



Office for Democratic Institutions and Human Rights

UNITED STATES OF AMERICA

GENERAL ELECTIONS 6 November 2012

OSCE/ODIHR Limited Election Observation Mission Report



**Warsaw
13 February 2013**

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**UNITED STATES OF AMERICA
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OSCE/ODIHR Limited Election Observation Mission Final Report

I. EXECUTIVE SUMMARY

Following an invitation from the United States Mission to the OSCE, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) on 3 October to observe the 6 November 2012 general elections. The OSCE/ODIHR LEOM assessed compliance of the electoral process against OSCE commitments and other international standards for democratic elections, as well as with domestic legislation.

The 6 November general elections took place in a competitive environment and were administered in a professional manner. However, decisions on technical aspects of the electoral process were often unduly politicized. The campaigns were vibrant and were covered extensively in the media, allowing voters to make informed choices. While generally characterized by broad public confidence, further steps should be taken to improve the electoral process, in areas such as voting rights, the accuracy of voter lists, campaign finance transparency, recount procedures, and access of international election observers.

The legal framework for general elections is highly decentralized and complex. Federal legislation sets only minimum standards for the conduct of elections. The implementation and details of the electoral process are regulated by state laws with some decisions taken at county level. Contrary to good electoral practice, late changes to electoral laws in some states led to a lack of clarity about which regulations would apply, thereby affecting voter information and the training of poll workers.

Following the 2010 census, the 435 seats in the House of Representatives were reapportioned among the 50 states and district boundaries were redrawn. The process of redistricting varied widely among states. While OSCE/ODIHR LEOM interlocutors noted some improvements in the transparency of the process, concerns were expressed that redistricting was highly politicized and driven by partisan interests, thereby limiting the competitiveness of a number of contests.

Elections were administered at the state level with many responsibilities delegated to county-level officials, resulting in a wide variety of practices. Overall, elections were conducted in a professional and transparent manner and enjoyed the trust of the majority of stakeholders. There is no federal election management body with oversight responsibility. The Election Assistance Commission (EAC), an advisory body on election administration, and the Federal Election Commission (FEC), which oversees campaign finance, were both marginalized due to political party polarization.

US citizens who were at least 18 years old on election day and resident of one of the 50 states were eligible to vote. Some 4.1 million citizens resident in US territories were not eligible to vote, while some 600,000 citizens that are residents of the District of Columbia were only eligible to vote in the presidential election. An estimated 5.9 million citizens were disenfranchised due to a criminal conviction, including some 2.6 million who have served their sentence. This contravenes the principle of universal suffrage and the commitment to ensure proportionality in the restriction of voting rights as enshrined in paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

Voter registration is implemented at state-level through an active system. A number of states launched initiatives to improve the accuracy of voter lists. Despite official and civil society voter education efforts an estimated 50 million eligible citizens were not registered to vote. This brings into question the effectiveness of existing measures to ensure that all persons entitled to vote are able to exercise that right.

Voter identification rules vary across the states and the issue is politically polarized. While efforts to ensure the integrity of the vote are important, these should not lead to the disenfranchisement of eligible voters. Although a number of regulations were introduced for identification at polling stations, similar provisions do not exist for postal voting.

Candidacy requirements are provided by the Constitution and candidate registration is regulated by a number of laws that vary across the states. While 32 presidential candidates appeared on ballots across the country, only 4 candidates were registered in a sufficient number of states to be potentially elected. Some 1,200 candidates contested seats for the House of Representatives and 120 ran for the Senate.

The Supreme Court has interpreted the principle of freedom of speech as enshrined in the Constitution to preclude limits on campaign spending. These elections were estimated as the most expensive to date. While the financing of candidates and parties is closely regulated, spending from outside groups can be exempt from disclosure requirements, raising transparency concerns. OSCE/ODIHR LEOM interlocutors also expressed concern about alleged co-ordination of spending between outside groups and candidates.

The election campaigns were vibrant and highly competitive. The presidential campaign received most of the national attention and focused on undecided voters in a few closely contested states. Third party candidates received only minimal attention.

A robust system of guarantees is in place to protect freedom of speech and freedom of the press. Overall, the media landscape is pluralistic and diverse and provided voters with a wide range of information and views on candidates, issues, and electoral platforms. The obligations placed on media for election coverage are very limited, with a preference given for self-regulation. While public and national broadcasters reported in a balanced manner, leading cable television networks were highly partisan.

There are many avenues to seek legal redress, although not all are adjusted to the context and pace of an electoral process. Provisions on recounts vary widely and are often insufficiently defined, which could result in complaints not being addressed in a consistent and timely manner.

Election observation is regulated by state law and generally does not provide for international observers, which is contrary to paragraph 8 of the 1990 OSCE Copenhagen Document. While welcomed by most authorities, OSCE/ODIHR LEOM observers were not provided with full and unimpeded access to polling stations in several states and even threatened with criminal sanctions in some. Domestic observation was widespread throughout the country, providing an important layer of transparency and public confidence.

Alternative voting methods are an established practice in the US and it is estimated that 35 per cent of voters cast their vote before election day through early in-person voting or postal voting, including by voters abroad. While the modalities of alternative voting vary across the states, they generally enjoy a high level of trust. However, a number of measures could be considered to protect the secrecy of vote.

The use of new voting technologies (NVT) in US elections is extensive and varies considerably across and within states. Federal guidelines on NVT are voluntary, resulting in a wide range of electronic voting systems regulated according to different standards. While the trend to return to paper-based voting continues, 11 states still use machines that do not allow the voter to verify that their vote was cast as intended. Election officials were generally well-trained in using NVT and minor technical problems on election day were handled in a satisfactory manner.

Election day was calm and although most voters were generally able to cast their vote without difficulty, there were reported instances of long queues of voters and shortages in polling station staff that caused delays in voting. While provisional ballots were provided to voters who could not be identified on the voter list, deadlines and rules for counting these ballots varied across the states, which could have delayed the announcement of results in closely contested races.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the United States Mission to the OSCE to observe the 6 November 2012 general elections, and based on the recommendation of a Needs Assessment Mission conducted from 23 to 27 April 2012, the OSCE/ODIHR deployed a LEOM on 3 October 2012.¹ The OSCE/ODIHR LEOM was led by Ambassador Daan Everts and consisted of a 13-member core team based in Washington D.C. and 44 long-term observers deployed to 40 locations across the United States. Members of the LEOM were drawn from 23 OSCE participating States.

In line with standard OSCE/ODIHR methodology for LEOMs, the mission did not include short-term observers and did not undertake a comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations across the country.

The election process was assessed for its compliance with OSCE commitments and other international standards for democratic elections, as well as domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was delivered at a press conference in Washington, D.C. on 7 November.

The OSCE/ODIHR LEOM wishes to thank the government of the United States of America for the invitation to observe the elections, and the Department of State and the National Association of Secretaries of State for their assistance and support. The OSCE/ODIHR LEOM also wishes to express its appreciation to representatives of other federal and state institutions, election authorities, political parties, media, and civil society for their co-operation.

III. POLITICAL BACKGROUND

The US is a federation comprising 50 states, the District of Columbia, and a number of overseas territories. The President is the Chief Executive and legislative power is vested in Congress, a bicameral body consisting of the Senate and House of Representatives. On 6 November, US citizens voted to elect the President and Vice President, 33 of 100 Senators, and all 435 Representatives. In addition, a number of elections were held for state and local office, as well as various referenda and initiatives.

¹ All previous OSCE/ODIHR reports on the US are available at: <http://www.osce.org/odihr/elections/usa>.

Since the 2010 mid-term congressional elections, when the Republican Party gained control of the House of Representatives, the 2012 general elections have been eagerly anticipated by the two dominant political forces, the Democratic Party and the Republican Party. Incumbent President, and Democratic nominee, Barack Obama sought re-election for a second and final term. His main contender was the Republican nominee, and former Massachusetts Governor, Mitt Romney. Two other candidates obtained sufficient ballot access to mathematically have the possibility of winning the presidential election: former New Mexico Governor Gary Johnson, the nominee of the Libertarian Party and Jill Stein, the Green Party nominee.

Control of the Congress was also at stake, with several close races expected. The outgoing Senate comprised 51 members from the Democratic Party, 47 from the Republican Party, and 2 independents. The outgoing House of Representatives comprised 240 Republicans, 190 Democrats, and 5 vacant seats.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

A. LEGAL FRAMEWORK

Consistent with the federal political system enshrined in the Constitution, the legal framework for general elections is highly decentralized and complex. Federal legislation sets only minimum standards, while the implementation and details of the electoral process are regulated by state laws with some decisions taken at the county level. Federal and state court decisions also form part of the legal framework. Together, this provides a diverse body of electoral law that varies across and within states.

Federal legislation includes the 1993 National Voter Registration Act (NVRA) that facilitates voter registration; the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the 2009 Military and Overseas Voter Empowerment Act (MOVE) that allow citizens living abroad to register and vote absentee in federal elections; the 1971 Federal Electoral Campaign Act (FECA) and the 2002 Bipartisan Campaign Reform Act (BCRA) that regulate campaign finance; and the 2002 Help America Vote Act (HAVA) that establishes minimum standards in certain areas of election administration.

