



Office for Democratic Institutions and Human Rights

# UNITED STATES OF AMERICA

## GENERAL ELECTIONS

5 November 2024

### ODIHR NEEDS ASSESSMENT MISSION REPORT

13 – 17 May 2024



Warsaw  
9 July 2024

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>EXECUTIVE SUMMARY.....</b>	<b>1</b>
<b>III.</b>	<b>FINDINGS .....</b>	<b>4</b>
<b>A.</b>	<b>BACKGROUND .....</b>	<b>4</b>
<b>B.</b>	<b>LEGAL FRAMEWORK.....</b>	<b>6</b>
<b>C.</b>	<b>ELECTORAL SYSTEM.....</b>	<b>8</b>
<b>D.</b>	<b>ELECTION ADMINISTRATION.....</b>	<b>9</b>
<b>E.</b>	<b>VOTER RIGHTS, REGISTRATION, AND IDENTIFICATION.....</b>	<b>10</b>
<b>F.</b>	<b>CANDIDATE REGISTRATION .....</b>	<b>12</b>
<b>G.</b>	<b>ALTERNATIVE VOTING METHODS .....</b>	<b>13</b>
<b>H.</b>	<b>NEW VOTING TECHNOLOGIES AND CYBERSECURITY .....</b>	<b>14</b>
<b>I.</b>	<b>ELECTION CAMPAIGN .....</b>	<b>15</b>
<b>J.</b>	<b>CAMPAIGN FINANCE .....</b>	<b>15</b>
<b>K.</b>	<b>MEDIA .....</b>	<b>16</b>
<b>L.</b>	<b>ELECTION DISPUTE RESOLUTION .....</b>	<b>17</b>
<b>M.</b>	<b>ELECTION OBSERVATION .....</b>	<b>17</b>
<b>IV.</b>	<b>CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>18</b>
	<b>ANNEX: LIST OF MEETINGS .....</b>	<b>19</b>

**UNITED STATES OF AMERICA**  
**GENERAL ELECTIONS**  
**5 November 2022**

**ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation from the United States Mission to the OSCE to observe the 5 November 2024 general elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 13 to 17 May. The NAM included Ulvi Akhundlu, Deputy Head of the ODIHR Election Department, and Hamadziripi Munyikwa, ODIHR Election Adviser. The ODIHR NAM was joined by Stéphanie Koltchanov, Head of Elections of the OSCE Parliamentary Assembly.

The mission assessed the pre-election environment and the preparations for the elections. Based on this assessment, the NAM recommends whether to deploy an ODIHR election-related activity for the forthcoming elections and, if so, what type of activity best meets the identified needs. The mission held meetings with officials from federal institutions, as well as representatives of political parties and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Department of State, including the United States Mission to the OSCE, for their co-operation and assistance in organizing the NAM. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM team and for sharing their views.

**II. EXECUTIVE SUMMARY**

The US is a federal republic of 50 states, the capital District of Columbia, and 16 overseas territories. Executive power is vested in the president, and the federal legislature is composed of a bicameral Congress made up of the House of Representatives and the Senate. States have their own constitutions and laws, as well as executive, legislative and judicial branches. On 5 November, elections will take place for the president and their nominated vice-president, 35 of 100 Senate seats and all 435 seats in the House of Representatives.

US politics is dominated by the Democratic and Republican parties, which have historically alternated power at the federal level in both the legislative and executive branches. These elections are expected to see the incumbent Joe Biden, vying with Republican Party candidate and former president Donald Trump, against whom the former won the 2020 presidential election. Many ODIHR NAM interlocutors emphasized that they saw a relationship between Mr. Trumps' persistent allegations of systematic electoral fraud during the 2020 elections, and the incidence of threats and harassment against election administrators. The former president was indicted in four separate criminal cases in 2023, including two related to alleged attempts to overturn 2020 election results which he contends have been politically motivated.

The U.S Constitution establishes the legal framework for federal elections, and federal election laws regulate the protection of voting rights of racial minorities, voting by persons with disabilities, voting abroad, standards for new voting technologies (NVT) and campaign finance. All other detailed aspects of election administration are regulated by state laws. In December 2022, the United States Congress passed the Electoral Count Reform Act to clarify the procedure for counting electoral college votes. The necessity of this clarification became apparent after a number of individuals sought to exploit ambiguities in this

process to overturn the results of the 2020 presidential election. Nearly 400 new election related laws were enacted at the state level since 2020, mostly ahead of the mid-terms in 2022, with all 50 states introducing election related bills. Most of the changes related to absentee and mail voting, early voting, ballot drop boxes and ballot collection, voter identification and voter registration; and many after the mid-term elections regulate the use of Artificial Intelligence in generating campaign material. Despite the high numbers of state election laws enacted, these addressed only some previous ODIHR recommendations.

District maps for the 435 congressional districts were revised ahead of the 2022 mid-term elections, based on demographic changes recorded in the 2020 census. Congressional district maps in five states were redrawn since the mid-terms in 2022 and two were still the subject of ongoing litigation in May 2024. In most states, state legislators are responsible for redistricting and only eight states and Washington D.C have independent redistricting commissions. Several NAM interlocutors reiterated concerns that partisan redistricting of electoral boundaries is frequently biased in favour of a single party and at times explicitly factors racial demographics in the delimitation process.

States manage their own elections with duties devolved to roughly 6,460 jurisdictions across the country. ODIHR NAM interlocutors highlighted the general state of underfunding as a major concern, as well as threats to the safety of election administration which among other issues poses challenges in maintaining experienced poll workers and recruiting new ones. While all ODIHR NAM interlocutors were confident of the capacity and integrity of election administrators, some highlighted that disinformation and deliberate undermining of trust in election administration have led to threats against election workers.

Citizens who are at least 18 years old on election day are eligible to vote, approximately 244 million citizens. Over 600,000 citizens residing in the District of Columbia and some 3.5 million citizens resident on US territories are not fully represented in Congress. Notwithstanding the positive trend towards states restoring voting rights for ex-prisoners, an estimated 4.4 million citizens are disenfranchised due to criminal felony conviction and most states continue to impose burdensome procedures for the reinstatement of these rights.

Voter registration is active. Voters register in the jurisdiction in which they reside, most often at the county level and states maintain voter registers. The available means and official requirements for registration vary by state, with voters generally being able to register in person, by post, online or through an authorized third party. Several ODIHR NAM interlocutors noted that access to voter registration is disproportionately more difficult for voters living in urban areas, low-income voters, and some racial minorities, with these groups continuing to have lower than average registration rates.

Voter identification requirements vary, with 35 states requiring voters to show identification before voting, 24 of which require photo identification. The remaining states use other identifying information provided at the polling place. Voter identification cards remain a politically contentious issue with ODIHR NAM interlocutors offering diverging perspectives on the potential risk for individuals, to vote more than once on the one hand, and the impact of unequal access to voter ID on turnout, on the other.

Federal legislation prohibits discrimination and ensures equal opportunity for persons with disabilities in political and electoral life, however several states impose restrictions to voting rights based on intellectual or psychosocial disability or guardianship. Robust and proactive legal guarantees ensure the rights of persons with physical disabilities to vote. All polling stations are mandated to provide specialized equipment to assist such voters. Some ODIHR NAM interlocutors stated that aging technology and the lack of well-trained polling staff may negatively affect the ability of persons with disabilities to register and to

vote, while the introduction of stricter requirements for early and mail voting since the 2020 general elections may make it more difficult for these voters to cast their ballots.

Forty-seven states and the District of Columbia offer early in-person voting with varying modalities across states. Twenty-eight states allow voters to request mail ballots without having to provide justification. Several state laws related to early in-person and absentee voting were passed since the last general elections, most of which adjusted modalities and timeframes for implementation. Most ODIHR NAM interlocutors expressed confidence in the methods for early and postal voting, but many also raised concerns about the postal system's capacity to deliver election mail on time and in keeping with post-mark requirements.

