



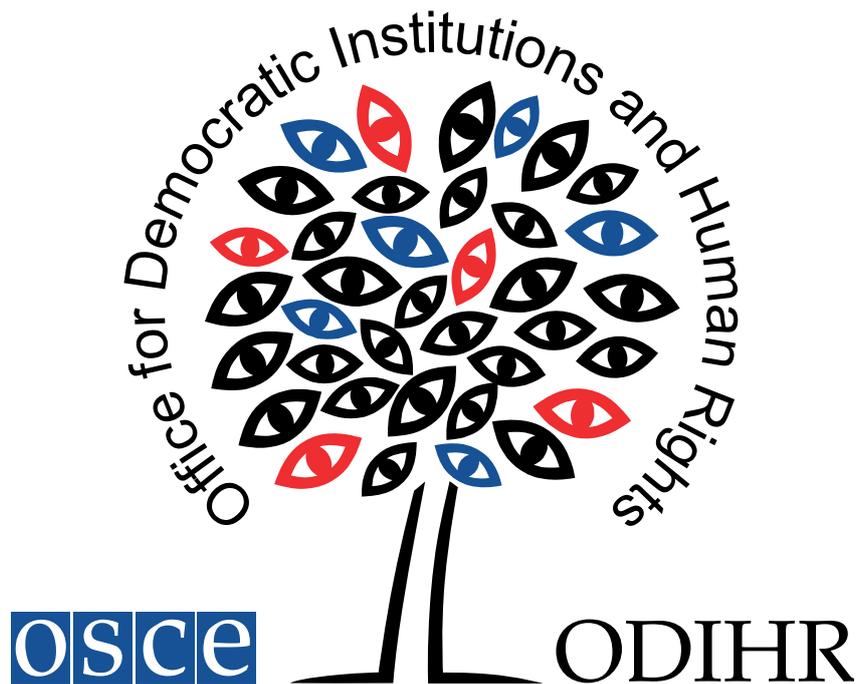
Office for Democratic Institutions and Human Rights

# UNITED STATES OF AMERICA

## GENERAL ELECTIONS

3 November 2020

### ODIHR Limited Election Observation Mission Final Report



Warsaw  
9 February 2021

## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>52</b>
<b>II.</b>	<b>INTRODUCTION AND ACKNOWLEDGMENTS .....</b>	<b>57</b>
<b>III.</b>	<b>BACKGROUND AND POLITICAL CONTEXT .....</b>	<b>58</b>
<b>IV.</b>	<b>ELECTORAL SYSTEM.....</b>	<b>59</b>
<b>V.</b>	<b>LEGAL FRAMEWORK .....</b>	<b>60</b>
<b>VI.</b>	<b>ELECTION ADMINISTRATION.....</b>	<b>62</b>
<b>VII.</b>	<b>CYBER SECURITY.....</b>	<b>64</b>
<b>VIII.</b>	<b>VOTER RIGHTS .....</b>	<b>66</b>
<b>IX.</b>	<b>VOTER REGISTRATION.....</b>	<b>67</b>
<b>X.</b>	<b>VOTER IDENTIFICATION.....</b>	<b>68</b>
<b>XI.</b>	<b>CANDIDATE REGISTRATION .....</b>	<b>69</b>
<b>XII.</b>	<b>CAMPAIGN ENVIRONMENT .....</b>	<b>70</b>
<b>XIII.</b>	<b>CAMPAIGN FINANCE.....</b>	<b>72</b>
<b>XIV.</b>	<b>MEDIA .....</b>	<b>75</b>
	A. MEDIA ENVIRONMENT .....	75
	B. LEGAL FRAMEWORK .....	77
	C. MEDIA MONITORING FINDINGS.....	78
<b>XV.</b>	<b>COMPLAINTS AND APPEALS .....</b>	<b>80</b>
<b>XVI.</b>	<b>ELECTION OBSERVATION.....</b>	<b>83</b>
<b>XVII.</b>	<b>EARLY VOTING .....</b>	<b>84</b>
<b>XVIII.</b>	<b>VOTING TECHNOLOGIES .....</b>	<b>87</b>
<b>XIX.</b>	<b>ELECTION DAY .....</b>	<b>89</b>
<b>XX.</b>	<b>POST-ELECTION DEVELOPMENTS.....</b>	<b>91</b>
	A. POLITICAL DEVELOPMENTS .....	91
	B. RECOUNTS AND POST-ELECTION LITIGATION .....	92
	C. TALLY OF ELECTORAL COLLEGE VOTES AND DECLARATION OF RESULTS .....	93
<b>XXI.</b>	<b>RECOMMENDATIONS .....</b>	<b>94</b>
	A. PRIORITY RECOMMENDATIONS.....	95
	B. OTHER RECOMMENDATIONS.....	96
	<b>ANNEX I: FINAL ELECTION RESULTS .....</b>	<b>99</b>
	<b>ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION.....</b>	<b>100</b>
	<b>ABOUT ODIHR .....</b>	<b>52</b>

**UNITED STATES OF AMERICA  
GENERAL ELECTIONS  
3 November 2020**

**ODIHR Limited Election Observation Mission Final Report**

**I. EXECUTIVE SUMMARY**

Following an invitation from the US government and based on the recommendation of a Needs Assessment Mission (NAM) conducted from 29 May to 5 June 2020, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Limited Election Observation Mission (LEOM) to observe the 3 November general elections.<sup>1</sup> The ODIHR LEOM assessed the compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, as well as with domestic legislation. For the short term election observation, the ODIHR LEOM was joined by a delegation from the OSCE Parliamentary Assembly to form an International Election Observation Mission (IEOM).

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 4 November concluded that the elections “were competitive and well managed despite legal uncertainties and logistical challenges. In a highly polarized political environment, acrimonious campaign rhetoric fuelled tensions. Measures intended to secure the elections during the pandemic triggered protracted litigation driven by partisan interests. Uncertainty caused by late legal challenges and evidence-deficient claims about election fraud created confusion and concern among election officials and voters. Voter registration and identification rules in some states are unduly restrictive for certain groups of citizens. The media, although sharply polarized, provided comprehensive coverage of the campaign and made efforts to provide accurate information on the organization of elections. Arrangements put in place by the election administrators, including for early and postal voting, together with committed civic engagement, allowed for high voter participation despite challenges posed by the COVID-19 pandemic”. The Preliminary Statement underscored that “counting and tabulation is ongoing and should continue in accordance with the law and OSCE commitments. Baseless allegations of systematic deficiencies, notably by the incumbent president, including on election night, harm public trust in democratic institutions.”

On 3 November, federal elections were held for the president and vice-president, 35 of 100 senators, and all 435 representatives. Federal elections to the House also took place in D.C. and the territories of Guam, Northern Mariana Islands, Puerto Rico, American Samoa, and the U.S. Virgin Islands. The president and Vice President are elected for a four-year term through an indirect election conducted by an Electoral College of 538 electors. The Electoral College system is not in accordance with international good practice as it does not fulfil the principle of equality of the vote, in that electoral college votes do not correspond equitably to the population size of some states and so have a disproportionate impact on the outcome of the presidential election. Senators and representatives are elected primarily through first-past-the-post contests, with senate electoral districts corresponding to the entire state and representatives elected in single-member districts.

The U.S. Constitution and its amendments establish a general framework for federal elections, with additional federal laws buttressing the protection of voting rights and providing minimum standards for voter registration, election technologies and the regulation of campaign finance. There have been

---

<sup>1</sup> The ODIHR NAM recommended the deployment of an Election Observation Mission (EOM). Due to health and travel considerations related to the COVID-19 pandemic, the mission format was subsequently changed to an LEOM.

no major changes to the legal framework for elections at the federal level, despite previous ODIHR recommendations. Several bills relating to electoral security, voter registration and online advertisements, as well as proposed amendments of the Voting Rights Act, were not passed by the Senate. The COVID-19 pandemic led to a plethora of amendments at the state level in order to protect the health of voters and election administration officials. However, almost all these changes were challenged in courts, and several emergency rulings that were issued during the weeks prior to election day led to last-minute procedural amendments. This in turn produced a great deal of legal uncertainty even in the days leading up to the elections which is contrary to international good practice, presents an additional burden on election administration and ultimately resulted in some voters not being able to cast their ballots. In the aftermath of the 2013 U.S. Supreme Court ruling on the constitutionality of sections of the Voting Rights Act, some states enacted laws which effectively compromised voting rights for some disadvantaged groups, thereby indicating the need of federal-level legal safeguards of the voting rights of racial and linguistic minorities against such laws and procedures.