The 1965 Voting Rights Act (VRA) is the earliest piece of federal electoral legislation. It aims to protect the rights of racial and linguistic minorities by prohibiting voting practices and procedures that have either discriminatory intent or impact. Section 5 of the VRA requires certain jurisdictions with a history of discrimination to obtain administrative or judicial pre-clearance of changes to their electoral laws and regulations from the Department of Justice or the federal district court in the District of Columbia.² In such cases, the burden of proof lies with the jurisdiction that introduces legislation. The VRA foresees a mechanism for jurisdictions to obtain termination of the pre-clearance requirement. The constitutionality of Section 5 has been called into question several times since it entered into force and is currently being challenged in several pending court cases.³

Since early 2011, several states introduced or amended fundamental aspects of electoral law, including on redistricting, voter registration, voter identification, and early voting. Several of these

² Unlike other Sections of the VRA, Section 5 has an expiration date. In 2006 it was reauthorized by Congress for 25 more years.

³ For instance, *Shelby County, Alabama v. Eric Holder*, *Nix v. Eric Holder*, *State of Texas v. United States of America*, and *State of Alaska v. Eric Holder*.

laws became the object of legal challenges. Contrary to good electoral practice, some amendments to state laws were only finalized in the weeks shortly before election day. Late changes to the legal framework can have a negative impact on electoral participants' understanding of provisions.

In line with good electoral practice and in order to allow sufficient time for potential legal challenges, states should consider establishing a deadline for introducing changes in electoral legislation sufficiently in advance of election day.

B. ELECTORAL SYSTEM

The President and Vice President are elected for a four-year term with an absolute majority by an Electoral College consisting of 538 Electors. Each State is assigned as many Electors as congressional representatives and the District of Columbia is assigned three Electors as if it were a state. Electors are elected by popular vote, mostly through "winner-takes-it-all" contests.⁴ There is no federal law or constitutional provision that requires Electors to vote for the candidate of the party that nominates them.⁵

Under the current system, it is possible that a presidential candidate might win the popular vote nationwide but not be elected. While any formal change to the Electoral College would require a constitutional amendment, several states have recently passed a National Popular Vote (NPV) act whereby states would pool their electoral votes in favour of the candidate that wins the national popular vote. For the NPV to take effect, states with a combined total of at least 270 electoral votes must join the initiative.⁶

Senators and Representatives are elected directly, mostly through "first-past-the-post" contests. Each State is represented in the Senate by two Senators who serve staggered six-year-terms with no state's two Senators scheduled to be elected in the same year. Each state is represented in the House by at least one Representative and the remaining seats are allocated to states proportional to their population. All Representatives serve two-year terms.

While electoral districts for the Senate are the entire state, Representatives are elected in congressional districts updated every ten years after a nationwide census. Following the 2010 census, the House seats were reapportioned among the 50 states to reflect population changes. Eighteen states were affected, with significant changes for Texas (plus four seats), Florida (plus two), New York (minus two), and Ohio (minus two).⁷ By extension, reapportionment impacted the size of each state's representation in the Electoral College.

States were subsequently obliged to redraw congressional district boundaries to ensure that each district represented approximately the same number of people. The process of redistricting varied widely among states. While some OSCE/ODIHR LEOM interlocutors noted some improvement in the transparency of the process and an increase in independent commissions,⁸ concerns were expressed that redistricting was highly politicized and driven by partisan interests, thereby limiting

⁴ With the exception of Maine and Nebraska, where some Electors are elected from the respective congressional districts via "first-past-the post" contests and the remainder via a state-wide "winner-takes-all" system.

⁵ Some states have passed such laws and penalties may include fines, replacement of the Elector, or criminal prosecution. Even though there have been several previous instances of Electors voting contrary to their pledge, no Elector has ever been penalized.

⁶ Currently, eight states and the District of Columbia (in total 132 Electoral votes) have enacted NPV bills.

⁷ For a full list, see: <http://www.census.gov/population/apportionment/files/Appportionment%20Population%202010.pdf>.

⁸ Arizona, Arkansas, California, Idaho, Montana, and Washington have independent commissions.

the competitiveness of a number of contests.⁹ Several redistricting plans were struck down by courts before the elections, which required states to revert to prior district plans or adopt temporary plans.¹⁰ At the time of the elections, legal challenges on redistricting remained ongoing in Florida, Louisiana, and Texas.

With a view to ensuring genuine competition in congressional districts, states could consider exchanging and developing good practices for drawing district boundaries that are timely, transparent, and involve broad public consultation.

V. ELECTION ADMINISTRATION

In line with the Constitution and the decentralized nature of the US political system, general elections are administered at the state level and there is no federal election management body with oversight responsibilities.¹¹ On the state level, administrative authority is vested in the respective state secretary or state election board. However, the greater part of election administration is typically delegated to county or lower-level election officials,¹² resulting in a wide variety of electoral practices across the country.

Overall, the election administration performed their duties in a professional and transparent manner and enjoyed the trust of the majority of stakeholders. The composition of election administration bodies varies across states. While some senior election officials are appointed, others are elected. Election administration bodies are often partisan, although 19 states and the District of Columbia provide bipartisan or independent bodies. Very few OSCE/ODIHR LEOM interlocutors raised concerns about the impartiality of county election officials.¹³ However, some county-level election supervisors ran on party tickets for re-election in 2012, raising possible conflicts of interest.

If senior election officials at state and lower levels are elected, the states could consider holding such elections in non-federal election years, to avoid any real or perceived conflicts of interest.

Poll workers who served at polling stations on election day were often volunteers or recruited to work for a few days, in accordance with state regulations. While training of polling staff was generally extensive, a number of counties experienced problems recruiting a sufficient number of experienced poll workers.¹⁴ In some counties, issues with identifying qualified poll workers led to a reduced number of polling stations or less poll workers.¹⁵ In cases where poll workers were nominated by political parties, some election officials faced challenges to maintain a partisan balance in appointments.¹⁶ On a positive note, women and minorities were well represented at all levels of election administration.

Election authorities should conduct a thorough review of the obstacles faced in identifying, hiring, and training poll workers.

⁹ For example, according to the *New York Times*, out of 435 House seats, 354 were either “solid” Democrat or “solid” Republican. See: <http://elections.nytimes.com/2012/ratings/house>.

¹⁰ Congressional districts for these elections were finalized by the courts in Colorado, Connecticut, Kansas, Mississippi, Minnesota, Nevada, New Mexico, New York, and Texas.

¹¹ Article 1, Section 4 of the US Constitution.

¹² Notable exceptions are Alaska and the District of Columbia, where the election administration is centralized.

¹³ In Ohio, for example, some decisions of county election officials were split among partisan lines, and ultimately decided by the elected secretary of state.

¹⁴ For example, as reported in South Carolina.

¹⁵ For example, in Jackson county in Kansas, Leon and Duval counties in Florida, and Fairfax county in Virginia.

¹⁶ For example, in Hamilton and Tipton counties in Indiana.

The bipartisan EAC, established by HAVA as a national advisory body to provide guidance on meeting HAVA requirements and election administration, functioned at a limited capacity during these elections. In addition to a reduced staff and budget, all four commissioner posts were vacant from December 2011 onwards thereby leaving the EAC without decision-making authority.¹⁷ While the EAC maintained a certain level of activity in gathering and disseminating electoral information, several OSCE/ODIHR LEOM interlocutors questioned the future role of the EAC. Two longstanding Democratic nominees for EAC commissioners remain unconfirmed by the Senate. In 2011, the House of Representatives passed a Republican-initiated bill to disband the EAC that is currently referred to the Senate.¹⁸

In line with HAVA requirements, there should be a national body with sufficient resources and outreach capacity to provide guidance on election administration and serve as a central clearinghouse to develop good electoral practices. Congress should ensure that such a body has the necessary financial and human resources to fulfil these duties in an effective manner.

Election officials at state and county level used various channels to inform voters about the elections and their voting rights, including information leaflets, the media, and the internet. In jurisdictions with minority populations, officials prepared election materials in minority languages, as required by the VRA and HAVA. Several election officials informed the OSCE/ODIHR LEOM that the training of election officials and voter awareness efforts were complicated by budgetary constraints and late changes to the legal framework, particularly regarding redistricting, early voting, and voter identification.

VI. VOTER RIGHTS, REGISTRATION, AND IDENTIFICATION

A. VOTER RIGHTS

US citizens who are at least 18 years old on election day and residents of a state are eligible to vote in general elections. Some 4.1 million citizens that are residents of US territories are not eligible to vote, while some 600,000 citizens that are residents of the District of Columbia are eligible to vote only for the president.¹⁹ This is at odds with the principle of universal suffrage and the commitment to ensure proportionality in the restriction of voting rights as enshrined in paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen document.²⁰

Consideration should be given to providing full representation rights in Congress for citizens resident in the District of Columbia and US territories, in line with paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

¹⁷ The positions of the Executive Director and the General Counsel were also vacant.

¹⁸ See, <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3463rfs/pdf/BILLS-112hr3463rfs.pdf>.

¹⁹ The District of Columbia and the territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the US Virgin Islands each have one non-voting representative in the House of Representatives.

²⁰ Paragraph 7.3 of the 1990 OSCE Copenhagen Document states that the participating States will “guarantee universal and equal suffrage to adult citizens,” while Paragraph 24 provides that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law.” Paragraph 14 of General Comment No. 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee states that grounds for the deprivation of voting rights should be “objective and reasonable.”