All prospective candidates for federal office are required to file a statement of candidacy with the Federal Elections Commission (FEC) within 15 days of receiving contributions or making expenditures that exceed \$5,000. All other registration procedures, including for the presidency and Congress, take place at state level, usually through the respective state's secretary of state. Candidates can seek the nomination of a state-recognized party, run as independents, or run as write in candidates with variations in regulations in various states.

New Voting Technologies are used extensively, with the different states and jurisdictions applying various technological solutions to elements of the electoral process. Voting equipment is certified by laboratories accredited by the Election Assistance Commission (EAC) or by the states themselves. Jurisdictions in most states use ballot marking devices with voter-verified paper audit trails, with an estimated 90 per cent of all ballots in these elections expected to be cast through paper-based systems, but counties in six states use electronic voting machines without paper records. All ODIHR NAM interlocutors were confident in the technology used for marking and counting ballots but coverage of broader public sentiment indicated decreasing trust in counting machines. The Cybersecurity Infrastructure and Security Agency works with states and localities to improve cyber security in relation to elections, co-ordinate efforts to mitigate cyberattacks, and counteract malign foreign influence. Most ODIHR NAM interlocutors expressed confidence in the cybersecurity infrastructure.

Freedoms of association and assembly are guaranteed, and there are no legal limitations to the nature and content of campaigning. All ODIHR NAM interlocutors confirmed that these freedoms are respected in practice. ODIHR NAM interlocutors indicated that the campaigns would focus on so called swing states in the contest for electoral college votes between the two major parties as well as on competitive congressional races. Political opinions on a number of salient issues are polarized, including on immigration, abortion, regulation of weapon ownership, LGBTI rights; the two main political parties emphasize and campaign on either side of these key issues. The integrity of elections and the trajectory of the rule of law are also important political issues in light of the violent events of 6 January 2021 and the ensuing legal implications for former president Trump. Parties and third-party campaigners use online and social media extensively, and several ODIHR NAM interlocutors highlighted the risk of disinformation, potentially amplified and made more convincing by Artificial Intelligence.

While half of the incumbent president's cabinet are women, only 29 per cent of seats in the House and 25 percent in the Senate are held by women and only 12 women are currently serving as governors. Several ODIHR NAM interlocutors noted that women's rights, access to abortion in particular, would be a central theme of the political party campaigns.

The Federal Election Commission oversees and enforces campaign finance regulations. Federal law limits individual donations to candidates and requires full disclosure. There are no restrictions on how much

campaigns may spend. Most ODIHR NAM interlocutors shared concerns that spending by independent groups and Political Action Committees, diminishes transparency of sources of campaign financing and may provide avenues to avoid disclosure.

The media landscape is pluralistic and caters to a diverse but increasingly polarized market. Media independence and freedom of speech are constitutionally protected. There are no requirements for equal and balanced media coverage. Commercial broadcasters are required to provide reasonable access to all legally qualified federal candidates as well as allowing equal time for all candidates in a given federal contest, though exceptions include appearances on newscasts, scheduled interviews, and debates. To promote transparency, all advertisements must include sponsorship identification and broadcasters must maintain a public record of all airtime purchased.

State laws regulate citizen and international election observers' access to aspects of the electoral process, but often do not explicitly provide for international observers and in some cases bar the presence of non-citizens at the polling station. The political parties, as well as civil society organizations with which the ODIHR NAM met, indicated that they would be making particularly concerted efforts to deploy observers for these elections.

All ODIHR NAM interlocutors expressed confidence in election administrators' integrity and their capacity to fulfil their roles, including on election day, despite the presence of rhetoric denigrating their integrity. Many ODIHR NAM interlocutors also emphasized the widespread presence of political party and non-partisan observers as contributing to transparency on election day. Notwithstanding the volume of changes to state election laws, most issues identified in previous reports remain unaddressed and only some ODIHR recommendations have been implemented. Most ODIHR NAM interlocutors saw value in a potential ODIHR observation activity for these elections recognising that an external assessment may contribute to further improvements to the electoral process by informing the ongoing debates about legislative changes at federal and state levels. They also noted the importance of international observation given the highly polarized environment and the discourse sowing distrust in the integrity of elections. The ODIHR NAM recommends specific attention be paid to the legal framework and its stability, the conduct of the electoral campaign, particularly in media and social networks, the effectiveness of campaign finance regulations, as well as voter rights, registration and identification. On this basis, the ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM) to observe the 5 November general elections. In addition to a core team of analysts, the mission recommends the secondment of 100 long-term observers from OSCE participating States to follow the electoral process countrywide. In line with the ODIHR's standard methodology, the LEOM would contain a media monitoring element.

### **III. FINDINGS**

#### **A. BACKGROUND**

The United States of America is a federal republic of 50 states, the District of Columbia, and 16 territories.<sup>1</sup> The president of the United States holds executive power, serving as head of state, head of government and the commander in chief of the armed forces. The US has a bicameral legislature (the Congress) composed of an upper chamber (the Senate) with two members from each of the 50 states, and the House of

---

<sup>1</sup> American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Puerto Rico, Virgin Islands, and Wake Island.

Representatives (the House) which has 435 voting representatives. The states have their own constitutions and laws. Governors hold executive power in all the individual states, with legislative power residing in state legislatures, and judicial authority in state courts.

In the upcoming elections, 34 of 100 Senate seats and all 435 seats in the House of Representatives will be contested for.<sup>2</sup> Elections will also be held for the governorships of 11 states and seats in the legislative chambers of 44 states, amounting to 5,793 (78 per cent) of the country's 7,386 state legislative seats. Over 100 ballot measures will be put to the vote and candidates will contest for other important state and local offices, including secretaries of state which have important election administration functions in seven states.

US politics is dominated by the Democratic and Republican parties, which have historically alternated power at the federal level in both the legislative and executive branches. Only a limited number of congressional seats and state electoral colleges are considered electorally competitive.<sup>3</sup> These elections are expected to see the incumbent Joe Biden, vying with Republican Party candidate and former president Donald Trump, against whom the former won the 2020 presidential election.<sup>4</sup> Democrats maintained a majority in the Senate in the 2022 mid-term elections with a caucus made up of 48 seats, two of three Senate independents and the Democratic Vice-president who serves as president of the Senate and may cast a tie-breaking vote. Republicans gained the majority in the House comprised of 219 Republicans, and 213 Democrats.

The allegations of systematic electoral fraud made by former president Donald Trump during and after the 2020 elections negatively affected trust in of election integrity, particularly with supporters of his party.<sup>5</sup> Many ODIHR NAM interlocutors emphasized that they saw a relationship between the repeated, unsubstantiated claims of systematic electoral malfeasance, including on election day, and the increase in threats and harassment of election administrators.<sup>6</sup> Several ODIHR NAM interlocutors have also expressed concerns about the effects of election related disinformation, as well as the amplifying power of Artificial Intelligence (AI), to undermine the administration of, and trust in, elections.<sup>7</sup>

In 2023, Donald Trump was indicted in four separate criminal cases. On 20 May 2024, he was found guilty of having falsified business records in a trial in New York State, becoming the only holder of the office of the president to be indicted as well as found guilty in a criminal trial. Mr. Trump has also been charged with mishandling sensitive documents and conspiracy to obstruct the government in their retrieval in Florida, as well as a federal case related to conspiring to defraud the government and disenfranchise voters,

---

<sup>2</sup> Regular senate elections will take place for 32 seats and two will be contested for in special elections, one in Colorado to fill the last two years Sen. Ben Sasse's term made vacant after his resignation in January 2023, and the other in California, to complete the last two years of Sen. Dianne Feinstein's term after her death in September 2023.

<sup>3</sup> See Cook Report analysis on [competitive House districts](#), and [senate seats](#).