States are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. Despite the fact that more than half of the states' chief election administrators belong to the political party holding the executive power in a given state, election stakeholders were generally confident in the impartiality of election officials. In the context of the pandemic and a highly politicized environment, election officials delivered their work under difficult circumstances.

For these elections, USD 400 million in federal emergency funds were made available by Congress and distributed to the states in order to address election-related issues stemming from the pandemic. The allocated federal funds alone were not sufficient to address the additional strain caused by the unprecedented rise in online voter registration and postal voting, with officials at all levels acknowledging that election infrastructure is generally underfunded. Private organizations and individuals provided substantial additional grants to election administration bodies which could potentially raise questions about conflicts of interest. Should election administrations continue to be permitted to receive private funding, the practice would need to be clearly regulated.

The majority of election administrations noted that while the challenge of recruiting a sufficient number of poll workers was addressed through comprehensive initiatives in some jurisdictions, it remained of concern in others. The numbers of polling stations for these elections were reduced by 21,000 nationwide or some 20 per cent. Despite these numerous and compounding challenges the work of the election administration at all levels enjoyed general confidence among the ODIHR LEOM interlocutors.

Various federal and state agencies provided cyber security support and risk mitigation services to election administrators, including cyber resilience reviews, vulnerability and risk assessment, and also provided for increased information sharing and training. A broad range of ODIHR LEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cyber security risks, despite some reported attempts at interference by foreign actors which, while limited in scope, nonetheless impacted public confidence.

Certain legislation and practices deprive some categories of citizens of their right to vote. More than 4.5 million citizens residing in the District of Columbia, and U.S. territories, of whom 90 per cent are ethnic and racial minorities, lack full representation in Congress. Furthermore, citizens residing in the U.S. territories do not have the right to vote for the president. Despite some changes in state laws to reverse felony disenfranchisement, an estimated 5.2 million citizens are effectively disenfranchised due to a criminal conviction, with about half of them having already served their

sentences. These restrictions on the voting rights of ex-felons and felons contravene principles of universal suffrage and the principle of proportionality in the restriction of rights, as provided for by OSCE commitments and other international standards. By law, citizens held in pre-trial detention in state jails are eligible to vote, but many were effectively prevented from casting their votes due to the lack of information on their rights, and authorities withholding access to ballot boxes or postal voting.

Voter registration is active with minimum conditions set by federal law. Sixteen states permit citizens to have their names “automatically” added to voters lists when applying for driver licenses, five more than in 2018. The number of citizens eligible to vote was estimated to be more than 250 million, but up to 40 million citizens remain unregistered. Online voter registration was available in 40 states, providing an effective and accessible voter registration modality during the pandemic. Voter registration deadlines were extended in some states in order to overcome challenges arising from the COVID-19 pandemic. However, some groups of citizens, such as Native Americans and people from economically disadvantaged groups, experienced greater difficulties in accessing voter registration modalities both online and in person. There are no federal regulations preventing citizens from registering in more than one state; however, for these elections 30 states and the District of Columbia participated in an inter-state project to identify duplicate records across those state voter registers.

Voter identification remained a politically divisive issue, contrasting an emphasis on the protection of electoral integrity with concerns that photo identification documents are not equitably available to all categories of voters. Voters were required to show some sort of identification document in 34 states, 18 of which require photo ID. In the remaining 16 states and the District of Columbia, verification can be done through other methods, including the checking of signatures or asking for personal information. States should make every effort to ensure that voter identification documents are equitably accessible to all voters and that requirements do not have a discriminatory impact.

Four presidential candidates were registered in a sufficient number of states to feasibly be elected, including the incumbent President Donald Trump, nominated by the Republican Party, and former Vice President Joe Biden, nominated by the Democratic Party. An additional 80 presidential candidates, 27 of whom were women, appeared on various state ballots. There were 151 candidates, including 42 women, competing for the 35 Senate seats and 1,113 candidates, including 340 women, competing for the 435 House seats. Eleven House candidates stood unopposed. Some states eased signature requirements for candidate registration of smaller parties due to the COVID-19 pandemic, but some, such as the Greens and Libertarians, continue to face significant obstacles to ballot access in parts of the country.

The pre-election period was marked by protests across the United States against police brutality and demanding racial justice. Between May 2020 and the elections, more than 12,000 such protests took place, the vast majority of which were peaceful. However, on a number of occasions protests and counter-protests turned violent and resulted in numerous injuries and some fatalities. The COVID-19 pandemic not only presented numerous challenges to the organization of the elections but also significantly impacted the conduct and content of the campaign. Notwithstanding measures in place to prevent the spread of COVID-19 infection, campaigning took place in an open atmosphere in which the fundamental freedoms of expression, assembly and association were respected.

Animosity and heated rhetoric between candidates distracted the focus of campaigns from policies and party platforms. The two leading presidential candidates accused each other of corruption, fraud, working for foreign interests, an inability to lead, and support for extremist groups. The incumbent president’s use of discriminatory and pejorative statements against individuals on the grounds of

their gender and origin was of particular concern. On many occasions, President Trump created an impression of refusing to commit to a peaceful transfer of power, claiming that the electoral process was systematically rigged, particularly in relation to postal voting, without presenting any evidence of systematic malfeasance and contradicting election officials at all levels. Such statements by an incumbent president weaken public confidence in state institutions and were perceived by many as increasing the potential for politically motivated violence after the elections. The distinction between state and party activities was not always respected, as the incumbent president repeatedly used his official capacity for political advantage.

The regulation of campaign finance is enforced at the federal level, with individual donations to candidates limited and fully disclosed, but with expenditure unrestrained. For these elections, total expenditure was estimated to have reached USD 14 billion. Campaign finance regulation is shaped by federal legislation and U.S. Supreme Court and lower-level court decisions. Overall, campaign finance regulations contain inconsistencies that render the campaign finance system vulnerable to circumvention and complicated to enforce. The system allows for 'independent' spenders (so-called Super PACs) which, unlike official campaigns, can receive unlimited donations from corporations provided that these Super PACs do not co-ordinate with candidates' campaigns. However, in practice transparency is effectively undermined by the ease with which the legal prohibition of co-ordination can be circumvented. Tax-exempt social welfare organizations may engage in political campaigns, insofar as campaigns do not constitute the organization's primary activity. These organizations can themselves also donate to Super PACs and, in so doing, may obscure sources of campaign financing and provide avenues for avoiding disclosure, further decreasing transparency.

The media landscape, while extremely polarized, is pluralistic and diverse, notwithstanding the concentrated nature of media ownership. Constitutional guarantees, U.S. Supreme Court decisions and self-regulation provide for a robust system of protection for media independence. Freedom of expression was respected, with a wide range of election-related information available, enabling voters to make an informed choice. Major media outlets made efforts to provide accurate information on the organization of elections, despite the evidently partisan preferences of some media outlets. ODIHR LEOM media monitoring revealed a clear dominance of the two main parties and their candidates in the media coverage. In the context of the presidential campaign, television channels frequently criticized President Trump, while former Vice President Biden was largely covered in a neutral tone.

The major television networks and cable channels are the dominant sources of political information, but there is a steady shift in media consumption towards content available online and on social networks. There were numerous civic activities aimed at preventing the spread of disinformation and fostering civil online discourse. Amidst growing public and legal scrutiny, major social media companies have adjusted policies and practices aiming to tackle disinformation, particularly in relation to elections, but concerns about the high frequency of disinformation spread via social networks remained. Through updated policies, some social media companies decided to limit or label content that was deemed election-related misinformation, including content delegitimizing the process or alleging fraud without evidence.

Election observation is regulated by state law, but some states entrusted discretionary power over observer access to election officials. The vast majority of states have statutory provisions permitting partisan observers to observe all stages of the election process. The elections were extensively observed by partisan and non-partisan observers which increased the transparency of the process. Eight states do not allow non-partisan citizen observers and at least eighteen states do not permit international observers inside polling premises. Due to the COVID-19 pandemic, election officials in several jurisdictions limited the number of observers permitted. The legal restrictions on the

presence of international observers that are in place in at least eighteen states are not in line with OSCE commitments.