In addition, some 5.9 million citizens are estimated to be disenfranchised due to a criminal conviction, including 2.6 million who have served their sentence.²¹ Minorities are disproportionately affected and it is estimated that 2.2 million African-Americans are disenfranchised. Prisoner and ex-prisoner voting rights are determined by state law and vary widely. Citizens from different states, who have committed the same crime, have their voting rights affected differently. Restrictions are often disproportionate to the crime committed and some states do not differentiate between types of crimes. Four states deprive all people with a criminal conviction of the right to vote, irrespective of the gravity of the crime or if the sentence has been served, unless pardoned by the state governor.²² Criminals serving a prison sentence are only eligible to vote in Maine and Vermont. Most other states impose burdensome procedures for reinstating voting rights of ex-prisoners, including long waiting periods.²³ In 2011, Florida and Iowa reversed legislation that had previously provided automatic restoration of voting rights for ex-prisoners. The deprivation of the right to vote is a severe penalty and the current restrictions on prisoner and ex-prisoner voting rights lack proportionality and are not in line with paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document and other international standards.

Restrictions of voting rights for prisoners and ex-prisoners should be reviewed to ensure that any limitation is proportionate to the crime committed and clearly outlined in the law. Federal legislation could be considered to provide consistency in restrictions to federal voting rights. Authorities should take effective and timely measures to facilitate the restoration of voting rights after a prison term has been served.

B. VOTER REGISTRATION

Voter registration is active and implemented at the state level, with minimum conditions provided by the NVRA. Voters were required to submit signed applications to register or update their information within state-prescribed deadlines, either in person, by post, or through an authorized third-party. Thirteen states provided voters with the opportunity to update their voter information online.²⁴ HAVA requires that all voters registered for the first time in any state need to provide photo identification when registering by post. While the NVRA provides that voter registration must remain open until at least 30 days before election day, deadlines varied widely. Eight states and the District of Columbia provided voter registration on election day and North Dakota does not require voter registration.²⁵ Voter registration on election day is not in line with international good practices and could result in multiple voter registrations.²⁶

In line with good practice, consideration could be given to removing the possibility for voters to register on election day to avoid the possibility of multiple registrations. A legal deadline for closing voter lists could be introduced, with additional entries permitted only in accordance with clearly defined legal requirements.

²¹ See, http://sentencingproject.org/doc/publications/fd_State_Level_Estimates_of_Felon_Disen_2010.pdf and http://www.sentencingproject.org/doc/publications/publications/fd_bs_fdlawsinus_Sep2012.pdf

²² Florida, Iowa, Kentucky and Virginia. In Florida, voting rights were previously reinstated for non-violent offences.

²³ Several OSCE/ODIHR LEOM interlocutors also noted that ex-prisoners are often not properly informed about their eligibility by election officials or probation officers.

²⁴ California, Maryland, New York, and South Carolina introduced online registration in July 2012.

²⁵ Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming and District of Columbia provide election day registration.

²⁶ See, for example, the 2002 Venice Commission Code of Good Practices in Electoral Matters, 1.2.iv, which recommends that "polling stations should not be permitted to register voters on Election Day itself."

Political parties and civil society organizations were actively engaged in voter registration drives, especially in closely contested states. However, recent legislation in eight states placed or attempted to place new restrictions on third-party registration drives, including reduced timeframes for the collection and submission of applications, as well as strict sanctions for non-compliance with the law.²⁷ Some civil society organizations characterized these new provisions as overly restrictive. In Florida, for example, the League of Women Voters temporarily suspended its voter registration activities because of burdensome requirements and the risk of prosecution.

Georgia and Tennessee required prospective first-time voters to provide documentary evidence of US citizenship when registering, and similar laws were passed in Kansas and Alabama but were not effective in these elections.²⁸ Several OSCE/ODIHR LEOM interlocutors claimed that the costs and logistical challenges in obtaining documents required for proof of citizenship negatively affected voter registration of minority voters, students, low-income, and elderly voters.²⁹

Undue obstacles and burdensome procedures should not be imposed on voter registration. Election authorities and civil society could enhance training of persons involved in voter registration drives, emphasizing the importance of accurate and timely submissions.

Some 237 million citizens were eligible to vote in these elections. While the total number of registered voters will not be determined until several months after the elections, it has been estimated that some 50 million eligible citizens were not registered.³⁰ This brings into question the effectiveness of existing measures to ensure that all persons entitled to vote are able to exercise that right.³¹

Authorities should review existing measures to register voters so as to ensure that all persons entitled to vote are able to exercise that right. States should consider further efforts to facilitate the registration of voters, including through civic education programmes. States could consider possibilities for automatic registration based on existing state and federal databases, thereby removing the need for citizens to proactively register.

HAVA requires that all states maintain electronic voter registration systems and mandates states to co-ordinate and match their state-wide voter registration databases with other state and federal databases.³² However, modalities are not sufficiently regulated and database formats vary considerably, resulting in uneven application and potential errors. Clear procedures to address possible inconsistencies are not provided. Several OSCE/ODIHR LEOM interlocutors stated that the absence of a nationwide exchange of voter registration data affected the accuracy of voter lists, including multiple and outdated entries.³³ A number of states have taken steps to improve the

²⁷ California, Florida, Illinois, Michigan, Mississippi, Nevada, North Carolina, and South Carolina.

²⁸ The Kansas law became effective on 1 January 2013. The Alabama law will become active if it is pre-cleared under Section 5 of the VRA.

²⁹ Paragraph 11 of General Comment No. 25 (1996) to Article 25 of the ICCPR by the UN Human Rights Committee states that “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed.”

³⁰ See, “Inaccurate, Costly and Inefficient” Pew Center on the States, February 2012, pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/Pew_Upgrading_Voter_Registration.pdf.

³¹ See, Paragraph 11 of General Comment No. 25 (1996) to Article 25 of the ICCPR by the UN Human Rights Committee.

³² This includes the state database of the Motor Vehicle Authority and the federal database of Social Security Agency, as well as state records of deceased people and prisoners.

³³ See also, “Inaccurate, Costly and Inefficient” Pew Center on the States, February 2012, pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/Pew_Upgrading_Voter_Registration.pdf.

accuracy of their voter lists by engaging in one of two multi-state voter information exchange projects that identify duplicate and outdated entries.³⁴

Federal guidelines to clarify HAVA requirements of matching voter records in state-wide voter registration databases with other databases should be considered. Clear regulations should be provided on the sequence of matching different state databases, which database contains the correct information in case of a mismatch, and how partial mismatches are addressed. Such guidelines should uphold both enfranchisement as well as voter list accuracy and be clearly communicated to voters.

C. VOTER IDENTIFICATION

Voter identification requirements varied widely and some 30 states required voters to present proof of identity at the polling station. For these elections, voters were required to provide photo identification documents in four states,³⁵ while in five other states they were requested to show photo identification but were permitted by law to cast a ballot after signing an affidavit to confirm identity, under penalty of perjury.³⁶ In contrast, postal voting, despite its increasing usage, does not require similar voter identification checks.

Consideration should be given to establishing federal standards on voter identification for both in-person voting and postal voting.

Voter identification is a highly polarized issue and divided along partisan lines. In general, Republicans advocate for stricter legislation to prevent potential fraud and protect the integrity of the process, while Democrats claim that the risk of fraud is minimal and does not warrant additional restrictions that could disenfranchise voters.

Following the 2010 mid-term congressional elections, a number of states enacted new voter identification laws requiring voters to present government-issued photo identification. Several of these laws were challenged and were ultimately not implemented in these elections. For example, in Alabama and Mississippi, new photo identification laws await pre-clearance under Section 5 of the VRA, while several new photo identification laws were temporarily or permanently struck down by courts or vetoed by state governors.³⁷ While several OSCE/ODIHR LEOM interlocutors argued that most citizens already have some form of photo identification necessary for everyday life, others stated that the cost associated with travelling to identification issuing offices and obtaining accompanying documentation placed an unreasonable restriction that disproportionately affected minority and low-income voters, as well as single parents. While efforts to ensure the integrity of the vote are important, these should be clearly defined and not lead to disenfranchisement of eligible voters.

³⁴ One is initiated by the Pew Center on the States and encompasses 7 states, the other is the Interstate Cross Check Project that includes some 15 states. Several other states are considering joining one of these efforts.

³⁵ Georgia, Indiana, Kansas, and Tennessee. If voters do not have photo identification with them, they will be asked to complete a provisional ballot, counted only if they return with the appropriate documentation.

³⁶ Idaho, Louisiana, Michigan, New Hampshire, and South Dakota. In Hawaii, voters need to verbally provide their information. In Florida, voters failing to present photo identification were issued a provisional ballot and the county election officials were to determine the eligibility of the voter within 48 hours.

³⁷ For example, governors in Michigan, Missouri, Montana, and North Carolina vetoed photo identification laws passed in their state legislature, while in Minnesota the governor vetoed a ballot initiative on photo identification. Texas and South Carolina photo identification laws were denied administrative and judicial pre-clearance by the Department of Justice for these elections. A state court ruled that Pennsylvania's proposed identification law could not be implemented in the short time before the elections.

Consideration could be given to introducing state-issued identification documents that could simultaneously represent proof of citizenship and identity. Such documents could be issued free of charge, at least to low-income voters.

VII. CANDIDATE REGISTRATION

Presidential and congressional candidates representing the Democratic and Republican parties are selected on the basis of primary elections, which take place on different dates in different states, and are confirmed at a national convention.³⁸ Candidacy requirements are provided by the Constitution.³⁹ Presidential candidates must be natural-born US citizen, at least 35 years old, and resident in the US for at least 14 years. No person can be elected to the office of President for more than two terms. Candidates for the Senate must be at least 30 years old and a US citizen for at least 9 years. Candidates for the House of Representative must be at least 25 years old and a US citizen for at least 7 years.