<sup>4</sup> Other [prominent independent and "third-party" candidates](#) registered in key swing states include, [Robert Kennedy Jr.](#) (Independent), [Chase Oliver](#) (Libertarian Party), [Jill Stein](#) (Green Party), and [Cornell West](#) (Independent)

<sup>5</sup> A Marist/NPR national [poll](#) published in November 2021 found that 75 per cent of Republicans say Donald Trump has a legitimate claim that there were "real cases of fraud that changed the results." By contrast, 86 per cent of Democrats and 60 per cent of independents expressed "great deal" or "good amount" in the fairness of elections.

<sup>6</sup> At a rally held on 6 January 2021, the then-incumbent President urged his supporters to pressure representatives to overturn the counting of electoral college votes. The protest turned violent as rioters attempted to enter the Capitol building. Five people, including four rioters and one police officer, died in the violence that ensued the breaking into the building of the Congress, but the rioters were ultimately not successful in circumventing the process. As of June 2024, over [1,400 people have been arrested](#) and charged in relation to the events.

<sup>7</sup> In January 2024, an AI-generated [robocall with a voice similar to President Biden's](#) suggested that voters not vote in the New Hampshire primary.

and corruptly obstructing an official proceeding as well as racketeering charges related to alleged attempts to overturn the 2020 election results in Georgia. Mr. Trump contends that the trials have been politically motivated.<sup>8</sup>

While half of the incumbent president's cabinet are women, including Kamala Harris, the first woman vice-president of the USA, and Janet Yellen, the first treasury secretary, women are generally underrepresented in elected offices. As of the 2022 mid-term elections, 128 women (29 per cent) have seats in the House and 25 in the Senate. Of 7,386 seats in all state legislatures combined women currently hold 2,432 out (32.9 per cent), and only 12 women are currently serving as governors.<sup>9</sup> Despite progress in the diversity of ethnic and racial representation at the federal level, minorities are underrepresented in political structures, particularly in state legislatures.<sup>10</sup>

ODIHR has observed ten elections in the US since 2002, with a Limited Election Observation Mission (LEOM) deployed for the mid-term elections in 2022.<sup>11</sup> The final report, issued in May 2023, contains 31 recommendations, 13 of which are considered to be of priority, and through which authorities may improve the electoral process and bring it closer in line with OSCE commitments.<sup>12</sup>

## B. LEGAL FRAMEWORK

The United States Constitution and a number of its amendments establish the legal foundation for federal elections. Federal laws regulate the protection of voting rights of racial minorities, voting by persons with disabilities, voting from abroad, as well as setting the minimum standards for new voting technologies (NVT) and the campaign finance.<sup>13</sup> Most of the detailed aspects of the electoral legal framework are established by state laws, with legislation and regulations varying across states. Federal and state courts significantly influence the electoral legal framework through their interpretation of legislation, the exercise of judicial review, the resolution of disputes, and by establishing precedents. Despite legal principles discouraging courts from changing election laws immediately prior to an election, actions by courts often alter critical elements of the electoral process which, many ODIHR NAM interlocutors noted, at times leads to uncertainty about some aspects of election administration.<sup>14</sup>

---

<sup>8</sup> An [Ipsos poll conducted in May 2024](#) found that 45 per cent of all respondents and 87 per cent of Republicans believe that the cases against Mr. Trump are politically motivated and intended to prevent him from winning the 2024 elections.

<sup>9</sup> See data by the [Rutgers University Centre for American Women and Politics](#).

<sup>10</sup> See [data](#) from the National Conference of State Legislators (NCSL) published ahead of the 2022 mid-term elections.

<sup>11</sup> See previous ODIHR [election reports](#) on the United States.

<sup>12</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations

<sup>13</sup> Federal legislation includes: the 1965 Voting Rights Act ([VRA](#)), which protects the rights of racial and linguistic minorities; [the 1986 Uniformed and Overseas Citizens Absentee Voting Act \(UOCAVA\)](#) and the 2009 Military and Overseas Voting Empowerment Act ([MOVE](#)), which facilitate out-of-country voting; [the 1984 Voting Accessibility for the Elderly and Handicapped Act](#) and the 1990 Americans with Disabilities Act ([ADA](#)), which promote access to the polls for people with disabilities; the 1993 National Voter Registration Act ([NVRA](#)), which facilitates voter registration; [the 1971 Federal Electoral Campaign Act](#) and [the 2002 Bipartisan Campaign Reform Act](#), which regulate campaign finance; and the 2002 Help America Vote Act ([HAVA](#)), which provides standards for new voting technologies (NVT), state-wide voter registration, provisional ballots, and access for voters with disabilities.

<sup>14</sup> The U.S. Supreme Court established in [Purcell v. Gonzalez](#) (2006), that federal district courts ordinarily should not enjoin state election laws in the period close to an election; and that federal appellate courts should stay injunctions when lower federal courts contravene that principle. However, the specific definition of proximity to an election remains unclear. In [Merrill v. Milligan](#) (2022), the U.S Supreme Court stated: “how close to an election is too close may depend in part on the nature of the election law at issue and how easily the state may make the change without undue collateral effect”.



In December 2022, the Congress passed the Electoral Count Reform and Presidential Transition Improvement Act which changed the procedure for counting votes outlined in the Electoral Count Act of 1887, after a number of individuals sought to exploit ambiguities in this process to overturn the results of the 2020 presidential election.<sup>15</sup> The new law specifies that the vice president's role at the Congress's joint session to count electoral votes is ceremonial, raises the objection threshold at the joint session from one member of each chamber of Congress to one-fifth of the members of both the House of Representatives and the Senate, and designates governors as the only officials responsible for submitting the certificate of ascertainment identifying that state's electors.

Election-related bills were introduced in all states since the 2020 general elections, mostly before the 2022 mid-terms, with some states passing comprehensive election legislation.<sup>16</sup> Most of the changes related to absentee and mail voting, early voting, ballot drop boxes and collection, voter registration and voter identification. A number of laws enacted after the 2022 mid-term elections focused on the use of Artificial Intelligence in generating campaign material.<sup>17</sup>

The US is a party to major international and regional instruments related to democratic elections.<sup>18</sup> The US has signed but not ratified the 1979 Convention for Elimination of All Forms of Discrimination against Women (CEDAW) and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).<sup>19</sup> The US ratified the 1966 ICCPR in 1992, with a number of reservations, understandings, and declarations.<sup>20</sup>

The Department of Justice (DoJ) monitors states' compliance with and implementation of federal legislation, including provisions of the Help America Vote Act (HAVA), the National Voter Registration Act (NVRA) and the Voting Rights Act (VRA) and can initiate lawsuits in cases of non-compliance.<sup>21</sup>

---

<sup>15</sup> See [here](#) for coverage of a speech by Donald Trump claiming that then Vice-President Mike Pence had the authority to change the outcome of the presidential election.

<sup>16</sup> A [report by the National Conference of State Legislatures](#) (NCSL) indicated that 285 laws were passed in 2021 also noting that while the number of laws proposed in the year was notably high (3,676) the rate of enactment of election related bills was consistent with previous years. See also tables of the enacted state level election legislation for [2022](#), [2023](#), and up to [June 2024](#).

<sup>17</sup> See [here](#) for a list of AI disclosure laws proposed and enacted.

<sup>18</sup> Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 2003 Convention against Corruption, and 2004 Council of Europe (CoE) Convention on Cybercrime. The US is a member of the CoE Group of States against Corruption (GRECO) and the European Commission for Democracy through Law (Venice Commission).

<sup>19</sup> Paragraph 13.2 of the 1989 OSCE Vienna Document commits participating States to consider acceding to international human rights treaties, with paragraph 15 referencing CEDAW. See also, paragraph 40.2 of the 1991 OSCE Moscow Document and paragraphs 5.20 and 5.21 of the 1990 OSCE Copenhagen Document. Additionally, the US is also not a party to the American Convention on Human Rights and the Indigenous and Tribal People's Convention.