An unprecedented volume of litigation over voting processes occurred in the months preceding the elections, with over 500 lawsuits and appeals filed in 46 states and the District of Columbia, some of which were still active before the courts a few days before the elections. The majority of lawsuits focused on issues arising from the health crisis, such as the expansion of early voting, the extension of deadlines for the receipt of postal ballots, the placement of drop boxes for absentee ballots, signature requirements for postal ballots, and limitations on those qualifying for absentee ballots. Following protracted litigation seeking to maintain previous arrangements despite the challenges posed by the COVID-19, some circuit courts reversed, suspended or rendered void several state or district court decisions intended to minimize the health risks of in-person voting. The perception that federal judges often voted on such election-related matters along partisan principles was widespread.

The rights and opportunities to vote early were considerably expanded due to the COVID-19 pandemic, affording multiple opportunities for voters to cast ballots in-person or by post. Measures promoting ballot access and inclusive participation were employed comprehensively, though some low-income citizens and Native Americans faced barriers to early voting. Last-minute changes to procedures were a source of confusion and hindered attempts to convey accurate voter information across the country despite the significant efforts of election officials and civil society organizations.

Early voting was generally well organized and implemented professionally by election workers and administrators. It was conducted in-person in 39 states and the District of Columbia, with voting periods ranging from 45 to 3 days. Long queues were reported in some instances, mostly in peak periods or states with shorter voting periods. All states provided voters with the option to cast a postal ballot, most of them upon request, with 38 states and the District of Columbia not requiring a reason for the request. An unprecedented 101 million American voters chose to cast a ballot before election day either in-person or by post, representing 64 per cent of all votes cast. The number and scale of substantiated cases of fraud associated to absentee ballots were negligible.

Voting Technology solutions are used extensively, with types of technology varying considerably across the country. Voting machines which do not provide for a voter-verified paper trail are still in use in jurisdictions across eight states, making it impossible to ensure an adequate recount or post-election audit. While some cases of problems with voting equipment setup before elections and during early voting were noted, these were isolated and rare. Although no issues were identified of ballots being marked incorrectly, the design of some voting devices (Ballot Marking Devices) does not allow voters to easily check that the ballots were marked as intended. The guidelines that are maintained by the Election Assistance Commission and used by a number of jurisdictions across the country, have not been updated since 2015, despite the fact that the use of technology in elections has diversified considerably.

Election day was orderly and took place in a peaceful atmosphere without unrest or intimidation. COVID-19 mitigating measures were generally in place and followed. Polling stations were suitable for independent access by persons with disabilities, and equipment and materials were sufficient for the conduct of the polls with polling officials knowledgeable of the procedures. A few jurisdictions experienced critical problems with electronic poll-books or voting machines, but interruptions during polling were promptly addressed. Some ten million voters received automated disinformation phone calls advising them to stay at home or incorrectly suggesting that polling would be extended until the following day. In the limited number of polling stations where the vote count was observed, polling officials conducted these processes professionally, efficiently and openly.

The possibility to request a recount is not universally available in all states, and procedures vary across the country. In Georgia, election officials conducted a full hand recount to meet the requirements of the state's risk-limiting audit and found only minor variations from the preliminary vote count and no changes to election outcome. Following an additional machine recount in Georgia and a hand recount in Wisconsin, both requested by President Trump's campaign, only very minor differences were noted, with no changes to election outcome. By 30 November, 41 lawsuits alleging election fraud and irregularities, incorrectly followed counting procedures, and limited access for Republican party observers, were filed by the incumbent president's election campaign or the Republican Party and their supporters in Arizona, Georgia, Michigan, Minnesota, Nevada, Pennsylvania and Wisconsin. The courts rejected most of these lawsuits, citing lack of evidence to substantiate claims, while ten lawsuits were withdrawn by the plaintiffs. In most cases in which allegations of fraud and misconduct were voiced publicly by the plaintiffs, they and their lawyers did not make these claims under oath during court hearings.

This report offers a number of recommendations to support efforts to bring elections in the United States closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to the system of Electoral College in terms of vote equality, redistricting processes independent of partisan considerations, ratification of signed international instruments impacting on elections, regulation of basic electoral procedures on federal levels and passing legislation to stop any discriminatory impact on minorities, voting rights of citizens with criminal convictions as well as citizens in the District of Columbia and U.S. territories, reduction of the number of unregistered voters, harmonization of voter identification requirements, reviewing the formula for the composition of the Federal Election Commission, measures to prevent intolerant rhetoric in social media, establishing reasonable time limits for election-related court cases, and fostering access of international and citizen observers. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

## II. INTRODUCTION AND ACKNOWLEDGMENTS

Following the 4 March invitation from the U.S. Government to observe the 3 November 2020 general elections and based on the recommendation of the Needs Assessment Mission (NAM) conducted from 29 May to 4 June, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 29 September. The ODIHR LEOM, led by Ambassador Urszula Gacek, consisted of a 15-member core team based in Washington D.C. and 30 long-term observers, who observed in 32 states and the District of Columbia. The LEOM remained in the United States until 15 November in order to follow post-election developments.

For the short term election observation, an International Election Observation Mission (IEOM) was formed as a common endeavor of the ODIHR LEOM and the delegation of the OSCE Parliamentary Assembly (OSCE PA). Mr. Michael Georg Link was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observers. Ms. Kari Henriksen headed the OSCE PA delegation. Both institutions involved in this IEOM have endorsed the 2005 Declaration of Principles for International Election Observation.<sup>2</sup> On election day, a total of 102

---

<sup>2</sup> See the 2005 [Declaration of Principles for International Election Observation](#).

observers from 39 countries were deployed, including 50 observers deployed by ODIHR and a 52-member delegation from the OSCE PA.<sup>3</sup>

The ODIHR EOM assessed the compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, as well as national legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference in Washington D.C. on 4 November 2020.<sup>4</sup>

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

### III. BACKGROUND AND POLITICAL CONTEXT

On 3 November, in line with the Constitution, federal elections were held for the president and vice-president, 35 of 100 senators, and all 435 representatives.<sup>5</sup> Elections were also held for state and local executive offices, state legislatures in 44 states, as well as 66 state judges in 31 states, along with various referenda and initiatives. The last presidential election was held in 2016, when the Republican candidate Donald Trump was elected over former Secretary of State Hillary Clinton, who had been nominated by the Democratic Party. The last congressional elections were held in 2018, resulting in a Senate composed of 53 Republicans, 45 Democrats and two Independents, as well as a House of Representatives composed of 235 Democrats and 199 Republicans.<sup>6</sup> Women are under-represented in the legislative branch, holding 24 percent of all congressional seats and approximately 25 percent of seats in state legislatures. Minorities and Native Americans also remain under-represented, despite increases compared to previous elections.<sup>7</sup>

The official selection of presidential candidates began in February 2020 with a series of nationwide state-level caucuses and primaries. The incumbent President Trump's nomination was confirmed on 27 August in a ceremony in front of the White House. His major challenger was former Vice President Biden, who was officially nominated by the Democratic Party on 18 August.

The pre-election period was marked by protests across the United States against police brutality and demanding racial justice. The protests erupted after a video emerged in May showing the death of George Floyd, an African American man, while he was being restrained by a Minneapolis police officer. According to Amnesty International, by September more than 12,000 protests, the vast majority of which were peaceful, had been held in all states. On a number of occasions however, protests and counter-protests turned violent resulting in numerous injuries and at least 19 fatalities.<sup>8</sup>

---

<sup>3</sup> The United States does not provide full country-wide accreditation for international election observers.

<sup>4</sup> See all previous [ODIHR election related reports on the United States](#).

<sup>5</sup> Thirty-three senate seat were contested in regular elections, and two in special elections, following the death of Senator John McCain of Arizona and resignation of Senator Johnny Isakson of Georgia.

<sup>6</sup> The seat in North Carolina's 9<sup>th</sup> District was not certified by the North Carolina Board of elections following accusations of postal vote fraud. A special election was held in January 2019 and the seat was filled by Republican Mark Harris.

<sup>7</sup> See February 2019 [report](#) by Pew Research Center.

