shelby County v. Holder*.
2. Citizens resident in the District of Columbia and US overseas territories should be provided with full representation rights in Congress.
3. Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate and that rights be restored upon completion of sentences. Guidance should be clearly and systematically communicated to those affected by any limitations. Pre-trial detainees should be afforded with the means to vote.
4. States should consider establishing independent bodies to draw district boundaries. Districting should respect the equality of the vote, not discriminate against any group, and be free from political influence. Districts should be determined well in advance of an election, following broad public consultations and allowing adequate time for potential judicial review.
5. Federal legislation should be amended to require disclosure of the sources of funding of all non-profit organizations that engage in campaign activities.
6. States should review their laws and practices to ensure that deprivation of the right to vote for persons with intellectual disabilities or those under guardianship is based on individualized assessment and not subject to blanket disenfranchisement. Data on guardianship and deprivation of voting rights should be collated on an ongoing basis to ensure oversight.
7. Effective measures should be taken to ensure the safety of journalists and media, including protection against threats, intimidation and violence.
8. The federal and state governments should provide sufficient and sustainable funding mechanisms to replace aging voting equipment and to improve cyber security.
9. Legislation should be amended to guarantee access to international observers invited by the US authorities for all stages of the electoral process, to ensure full compliance with OSCE commitments.

**B. OTHER RECOMMENDATIONS**

**LEGAL FRAMEWORK**

10. In line with OSCE commitments, consideration should be given to ratifying CEDAW and CRPD as a means to further protect and promote the electoral rights of women and persons with disabilities.

**ELECTION ADMINISTRATION**

11. To safeguard the impartiality of the election administration, officials should not be allowed to stand as candidates in contests that they are directly supervising.

12. The capacity of the Election Assistance Commission should be strengthened to ensure effective support to states and jurisdictions in the conduct of elections. In particular, the authorities should ensure that any future vacancies in the Commission's membership are promptly filled.

#### **CYBER SECURITY**

13. Information Sharing and Analysis Centers and the Election Assistance Commission could broaden their training efforts to build cyber security capacity at state and sub-state level. Special efforts could be made to dispel cyber security misconceptions and train officials on how to mitigate cyber security risks through feasibility studies, procurement documents and contingency plans.
14. The Cybersecurity and Infrastructure Agency and the Election Assistance Commission could be tasked with creating cyber security standards for election technologies across all jurisdictions. These standards should require accountable mechanisms for all administrative processes and election technologies, including voter registration, the casting of votes, and tabulation and transmission of results. The standards should also require that the cyber security of any certified technology is continuously kept up to date.

#### **VOTER REGISTRATION**

15. Authorities should develop clear procedures for the collection, aggregation and dissemination of information regarding the number of eligible and registered voters, updates made to the voter lists, and other relevant voter registration and participation figures at the national level before election day.
16. States not already participating in inter-state projects should consider doing so, to improve the accuracy of state voter registers across the country.
17. Authorities should review existing measures to further reduce the number of unregistered voters, including removing undue obstacles and burdensome procedures faced by marginalized sections of the population. Clear and accessible civic education programmes aimed at inclusive voter registration should be in place.

#### **VOTER IDENTIFICATION**

18. States should refrain from introducing voter identification requirements that have or could have a discriminatory impact on voters. Consideration should be given to establishing federal standards for voter identification for both in-person and postal voting, to avoid possible discrimination and to comply with the Voting Rights Act.

#### **CANDIDATE REGISTRATION**

19. The number of supporting signatures for nomination of independent or third-party candidates should not exceed one per cent of registered voters, in line with good practice. States should ensure that definitions of "recognized parties" are inclusive and do not present unfair obstacles to register.
20. Building upon the recent good practice of some political parties, consideration could be given to introducing special measures to promote women candidates. This could include sustained



legal and other measures, with benchmarks and concrete timetables, to increase the representation of women in Congress.

#### **ELECTION CAMPAIGN**

21. Public officials, political parties, their candidates and supporters should refrain from making statements during the campaign that constitute incitement to discrimination, hostility or violence.
22. The authorities should consider measures for further strengthening the level of oversight of online political advertising, including strengthened sanctions.

#### **CAMPAIGN FINANCE**

23. To ensure effective oversight, federal legislation could be amended to reform the structure of the FEC. Such a reform could include appointing, in addition to an equal number of members from the two main parties, an odd number of independent members.
24. Stricter rules and checks governing co-ordination between candidates and external actors of spending for political purposes should be introduced, to ensure that spending by outside groups is genuinely independent.
25. To level the playing field, consideration could be given to introducing a system of public financing for congressional elections, as well as introducing reasonable expenditure limits.

#### **MEDIA**

26. To uphold the right to access to information, provisions allowing blocking, throttling or introducing paid prioritization of Internet content should be revised.
27. Consideration could be given to increase public funding for public broadcasters to support fair and balanced news programmes, including election-related reporting.
28. The Federal Communications Commission could develop a standardized online form for broadcasters to submit all necessary information on political advertising and organize them more clearly in a publicly accessible searchable database.