<sup>20</sup> These included reservations on the application of the death penalty, the scope of rights under the U.S. Constitution, and declarations emphasizing that the treaty is not self-executing, meaning it does not create obligations enforceable in U.S. courts without enabling legislation

<sup>21</sup> Section 5 of the VRA requires jurisdictions with a history of discrimination to obtain federal pre-clearance for electoral law changes from the DoJ or the federal district court in the District of Columbia. In 2013, the Supreme Court ruled that the formula for determining jurisdictions subject to pre-clearance was outdated and that Congress should establish a new formula. To date, Congress has not done so, resulting in most jurisdictions not needing to pre-clear election-related changes, with three exceptions that are covered by separate court orders.

## C. ELECTORAL SYSTEM

The president is elected, along with their respective vice-presidential nominee, to a four-year term. By marking a ballot for a given presidential candidate, voters in all 50 states and Washington D.C select the slate of electoral college members representing that candidate in the state.<sup>22</sup> The state level votes for electors are generally ‘first past the post’ elections in which the candidate with the most votes wins all the available Electoral College votes for that state.<sup>23</sup> There are 538 Electoral College members in all; each state has the same number of electoral college members as it has delegates to both houses of congress and Washington D.C has three delegates. The state electoral college electors meet in their respective states to cast their votes for the president and the candidate that wins 270 Electoral College votes overall wins the election.<sup>24</sup>

A candidate may still fall short of the majority of Electoral College votes despite winning the popular vote nationwide.<sup>25</sup> As a result, several ODIHR NAM interlocutors highlighted that the Electoral College goes against the principle of equality of vote. Notwithstanding the Electoral College’s constitutional basis, several states have passed National Popular Vote (NPV) acts in which they pledge to pool their electoral votes in favour of the candidate that wins the national popular vote.<sup>26</sup>

Senators and Representatives are directly elected, primarily through first-past-the-post contests.<sup>27</sup> Senators are elected to six-year terms, with approximately one third of senate seats contested for every two years. Elections for all 435 congressional seats are held every two years. Senate electoral districts correspond to the entire state, and Representatives are elected from single-member districts. All states have at least one representative in the House and all other seats are allocated to states in proportion to their population at the most recent census.<sup>28</sup> States with more than a single electoral district are generally required to delimit electoral boundary districts following each national census. Of the 44 states with more than one congressional district, state legislators are primarily responsible for redistricting in 33 states.<sup>29</sup> Three states use “politician commissions” which may include elected officials, and eight states and Washington D.C.

---

<sup>22</sup> Slates of potential electors, or members of the electoral college for a given state, are generally nominated by parties at their state party conventions or are chosen by a vote of the party's central committee.

<sup>23</sup> Electoral College votes in Maine and Nebraska may be split, with two votes allocated to the winner of the state-wide popular vote, and one vote allocated to the winner of each congressional district.

<sup>24</sup> There is no constitutional requirement or federal law requiring electors to vote in line with their nominating party, but some state laws invalidate or sanction so-called “faithless electors”. In July 2020, the Supreme Court unanimously held that states may punish or replace presidential electors who refuse to cast their ballots for the candidate chosen by the voters of their state in the cases [Chiafalo v. Washington](#), and [Colorado Department of State v. Baca](#). Prosecution is ongoing in [Arizona](#), [Georgia](#), [Nevada](#), and [Wisconsin](#) in relation to alleged attempts by Donald Trump’s 2020 presidential campaign to submit fraudulent documentation claiming that he had won the electoral college votes in those states as well as in Michigan, New Mexico and Pennsylvania.

<sup>25</sup> In 2016, the Electoral College vote was won by Mr. Trump, who secured 304 Electoral College votes while Hilary Clinton won the popular vote, receiving 48.3 per cent of votes cast as compared to 46.2 per cent for Mr. Trump.

<sup>26</sup> [The National Popular Vote Act](#) (NPV) has been enacted in 17 states and the District of Columbia, totalling in 209 electoral votes. For the NPV to take effect, states with a combined total of at least 270 electoral votes must join the initiative.

<sup>27</sup> In Georgia elections for the House and Senate elections, a second round is held should none of the candidates receive an absolute majority. In the House, vacancies arising between elections are filled through by-elections. In the Senate, vacancies may be filled temporarily by Governors, except in Oregon where a special election is required.

<sup>28</sup> Following the [2020 Census](#), Texas gained two seats and Colorado, Florida, Montana, North Carolina and Oregon each gained one seat, while California, Illinois, Michigan, New York, Ohio, Pennsylvania and West Virginia all lost one seat.

<sup>29</sup> Of the states in which state legislators are responsible for drawing boundaries Iowa, Maine, Utah and Vermont appoint advisory commission to support the legislators. In Maryland the advisory commission supports the Governor in drawing draft plans which are submitted to the legislature.

use independent commissions.<sup>30</sup> New district maps were drawn for 435 congressional districts and 7,383 state legislative seats across 99 chambers following the 2020 census. Congressional district maps in Alabama, Georgia, Louisiana, New York and North Carolina which had been delineated before the 2022 mid-terms were redrawn ahead of these elections. Litigation was continuing over maps in Ohio and Utah in May 2024.<sup>31</sup>

The US supreme court has reiterated that pre-dominantly factoring race in redistricting decisions violates the Voting Rights Act (VRA) and may be considered unconstitutional, but that complaints against maps drawn to achieve a partisan end are not justiciable in federal court.<sup>32</sup> Several NAM interlocutors expressed serious concerns with the issue of partisan redistricting of electoral boundaries.

#### D. ELECTION ADMINISTRATION

States are responsible for managing elections, with duties devolved to roughly 6,460 jurisdictions across the country and no federal body mandated to administer elections directly. In 41 states the Secretary of State serves as the chief election official and is charged with management and oversight of elections and voters rolls, with the remaining states and the District of Columbia assigning these tasks to state election boards or divisions.<sup>33</sup> Contrary to international standards, chief election officials of states and counties (or county equivalents) are often elected as party candidates, at times in elections they themselves administer.<sup>34</sup>

The Election Assistance Commission (EAC) is a bipartisan body composed of four appointees, two appointed by each of the main political parties.<sup>35</sup> It advises states on HAVA requirements and facilitates the sharing of information about election administration. It also develops guidelines for testing and certifying election technology.<sup>36</sup> The EAC informed the ODIHR NAM that beyond its general mandate its priority for these elections would be protecting election workers from threats and harassment resulting from increased misinformation and disinformation.

Federal legislation prohibits discrimination and ensures equal opportunity for persons with disabilities in political and electoral life.<sup>37</sup> It is estimated that one sixth of the voting age population has some type of disability.<sup>38</sup> Some ODIHR NAM interlocutors noted that factors such as changes in the use of election technology and stricter requirements for early and mail voting since the 2020 elections may make it more difficult for persons with physical and sensory disabilities to vote.

---

<sup>30</sup> Politician commissions are in place in Hawaii, New Jersey and Virginia. Independent Commissions are in place in Alaska, Arizona, California, Colorado, Idaho, Michigan, Montana and New York.

<sup>31</sup> See [here](#) for a summary of new maps enacted after the 2022 mid-terms.

<sup>32</sup> See the Supreme decisions related to racial gerrymandering in *Alexander, President of The South Carolina Senate, et al v. South Carolina State Conference of the NAACP et al.*, June 2023 decision in *Allen v. Milligan*, and partisan gerrymandering in *Rucho v. Common Cause* (2019), and *Moore v. Harper* (2023). Cases against partisan gerrymandering may still be brought before state courts.

<sup>33</sup> See [here](#) for a list of chief election officials per state.

<sup>34</sup> Elections for [seven Secretaries of State](#) will take place in 2024. Paragraph 20 of the 1996 UN Human Rights Committee (CCPR) General Comment 25 states that “an independent electoral authority should be established to supervise the electoral process”.

<sup>35</sup> See the EAC’s Election Administration and Voting Survey for the 2022 mid-term elections [here](#).

<sup>36</sup> See the most recent [Voluntary Voting System Guidelines 2.0](#) issued in February 2021.