<sup>8</sup> On 20 October, Amnesty International, Human Rights Watch, Human Rights First, and Physicians for Human Rights called on U.S. municipal governments to adopt measures to prevent armed individuals or groups from intimidating or threatening protesters or voters during and following the elections. See the [press release](#). See also the OSCE PA [statement](#).

The COVID-19 pandemic presented significant challenges to the organization of these elections, impacting the campaign and pervading the political discourse. Diverging perspectives on the measures taken in response to the pandemic exacerbated the already high degree of political division and polarization in the country.

#### IV. ELECTORAL SYSTEM

The president and Vice President are elected jointly for a four-year term through an indirect election conducted by an Electoral College of 538 electors. All states have a number of electors corresponding to their total representation in both houses of Congress, and the District of Columbia has three Electoral College delegates. Forty-eight states and the District of Columbia award all Electoral College delegates to the party of the presidential candidate that won most votes in that state.<sup>9</sup> The Electoral College system does not fulfil the principle of equality of the vote as Electoral College votes do not correspond equitably to the population size of the states, generally inflating the impact of some less populous states.<sup>10</sup> The disproportionate weight of votes, evident in the fact that a candidate could win the national popular vote while falling short of the majority of Electoral College votes, is not in accordance with the principle of equality of the vote and international good practice.<sup>11</sup>

*In keeping with the principle of equality of the vote, the United States authorities should review the Electoral College system for the election of the president and Vice President.*

While there is no federal law requiring electors to cast their vote for the candidate for whom they have pledged to vote, some states have laws providing for sanctions or the replacement of these “faithless electors”.<sup>12</sup> Several states have joined the National Popular Vote (NPV) Interstate Compact, in which these states would award their Electoral College votes to the winner of the national popular vote (across all 50 states and the District of Columbia), regardless of the results of the vote in that individual state. However, these NPV laws as enacted in each of the individual NPV states, remain inactive until they are passed in a sufficient number of states for them to take effect.<sup>13</sup>

---

<sup>9</sup> Nebraska and Maine electoral votes are allocated proportionally, according to the majority votes won in each of the congressional districts.

<sup>10</sup> While the number of house representatives is apportioned within each state proportionally according to population size, the number of senators for each state is two, thus making the number of electors disproportionate to the population sizes and thus to the number of voters in each given state. For example, according to the [U.S. Census figures](#), the estimated population per one Electoral College vote in California is 718,000 while in Wyoming, it is 193,000 (i.e. almost four times less). Section I.2.2.iv of the 2002 [Venice Commission’s Code of Good Practice in Electoral Matters](#) recommends that seats be evenly distributed among constituencies and that the “the permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).” While this code does not explicitly make reference to presidential elections and mentions that “[The principle of equality of vote] must at least apply to elections to lower houses of parliament and regional and local elections”, the principle may be equally applied. The issue of equality of the vote is exacerbated by the fact that presidential elections are less competitive in a large number of states thereby amplifying the impact of certain “swing” states on the outcome of presidential elections.

<sup>11</sup> This has occurred five times in the [history](#) of U.S. presidential elections.

<sup>12</sup> These laws, present in various forms in 32 states and the District of Columbia, either impose a fine to an elector who fails to vote according to the state-wide or district popular vote or replace them. In July 2020, the U.S. Supreme Court [confirmed](#) the constitutionality of state laws punishing or replacing faithless electors.

<sup>13</sup> The Act (NPV) has been enacted in 16 states and the District of Columbia, totalling in 196 electoral votes. For the NPV to take effect, states with a combined total of at least 270 electoral votes must join the initiative.

Senators and representatives are elected directly, primarily through first-past-the-post contests.<sup>14</sup> Each state is represented in the Senate by two senators and by at least one representative in the House, with the remaining seats allocated to states in proportion to their population. While Senate electoral districts correspond to the entire state, representatives are elected from single-member districts.

While single-member districts are generally of equal population size, there are widespread concerns that over the years district lines have been progressively manipulated in ways that favour partisan outcomes. In 2019, the U.S. Supreme Court ruled that “partisan gerrymandering claims present political questions beyond the reach of the federal courts.”<sup>15</sup> However, where such redistricting can be determined to have been conducted along racial lines, this constitutes a violation of the Voting Rights Act (VRA) and can still be examined by federal courts.

In 42 states, state legislatures have primary control over the delimitation of single-member congressional districts, including those in which members of the state legislatures will be competing, thereby presenting a clear conflict of interest.<sup>16</sup> In 2020, ballot initiatives to establish independent redistricting commissions were proposed in North Dakota, Nevada, Arkansas and Oregon but all these failed to receive the necessary signatures to be placed on the ballot.<sup>17</sup>

*State authorities should consider establishing independent redistricting commissions to draw district boundaries in a manner that is independent from partisan considerations. Districts should be determined well in advance of an election, following broad public consultations and allowing adequate time for potential judicial review.*

## V. LEGAL FRAMEWORK

The U.S. Constitution and its amendments establish a framework for federal elections, with additional federal laws focusing on the protection of voting rights and providing minimum standards for voter registration, election technology and the regulation of campaign finance.<sup>18</sup> A diverse body of state election laws and regulations exists across the states, with further variations between counties in certain states. Federal and state court decisions form an integral part of the legal framework. The U.S. is a party to major international and regional conventions relating to democratic elections.<sup>19</sup> The US has signed, but not ratified, the United Nations Convention on the

---

<sup>15</sup> Senators and Representatives in Maine are elected using a ranked-choice voting system. In Georgia, a runoff is required for state and national election if a majority is not achieved on election day.

<sup>16</sup> See [Rucho et al. v. Common Cause et al.](#)

<sup>16</sup> See more information on redistricting provided by [Loyola Law School](#) and the [NCSL](#).

<sup>17</sup> The challenges presented by the COVID-19 pandemic in the collection of signatures led different non-governmental organisations to file lawsuits to the federal courts requesting lower thresholds for the required signatures. These were either denied by the trial court or accepted, but reversed on appeal. An initiative to establish a bi-partisan redistricting commission was successfully brought to the ballot for the 3 November General Elections in Virginia and was approved by voters.

<sup>18</sup> Federal legislation includes: the 1965 Voting Rights Act ([VRA](#)), [the 1986 Uniformed and Overseas Citizens Absentee Voting Act](#) and the 2009 Military and Overseas Voting Empowerment Act ([MOVE](#)), [the 1984 Voting Accessibility for the Elderly and Handicapped Act](#) and the 1990 Americans with Disabilities Act ([ADA](#)), the 1993 National Voter Registration Act ([NVRA](#)), [the 1971 Federal Electoral Campaign Act](#) and [the 2002 Bipartisan Campaign Reform Act](#), the 1939 [Hatch Act](#) and its amendments, and the 2002 Help America Vote Act ([HAVA](#)).

<sup>19</sup> Including the 1966 International Covenant on Civil and Political Rights (ratified in 1992 with a number of reservations), the 1965 Convention on the Elimination of all forms of Racial Discrimination the 2003 UN

Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).

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

At the federal level, there have been no election-related legislative changes since the last elections, despite previous ODIHR recommendations. Several bills relating to electoral security, voter registration and online advertisements were submitted to Congress, but none were adopted.<sup>20</sup> The COVID-19 pandemic led to a plethora of state level amendments which would allow the elections to be held while protecting the health of voters and election administration officials. A significant proportion of these measures were challenged in courts, mostly by the Republican Party, resulting in protracted litigation seeking to maintain previous arrangements.<sup>21</sup> This, in turn, produced a great deal of legal uncertainty even in the days leading up to the elections. Notwithstanding the imperatives of securing the election during a pandemic, the litigation of election processes so close to the election day and the resulting legal uncertainty was contrary to international good practice, presented an additional burden on election administration and ultimately resulted in some voters not being able to cast their ballots<sup>22</sup> (See also the *Complaints and Appeals* section of this report).

*The basic electoral procedures should be codified at the federal level in order to provide consistent standards and stability of electoral law. Federal election law could be enacted to regulate several critical issues, including time limits for voter registration, early voting deadlines and procedures, rights of observers and deadlines for the adjudication of pre- and post-election lawsuits.*

The Department of Justice (DoJ) monitors the implementation of federal election law and can initiate or join enforcement lawsuits in cases of non-compliance. In 2013, the U.S. Supreme Court ruled that the formula determining which jurisdictions fall under the preclearance requirement of the VRA was unconstitutional due to the outdated data on which it was based.<sup>23</sup> Following the removal of the preclearance requirements, several states enacted laws which effectively compromised voting rights for disadvantaged groups. These laws have been challenged in courts and, in several cases, the courts invalidated amendments to election legislation citing racial discrimination in these laws.<sup>24</sup>

---

Convention against Corruption, the 2004 Council of Europe Convention on Cybercrime. The U.S. is also a member of the Council of Europe's Group of States against Corruption and European Commission for Democracy through Law (Venice Commission).