Additional candidacy requirements are established by state laws and vary considerably between states. In general, a political party could nominate candidates for the presidency or Congress if it obtained a certain percentage of votes in previous elections, although this threshold differed considerably among the states.⁴⁰ Smaller political parties and independent candidates were able to run if they collected a specified number of supporting signatures, typically several months before the elections. The number of signatures required and the signature submission deadlines varied among the states. The majority of states also allowed for voters to “write-in” candidates who were not included on the ballot.⁴¹ While the political system is based on federalism, the variations in state regulations for candidate registration result in significant differences in the conditions for citizens of different states to be elected to the same national institutions.

*Federal and state authorities could reflect on the extent to which differences in candidate registration requirements affect the principle of equality of political rights of all citizens and the extent to which they comply with international standards.*⁴²

*Consideration could be given to decreasing the number of required signatures for nomination of independent or third party candidates to a maximum of one per cent of the number of registered voters in a given district, in line with good electoral practice.*⁴³

Although a total of 32 presidential candidates, including 8 women, were on the ballots across the country, only 4 obtained ballot access in a sufficient number of states to be potentially

³⁸ The first presidential primary was held in January 2012. The Republican National Convention took place from 27 to 30 August, and the Democratic National Convention from 3 to 6 September.

³⁹ Constitution of the United States, Article 1, Sections 2 -3, and Article 2, Section 1.

⁴⁰ For presidential elections, this figure varies from 1 to 20 per cent.

⁴¹ This is possible in 44 states for the presidential and vice-presidential elections.

⁴² See, for example, paragraph 7.5 of the 1990 OSCE Copenhagen Document, which provides that participating States will “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.” Paragraph 17 of General Comment No. 25 (1996) to Article 25 of the ICCPR by the UN Human Rights Committee stipulates that “if a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy.”

⁴³ See, for example, the 2002 Venice Commission Code of Good Practices in Electoral Matters, 1.3.ii, which recommends that “law should not require collection of the signatures of more than 1% of voters in the constituency concerned.”

elected.⁴⁴ In addition, 120 candidates, including 20 women, ran for the 33 Senate seats and some 1,200 candidates, including 192 women, ran for the 435 House seats. There were 13 congressional districts where either a Democratic or Republican candidate was elected unopposed.⁴⁵

VIII. CAMPAIGN FINANCE

The 2012 general elections were characterized by a high level of campaign spending that significantly exceeded those in recent elections. Through election day, more than USD 4.5 billion was raised and some USD 4.3 billion spent by presidential and congressional candidates and the national party organizations.⁴⁶

Unlike other areas of electoral legislation, campaign finance for general elections is regulated by federal law. The FEC is mandated to supervise and implement relevant provisions and consists of six commissioners, appointed by the President and confirmed by the Senate, with no more than three commissioners representing the same party. At the time of the elections, mandates of five of the six commissioners had expired without agreement on who should replace them. Decisions require at least four votes. While campaign finance has become an increasingly contested issue in US elections, partisan voting within the FEC has limited its ability to reach decisions on key campaign finance issues.

The formula for the composition of the Federal Election Commission could be reconsidered so as to ensure timely and effective oversight and application of campaign finance regulations.

The US campaign finance system is heavily reliant on private funding. While public financing is available for presidential candidates, it is subject to several limitations, particularly regarding campaign expenditure.⁴⁷ Several interlocutors informed the OSCE/ODIHR LEOM that the limits imposed by public financing are no longer proportionate to the costs of running an effective campaign. For the first time since the inception of public financing, the two major party nominees waived public financing in favour of private funding, raising some questions about the future of the system in its current form. Public financing is not available for congressional races.

Consideration should be given to reforming the public financing system for presidential elections. This could include revising the expenditure limits as well as introducing incentives such as federal matching funds.⁴⁸

Campaign finance contributions are subject to a range of monetary limitations and certain categories are prohibited, including foreign and anonymous donations.⁴⁹ The main sources of financing in these

⁴⁴ Apart from President Obama and former Governor Romney, this included former New Mexico Governor Gary Johnson, the nominee of the Libertarian Party, who was on the ballots in 48 states and the District of Columbia, and Jill Stein, the Green Party nominee, who was on the ballot in 38 states and the District of Columbia.

⁴⁵ Candidates were elected unopposed in Alabama (1st congressional district), Florida (15th and 24th), Georgia (3rd, 8th and 10th), Kansas (1st), Massachusetts (1st and 2nd), Ohio (8th and 11th), South Carolina (2nd), and Texas (3rd).

⁴⁶ This data does not include money raised and spent by Political Action Committees (PACs) and outside groups.

Data provided by the FEC, see: <http://www.fec.gov/disclosure/pnational.do>;

<http://www.fec.gov/disclosure/hsnational.do>; and <http://www.fec.gov/disclosure/partySummary.do>.

⁴⁷ The public funding entitlement for the 2012 general elections was USD 91.2 million. To qualify for public funding, a major party candidate can not spend more than the entitlement received. In addition to public funding, candidates may also spend up to USD 50,000 from their own personal funds.

⁴⁸ The term “matching funds” refers to the money a presidential candidate is given by federal government to match the money they have raised personally. Federal matching funds are an existing mechanism available for presidential primary contests.

⁴⁹ See, FEC 2012 Contribution Limits: http://www.fec.gov/pages/brochures/contrib.shtml#Contribution_Limits.

elections were donations made by individuals, political parties, and Political Action Committees (PACs)⁵⁰ to a candidate's campaign or political party. According to the latest reports of presidential candidates, a third of the donations to the two presidential candidates came from non-itemized contributions of USD 200 or less.⁵¹ Corporations and unions cannot make direct contributions to parties and federal candidates, but they can make contributions through a PAC, subject to limitations. Candidates are also entitled to self-finance their campaigns.

There are no legal limits on campaign spending as the Supreme Court held that any limitation would be an infringement of the right to free speech as protected by the First Amendment to the Constitution.⁵² In addition, this was the first presidential election since the 2010 Supreme Court decision *Citizens United v. FEC*⁵³ that held that corporations and labour unions have a constitutionally protected right to make unlimited 'outside spending,' independent of candidates and political parties, that explicitly advocate for or against the election of a candidate.⁵⁴ Expenditures can be made directly or through outside groups, namely Super PACs and the so-called 501(c) and 527 organizations, named after their respective sections in the Internal Revenue Services (IRS) Code.⁵⁵ During these elections, overall outside spending was estimated at some USD 1.3 billion.⁵⁶ Half of the total outside spending was spent in the presidential race.⁵⁷ The bulk of this outside spending was spent on television advertisements, mostly negative in tone.

In order to be considered independent, outside spending must not be co-ordinated with a candidate or a political party. However, co-ordination rules are overly complex and difficult to interpret. The FEC received a large number of complaints alleging co-ordination and the media reported several cases of apparent co-ordination.

⁵⁰ PACs are not legally tied to a candidate or party but they may make direct contributions to their campaign funds. A PAC may act independently or may be connected to a specific corporation or union.

⁵¹ See, reports filed with the FEC: <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do>. While President Obama relied mostly on a small donor base giving to his campaign USD 200 or less, former Governor Romney was more reliant on a network of big donors nationwide.

⁵² The US Supreme Court ruled in *Buckley v. Valeo* (424 US 1,231976) that "spending limits would constrain the right to free speech as enshrined in the First Amendment to the Constitution." The First Amendment to the Constitution reads "Congress shall make no law... abridging freedom of speech...."

⁵³ *Citizens United v. FEC*, 558 US 50 (2010). The Federal Court of Appeals for the DC Circuit ruled in *SpeechNow (Speechnow.org v. FEC*, US Court of Appeals for the DC Circuit, No. 08-5223 (2010)) that contributions to groups that only make outside spending cannot be limited in the size and source of contributions.

⁵⁴ Outside spending refers to independent expenditures and electioneering communications. The term 'electioneering communication' means any broadcast, cable, or satellite communication which refers to a clearly identified candidate for Federal office and which is made within 60 days before a general, special, or runoff election for the office sought by the candidate; or 30 days before a primary. All public communications financed by outside groups must include a clear disclaimer that indicates who paid for the communication and whether or not it was authorized by a candidate.

⁵⁵ A Super PAC is a political committee – similar to a 527 organization registered with the FEC – whose primary purpose is to influence elections that can receive unlimited donations from corporations, unions or wealthy individuals so long as the money is spent independently of a candidate's campaign. So-called 527 organizations have to register with the FEC if they meet the test of a political committee (organizations receiving contributions or making expenditures in excess of USD 1,000 for the purpose of influencing a federal election) or with the IRS if they do not meet the political committee test (because they are issue advocacy organizations that do not explicitly attempt to influence federal elections). 501(c) organizations are non-profit groups which can be engaged in campaign activities but have to be primarily engaged in their tax-exempt activities to keep their status.

⁵⁶ See, FEC data: www.fec.gov/disclosureie/ienational.do, www.fec.gov/disclosureie/ienational.do?candOffice=S. See also, <http://www.opensecrets.org/outsidespending/index.php?q13>.

⁵⁷ According to the Center for Responsive Politics: www.opensecrets.org/outsidespending/cycle_tots.php?cycle=2012&view=A&chart=A#viewpt.

FEC rules regarding co-ordination of campaign expenditures should be reviewed and clarified to ensure that outside spending is genuinely independent. Additional resources could be dedicated to the FEC to provide it with the capacity of conducting a thorough oversight of co-ordination rules.