<sup>37</sup> See [guidance](#) provided by the DoJ on the Americans with Disabilities Act and other federal laws protecting the rights of voters with disabilities.

<sup>38</sup> See [data](#) from United States Census Bureau from November 2018. The EAC reported that 17.7 million and 15.8 million people with disabilities voted in the [2020](#) and [2022](#) elections respectively.

ODIHR NAM interlocutors noted general confidence in the capacity and integrity of election officials across the country. Some ODIHR NAM interlocutors highlighted insufficient funding, and the threats to election officials including the publishing of personal information online, threatening contact and phone calls including death threats, as affecting the ability of administrators to do their jobs effectively and to maintain experienced poll workers as well as recruit new ones.<sup>39</sup> In an effort to attract new poll workers the EAC introduced National Poll Worker Recruitment Day to be held on 1 August.<sup>40</sup> Some officials also highlighted the propagation of election related misinformation leading to a drastic increase in Freedom of Information Act (FOIA) requests since 2020, as effectively debilitating their capacity to deliver on their core tasks. In 2021, the DoJ launched a taskforce to address threats of violence against election workers, investigating and prosecuting these offenses where appropriate.<sup>41</sup>

## E. VOTER RIGHTS, REGISTRATION, AND IDENTIFICATION

### 1. Voter Rights

US Citizens who are at least 18 years old on election day have the right to vote.<sup>42</sup> While some 600,000 citizens residing in the District of Columbia have the right to vote in presidential elections, they and some 3.5 million citizens who reside in US territories do not have full representation rights in the Congress.<sup>43</sup>

An estimated 4.4 million citizens are disenfranchised due to a criminal conviction, 58 per cent of whom have already served their sentences.<sup>44</sup> Racial minorities are disproportionately affected by felony disenfranchisement and it is estimated that, as of 2020, 1.8 million, 5.3 per cent of the adult African American population, are unable to vote as a result of these policies.<sup>45</sup> Prisoner and ex-prisoner voting rights are determined by state law and vary considerably, with only Maine, Vermont, the District of Columbia, and Puerto Rico allowing citizens to vote from prison.<sup>46</sup> In the remaining 48 states convicted felons, those awaiting trial or those on parole, are deprived of their right to vote.<sup>47</sup> In line with prior ODIHR recommendations, there have been positive trends towards the restoration of voting rights for ex-prisoners.<sup>48</sup> Most states, however, impose burdensome procedures for the reinstatement of voting rights.<sup>49</sup>

<sup>39</sup> See coverage of a “swatting” incident targeted at the head of the Cybersecurity and Infrastructure Security Agency [here](#) and other election officials across the country [here](#). See October 2021 [witness testimony from election officials](#) in three states to the Senate Committee on Rules and Administration. Also, see a March 2022 report by the Brennan Center on [threats against election officials](#).

<sup>40</sup> See resources provided by the EAC to jurisdictions to encourage recruitment [here](#).

<sup>41</sup> As of May 2024 the taskforce has [resulted in the arrests, trial and sentencing of five individuals](#) in relation to threats against election workers.

<sup>42</sup> Approximately 244 million citizens are eligible to vote.

<sup>43</sup> Residents of US overseas territories also do not have the right to vote in presidential elections. See the 2021 US Commission on Civil Rights [report on voting rights in US territories](#) as well as individual report on [Puerto Rico](#) and the [US Virgin Islands](#). In 2021, [The Washington D.C. Admission Act](#), a bill seeking to admit Washington, D.C. as the 51st state, with full voting representation in Congress, passed the House. The Senate received the bill but did not vote on it.

<sup>44</sup> See The Sentencing Project 2023 [report on state felony disenfranchisement reform](#). See [Pew Research](#) on the disproportionate impact of felony disenfranchisement on racial minorities.

<sup>45</sup> A [2022 Sentencing Project report](#) found that over one fifth of all disenfranchised people are women, and that at least 506,000 Latin Americans or 1.7 per cent of the voting eligible population are disenfranchised. The same report noted that over 1.1 million people were banned from voting in Florida, often due to unpaid monetary sanctions.

<sup>46</sup> Primarily, these laws concern ‘ex-felons’. In the US, a felony is typically defined as a serious crime punishable by a term of imprisonment of at least one year.

<sup>47</sup> In 11 states, prisoners and ex-prisoners permanently lose their right to vote unless pardoned by the state governor.

<sup>48</sup> Twelve states enacted [bills restoring voting rights to citizens on parole](#) since 2021.

<sup>49</sup> See the [NCSL database on felon voting rights](#). Recent cases of former felons facing being arrested for illegally voting or registering to vote have been reported in [Texas](#), [Tennessee](#), and [Florida](#).

Only 10 states have no restrictions on the right to vote based on disability in their state constitutions or election law while 39 states have laws that bar voting by individuals who are under guardianship.<sup>50</sup> An estimated 1.5 million adult US citizens are under guardianship. Some of these restrictions are contrary to international standards on the rights of persons with disabilities.

## 2. Voter Registration

Voter registration is active.<sup>51</sup> States maintain voter rolls and voters must register in the jurisdiction in which they are resident, usually at county level. The NVRA and HAVA establish the minimum conditions for registering and maintaining registration, while specific means available vary by state and include registering in person, by post, online or through an authorized third party.

All states are required by the NVRA to give citizens the option to register to vote when applying for a driver's license. In 24 states and the District of Columbia voters are automatically registered when they apply for a driver's license and have the option to opt out within a timeframe after receiving their license. Some ODIHR NAM interlocutors noted that the automatic registration without deregistering in another state might result in individuals voting in more than one state.<sup>52</sup>

The EAC produces a federal postal registration form that can be used to register by voters in any state. Voters registering to vote by post for the first time are required by HAVA to provide proof of identity. In all, 42 states and the District of Columbia offer online registration.<sup>53</sup> Five states have laws requiring documentary proof of citizenship for registration though these have previously been judged unconstitutional.<sup>54</sup> In May 2024, Republican representatives in Congress also introduced a bill proposing that all states require proof of citizenship in order to register as a voter.<sup>55</sup>

The NVRA requires registration to remain open at least up to 30 days before election day, however some states extend the timeframe, with 21 states and the District of Columbia allowing registration on election day.<sup>56</sup> The NVRA and HAVA provide the framework for voter list maintenance, including the removal of deceased persons from the voter rolls, as well as individuals with criminal convictions and those who have been deemed incapacitated. The NVRA also prohibits states from removing registrants from the voter list within 90 days of an election. HAVA requires states to establish state-wide voter registration databases and determines basic requirements for their maintenance. States are tasked with co-ordinating with state agency

---

<sup>50</sup> See Bazelon Center list of [State Laws Affecting the Voting Rights of People with Mental Disabilities](#), "[Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination](#)", and Pew Trusts "[Thousands Lose Right to Vote Under 'Incompetence' Laws](#)".

<sup>51</sup> Voter registration is required in 49 states and the District of Columbia; North Dakota is the only state that does not require registration.

<sup>52</sup> See [report by the Heritage Foundation](#) arguing for using Department of Motor Vehicles data to stop registration in multiple states.

<sup>53</sup> See [here](#) for a list of states permit online voter registration.

<sup>54</sup> Alabama, Arizona, Georgia, Kansas and Tennessee have laws requiring documentary proof of citizenship. Kansas' law was judged unconstitutional. See [Fish v. Kobach](#) and [League of Women Voters v. Harrington](#). Bills proposing requiring documentary proof of citizenship have been introduced in several states since 2020, see [here](#) for a list of bills introduced.

<sup>55</sup> See text of the Safeguard America Voter Eligibility (SAVE) Act [here](#).

<sup>56</sup> North Dakota does not register voters, but voters are required to provide valid proof of ID and residency to the polls in order to vote. Montana changed its law though continues to allow registration on early voting days and up until the day before the election.

records on felon status and deaths, and the removal of duplicates from the voter list. The procedures for these vary across the states.