<sup>20</sup> A comprehensive draft law at the federal level, the [For the People Act](#), was adopted by the House in December 2019 but is still pending in the Senate. Likewise, in May 2020 the House adopted the [Heroes Act](#), aiming to detail postal voting procedures and absentee vote requirements, enhance online voter registration, and appropriate USD 3.6 billion for election officials to address all COVID-19 related measures. This act is also pending in the Senate.

<sup>21</sup> See [here](#).

<sup>22</sup> See Paragraph 63 of the Guidelines and Explanatory Report of the Venice Commission's [Code of Good Practice in Electoral Matters](#).

<sup>23</sup> See [Shelby County v. Holder](#). Under the VRA preclearance requirement, jurisdictions that had a history of discrimination are required to obtain the approval of the DoJ or of a federal district court before changing any election laws or standards, practices or procedures. In December 2019, the U.S. House of Representatives adopted the [Voting Rights Advancement Act](#), envisioning a new preclearance formula. The bill is currently pending in the Senate. The Congress has yet to establish criteria for determining which jurisdictions should be under preclearance.

<sup>24</sup> See for instance, *North Carolina N.C. State Conference of NAACP v McCrory*. In 2013, North Carolina passed a restrictive voter ID law that excluded government identification that African-American residents disproportionately use. Following litigation, the Court of Appeals for the 4<sup>th</sup> Circuit ruled that the law "targets

In its 2019 report, the American Civil Liberties Union listed more than 60 voting rights cases it had opened since the *Shelby* decision from 2013 to 2019 in 18 states, with an 80 per cent record of success in blocking discriminatory changes to election legislation.<sup>25</sup> It is notable however that these cases take substantial time to litigate, which risks leaving discriminatory practices in place for years before they are ultimately blocked or rescinded.

*Congress should consider passing legislation in order to ensure timely and effective safeguards preventing legal changes that may have discriminatory intent or impact against racial and linguistic minorities, such as through reactivating the preclearance regime of the Voting Rights Act.*

## VI. ELECTION ADMINISTRATION

Election administration is highly decentralized, with no federal body mandated with overseeing the entire electoral process. States are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. The majority of principal election administrators are either appointed or elected and tend to be of the same political party as the state's governor. Conversely, 20 states and the District of Columbia have either bipartisan or independent election management bodies.

In general, ODIHR LEOM interlocutors expressed a high level of confidence in the work of the election administration. Despite the numerous challenges election administration bodies had to overcome, elections were administered in a professional and transparent manner. Election officials at all levels worked under difficult circumstances considering the COVID-19 pandemic and within a highly politicized election environment. Furthermore, many election officials, especially in the states where elections were closely contested, experienced a concerning increase in personal attacks and threats to their security.<sup>26</sup> On 2 January, after the election results had already been certified, following the legal process, including the adjudication of complaints, the incumbent president called the Georgia Secretary of State seeking to persuade the Secretary to change the presidential election results, insisting that he had won the election.<sup>27</sup> Many election stakeholders considered this to be a significant and undue form of pressure on an election official and that it affects public confidence in the election system.

*Election administration should be able to work in an atmosphere free from threat and coercion. Any cases of threats and personal attacks on election administrators should be promptly investigated by federal and state law enforcement agencies, and sanctioned in accordance with the law.*

---

African Americans with almost surgical precision” in an effort to reduce their turnout. North Carolina Republicans later appealed the ruling in an effort to restore the law, but the US Supreme Court [declined to hear the case](#) in 2017. See also *Frank v. Walker* (2014) on voter ID laws, *LULAC v. Cox* (2018) on closure of county polling place, *MOVE Texas Civic Fund v. Whitley* (2019) on statewide voter purge and *Navajo Nation Human Rights Comm'n v. San Juan Cty* (2017) on elimination of voting places.

<sup>25</sup> In particular in Alabama, California, Florida, Georgia, Kansas, Louisiana, Michigan, Missouri, Montana, North Carolina, Nebraska, New York, Ohio, South Dakota, Texas, Utah, Washington and Wisconsin. See the 2019 [ACLU](#) report.

<sup>26</sup> Threats and attacks on election administration officials at all levels were [reported](#) in Arizona, Georgia, Michigan Nevada and Pennsylvania. See also this [report](#) from 1 December 2020.

<sup>27</sup> The [full recording of the phone conversation and the transcript](#) were obtained by the Washington Post and released by various media.

The composition of election administration bodies at the state level varies widely. In 24 states, the Secretary of State is the chief election official, while other states have either an appointed chief election officials, an appointed commission, or both. Many decisions are made by lower-level election officials. 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>28</sup> Nevertheless, ODIHR LEOM interlocutors in general expressed confidence in the impartiality of election administrators.

*To meet international standards and safeguard the impartiality of the election administration, election officials at the state and county level should not supervise elections which they are contesting.*

The bipartisan Election Assistance Commission (EAC) is a federal body that provides guidance on meeting the requirements of the Help America Vote Act (HAVA) and serves as a clearinghouse for information about election administration. For these elections, the EAC was tasked by Congress with distributing USD 400 million in emergency funds to the states in order to address issues stemming from the COVID-19 pandemic. In general, ODIHR LEOM interlocutors were of the opinion that the allocated federal funds alone were not sufficient to meet the needs of election administrations during the pandemic, mainly due to an increased workload related to a substantial rise in online voter registration and postal voting.

Officials at all levels acknowledged that election infrastructure is generally underfunded. Some 2,500 local election administrations supplemented financial shortfalls with funding provided by a few private donors, most notably by the Center for Tech and Civic Life (CTCL).<sup>29</sup> While this initiative was welcomed by most local election administrations, and was carefully considered in many jurisdictions, regulation to protect election processes from private interference through financial instruments and therefore safeguard the independence of the election administration is currently not in place.

*The Federal and State governments should ensure sufficient funds to meet the administrative needs of the election management bodies.*

*In order to safeguard the independence of election administration, private donations should be avoided. Where such funding is permitted it should be strictly regulated, corresponding to rigorously defined needs, and fully disclosed in order to ensure transparency and accountability.*

The majority of election administrations spoken to by ODIHR LEOM observers noted that the recruitment of sufficient numbers of poll workers was a significant challenge due to the COVID-19 pandemic. In addition to regular polling staff, election administrations had to plan for reserve staff to be able to meet urgent needs. Comprehensive initiatives such as the National Poll Workers Recruitment Day launched by the EAC encouraging students to engage as poll workers generally had positive results; however, in some jurisdictions recruiting sufficient staff remained a problem.<sup>30</sup> According to available data, the number of polling locations was reduced by approximately 21,000

---

<sup>28</sup> Chief Election Officials ran for office in 4 states, including the Lt. Governor of Utah run for Governor. 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>29</sup> The [CTCL COVID-19 Response Grants Program](#) and other organizations donated up to USD 350 Million. Most of this money was received by granting organization as private donations from Priscilla Chan and Mark Zuckerberg and [regranted](#) to election administration bodies.