A defining element of the US campaign finance system has been transparency, ensured by frequent and detailed campaign finance disclosure. Candidates, political parties, PACs, and Super PACs are required to file regular reports to the FEC disclosing the funds they raise and spend on campaigns. The reports contain a list of all donors who contributed over USD 200, along with their address, employer and job title. The FEC makes the reports public on its website within 48 hours of their receipt.

However, 501(c) organizations do not fall under FEC jurisdiction and are not obliged to disclose their donors to the FEC or the IRS as long as election campaigning is not their primary activity,⁵⁸ thereby raising transparency concerns. Although some complaints have been filed,⁵⁹ the IRS has so far been silent on the definition of ‘primary activity,’ leaving considerable space for 501(c) organizations to campaign without disclosing their donors. According to the Council of Europe’s Group of States against Corruption of the Council of Europe (GRECO), which recently reviewed US campaign finance legislation, the transparency of funding provided to these organizations should be increased when the purpose of the funding is intended to independently affect the election of a candidate.⁶⁰

Consideration could be given to increase the transparency of campaign financing of 501(c) organizations, including a clearer definition of what constitutes a ‘primary activity.’ Donor disclosure rules should apply to all persons, groups, and entities engaged in electoral campaign activities regardless of their form and whether or not they are registered with the FEC.

IX. ELECTION CAMPAIGN

The campaign environment was highly polarized and focussed on the candidates of the Democratic and Republican parties. The majority of OSCE/ODIHR LEOM interlocutors reported that most voters had decided on their choice several weeks prior to the elections. As such, campaign efforts focussed on undecided voters in the so-called “swing” or “battleground” states⁶¹ and those districts considered decisive to the overall result.

The election campaigns for federal office were vibrant and highly competitive. Presidential and congressional candidates engaged in various campaign activities. Traditional campaign activities such as mass rallies, billboards, door-to-door canvassing and telephone banks were effectively used in order to reach out to voters, including minorities, women and youth. In addition, candidates widely used the internet, including social media as well as extensive television advertising. There were several cases of misleading campaign information in television advertisements, billboards, and in

⁵⁸ Under current law, 501(c) organizations are barred from making political activity their primary purpose, which is generally assumed to involve spending less than 50 percent of their budgets.

⁵⁹ For instance, the Campaign Legal Center and Democracy 21 filed a complaint with the IRS requesting that 501(c) status be removed from Crossroads GPS due to alleged links with the American Crossroads PAC.

⁶⁰ See Evaluation Report on the USA on Transparency of Party Funding of the Group of States against Corruption (GRECO). The report and accompanying press release are available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2011\)2_USA_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2011)2_USA_Two_EN.pdf).

⁶¹ For the 2012 elections, these were considered to be Colorado, Florida, Iowa, Nevada, New Hampshire, North Carolina, Ohio, Virginia, and Wisconsin.

letters and text messages sent to voters.⁶² A number of candidates adapted their campaign strategies in an attempt to influence the increasing number of voters who cast their vote before election day.

The presidential campaign received most of the national attention. Three presidential, and one vice-presidential, debates between the candidates of the Democratic and the Republican parties were broadcast on national television, widely watched, and played a significant role in framing the campaign. An additional three televised debates were held for third party presidential candidates.⁶³ However, third party candidates generally received minimal exposure. Several candidates raised concerns on this matter in the media and also sought legal redress to achieve greater campaign coverage.⁶⁴

Federal campaigns were notable for the high quantity of information being provided that aggressively emphasized differing viewpoints and criticized opponents' campaign positions. Campaigning centred on issues relating to the economy, job creation, tax cuts, the budget deficit, health care, education, foreign policy and issues of special concern to women. Although exchanges between candidates, particularly in tightly fought races, were often personalized and negative in tone, only a few isolated incidents were noted.⁶⁵ A hurricane in the week prior to the elections led to some interruptions in campaigning as well as a toning down of the rhetoric. Overall, voters were able to make informed choices due to a wealth of public information that provided a wide diversity of views.

X. MEDIA

A. MEDIA ENVIRONMENT

The US media landscape is marked by a pluralistic, diverse and independent media system. Television remains the main source of political information in the US, as provided through public, national, and cable broadcasters. The main commercial television channels include the national networks of *ABC*, *CBS*, and *NBC*, and the cable television channels of *CNN*, *Fox*, and *MSNBC*.⁶⁶ There are more than 2,000 commercial and public television stations and some 15,000 radio stations in the country.⁶⁷ Talk radio shows, mostly conservative, have become increasingly popular over

⁶² For example, in Pennsylvania, a utility company posted voter information leaflets to some 1.3 million voters that erroneously informed voters that photo identification is required to vote, information which was not corrected. Also in Pennsylvania, billboards with a confusing message on voter identification in Spanish were displayed. In Maricopa county, Arizona, voters received erroneous information about the date of the election. In Ohio, TV advertisements erroneously suggested that a car-making facility in Toledo would be moved to China. In Florida, citizens received anonymous letters questioning their citizenship.

⁶³ Gary Johnson, the Libertarian Party nominee, Jill Stein, the Green Party nominee, Virgil Goode, the Constitution Party nominee, and Rocky Anderson, the Justice Party nominee, attended the first two debates and Gary Johnson and Jill Stein took part in the third one.

⁶⁴ On 19 October, former New Mexico Governor Gary Johnson, the nominee of the Libertarian Party, filed a complaint in Federal Court in the District of Columbia asking the court to compel the Commission on Presidential Debates to include him in upcoming debates. Jill Stein, the nominee of the Green Party, made numerous statements insisting that the debates must include every candidate who is on enough ballots to win the election by a majority of the electoral college.

⁶⁵ On 12 October shots were fired through a window of a President Obama campaign office in Denver. On 16 October, the Green Party presidential candidate Jill Stein and her running mate Cheri Honkala were arrested while protesting their lack of inclusion in the presidential debate in New York.

⁶⁶ In their 2012 annual report on the state of the media, the Pew Research Center's Project for Excellence in Journalism (PEJ) reported that 7.8 million people watched the evening news each night on ABC, 5.9 million watched CBS, and 8.8 million watched NBC. In addition, some 3.3 million people watched the evening news on cable television, led by Fox (1.9 million) and followed by MSNBC (773,000) and CNN (654,000). Report available at http://stateofthemediamedia.org/files/2012/08/2012_sotm_annual_report.pdf.

⁶⁷ Report of the Federal Communications Commission (FCC), 16 May 2011.

recent decades. Newspapers have a local base reflected in the relatively low circulation of national titles. The main titles at the national level are the *New York Times*, *Washington Post*, *Los Angeles Times*, *USA Today*, and the *Wall Street Journal*. The internet has increased its role as a key source of information on elections and candidates, particularly through social media, as well as news websites of traditional broadcast and print media, and dedicated online news sites such as *Politico* and *The Huffington Post*.

Public service broadcasters are generally peripheral, although National Public Radio (NPR) enjoys a significant and growing audience. Most public TV stations are affiliates of the Public Broadcasting Service (PBS) and, through federal government subsidies, air programmes that commercial stations tend not to offer, such as educational, cultural, and public affairs shows. In addition, several OSCE/ODIHR LEOM interlocutors expressed concerns in relation to the increased concentration of ownership of commercial broadcast media, alleging that this has weakened diversity of content and viewpoints.⁶⁸

*Consideration could be given to strengthening the not-for-profit, public-service arm of the media, so to provide space for impartial election reporting.*⁶⁹

B. LEGAL FRAMEWORK FOR THE MEDIA

The US has a robust system of guarantees protecting freedom of speech and freedom of the press. The obligations imposed on the media for election coverage are very limited in line with the protection of freedom of speech as afforded by the First Amendment to the US Constitution. The 1934 Communications Act (since amended) and regulations issued by the Federal Communications Commission (FCC) provide the basic framework for elections for broadcast media during elections. Print media are not bound by any statutory requirements. Federal regulation of editorial matters is minimal with preference given to self-regulation.

There are no requirements for equal and balanced news coverage. However, in the 60 days prior to general elections, commercial broadcasters are obliged to provide “reasonable access” to all candidates for federal office. This equal opportunity rule ensures that if a broadcaster grants airtime to one candidate, it must allow equal conditions for other candidates in that contest.⁷⁰ There are, however, several exceptions to this rule, introduced with the aim of protecting media independence and editorial freedom. The main exemptions include candidates’ appearances on newscasts, regularly scheduled news interviews, and news events such as candidate debates. The scope of these exemptions has been expanded over the years to include a greater variety of entertainment and current affairs programmes.

Paid airtime is also subject to the equal opportunity rule. Federal candidates are entitled to purchase airtime at the lowest sum charged for a comparable advertisement on a channel by channel basis. There are no legal limits to the amount of media campaign expenditures, but there are detailed rules that promote financial accountability and transparency of election-related advertising. All advertisements must include sponsorship identification and stations are not allowed to censor the content of a candidate’s advertisement.

⁶⁸ See, also, “Converging Media, Diverging Politics: A Political Economy of News Media in the United States and Canada” Edited by David Skinner, James R. Compton, and Michael Gasher, Rowman and Littlefield, 2005.

⁶⁹ See, Paragraph 16 of General Comment No. 34 (2011) to Article 19 of the ICCPR by the UN Human Rights Committee, which stipulates that states “should guarantee [public broadcaster] independence and editorial freedom. They should provide funding in a manner that does not undermine their independence.”

⁷⁰ This applies to broadcast, cable and Direct Broadcast Satellite providers.