HAVA also mandates states to co-ordinate and match their voter registration databases with state and federal databases to ensure the accuracy of state voter registers.<sup>57</sup> Thirty-three states and the District of Columbia participate in the inter-state Electronic Registration Information Center (ERIC) project which aims to identify duplicate records and inaccuracies, and to ensure the integrity and accuracy of voter registers.<sup>58</sup> Where potential duplicate records are identified, states are required to attempt to contact the individuals concerned before removing their names from voter lists.

Many ODIHR NAM interlocutors reiterated longstanding concerns that access to voter registration is disproportionately more difficult for voters living in urban areas, low-income voters, and Native Americans, with these groups continuing to have lower than average registration rates.<sup>59</sup>

### 3. Voter Identification

Voter identification requirements vary across the states, with 35 states requiring voters to show identification, of which 24 require photo identification and 11 accept other forms of identification.<sup>60</sup> The remaining 16 states use other identifying information provided at the polling place, such as matching signatures or signed affidavits. HAVA requires that provisional ballots be provided to voters who believe they are registered at a locality but could not be found on the voter list. State regulations and deadlines for verification and counting of provisional ballots vary.<sup>61</sup> Identification of voters for postal ballots has been a central area of concern since the last general elections with Florida, Georgia and Texas adding voter identification requirements to absentee ballot request applications and absentee ballot returns.

Voter identification cards remain a politically contentious issue, with ODIHR NAM interlocutors offering diverging perspectives on the risk posed by multiple voting and the necessary emphasis on the balance between electoral integrity and inclusive participation.<sup>62</sup> Some ODIHR NAM interlocutors highlighted the lack of a central federal voter register as a barrier to determining whether individuals are registered and voting in more than one state.

## F. CANDIDATE REGISTRATION

In keeping with the constitution, candidates for president must be natural-born US citizens, at least 35 years old, and a resident of 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 citizen for at least 9 years. Candidates for the House of Representatives must be at least 25 years old and a citizen for at least 7 years. Both Senators and Representatives, when elected, must be residents of the state in which they are elected.

---

<sup>57</sup> Databases include the state database of the Motor Vehicle Authority and the federal database of the Social Security Agency, as well as state records of deceased people and prisoners.

<sup>58</sup> Alabama, Nebraska and Oklahoma joined [ERIC](#) since 2020. Another programme the Interstate Voter Cross-Check Program (IVCP) was indefinitely suspended in 2019 following a [class action lawsuit](#) brought against the programme over questions of informational privacy.

<sup>59</sup> See coverage of voter identification gaps for Asian and Latino communities [here](#).

<sup>60</sup> See detailed breakdown of voter identification requirements by state [here](#).

<sup>61</sup> See [here](#) for a summary of how provisional ballots are handled by various states.

<sup>62</sup> See a report by the Movement Advancement Project on the impact of barriers to ID, [here](#).

All prospective candidates are required to file a statement of candidacy with the Federal Elections Commission (FEC) within 15 days of receiving contributions or making expenditures that exceed USD 5,000. All other registration procedures, including for the presidency and Congress, take place at state level, usually through state's secretary of state. Candidates can seek the nomination of a state-recognized party, run as independents, or run as write in candidates.<sup>63</sup> Political parties generally select candidates through party primary elections which are run by the state's election administrators. Minor parties and independent candidates must collect supporting signatures with requirements, numbers and timeframes determined by the respective states. Most states allow for voters to "write-in" candidates who are not included on the ballot.

Donald Trump was barred from the Republican primary ballot in Colorado after a civil society organization filed a complaint alleging that his role in the 6 January 2021 attack on the U.S. Capitol by his supporters disqualified him as a candidate, based on clauses in the U.S. Constitution's 14th Amendment prohibiting federal, state and military officials who have engaged in insurrection or rebellion against the country from holding office again. The decision by Colorado's Supreme Court was overturned by the U.S. Supreme Court on 4 March 2024 allowing him to contest in the state's primary elections.<sup>64</sup>

## G. ALTERNATIVE VOTING METHODS

Voting in person on election day has generally declined, with more than 18 per cent of voters having made use of early voting and 32 per cent having voted by mail in the 2022 mid-term elections.<sup>65</sup>

Forty-seven states and the District of Columbia offer early in-person voting with variations in timelines and locations.<sup>66</sup> Legislation pertaining to early voting enacted in various states since 2020 generally adjusted the number of days of early voting but did not make drastic changes to the practice itself.<sup>67</sup> Texas and Georgia ended overnight and drive through voting and the use of mobile voting, respectively. The DoJ guidance on protecting the rights of voters with disabilities does not explicitly specify the extent to which federal accessibility requirements are applicable to early in-person voting.<sup>68</sup>

Eight States and the District of Columbia are all-mail-ballot states, meaning that all voters receive a ballot in the mail and can also return it by mail or vote in person during early voting or on election day.<sup>69</sup> Additionally 28 states offer "no-excuse absentee voting" in which any registered voter can request a mail ballot without having to provide justification.<sup>70</sup> In order to receive a mail ballot in any of the other states, voters are required to provide evidence of need based on the states' criteria for valid excuses.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voting Empowerment Act (MOVE), mandate the Department of Defense (DoD) to manage the Federal

---

<sup>63</sup> See a summary of state laws on presidential ballot access [here](#) and congressional ballot access [here](#).

<sup>64</sup> Maine's secretary of state had also barred Mr. Trump on the same basis but reversed her decision following the Supreme Court decision.

<sup>65</sup> See [data on means of voting in 2022](#) collected by the MIT Election data and science lab.

<sup>66</sup> See NCSL resources on [early voting](#).

<sup>67</sup> See details on recently introduced laws related to early voting [here](#).

<sup>68</sup> See 2017 Government Accountability Office report "[Observations on Polling Place Accessibility and Related Federal Guidance](#)."

<sup>69</sup> California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, Washington

<sup>70</sup> See list of states offering "no excuse" absentee voting [here](#).

Voting Assistance Program, which facilitates voter registration and ballot requests for military and overseas voters, as well as providing information to voters and election officials. States are required to send ballots to voters abroad at least 45 days prior to election day. Out-of-country voters who have not received a ballot in time to return it before election day can use a ‘back-up’ Federal Write-In Absentee Ballot (FWAB), which is accepted by all states. Previous ODIHR recommendations have noted that the electronic submission of marked ballots from out-of-country voters, permitted in 31 states with variance in counties, runs contrary to OSCE commitments to maintain the secrecy of the vote.<sup>71</sup>

Most ODIHR NAM interlocutors expressed confidence in the methods for early and postal voting. Some ODIHR NAM interlocutors were critical of no-excuse mail voting arguing that the practice should be limited to those citizens who are physically unable to make it to a polling station,<sup>72</sup> while others raised concerns about the capacity of the United States Postal Service to deliver election related mail on time and in keeping with post-marking requirements. Some ODIHR NAM interlocutors were of the opinion that stricter ID requirements and earlier deadlines for return in some states would result in a high toll of rejected ballots.<sup>73</sup>

## H. NEW VOTING TECHNOLOGIES AND CYBERSECURITY

New Voting Technologies are used extensively, with the different states and jurisdictions applying various technological solutions to elements of the electoral process, including electronic poll books used for voter identification at the polling station, ballot marking devices and electronic voting machines, and counting machines. Jurisdictions have generally transitioned from entirely electronic voter machines towards paper-based voting solutions with voter-verified paper audit trails (VVPATs), but counties in six states still exclusively use Direct Recording Electronic voting machines with no paper trail.