#### **COMPLAINTS AND APPEALS**

29. The possibility to initiate a recount should be provided by all states, subject to reasonable conditions. States could enact laws to provide for automatic recounts when the margin between candidates is very close, as well as discretionary recounts that can be requested by candidates when results are outside this margin. Reasonable financial costs and deadlines should be imposed for discretionary recounts, in order to make the opportunity to challenge results meaningful.

#### **EARLY VOTING**

30. Standardized regulations for processing and verifying postal ballots should be developed, ensuring sufficient time and transparency. Specialized training on postal voting administration should be provided to election officials.

31. Federal authorities should create conditions to allow out-of-country voters to cast their ballots in secrecy, while providing sufficient time for requesting and returning ballots.

#### **NEW VOTING TECHNOLOGIES**

32. To help address security and reliability concerns of aging equipment, the authorities should upgrade or replace existing NVT. Such equipment should support a voter-verified paper audit trail and a secondary results verification method. Procurement of NVT should follow best practices compiled by the EAC.
33. All jurisdictions using NVT should require post-election audits as a secondary results verification method. In particular, consideration could be given to using Risk Limiting Audits.
34. The Election Assistance Commission's mandate on certification of voting machines could be broadened to include the authority to decertify voting technologies based on new and emerging cyber threats. The Commission's mandate on certification should be extended to online and offline voter registration systems, electronic poll books, and results transmission systems.

#### **ELECTION DAY**

35. Additional measures could be taken by the election administration to avoid queues, including through better planning and queue management, installation of additional voting equipment in polling stations, or increasing the number of the polling stations in densely populated areas.
36. To enhance transparency, jurisdictions should consider promptly publishing results by polling station. When reporting preliminary results, election officials should also include available information on how many provisional and absentee ballots have yet to be processed. State authorities should publish preliminary and final election results
37. Continued efforts should be made to make the voting process more accessible to persons with disabilities. Organizations of persons with disabilities should be consulted when new voting technologies are introduced, to ensure the necessary balance between security and accessibility of the electoral process for persons with disabilities.

**ANNEX I: ELECTION RESULTS**

**Election for the United States Senate**

<b>Political Party</b>	<b>Incumbent</b>	<b>Number of Seats to be Elected</b>	<b>Number of Seats Won</b>
Democratic	24 running (23 not up for election)	35	22 (45 total)
Republican	9 running (42 not up for election)		11 (53 total)
Independent	2 running		2 (2 total)

**Elections for the United States House of Representatives**

<b>Political Party</b>	<b>Incumbent</b>	<b>Number of Seats to be Elected</b>	<b>Number of Seats Won<sup>125</sup></b>
Democratic	194	435	235
Republican	241		199

<sup>125</sup>

At the time of publication, no winner was certified in the race in North Carolina's 9th congressional district due to allegations of election fraud. The seat is currently vacant pending appeal.

## ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION

### OSCE Parliamentary Assembly

George	Tsereteli	Georgia	Special Co-ordinator
Isabel	Santos	Portugal	Head of the OSCE PA Delegation
Bledar	Cuci	Albania	MP
Elona	Hoxha	Albania	MP
Fatmir	Mediu	Albania	MP
Roman	Haider	Austria	MP
Reinhold	Lopatka	Austria	MP
Andreas	Schieder	Austria	MP
Karin	Brouwers	Belgium	MP
Olivier	Henry	Belgium	MP
Desislava	Atanasova	Bulgaria	MP
Luchezar	Ivanov	Bulgaria	MP
Imren	Mehmedova	Bulgaria	MP
Kristian	Vigenin	Bulgaria	MP
Boris	Yachev	Bulgaria	MP
Robert	Podolnjak	Croatia	MP
Irene	Charalambides	Cyprus	MP
Josef	Hajek	Czech Republic	MP
Karla	Marikova	Czech Republic	MP
Michael Astrup	Jensen	Denmark	MP
Troels	Ravn	Denmark	MP
Soren	Sondergaard	Denmark	MP
Stephane	Demilly	France	MP
Britta	Dassler	Germany	MP
Pascal Felix Ernst	Kober	Germany	MP
Georgios	Varemenos	Greece	MP
Zsolt	Csenger-Zalan	Hungary	MP
Gunnar Bragi	Sveinsson	Iceland	MP
Gudmundur Andri	Thorsson	Iceland	MP
Victor	Boyhan	Ireland	MP
Lisa	Chambers	Ireland	MP
Alex	Bazzaro	Italy	MP
Mauro	Del Barba	Italy	MP
Paolo	Grimoldi	Italy	MP
Niccolo	Invidia	Italy	MP
Vito	Vattuone	Italy	MP
Mohamed	El Bakkouri	Morocco	MP
Abdelkrim	El Hams	Morocco	MP
Asmund Grover	Aukrust	Norway	MP