Broadcasters are also required to keep a publicly accessible “political file” reporting all requests to purchase airtime. From 2 August 2012 onwards, the FCC required broadcasters affiliated with the four major networks (ABC, CBS, NBC, and FOX) in the top 50 television markets to post their political files on the FCC website.⁷¹ While many civil society groups welcomed the decision as a measure to increase transparency, the National Association of Broadcasters opposed it, arguing that it would force networks to make public their advertising rates, thus undermining their competitiveness. In the course of the campaign, concerns were raised by several OSCE/ODIHR LEOM media interlocutors in respect of the usability and uniformity of the information filed. Networks interpreted the regulation differently and submitted differing levels of information in differing formats. Following the elections, debate continued about the timing and extent of online disclosure required from television stations to the FCC. Several court cases are ongoing and deliberations continue at the FCC, making it unclear what will be required in future campaigns.

Consideration should be given to broaden the range of television markets where broadcasters are required to post their political files on the FCC website. The FCC could issue more detailed rules on how to file the information to avoid varying interpretation of the requirements. The FCC should also take steps to put in place effective remedies against the lack of compliance with this provision.

Several OSCE/ODIHR LEOM interlocutors expressed concerns regarding disclosure of advertising sponsored by third party groups that are not required to reveal the identities of their donors (see Campaign Finance section). While Section 317 of the Federal Communications Act could, in principle, permit the FCC to require disclosure of those paying for advertisements, no regulations were issued for these elections.⁷²

The FCC could consider using existing statutory provisions to update and strengthen current rules concerning sponsorship identification rules for political advertisements. The FEC and Congress could also consider requiring more meaningful disclosure of those organizations sponsoring third party advertisements.



C. OSCE/ODIHR LEOM MEDIA MONITORING

The OSCE/ODIHR LEOM conducted media monitoring from 12 October to 6 November. The mission monitored a cross-section of media outlets, with quantitative and qualitative analysis of their political and election-related coverage.⁷³ Overall, the media provided pluralistic and extensive coverage of the general elections that allowed voters to access a wide range of information and views on candidates, issues and electoral platforms before casting their vote.

The public electronic media fulfilled their remit as public service broadcasters by covering the elections and candidates in a comprehensive manner, with substantive news and analysis of the candidates' platforms and the issues. PBS equitably allocated airtime in news and current affairs

⁷¹ FCC, Second Report and Order, 27 April 2012. The concerned media markets are the so-called Designated Market Areas (DMAs) as defined by Nielsen Media Research. The term ‘media market’ refers to a group of counties that form an exclusive geographical area. There are 210 Nielsen DMAs in the US. The FCC online filing system is due to be extended to all television stations beginning in July 2014. The FCC will hold public consultations in July 2013 prior to this extension.

⁷² In 2011 the Media Access Project, a public interest group, filed a petition to the FCC proposing a rule to require on-air identification of anyone who contributes at least 25 per cent of the funding of the sponsor of an advertisement, and the written disclosure in a broadcaster's political file of all who contribute at least 10 per cent.

⁷³ TV: ABC, CBS, CNN, Fox News, MSNBC, NBC, PBS. Radio: NPR. Newspapers: New York Times, USA Today, Wall Street Journal. News Websites: The Huffington Post, Politico.

programmes between Barack Obama (54 per cent) and Mitt Romney (46 per cent) that was balanced in tone. Likewise, NPR coverage was equitable, with 46 per cent devoted to Obama and 54 per cent to Romney, and was balanced in tone.

The main national networks also provided even coverage of Obama (51 per cent) and Romney (49 per cent) that was balanced in tone. In contrast, leading cable television channels were highly partisan in their election coverage, with both Obama and Romney receiving more negative than positive coverage. Fox News dedicated 62 per cent of its coverage to Obama and 38 per cent to Romney. Coverage of Obama on Fox News was mostly negative in tone (71 per cent), while Romney received 48 per cent of positive coverage. MSNBC dedicated 36 per cent of its coverage to Obama and 64 per cent to Romney. Coverage of Romney on MSNBC was mostly negative in tone (87 per cent), while coverage of Obama was mainly positive (82 per cent).

The presidential election dominated the agenda of national media together with a very limited number of Congressional races considered close.⁷⁴ OSCE/ODIHR LEOM media monitoring results show that all broadcast media dedicated the greater part of their electoral coverage to non-substantive issues such as daily opinion polls and the holding of campaign events (64 per cent), often at the expense of substantive discussion of policy (36 per cent). Press and online media provided extensive and comprehensive coverage of the elections, often with a greater focus on policy issues.

XI. COMPLAINTS AND APPEALS

Complaints and appeals can be brought before state and federal courts by individuals, parties, organizations, and interest groups in cases of violation of electoral rights. HAVA requires that states must establish a state-based administrative complaints procedure. The Department of Justice monitors compliance by states with federal election legislation and may bring lawsuits in federal courts against noncompliant jurisdictions to remedy denial or abridgement of voting rights. Complaints regarding federal campaign finance are resolved by the FEC and complaints on media-related campaign issues by the FCC.

The majority of electoral disputes in this election cycle pertained to new legislation regarding voter identification, early voting, redistricting, and provisional ballots. Texas and South Carolina voter identification laws were denied both administrative and judicial pre-clearance under the VRA. While Texas law was found by a federal court to impose strict burdens on racial minorities, the South Carolina law was upheld but its enforcement was delayed until 2013 due to the short timeframe before the general elections. Outside of the VRA coverage, lawsuits were filed against a voter identification law in Pennsylvania, where it was decided that the law could not be implemented in the short time before the elections, and Wisconsin, where a decision is expected in 2013. Courts reinstated early voting that was curtailed by state laws in Ohio and Florida. Other cases pertained to provisional ballots, including in Ohio where legal challenges on the validity of provisional ballots continued well after election day. There were only a few HAVA related complaints in this election cycle, which related primarily to access of persons with disabilities.

While administrative bodies and courts frequently expedited hearings on electoral disputes, some cases were decided upon with only a few days remaining before the elections. In general, the dispute resolution mechanism provides for effective remedy, although certain aspects are not adjusted to the pace and context of an election process.

⁷⁴ These included contests in Massachusetts, Connecticut, Virginia, Arizona, Indiana, Montana, Nevada, North Dakota, and Wisconsin. Coverage of congressional elections was mainly provided by local media at state level.

Consideration could be given to establishing expedited timelines for consideration of complaints during an election period, in those states where such provisions do not exist.

Provisions on recounts vary widely. They can be requested from the state election boards or the courts. In some states the plaintiff is required to pay the costs of the recount which can amount to several thousands of US dollars, with the possibility of reimbursement if the election results are reversed by the recount. Some states provide for an automatic recount in case of a narrow margin in results, with costs covered by the state. In some state statutes, there is no deadline set for eventual recounts,⁷⁵ while in New York and Wyoming the law does not establish recount procedures. While there were only a limited number of recounts in these elections, which ultimately did not affect the final results, the issue would benefit from further attention.

Consideration could be given to enacting laws that provide for a cost-free automatic recount in case of tight margins in those states where no such provisions exist. States should introduce deadlines for the holding and completion of recounts to ensure a timely remedy.

XII. ELECTION OBSERVATION

In line with OSCE commitments, the US has regularly invited the OSCE/ODIHR to observe federal elections. However, election observation is regulated by state law, which generally does not provide for international observers, as required by paragraph 8 of the 1990 OSCE Copenhagen Document and the 1999 Istanbul Document.⁷⁶ In 2010, the National Association of Secretaries of States (NASS) extended its 2005 resolution encouraging federal, state and local election officials to cooperate with and provide access to international observers.⁷⁷ Missouri, New Mexico, North Dakota, South Dakota, and the District of Columbia explicitly provide for international election observation, while other states interpreted their laws in a way that permits access or delegated the decision to county officials. Some state laws, such as California, Oregon and West Virginia, allow observation of counting and tabulation of results by the general public. While made welcome by most election authorities, OSCE/ODIHR LEOM observers were not provided full and unimpeded access to polling stations in several states.⁷⁸ In some cases, OSCE/ODIHR observers were publicly threatened with criminal sanctions if they would enter polling stations. This is in contravention of paragraphs 8 and 10 of the 1990 OSCE Copenhagen Document and the 1999 Istanbul Document.⁷⁹

Legislation should guarantee access in all states to international observers invited by the US authorities, to ensure full compliance with Paragraphs 8 and 10 of the 1990 OSCE Copenhagen Document and the 1999 Istanbul Document.

⁷⁵ Arkansas, Michigan, Missouri, Oregon, and Vermont.

⁷⁶ Paragraph 8 of the 1990 OSCE Copenhagen Document provides that “the participating States should consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other [O]SCE participating State....” Paragraph 25 of the 1999 Istanbul Document reaffirms that OSCE participating States “will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings.”

⁷⁷ NASS Resolution Supporting International Election Observers, 2010, see: http://www.nass.org/index.php?option=com_docman&task=doc_download&gid=904&Itemid=.

⁷⁸ Alabama, Alaska, Florida, Iowa, Michigan, Mississippi, Ohio, Pennsylvania, Tennessee, and Texas.

⁷⁹ Paragraph 10.1 of the 1990 OSCE Copenhagen Document provides that participating States “respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms.”

Domestic observation was widespread throughout the country, with a focus on battleground states, both by political parties and citizen observer groups, providing an important layer of transparency and confidence. However, citizen observer groups informed the OSCE/ODIHR LEOM that they faced challenges gaining access to documentation related to new voting technologies, including source codes. The Department of Justice deployed more than 780 federal observers to 23 states to monitor the implementation of federal electoral law.