<sup>30</sup> For example, as reported to the ODIHR LEOM in some jurisdictions in California, Indiana, and Utah.

across the country or some 20 per cent, mainly due to the consequences of the COVID-19 pandemic.<sup>31</sup> It was reported to ODIHR LEOM that this reduction negatively affected the participation of certain categories of voters, particularly Native Americans<sup>32</sup> and some African American communities.<sup>33</sup>

Election administrations took various steps to counteract disinformation intended to confuse voters or discourage turnout. State and county level authorities mainly used their websites and social media to counteract such disinformation and to disseminate voter information. These efforts were considerably supported by federal and local authorities, civil society associations and traditional and social media companies. As required by law, voter information was available in multiple languages.<sup>34</sup>

Federal legislation prohibits discrimination and provides for equal opportunities for persons with disabilities in political and electoral life.<sup>35</sup> It is estimated that close to one-sixth of the voting age population has some form of disability.<sup>36</sup> Polling stations were generally equipped with the necessary material to facilitate independent voting; however, some ODIHR LEOM interlocutors reported that due to the COVID-19 pandemic, most persons with disabilities preferred to cast their vote by post.<sup>37</sup>

## VII. CYBER SECURITY

The aftermath of the 2016 elections revealed a diverse set of vulnerabilities related to the security and robustness of the electoral infrastructure, which led to various federal and state level investigations into cyber threats and possible foreign interference in U.S. elections.<sup>38</sup>

Following the designation of election infrastructure as critical infrastructure in 2017, the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) was entrusted with the main operational responsibility for electoral cyber security. In line with previous ODIHR recommendations, various federal and state authorities introduced initiatives to help secure election technologies during the 2020 general elections. CISA, the EAC and other federal and state institutions offered voluntary cyber security mitigation services to election administration bodies, such as risk assessments, vulnerability scanning and cyber resilience reviews, and also provided for increased information sharing and training. In March 2020, CISA initiated a project designed to serve as a focal point of election security resources, with an emphasis on resilient and secure electoral infrastructure.<sup>39</sup>

---

<sup>31</sup> See the following [report](#). The EAC publishes the total number of polling locations during the next year. In 2016 General Elections, [there were](#) 116,990 polling places.

<sup>32</sup> In Indiana and Minnesota.

<sup>33</sup> In Arkansas and Georgia.

<sup>34</sup> EAC provided its voter information guide in 12 languages and the national voter registration application form in 15 languages. See [Voter's Guide to Federal Elections](#).

<sup>35</sup> Including the Voting Rights Act, Americans with Disabilities Act, Voting Accessibility for the Elderly and Handicapped Act, and Help America Vote Act. See also this [guidance](#) provided by the DoJ.

<sup>36</sup> According to a [report](#) from Rutgers University

<sup>37</sup> As reported to ODIHR LEOM in Colorado, Michigan, Minnesota, Nevada, Ohio, Texas and Wisconsin.

<sup>38</sup> See the 8 May 2018 Summary of Initial Findings and Recommendations on "[Russian Targeting of Election Infrastructure During the 2016 Election](#)" issued by the U.S. Senate Select Committee on Intelligence.

<sup>39</sup> See information on [#protect2020](#) project. Additional institutions included the Information Sharing and Analysis Centers (ISACs) that assist states and jurisdictions to mitigate cyber-risks. The Multi-State (MS) ISAC and the

In December 2019, Congress allocated USD 425 million (as additional HAVA funds) to enhance technology and security of elections across the country, and the funds were distributed by the EAC.<sup>40</sup> Additional measures by authorities included providing access for election administrators to information on potential cyber-risks, discretionary cybersecurity training, and installation of intrusion detection systems.<sup>41</sup> A broad range of ODIHR LEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cyber-security risks.<sup>42</sup>

Reports of foreign actors perpetrating possible acts of disruption, including on voter registration systems, public election information databases and through disinformation in the run-up to elections, impacted on public confidence in the electoral process.<sup>43</sup> Furthermore, not all jurisdictions made use of the services offered or general technical guidelines.<sup>44</sup>

*In order to further increase cyber security capacity at state and lower levels, CISA and other relevant cyber security organizations should continue expanding their services and training efforts to encompass all election jurisdictions.*

Following the election day, as the counting and tabulation of the results was still ongoing in several states, the incumbent President continued to make allegations of election fraud, claiming, among other things, that 2.7 million votes were either switched from him to his opponent or deleted from a specific type of voting system used nationwide.<sup>45</sup> On 12 November, CISA, EAC and several other cyber security and national election associations issued a statement that these elections were “the most secure in American history” and stated that “there is no evidence that any voting system deleted or lost votes, changed votes, or was in any way compromised”.<sup>46</sup> The incumbent President criticized the statement as inaccurate and subsequently dismissed the CISA Director.<sup>47</sup> Additionally, on 16 November, 59 election security specialists and computer scientists issued a statement that there was no credible evidence of computer fraud in the 2020 General Election and emphasized that policymakers must work with experts to improve confidence in elections.<sup>48</sup> In the aftermath of the dismissal of the head of CISA, numerous election stakeholders raised concerns about a potential for the politization of institutions responsible for electoral cybersecurity.

---

Election-Infrastructure (EI) ISAC provide central resources for gathering information on threats to critical infrastructure and enable communication between the public and private sector.

<sup>40</sup> These resources are in addition to USD 380 million that the Congress allocated in 2018, as HAVA Election Security Funds.

<sup>41</sup> In 2017 the Federal Bureau of Investigation established the Foreign Influence Task Force to identify and counteract malign foreign influence operations targeting the US. The task force’s informational input was widely greeted by the election administrators as it allowed for rapid local mitigation efforts in case of possible international threats.

<sup>42</sup> See also [the Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees from Nov 12<sup>th</sup> 2020](#).

<sup>43</sup> On 21 October<sup>t</sup> 2020, the [Director of National Intelligence](#) and [the Director of the Federal Bureau of Investigation](#) made a statement that perpetrators from Iran and Russia took actions to influence U.S. elections. Although the U.S. authorities have taken additional measures to combat foreign disinformation in the country after the 21 October announcement (e.g. [seizing](#) of specific internet domains), no further information on foreign impact on the electoral process has been disclosed.

<sup>44</sup> E.g. EI-ISAC jurisdiction membership numbers have doubled from 1,300 members in 2018 to estimated 3,000 members, with additional approximated 2000 sub-state level jurisdictions benefitting from state level membership, but the total number of jurisdictions is close to 10,000.

<sup>45</sup> [Tweets](#) by President Trump from 12 November 2020 were subsequently deleted following the suspension of his account on 8 January .

<sup>46</sup> See the [joint statement](#) from 12 November 2020.

<sup>47</sup> See [coverage](#) of the incumbent President’s termination of the CISA director on 18 November 2020.

<sup>48</sup> See [statement](#) by election security experts from 16 November 2020

## VIII. VOTER RIGHTS

U.S. citizens who are at least 18 years of age on election day are eligible to vote. While more than half a million citizens residing in the District of Columbia have the right to vote in presidential elections, they, as well as some four million citizens resident in U.S. territories, of whom over 90 per cent are ethnic and racial minorities, lack full representation in the Congress, which stands contrary to the principle of universal suffrage and OSCE commitments.<sup>49</sup> Citizens residing in the U.S. territories also do not have the right to vote for the president. On 26 June 2020, the U.S. House of Representatives passed the Washington, D.C. Admission Act, with the vote split largely along party lines. The vote marked the first time that a District of Columbia statehood bill was passed by either the House or the Senate. The bill is yet to be passed by the Senate.

*Citizens resident in the District of Columbia and U.S territories should be provided with full representation rights in Congress. In addition, the right to vote in presidential elections should be extended to citizens resident in the U.S. territories.*

An estimated 5.2 million citizens are disenfranchised due to a criminal conviction, with many of them having already served their sentences.<sup>50</sup> These restrictions disproportionately affect racial minorities and it is estimated that 1.3 million African Americans are unable to vote as a result of these policies. Convicted felons and those on parole are deprived of their voting rights in 48 states, while only Maine, Vermont and the District of Columbia do not revoke the voting rights of citizens convicted of crimes.<sup>51</sup> In Florida, following a referendum in 2018, an amendment was passed to the state's constitution automatically restoring voting rights for an estimated 1.4 million former criminal offenders who had completed their sentence. However, in July 2019, the Florida state legislature enacted a law requiring citizens with past convictions to pay all court costs, fees and fines in full, as a condition to register to vote. In a referendum held along with these elections, voters in California voted positively to restore voting rights of citizens who completed their prison terms.<sup>52</sup> Restrictions on voting rights of felons and ex-felons contravene principles of universal suffrage, and the principle of proportionality in the restriction of rights, as provided for by the OSCE commitments and other international standards.<sup>53</sup>

By law, citizens held in pre-trial detention in state jails are eligible to vote. However, it is reported that in practice these citizens are prevented from voting due to numerous factors, including

---

<sup>49</sup> American Samoa, Guam, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, Puerto Rico and the District of Columbia have no representation in the Senate and only non-voting representatives in the House. See paragraph 7.3 of the 1990 OSCE Copenhagen Document. See also paragraph 36 of the 2006 [Concluding Observations](#) of the U.N. Human Rights Committee, which stipulates that “The State party should ensure the right of residents of the District of Columbia to take part in the conduct of public affairs, directly or through freely chosen representatives, in particular with regard to the House of Representatives.”