Siv	Mossleth	Norway	MP
Piotr	Apel	Poland	MP
Barbara	Bartus	Poland	MP
Grzegorz	Bierecki	Poland	MP
Grzegorz	Furgo	Poland	MP
Tomasz	Grodzki	Poland	MP
Jan	Lopata	Poland	MP
Slawomir	Nitras	Poland	MP
Miguel	Santos	Portugal	MP
Costel Neculai	Dunava	Romania	MP
Catalin-Daniel	Fenechiu	Romania	MP
Petru	Movila	Romania	MP
Serban	Nicolae	Romania	MP
Lucian	Romascanu	Romania	MP
Aleksei	Kornienko	Russian Federation	MP
Artem	Turov	Russian Federation	MP
Antonio	Gutierrez	Spain	MP
Juan Carlos	Vera	Spain	MP
Johan	Buser	Sweden	MP
Carl-Oskar	Bohlin	Sweden	MP
Hugues	Hiltpold	Switzerland	MP
Margareta	Kiener Nellen	Switzerland	MP
Albert	Van den Bosch	The Netherlands	MP
Franklin	Van Kappen	The Netherlands	MP
Bram	Van Ojik	The Netherlands	MP
Madeleine	Van Toorenburg	The Netherlands	MP
Haydar	Akar	Turkey	MP
Mehmet Sait	Kirazoglu	Turkey	MP
Olga	Bielkova	Ukraine	MP
Sergii	Vysotskiy	Ukraine	MP
Mark	Hendrick	United Kingdom	MP
Diana	Johnson	United Kingdom	MP
Nigel	Mills	United Kingdom	MP
Mark	Pritchard	United Kingdom	MP
Royston	Smith	United Kingdom	MP
John	Whittingdale	United Kingdom	MP
Silvia	Andrisova	Czech Republic	Staff of Delegation
Anne-Cecile	Blauwblomme-Delcroix	France	Staff of Delegation
Bernadette	Mathews	Ireland	Staff of Delegation
Anetta	Kosieradzka	Poland	Staff of Delegation
Marina	Yakovleva	Russian Federation	Staff of Delegation
Fredrik	Svensson	Sweden	Staff of Delegation
Femmy	De Jong	The Netherlands	Staff of Delegation
Roderick	Van Meel	The Netherlands	Staff of Delegation
Hatice	Er As	Turkey	Staff of Delegation

Michael Andreas	Baker	Canada	OSCE PA International Secretariat
Loic	Poulain	France	OSCE PA International Secretariat
Roberto	Montella	Italy	OSCE PA International Secretariat
Semyon	Dzakhaev	Russian Federation	OSCE PA International Secretariat
Gustavo	Pallares	Spain	OSCE PA International Secretariat

### ODIHR LEOM Long-Term Observers

Vusal	Behbudov	Azerbaijan
Ognjen	Domuz	Bosnia and Herzegovina
Magdalena	Miksova	Czech Republic
Marketa	Nekvindova	Czech Republic
Roman	Stanek	Czech Republic
Jessica	Berthereau	France
Zoran	Ilievski	the former Yugoslav Republic of Macedonia
Anna	Kebadze	Georgia
Julian	Dörmann	Germany
Gabriele	Habashi	Germany
Henning	Horstmeyer	Germany
Anke	Kerl	Germany
Stefan	Koeppe	Germany
Kirsten	Müller	Germany
Salif	Nimaga	Germany
Yuna	Rault-d'inca	Germany
Kai	Schaefer	Germany
Jennifer	Seel	Germany
Audrey	Ryan	Ireland
Marija	Raspopovic	Montenegro
Elizaveta	Borisova	Russian Federation
Boris	Diakonov	Russian Federation
Yulia	Kudeneeva	Russian Federation
Vsevolod	Perevozchikov	Russian Federation
Iurii	Shapovalov	Russian Federation
Alexander	Vladychenko	Russian Federation
Mario	Barfus	Switzerland
Gabriela	Buettner	Switzerland
Shumit	Chanda	Switzerland
Diana	Ferrari	Switzerland
Monica	Giambonini	Switzerland
Thomas	Holzer	Switzerland
Victor	Pazinski	Switzerland
Annina	Schneider	Switzerland
Andreas	Speiser	Switzerland
Stefan	Ziegler	Switzerland

### ODIHR LEOM Core Team

Tana	De Zulueta	Italy	Head of Mission
Caroline	Gonthier	France	
Jane	Kareski	the former Yugoslav Republic of Macedonia	
Nicolina	Staleska	the former Yugoslav Republic of Macedonia	
Mikheil	Golijashvili	Georgia	
Stefan	Krause	Germany	
Carsten	Schürmann	Germany	
Anne	Marlborough	Ireland	
Pietro	Tesfamariam	Italy	
Pavel	Cabacenco	Moldova	
Roman	Railean	Moldova	
Pawel	Jurczak	Poland	
Maša	Janjušević	Serbia	
Farrukh	Jurakkulov	Tajikistan	
Dan	Redford	United Kingdom	

## **ABOUT THE OSCE/ODIHR**

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of election observation. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's democratization activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of tolerance and non-discrimination, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on Roma and Sinti. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihhr](http://www.osce.org/odihhr)).