XIII. ALTERNATIVE VOTING METHODS

Alternative voting methods are an established practice in the US and it is estimated that some 35 per cent of voters cast their ballots before election day through in-person voting or through postal voting, including by voters abroad. The methods and modalities of alternative voting vary across the states. Alternative voting is increasingly encouraged by the election officials, to reduce pressure on election day, and by political parties, to secure participation of their supporters. In general, there is high public trust in election authorities to administer early and postal voting impartially and according to the law. The OSCE/ODIHR LEOM noted adequate measures to prevent unauthorized access to election materials, as well as for overnight security.

In-person early voting was possible in 32 states and the District of Columbia. The dates and working hours for early voting vary significantly across states, from 4 to 45 days, and early voting was shortened in four states prior to these elections.⁸⁰ Some OSCE/ODIHR LEOM interlocutors, including several election administrators, stated that efforts to cut early voting days were politically motivated. The widespread use of early in-person voting resulted in long queues in a number of states during the early voting period. The flow of voters was slowed down further in some states by ballot papers that were several pages long and included multiple electoral contests and referenda. In the eastern states, early voting was cancelled for two days due to a hurricane, but was generally compensated by extended opening hours.

Where in-person early voting is used, states should ensure that the location and opening hours of polling stations provide, as far as possible, equal convenience and accessibility to all voters. There should be sufficient polling station staff to handle the expected number of voters. Election authorities could consider undertaking time-and-motion studies to determine the amount of time required to process each voter.

Although all states provide for postal voting, 29 states and the District of Columbia did not require voters to provide a reason for voting by mail. Oregon, Washington, and some counties in other states, conducted elections entirely by post. As is the case of any method of voting in an uncontrolled environment, postal voting creates a potential problem in relation to the secrecy of the vote and individuals being pressured to vote in a certain way; a concern also raised by several OSCE/ODIHR LEOM interlocutors. Regulations to protect the secrecy of postal ballots have been introduced by a number of states but vary across the country. Some states do not require a secrecy envelope and the ballot paper is returned in an envelope containing voter information,⁸¹ which may violate the right to a secret ballot as provided by paragraph 7.4 of the 1990 OSCE Copenhagen Document and other international standards.⁸²

⁸⁰ Florida, Georgia, Tennessee, and West Virginia. Courts later reinstated early voting that had been curtailed in Florida and Ohio.

⁸¹ For example, California, Illinois, North Carolina, Virginia, and Wisconsin.

⁸² Paragraph 7.4 of the 1990 OSCE Copenhagen Document provides that participating States should “ensure that votes are cast by secret ballot or by equivalent free voting procedure.” See also, Article 25(b) of the ICCPR.

In order to comply with international standards, consideration should be given to adopting federal legislation that guarantees the secrecy of the vote in US elections.

State and county authorities should ensure the secrecy of the postal ballot is always safeguarded when received by the election officials by providing a secrecy envelope.

Due to the increasing usage of postal ballots across the US, federal authorities should consider conducting an analysis of the impact of voting in uncontrolled environments as a means to identify and prevent possible forms of pressure on voters.

The MOVE and UOCAVA acts provide citizens living abroad with the possibility to vote in general elections. The Federal Voting Assistance Program (FVAP) of the Department of Defense provided considerable assistance to facilitate voter registration and ballot requests, as well as voter information campaigns. The MOVE act requires states to distribute ballots to voters abroad at least 45 days prior to election day to ensure voters have a reasonable opportunity to return their ballots on time, and the majority of jurisdiction complied with this provision.⁸³ Some 31 states allowed voters to return their completed ballots by email or fax, which requires voters to waive the right to secrecy of their vote. This is not in line with the right to a secret ballot as provided by paragraph 7.4 of the 1990 OSCE Copenhagen Document.

Federal authorities should continue to develop secure out-of-country voting methods, with a view to ensuring the secrecy of the vote while allowing for expedient return of the ballot.

XIV. NEW VOTING TECHNOLOGIES

The use of new voting technologies (NVT) in US elections is extensive and varies considerably across and within states. Most states use more than one type of NVT, either because of county variations or to accommodate voters with special needs.⁸⁴ This includes Direct Recording Electronic (DRE) voting machines, as well as optical ballot scanners that can read and count paper ballots that have been filled out manually by the voter.

The EAC is mandated by HAVA to certify NVT systems, however the guidelines are voluntary and few systems have been tested against national standards. Contrary to international good practice, there is a lack of state-level provisions regarding certification and auditing, resulting in a broad range of systems regulated according to different standards.⁸⁵ In addition, HAVA guidelines are limited to the voting process only and few states conduct advance end-to-end testing of their complete NVT systems, including counting procedures.

Federal authorities could harmonize NVT certification requirements across states by introducing a mandatory set of minimum requirements. Consideration should be given to extending the mandate of the EAC to include all aspects of NVT, including counting technology.

⁸³ Some jurisdictions in Alabama, Mississippi, and Vermont breached this deadline and had to extend the deadline to receive and count ballots by 10 days.

⁸⁴ HAVA mandates that every polling station is equipped with voting equipment that provides for access of voters with disabilities and voters with minority language needs.

⁸⁵ See, for example, 2004 Council of Europe *Legal, Operational and Technical Standards for E-Voting*, Recommendation Rec(2004)11, and 2011 Council of Europe *Guidelines on Transparency of E-Enabled Elections*.

The trend to return to paper-based voting continued in these elections but 32 states provided for electronic counting of paper ballots for almost all voters. Several election officials indicated to the OSCE/ODIHR LEOM that they returned to paper-based voting in response to voter concerns about the integrity of NVT. However, 11 states continue to mostly use DRE voting machines that do not provide any form of Voter Verified Paper Audit Trail (VVPAT).⁸⁶ Using a VVPAT gives the voter the opportunity to verify that their vote has been cast correctly, and allows for a recount, leading to more transparency and confidence in the process.

To promote transparency and confidence in NVT, authorities should consider adopting federal legislation for the mandatory use of a paper trail in elections.

Overall, election officials were well-trained, experienced, and comfortable in using NVT. The OSCE/ODIHR LEOM found that in most cases technical problems were dealt with in a satisfactory manner. However, some problems were noted regarding the secrecy of the ballot while using optical ballot scanners. For example, the OSCE/ODIHR LEOM received several reports where voters cast double-sided ballots or inserted their ballots upwards, thereby exposing their voting preferences to others present in the polling station.

In order to guarantee the secrecy of the vote, ballot paper secrecy sleeves or one-sided ballots should be used with optical ballot scanners.

XV. ELECTION DAY

In line with standard OSCE/ODIHR methodology for LEOMs, the mission did not include short-term observers and did not undertake comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations in 13 states and the District of Columbia.

Voters seemed able to cast their votes in a calm atmosphere and poll workers were experienced and well trained. While most voters were generally able to cast their vote without difficulties, there were reported instances of long queues of voters in several states, and shortages in polling station staff that caused delays in voting. In some states, ballot length and complexity also had an impact on the flow of voters.⁸⁷

The OSCE/ODIHR LEOM noted that the use of provisional ballots varied across states. HAVA requires that provisional ballots be provided to voters who believe they are registered at a polling station, but could not be identified on the voter list. In several states, polling station officials used electronic voter registers with online access to county-level voter information, which allowed officials to redirect voters to correct polling places where necessary. In polling stations where this was not available, some polling station officials called county-level officials to check where the voter was registered. However this was not always possible or easy, which led to an increase in the use of provisional ballots. While some states have rules to count provisional ballots regardless of where they were cast, others count the provisional ballots only if they were cast in the precinct where the voter is registered. Deadlines for counting provisional ballots also vary across the states and could delay the announcement of results in closely contested races. The presidential election results in

⁸⁶ Delaware, Georgia, Indiana, Louisiana, Maryland, New Jersey, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

⁸⁷ In his election night speech President Obama referred to people who had waited for a long time to vote and remarked “by the way, we have to fix that.”

Florida were announced on 10 November, four days after election day. In Ohio, the counting of provisional ballots finished on 27 November.

In states where provisional ballots are not counted if cast in a precinct where the voter is not registered, the authorities should consider solutions that would reduce the number of instances of voters voting in wrong polling stations. For example, poll workers could be provided with access to county-level voter lists, which would allow for easier and accurate redirection of voters to their correct polling stations.

In states affected by the hurricane, commendable efforts were made by election officials to ensure that voters could cast their vote, including by making it possible for voters to cast their ballots in any polling station within the state. New Jersey officials issued a directive allowing displaced voters to vote by email or fax, however, the email servers in several counties crashed due to heavy usage. Voters voting by email or fax also waived the secrecy of their vote.

Campaigning continued on election day, including through advertisements and get-out-the-vote efforts, as allowed by law. The media reported on the activities of the candidates, the voting process, and exit poll findings throughout the day. The television networks starting announcing unofficial election results shortly after polls closed.

All voters queuing at the time of closing of the polls were allowed to vote. In some polling stations, this led to an extension of polling for a few hours.⁸⁸ The vote count was generally completed automatically via DRE machines or counting scanners, which printed a results protocol that was signed by the officials. The election officials tabulated unofficial results received from polling stations by various means, including by telephone or electronically over a secure line, and the preliminary results were made instantly available to media networks and posted on the internet. The unofficial results generally did not include provisional ballots,⁸⁹ as well as absentee ballots postmarked by election day but not yet received. Election officials in a number of states did not publish results of elections broken down on the polling station level.