<sup>50</sup> See the 14 October 2020 [report](#) by the Sentencing Project.

<sup>51</sup> Voting rights are automatically restored after the sentence is served in 36 states, with variations in timeframes. In 11 states, citizens with criminal convictions are permanently disenfranchised, unless pardoned by the state governor.

<sup>52</sup> See more information on this ballot measure [here](#).

<sup>53</sup> Paragraphs 7.3 and 24 of the [1990 OSCE Copenhagen Document](#) state that participating States will “guarantee universal and equal suffrage to adult citizens,” and that “...any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.” See also the 2003 Inter-American Commission on Human Rights (IACHR) decision in [Statehood Solidarity Committee v. U.S.](#)

widespread misinformation or lack of information about their eligibility, lack of opportunities for voter registration (due to limited internet access and restriction of movement), and challenges to casting a ballot such as not having an appropriate ID, no possibility to apply for or send a postal ballot, and no access to the ballot box due to restriction of movement to go to a polling station, or as no polling stations are opened in detention centers.<sup>54</sup>

*Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate and that rights be restored upon completion of sentences. Pre-trial detainees should be provided with the possibility to vote and informed about their voting rights and ways to exercise them.*

Restrictions in 39 states and the District of Columbia disenfranchise people with psychosocial and intellectual disabilities under guardianship or who have had their voting rights revoked by a court decision, often on the basis of a medical diagnosis or legal guardianship status. There are an estimated 1.5 million adults under legal guardianship across the country, but it is unclear how many lost their right to vote.<sup>55</sup> Some of these practices are contrary to international standards on the rights of persons with disabilities.<sup>56</sup>

*States should consider reviewing their legislation regarding voting rights for persons with disabilities. The legal frameworks should be harmonized with international standards, by removing any restrictions on electoral rights on the basis of intellectual or psychosocial disability.*

## IX. VOTER REGISTRATION

Voter registration in the United States is active, i.e. citizens must register in order to cast a ballot.<sup>57</sup> The registration is conducted in the jurisdiction of the voters' residence, most often at the county level.<sup>58</sup> Voters can register in person, online or through a third party, such as civil society organizations. In an increase of five states since the 2018 elections, 16 states implemented 'automatic' voter registration.<sup>59</sup> Twenty states and the District of Columbia allow voter registration at the time of voting, with adequate safeguards in place. Voter registration deadlines were extended in some states to overcome challenges arising from the COVID-19 pandemic.<sup>60</sup>

Due to the mostly active voter registration process, a considerable number of citizens remained unregistered. According to the most recent information available from 2018, the number of citizens eligible to vote was estimated to be 254 million.<sup>61</sup> No consolidated official figures on the total number of registered voters across the country were publicly available before the election day and

---

<sup>54</sup> See this [report](#) by the Prison Policy Initiative.

<sup>55</sup> See also this [guide](#) to Voting Rights of People with Mental Disabilities, 2016

<sup>56</sup> See Articles 12 and 29 of the 2006 CRPD. Paragraph 9.4 of the 2013 CRPD Committee's Communication No. 4/2011 provides that "an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability".

<sup>57</sup> Voter registration is required in 49 states and the District of Columbia; in North Dakota there is no registration process.

<sup>58</sup> Other types of jurisdiction, in some states, may be cities, towns or villages.

<sup>59</sup> In these cases voters are automatically registered at the time of applying for or renewing a driver's license. In case they do not wish to be registered to vote, they can opt-out.

<sup>60</sup> Voter registration deadlines were extended for three weeks in Arizona. After the extension and in a last-minute change, a [court ruling](#) reversed the decision and reduced the deadline to 10 extra days, until 15 October.

<sup>61</sup> See the voter registration [estimates](#) for 2018 mid-term elections.

right after the election day. According to available data, some 40 million eligible citizens remained unregistered in these elections, but one third of them had the possibility of election-day registration.<sup>62</sup>

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

While there are no federal regulations preventing citizens from registering in more than one state, 30 states and the District of Columbia participated in an inter-state Electronic Registration Information Centre (ERIC) project to identify duplicate records and inaccuracies, and to ensure the integrity and accuracy of voter registers. ERIC is designed to ensure that any duplicates within the participating states would be identified and reported to the participating states, but if voters are registered also in any of the states not participating in this project, their multiple registration would remain unnoticed.

*To improve the accuracy of the voter registers all states should participate in inter-state voter information exchange.*

Online voter registration was available in 40 states and it was a particularly accessible method of registration during the COVID-19 pandemic, as public premises where voter registration could be conducted in person were inaccessible during significant portions of the voter registration periods. While this method of voter registration was very effective and user-friendly in general, voter registration websites in four states were inaccessible during important voter registration periods, with the risk that some voters may have been excluded and raising concerns over the robustness of voter registration servers and the adequacy of risk mitigation solutions.<sup>63</sup>

Election authorities, civil society groups and social networks made considerable efforts to disseminate voter registration information. Initiatives such as National Voter Registration Day resulted in the registration of around 1.5 million voters while 4.4 million voters were registered through the "Voting Information Center" established by Facebook. However, some citizens, such as Native Americans and people from economically disadvantaged groups, had more difficulties in accessing voter registration modalities both online and in person.<sup>64</sup> The COVID-19 pandemic in combination with other factors such as geographical isolation and insufficient internet connection made it more difficult for groups living in remote areas, including many Native Americans, to register to vote.

*Authorities should review existing measures to further reduce the number of unregistered voters, including addressing burdensome procedures and obstacles faced by disadvantaged groups.*

## **X. VOTER IDENTIFICATION**

---

<sup>62</sup> See [this analysis](#) of the number of unregistered voters.

<sup>63</sup> In Louisiana during Voter Registration Day on 21 September. In Florida and Virginia on the last day of voter registration (registration was extended). Technical problems were registered in Pennsylvania in the first weekend of October.

<sup>64</sup> See a [report](#) by the Native American Rights Fund.

Voter identification requirements vary across the states, and in 34 states voters are required to show identification before voting, with 18 of these requiring photo ID.<sup>65</sup> In the remaining 16 states and the District of Columbia, other identifying or authenticating information, such as signing an affidavit, verbally checking voters' personal information or verification of voters' signatures for postal voting, may be used.

Voter identification is a politically divisive issue. Proponents of stricter voter identification requirements argue that such measures strengthen the integrity of electoral processes by deterring and detecting electoral fraud with no overall impact on turnout.<sup>66</sup> Opponents of stricter identification rules argue that voter identification laws do not respond to credible threats to the electoral process and effectively suppress certain categories of voters that often face challenges in obtaining identification documents. These groups include Native Americans, persons with disabilities, the homeless, economically disadvantaged groups, with racial and ethnic minorities disproportionately affected, and transgender individuals.<sup>67</sup>

The inability to present a valid ID can lead to people belonging to these groups not being able to cast votes. While efforts to ensure the integrity of the vote are important, these should not lead to the disenfranchisement of eligible voters.

*States should make every effort to ensure that voter identification requirements are equally accessible to all voters. Consideration should be given to harmonizing federal standards for voter identification for both in-person and postal voting, in order to comply with the Voting Rights Act and avoid possible discrimination.*

## **XI. CANDIDATE REGISTRATION**

Under the U.S. Constitution, presidential and vice-presidential candidates must be natural born U.S. citizens, at least 35 years old, and resident in the U.S. for at least 14 years. Senate candidates must be at least 30 years old and citizens for at least 9 years. Candidates for the House of Representatives must be at least 25 years of age and citizens for at least 7 years. Both senators and representatives, when elected, must be residents of the state in which they are elected.

All states offer the possibility for recognized political parties to nominate candidates.<sup>68</sup> Smaller, non-recognized political parties and independent candidates may run if they collect a certain number of supporting signatures before a deadline, usually set several months before election day and which varies from state to state. In many states, prospective candidates must obtain signatures that amount

---

<sup>65</sup> See the [overview](#) provided by National Conference of State Legislatures (NCSL). In March 2020, new legislation was adopted in Kentucky that requires a photo ID to vote.