Voting equipment is certified by laboratories accredited by the EAC or by the states themselves. The EAC issues Voluntary Voting System Guidelines (VVSG) which detail the certification requirements for non-networked equipment such as voting machines and scanners. Most states use ballot marking devices with voter-verified paper audit trails (VVPT), with an estimated 90 per cent of all ballots in these elections expected to be cast through paper-based systems.<sup>74</sup> All ODIHR NAM interlocutors were confident in the available technology used for marking and counting ballots but some noted that the available tools were aging and would be costly to replace, while coverage of broader public sentiment indicated decreasing trust in counting machines.<sup>75</sup>

The Cybersecurity Infrastructure and Security Agency (CISA) works with states and localities to improve cyber security in relation to elections, co-ordinate efforts to mitigate cyberattacks, and counteract malign foreign influence. The Federal Bureau of Investigation (FBI) Foreign Influence Task Force (FITF) was formed in 2017 to identify and counteract malign foreign influence operations including those intended to influence political sentiment and public discourse. The taskforce is composed of representatives from various divisions within the FBI and addresses aspects such as finance violations and financing elections

---

<sup>71</sup> See [here](#) for details on electronic ballot return by state.

<sup>72</sup> See paper by the Heritage Foundation [here](#).

<sup>73</sup> See [here](#) for a breakdown of ballot rejection rates during the 2022 mid-term elections which remained consistent with the most recent previous mid-term election in 2018.

<sup>74</sup> See [Verified Voting's breakdown](#) of ballot marking devices to be used in 20204.

<sup>75</sup> See report on aging voting equipment by the [Brennan Center](#), and low confidence in counting machines by the [Associated Press](#).



from abroad, voter suppression, foreign intelligence, and specific cyber intrusions. Most ODIHR NAM interlocutors expressed confidence in the cybersecurity infrastructure.

## I. ELECTION CAMPAIGN

Robust constitutional and legal guarantees protect fundamental freedoms associated with campaigning and the manner and content of election campaigning are generally unregulated. The holding of political events and rallies is generally subject to permission from local authorities with some states requiring a fixed fee. ODIHR NAM interlocutors did not anticipate any barriers to the freedom to campaign freely. Many ODIHR NAM interlocutors noted that inflammatory speech targeting political opponents and election officials have become a common feature of the political discourse.

Parties and their affiliated entities are expected to rely heavily on online platforms and social media for campaigning. Many ODIHR NAM interlocutors were concerned about the capacity for Artificial Intelligence to target and amplify disinformation as well to make it more convincing, particularly as it relates to the administration and the outcome of the election.

Both of the major parties informed the ODIHR NAM that they would be focusing their campaigns on the states with the more competitive congressional races. Key topics are expected to be immigration, the economy, abortion, and the rights of LGBTI people; over all of which the two main parties hold starkly polarized positions. The most salient foreign policy issues will include the war in Gaza, and to a lesser extent the war in Ukraine. ODIHR NAM interlocutors also pointed to democracy and election integrity more specifically as central themes, as both major parties have cast their opponents as existential threats to the democratic system.

## J. CAMPAIGN FINANCE

Campaign finance for federal elections is comprehensively regulated by federal law. The Federal Election Commission (FEC), is the six-member bipartisan body vested with the authority for campaign finance oversight.

Election campaigns can receive contributions from individuals, political parties, and Political Action Committees (PACs), though direct donations from trade unions and corporations are forbidden, as are foreign or anonymous donations.<sup>76</sup> Corporations and trade unions can contribute to PACs, with some limitations in place. Public financing is not available for congressional elections. There are no expenditure limits, as the US Supreme Court judged such limitations as constraints to free speech as enshrined in the First Amendment to the US Constitution. The Court also extended the right to “independent speech” to legal entities, including so-called Super PACs, allowing these entities to spend without limit.<sup>77</sup> Independent groups cannot co-ordinate with a candidate or party about their spending or messaging. A longstanding ODIHR recommendation to review and clarify the FEC’s rules related to what constitutes co-ordination remains unaddressed.

Among the key changes to the regulatory framework since the last general elections, in May 2022, the United States Supreme Court struck down the limits on which candidates could be repaid from post-election

---

<sup>76</sup> See, the [FEC’s full breakdown on contribution limits](#). Also see [data from opensecrets.org](#) on candidate fundraising.

<sup>77</sup> See, respectively, [Buckley v. Valeo](#) and [Citizens United v. FEC](#).

contributions for loans they may make to their own campaigns.<sup>78</sup> In December 2023 the FEC revised its rules to allow candidates to draw a salary from campaign funds which ODIHR NAM interlocutors welcomed as expanding the access to contest for office.<sup>79</sup> In August 2023 the FEC issued a notice seeking comments on amending its regulations prohibiting fraudulent misrepresentation to include deliberately deceptive AI generated content, but it remains unclear whether the commission would proceed with such changes.<sup>80</sup>

Candidates, political parties, and PACs are required to file regular reports to the FEC on funds raised and spent.<sup>81</sup> The reports list donors who contributed over USD 200, along with their address, employer and job title. The FEC publishes the reports on its website within 48 hours of receipt. However, insofar as election campaigning is not their primary activity, some non-profit organizations (501(c) organizations) are not obliged to disclose their donors to the FEC, or the Internal Revenue Service. ODIHR has previously recommended that disclosure requirements be applied to all persons and groups engaged in campaigning regardless of their form or whether they are registered with the FEC.<sup>82</sup> Most ODIHR NAM interlocutors shared concerns about the lack of transparency in campaign financing with a specific emphasis on spending by independent groups which they perceive as potentially diminishing transparency of campaign financing and providing avenues to avoid disclosure.

## K. MEDIA

The media landscape is pluralistic and caters to a diverse but increasingly polarized audience.<sup>83</sup> Most Americans access political news from online media sources and social networks but campaigns spend more than twice as much on television advertising than they do online.<sup>84</sup> The environment has traditionally been dominated by major television networks and cable channels. Despite more than 17,000 commercial and public broadcast stations, media ownership is concentrated within a small number of entities overall.<sup>85</sup> Two public networks, Public Broadcasting Service (PBS), and National Public Radio (NPR) operate across the country as separate entities, with the combined system reaching more than 98 per cent of the country's population through free services.<sup>86</sup> There are approximately 1,300 print publications with newspapers generally having a local base, and all major metropolitan areas having their own publications.

The first amendment of the U.S constitution guarantees robust protections of freedom of speech. The legal framework protects media independence, with various self-regulation mechanisms and Supreme Court decisions affirming freedom of speech. The 1996 Telecommunications Act and Federal Communication Commission (FCC) regulations outline the basic framework for broadcasters during elections. The FCC

---

<sup>78</sup> See US Supreme Court Opinion on [FEC v. Ted Cruz for Senate](#). The previous limit had been set at USD 250,000 to be paid within 20 days of the election abridged deterring candidates from lending money to their own campaigns

<sup>79</sup> The regulations now allow candidates to be paid an amount equal to the lesser of either their average annual income over the previous five years that they worked, or 50 per cent of the annual salary paid to a member of Congress.

<sup>80</sup> See [Congressional Research Service summary of developments in AI and Campaign Finance regulation](#).

<sup>81</sup> For PACs that either contribute or spend at least USD 1,000 to influence an election.

<sup>82</sup> See also, the [2011 GRECO Evaluation Report on the US on the Transparency of Party Funding](#) and the [2021 GRECO Second Compliance Report on the US](#).

<sup>83</sup> Registered broadcast media include over 1,700 commercial and public television stations and more than 15,000 radio stations.

<sup>84</sup> See reports by Pew Research on news consumption, [here](#). Also see [coverage by Reuters](#) on the expected expenditure on various media for these elections.

<sup>85</sup> Six major companies control approximately 90 per cent of media content: AT&T (CNN), CBS, Comcast (NBC, MSNBC, BuzzFeed), Disney (ABC), News Corp (Fox News, Wall Street Journal, New York Post) and Viacom.