To enhance transparency of the election results, all states should ensure that preliminary and final results are published with a complete breakdown of the vote by district and polling station. Results should include the total number of voters and turnout at each polling station, the numbers of valid, invalid and provisional ballots, votes cast for each candidate, and, where applicable, the numbers of early and absentee ballots.

XVI. RECOMMENDATIONS

The following recommendations are offered for consideration by federal and state authorities, political parties and civil society of the United States, in further support of efforts to conduct elections fully in line with OSCE commitments and other standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of the United States to further improve the electoral process and in following-up on the recommendations contained in this and previous reports.

⁸⁸ Most notably in Miami-Dade county, Florida.

⁸⁹ The deadline for adjudication of provisional ballots varies widely. For example, in Florida provisional ballots are counted within 2 days after election day, while in Ohio, they are counted 10 days after election day.

A. PRIORITY RECOMMENDATIONS

1. Consideration should be given to providing full representation rights in Congress for citizens resident in the District of Columbia and US territories, in line with paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.
2. Restrictions of voting rights for prisoners and ex-prisoners should be reviewed to ensure that any limitation is proportionate to the crime committed and clearly outlined in the law. Federal legislation could be considered to provide consistency in restrictions to federal voting rights. Authorities should take effective and timely measures to facilitate the restoration of voting rights after a prison term has been served.
3. Authorities should review existing measures to register voters so as to ensure that all persons entitled to vote are able to exercise that right. States should consider further efforts to facilitate the registration of voters, including through civic education programmes. States could consider possibilities for automatic registration based on existing state and federal databases, thereby removing the need for citizens to proactively register.
4. In line with HAVA requirements, there should be a national body with sufficient resources and outreach capacity to provide guidance on election administration and serve as a central clearinghouse to develop good electoral practices. Congress should ensure that such a body has the necessary financial and human resources to fulfil these duties in an effective manner.
5. Consideration could be given to increase the transparency of campaign financing of 501(c) organizations, including a clearer definition of what constitutes a 'primary activity.' Donor disclosure rules should apply to all persons, groups, and entities engaged in electoral campaign activities regardless of their form and whether or not they are registered with the FEC.
6. The formula for the composition of the Federal Election Commission could be reconsidered so as to ensure timely and effective oversight and application of campaign finance regulations.
7. Consideration could be given to enacting laws that provide for a cost-free automatic recount in case of tight margins in those states where no such provisions exist. States should introduce deadlines for the holding and completion of recounts to ensure a timely remedy.
8. In order to comply with international standards, consideration should be given to adopting federal legislation that guarantees the secrecy of the vote in US elections.
9. Federal authorities could harmonize NVT certification requirements across states by introducing a mandatory set of minimum requirements. Consideration should be given to extending the mandate of the EAC to include all aspects of NVT, including counting technology.
10. Legislation should guarantee access in all states to international observers invited by the US authorities, to ensure full compliance with Paragraphs 8 and 10 of the 1990 OSCE Copenhagen Document and the 1999 Istanbul Document.
11. To enhance transparency of the election results, all states should ensure that preliminary and final results are published with a complete breakdown of the vote by district and polling station. Results should include the total number of voters and turnout at each polling station,

the numbers of valid, invalid and provisional ballots, votes cast for each candidate, and, where applicable, the numbers of early and absentee ballots.

B. OTHER RECOMMENDATIONS

Legal

12. In line with good electoral practice and in order to allow sufficient time for potential legal challenges, states should consider establishing a deadline for introducing changes in electoral legislation sufficiently in advance of election day.
13. With a view to ensuring genuine competition in congressional districts, states could consider exchanging and developing good practices for drawing district boundaries that are timely, transparent, and involve broad public consultation.

Election Administration

14. If senior election officials at state and lower levels are elected, the states could consider holding such elections in non-federal election years, to avoid any real or perceived conflicts of interest.
15. Election authorities should conduct a thorough review of the obstacles faced in identifying, hiring, and training poll workers.

Voter Registration

16. Undue obstacles and burdensome procedures should not be imposed on voter registration. Election authorities and civil society could enhance training of persons involved in voter registration drives, emphasizing the importance of accurate and timely submissions.
17. Federal guidelines to clarify HAVA requirements of matching voter records in state-wide voter registration databases with other databases should be considered. Clear regulations should be provided on the sequence of matching different state databases, which database contains the correct information in case of a mismatch, and how partial mismatches are addressed. Such guidelines should uphold both enfranchisement as well as voter list accuracy and be clearly communicated to voters.
18. In line with good practice, consideration could be given to removing the possibility for voters to register on election day to avoid the possibility of multiple registrations. A legal deadline for closing voter lists could be introduced, with additional entries permitted only in accordance with clearly defined legal requirements.

Voter Identification

19. Consideration should be given to establishing federal standards on voter identification for both in-person voting and postal voting.
20. Consideration could be given to introducing state-issued identification documents that could simultaneously represent proof of citizenship and identity. Such documents could be issued free of charge, at least to low-income voters.

Candidate Registration

21. Federal and state authorities could reflect on the extent to which differences in candidate registration requirements affect the principle of equality of political rights of all citizens and the extent to which they comply with international standards.
22. Consideration could be given to decreasing the number of required signatures for nomination of independent or third party candidates to a maximum of one per cent of the number of registered voters in a given district, in line with good electoral practice.

Campaign Finance

23. FEC rules regarding co-ordination of campaign expenditures should be reviewed and clarified to ensure that outside spending is genuinely independent. Additional resources could be dedicated to the FEC to provide it with the capacity of conducting a thorough oversight of co-ordination rules.
24. Consideration should be given to reforming the public financing system for presidential elections. This could include revising the expenditure limits as well as introducing incentives such as federal matching funds.

Media

25. Consideration could be given to strengthening the not-for-profit, public-service arm of the media, so to provide space for impartial election reporting.
26. Consideration should be given to broaden the range of television markets where broadcasters are required to post their political files on the FCC website. The FCC could issue more detailed rules on how to file the information to avoid varying interpretation of the requirements. The FCC should also take steps to put in place effective remedies against the lack of compliance with this provision.
27. The FCC could consider using existing statutory provisions to update and strengthen current rules concerning sponsorship identification rules for political advertisements. The FEC and Congress could also consider requiring more meaningful disclosure of those organizations sponsoring third party advertisements.

Complaints and Appeals

28. Consideration could be given to establishing expedited timelines for consideration of complaints during an election period, in those states where such provisions do not exist.

Alternative Voting Methods

29. Where in-person early voting is used, states should ensure that the location and opening hours of polling stations provide, as far as possible, equal convenience and accessibility to all voters. There should be sufficient polling station staff to handle the expected number of voters. Election authorities could consider undertaking time-and-motion studies to determine the amount of time required to process each voter.

30. State and county authorities should ensure the secrecy of the postal ballot is always safeguarded when received by the election officials by providing a secrecy envelope.
31. Due to the increasing usage of postal ballots across the US, federal authorities should consider conducting an analysis of the impact of voting in uncontrolled environments as a means to identify and prevent possible forms of pressure on voters.
32. Federal authorities should continue to develop secure out-of-country voting methods, with a view to ensuring the secrecy of the vote while allowing for expedient return of the ballot.

New Voting Technologies

33. In order to guarantee the secrecy of the vote, ballot paper secrecy sleeves or one-sided ballots should be used with optical ballot scanners.
34. To promote transparency and confidence in NVT, authorities should consider adopting federal legislation for the mandatory use of a paper trail in elections.

Election Day

35. In states where provisional ballots are not counted if cast in a precinct where the voter is not registered, the authorities should consider solutions that would reduce the number of instances of voters voting in wrong polling stations. For example, poll workers could be provided with access to county-level voter lists, which would allow for easier and accurate redirection of voters to their correct polling stations.

ANNEX: FINAL RESULTS

Presidential and Vice-Presidential Elections⁹⁰

Presidential Candidate	Vice Presidential Candidate	Political Party	Electoral Vote	Percentage	Popular Vote	Percentage
Barack H. Obama	Joseph R. Biden, Jr.	Democratic	332	61.70%	65,899,660	51.06%
Willard Mitt Romney	Paul Ryan	Republican	206	38.30%	60,932,152	47.21%
Gary Johnson	James P. Gray	Libertarian	0	0.00%	1,275,804	0.99%
Jill Stein	Cheri Honkala	Green	0	0.00%	469,501	0.36%
Other candidates			0	0.00%	490,545	0.38%

Elections for the Senate (Class 1* Senators)⁹¹

Political Party	Number of Seats Contested	Number of Seats Won
Democratic	32	23
Republican	33	8
Libertarian	14	0
Independent	8	2

* Senate elections were conducted for one senator in each of the following states: Arizona, California, Connecticut, Delaware, Florida, Hawaii, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Elections for the House of Representatives⁹²

Political Party	Number of Seats Contested	Number of Seats Won
Democratic	435	201
Republican	435	234

⁹⁰ Source: <http://www.fec.gov/pubrec/fe2012/2012presgeresults.pdf>.

⁹¹ Source: <http://www.politico.com/2012-election/map/#/Senate/2012/>.

⁹² Source: <http://www.politico.com/2012-election/map/#/House/2012/>.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the 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.

The OSCE/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 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates 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 standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/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. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/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 persons, 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**, the OSCE/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. The OSCE/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.

The OSCE/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/odihr).