<sup>86</sup> See [Pew Research Center fact sheet](#) on public broadcasting.

reviews complaints related to broadcast media coverage of candidates but does not monitor the media systematically for breaches of conduct. The content of print media and online platforms are not bound by any statutory requirements.<sup>87</sup>

There are no requirements for equal and balanced media coverage. The Public Broadcasting Service (PBS) is prohibited from endorsing or opposing candidates for public office and cannot air paid advertisements. Commercial broadcasters are required to provide “reasonable access” to all legally qualified federal candidates at any time, and rules require stations to charge only the lowest unit charge to candidates requesting to purchase airtime in the 60 days preceding a general election. The source of sponsorship must be identified for all political advertising and broadcasters are obliged to maintain a publicly accessible ‘political file’ of all requests to purchase airtime. The equal-time rule means that if a broadcaster grants airtime to one candidate it must allow equal conditions for other candidates in that contest. There are, however, some exceptions to this rule including appearance on newscasts, scheduled interviews, and debates. The FCC interprets the equal opportunity rule as applying only to candidates, not their supporters. As such, the rule does not apply where the candidate’s voice or image is not featured. All ODIHR NAM interlocutors were satisfied with the freedom of speech in the country, though some were concerned with the tension over the power of increasingly convincing disinformation about the date, place and method of voting, as well as its capacity to affect voter’s ability to make an informed choice,

#### **L. ELECTION DISPUTE RESOLUTION**

Political parties, candidates, electoral campaigns, civil-society groups, and voters may file lawsuits in state and federal courts, in relation to state election laws and regulations issued by state election officials and district boundaries. In addition to state and federal courts, complaints may also be filed with county election boards, election supervisors, secretaries of state, law enforcement agencies, and state attorney generals’ offices. ODIHR NAM interlocutors noted that litigants often pursue both federal or state avenues of recourse for their complaints.

In line with the *Purcell principle*, federal courts may not enjoin state election laws close to an election, but no guidance or deadlines are provided for the implementation of the principle, which does not safeguard against inconsistent and arbitrary implementation.<sup>88</sup> Although not binding for them, state courts occasionally also follow this principle.

#### **M. ELECTION OBSERVATION**

In line with its OSCE commitments, the US Government has invited ODIHR to observe the upcoming elections in a timely manner. Observation is regulated by state law, which does not always and explicitly provide for international observers. As of the most recent 2020 general elections, five states and the District of Columbia explicitly permit observation by international observers in their state laws.<sup>89</sup> International

---

<sup>87</sup> On 22 May 2024, the FCC introduced [a proposal](#) to require political advertisers to disclose when they use content generated by Artificial Intelligence for advertising on television or radio, but the rules would not apply to digital and streaming platforms.

<sup>88</sup> In *Merrill v. Milligan* (2022), the U.S Supreme Court stated: “how close to an election is too close may depend in part on the nature of the election law at issue and how easily the state may make the change without undue collateral effect.”

<sup>89</sup> California, Hawaii, Missouri, New Mexico and Utah.

election observation is restricted in eighteen states.<sup>90</sup> Such restrictions on election observers are not in line with OSCE commitments.<sup>91</sup>

Political parties and civil society with whom the ODIHR NAM met indicated that they would be deploying poll watchers in great numbers. Many of these groups plan to deploy lawyers to provide immediate support in case of disputes, as well as volunteers to facilitate voter access. Many ODIHR NAM interlocutors welcomed the observation by the major parties as providing necessary and adequate transparency.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

All ODIHR NAM interlocutors expressed confidence in the election administrators' integrity and their capacity to fulfil their roles, including on election day, despite the presence of rhetoric denigrating from their integrity. Many ODIHR NAM interlocutors also emphasized the widespread presence of political party and non-partisan observers as contributing to transparency on election day. Notwithstanding the volume of changes to state election laws, most issues identified in previous reports remain unaddressed and only some ODIHR recommendations have been implemented. Most ODIHR NAM interlocutors saw value in a potential ODIHR observation activity for these elections recognising that an external assessment may contribute to further improvements to the electoral process by informing the ongoing debates about legislative changes at federal and state levels. They also noted the importance of international observation given the highly polarized environment and the discourse sowing distrust in the integrity of elections.

The ODIHR NAM recommends specific attention be paid to the legal framework and its stability, the conduct of the electoral campaign, particularly in media and social networks, the effectiveness of campaign finance regulations, as well as voter rights, registration and identification. On this basis, the ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM) to observe the 5 November general elections. In addition to a core team of analysts, the mission recommends the secondment of 100 long-term observers from OSCE participating States to follow the electoral process countrywide. In line with the ODIHR's standard methodology, the LEOM would contain a media monitoring element.

---

<sup>90</sup> Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Mississippi, Minnesota, New Jersey, Texas, North Carolina, Louisiana, Oklahoma, Ohio and Pennsylvania do not allow for presence of international observers in polling stations by law. The remaining 27 states have statutory language that may provide for international observers.

<sup>91</sup> Paragraph 8 of the [1990 OSCE Copenhagen Document](#) provides that "the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place".

## **ANNEX: LIST OF MEETINGS**

### **Department of State**

Liam Wasley, Office Director  
Jennifer Laurendeau, EUR/RPM Deputy Director  
Lynne Davidson, DRL Senior Advisor  
Natasha Gloger, DRL OSCE Lead  
Gretchen Franke, Assistant Director for Special Projects, OFM,  
Don Baker, EUR/RPM OSCE Coordinator

### **Department of Justice**

Cristopher Herren, Voting Section Chief  
Karen Stevens, Senior Counsel, Civil Rights Division

### **Department of Defense**

Sara Hedlund, Program Analyst, FVAP  
Lisa Thomas, Military Service Liaison

### **Department of Homeland Security**

Allison Snell, Associate Director, Election Security  
Scott Wetzel, Engagement Lead  
James Tipton, Integration Lead

### **Federal Bureau of Investigation**

Ewura Esi Arthur, Section Chief  
Luke Giannini, Assistant Section Chief

### **Federal Election Commission**

Ellen Weintraub, Commissioner

### **Federal Communications Commission**

Gary Schoman, Special Counsel for Political Programming  
Robert Baker, Policy Division Assistant Chief  
Sima Nilsson, Policy Division Attorney

### **Election Assistance Commission**

Benjamin Hovland, Chair  
Donald Palmer, Vice Chair  
Christy McCormick, Commissioner  
Thomas Hicks, Commissioner  
Brianna Schletz, Executive Director

### **US Commission on Civil Rights**

Yvesner Zamar, Special Assistant to Chair Garza  
Mauro Morales, Staff Director  
Marik Xavier-Brier, Director, Office of Civil Rights Evaluation  
David Ganz, General Counsel

### **House of Representatives Committee on House Administration**

March Bell, General Counsel

**Senate Committee on Rules and Administration**

Steve Spaulding, Policy Director  
Allison Hunn, Senior Policy Advisor/Senior Counsel  
Kulani Jalata, Counsel  
Allison Tuck, Chief Counsel

**National Association of Secretaries of State**

Leslie D. Reynolds, Executive Director  
Maria Benson, Communications Director

**National Conference of State Legislators**

Susan Frederick, Senior Federal Affairs Counsel  
Nicole Ezeh, Legislative Specialist

**National Association of State Election Directors**

Amy Cohen, Executive Director

**US Commission on Security and Co-operation in Europe**

Shannon Simrell, Senior Policy Adviser  
Kyle Parker, Senior Senate Staff Representative

**US Postal Service**

Adrienne Marshall, Executive Director Election and Government Mail Services

**Democratic National Committee**

Jake Kenswil, Deputy Director of Civic Engagement and Voter Protection  
Anatole Jenkins, Senior Advisor for

**Republican National Congressional Committee**

Michael Thom, Political Director

**Brennan Center for Justice**

Daniel I. Weiner, Senior Counsel, Democracy Program

**The Heritage Foundation**

Hans A. von Spakovsky, Manager, Election Law Reform Initiative  
Charles Stimson, Manager, National Security Law Program

**International Community**

Representatives of diplomatic missions of OSCE participating States<sup>92</sup>

---

<sup>92</sup> The ODIHR NAM extended an invitation to representations of all OSCE participating States resident in the United States of America.