<sup>66</sup> See [report](#) by the Heritage Foundation.

<sup>67</sup> Transgender people who live in a gender different from the one assigned to them at birth face unique obstacles to obtaining identification documents that reflect their gender. See a recent [study](#) by the UCLA School of Law, Williams Institute.

<sup>68</sup> The definition of a 'recognized' party varies by state based on the number of registered voters who had declared their association with the respective party or the number of votes received by the respective party in previous elections. State deadlines for candidate filing for the primary elections are set by state law and ranged from 8 November 2019 to 24 July 2020.

to more than one percent of registered voters.<sup>69</sup> This is contrary to international good practice and may pose an unreasonable barrier to candidacy.<sup>70</sup>

*In line with good practice, the number of supporting signatures for candidate nomination could be revised so as not to exceed one per cent of registered voters. Additionally, federal legislation could clarify rules on nomination, such as appropriate advance deadlines, thereby establishing greater certainty for candidates.*

Some states temporarily eased candidate signature requirements due to the COVID-19 pandemic by extending deadlines for collecting supporting signatures, waiving the requirement to collect signatures or decreasing the number of signatures required.<sup>71</sup> Twenty-four separate lawsuits relating to these measures were filed in 16 states and the District of Columbia, with varying outcomes.<sup>72</sup> However, representatives from the Green and Libertarian Parties informed the ODIHR LEOM that this process remained very challenging, given pandemic-related restrictions affecting physical contact with voters.

Eighty-eight presidential candidates, including 27 women, appeared on various state ballots. Four presidential candidates were registered in a sufficient number of states to have enough Electoral College votes to be elected.<sup>73</sup> Following the elections, Senator Kamala Harris, running on the ticket with the former Vice President Biden, became the first woman and the first person of color to be elected Vice President. Individual candidates stood unopposed in 11 House races.<sup>74</sup> There were 151 candidates, including 42 women, competing for the 35 Senate seats and 1,113 candidates, of whom 340 were women, competing for the 435 House seats.<sup>75</sup> At least 27 LGBTI candidates across 21 states and 13 persons with disabilities in 11 states appeared on ballots for federal elections.

## XII. CAMPAIGN ENVIRONMENT

---

<sup>69</sup> The number of necessary supporting signatures is often set either above one per cent of registered voters or above one percent of voters who participated in a previous election, which often amounts to more than one percent of registered voters.

<sup>70</sup> See Section 1.3.ii of the [2002 Venice Commission Code of Good Practice in Electoral Matters which states that “The law should not require collection of the signatures of more than 1% of voters in the constituency concerned”](#), as well as paragraph 17 of General Comment 25 of the ICCPR stating that the minimum number of supporters for a nomination “should be reasonable and not act as a barrier for candidacy.”

<sup>71</sup> Candidate signature requirements were cancelled in Vermont and decreased in some states, including in Maryland, Michigan, New Hampshire and Virginia.

<sup>72</sup> In Maryland, New York, Connecticut, Pennsylvania and the District of Columbia, requests to modify registration requirements were denied by the courts, as restrictions had already been eased in light of the pandemic by the time of the hearings, including through reducing the number of signatures required and extending deadlines for submitting the signatures. In Rhode Island, Virginia and Georgia, the requirements were modified as the lawsuits requested. In Ohio, injunctive relief was denied in one case because signature collection qualifies as ‘an essential service’, so the plaintiff was not overly restricted by the confinement measures. In California, injunctions were denied because alternative methods pre-dating COVID-19 pandemic were already available to make getting signatures easier, thus plaintiffs were not overburdened. In Alaska, Hawaii, Arizona, Maine, Arkansas and Oklahoma, the cases were withdrawn or dismissed on technical grounds.

<sup>73</sup> The incumbent President and Republican nominee Donald Trump, the Democratic Party nominee Joseph Biden, Jo Jorgensen of the Libertarian Party and Howie Hawkins of the Green Party.

<sup>74</sup> Five Democrat and six Republican candidates in House districts across 10 different states.

<sup>75</sup> This was the highest number of nominations of women candidates for the House until now, including among the two major parties. See the [data and analysis](#) provided by the Center for American Women and Politics.

Despite measures in place to prevent the spread of COVID-19 infection, campaigning took place in an open atmosphere in which the fundamental freedoms of expression, assembly and association were respected. Public safety measures impacted the capacity of candidates to present their programs at in-person public events. On the national level, the campaign was dominated by the two main presidential candidates and focused on the incumbent administration's response to the COVID-19 pandemic, economic recovery, healthcare and the appointment of a new U.S. Supreme Court justice as central campaign themes. Congressional races also focused on local issues.

Both major parties limited in-person activities, such as door-to-door canvassing, and relied instead on online advertising, social media, text messages and phone calls to reach out to voters. Rallies held during these elections were significantly smaller and fewer than in previous elections and primarily concentrated in the most contested (battleground) states. ODIHR LEOM observers noted that Republican candidates held more in-person events than Democratic candidates. Notably, by comparison to former Vice President Biden, President Trump held more in-person rallies and events.. Non-traditional rallies were devised in the context of the pandemic including drive-in events and those held at airports.<sup>76</sup> Congressional and third-party presidential candidates were generally less visible.

The campaign was characterized by deepening political polarization, extremely negative campaigning and hostility between the two major presidential candidates. Animosity between the candidates negatively affected the focus of the campaign on policies and party platforms. The two leading presidential candidates accused each other of corruption, fraud, working for foreign interests, an inability to lead, and of supporting extremist groups. The incumbent President's use of discriminatory and pejorative statements against individuals on the grounds of their gender and origin was of particular concern<sup>77</sup>.

*Public officials, political parties, their candidates and supporters should refrain from using inflammatory and discriminatory rhetoric.*

Negative campaigning by most candidates was frequently exacerbated by the misrepresentation of facts, especially by the incumbent president, thereby detracting from the ability of voters to accurately appraise the candidate's views and qualifications. There were some isolated but notable bipartisan initiatives to de-escalate the negative rhetoric and refocus the campaigns on policy discussions.<sup>78</sup>

President Trump repeatedly made allegations of media bias against his campaign. The president also alleged on multiple occasions that the electoral process, and postal voting in particular, would be open to widespread fraud, while not providing any further information or evidence of a systematic threat to election credibility. Further to these allegations, on several occasions President Trump called on his supporters to "watch the polls", thereby raising concerns of ODIHR LEOM interlocutors that unofficial poll watching would devolve into voter intimidation on election day. These concerns were reinforced by record gun sales nationwide, the reports of alleged kidnapping plots against the governors of Michigan and Virginia, street protests and measures taken by businesses to protect store fronts, and crowd control measures put in place in major cities. In contrast

---

<sup>76</sup> Forty rallies and campaign events were observed in the pre-election period by the ODIHR LEOM observers.

<sup>77</sup> See for example [here](#) and [here](#)

<sup>78</sup> See the [bipartisan ad](#) by candidates for governor in Utah, and the following [Tweet](#) by Senator Mitt Romney.

to the president's allegations, national security agencies issued statements attempting to reassure citizens about the integrity of the election process.<sup>79</sup>

On a number of occasions, the incumbent president refused to respond to questions over whether he would commit to the peaceful transfer of power, thereby raising concerns among election stakeholders about the integrity of this central facet of the democratic process.<sup>80</sup> Statements of this nature by a presidential candidate were of an inflammatory nature, and risked eroding public confidence in democratic institutions and delegitimizing the outcome of the election. Some civil society associations responded by releasing statements in support of the integrity of the elections, and national security agencies were also vocal in their efforts to support election integrity.<sup>81</sup>

The distinction between state and party activities was not always respected, as the incumbent president repeatedly used his official capacity for political advantage. Some ODIHR LEOM interlocutors expressed concerns over the use of administrative resources for campaigning, citing the fact that the COVID-19 economic relief checks sent to voters in April contained a letter signed by the president with language echoing the incumbent's campaign slogans. This was the first time a president's name had appeared on an Internal Revenue Service (IRS) disbursement. The U.S. Department of Agriculture initiative to buy fresh food and ship it to families in need also included a signed letter on the White House letterhead. On 8 October, the Office of Special Counsel (OSC) requested that the Secretary of Agriculture reimburse costs related to his participation in a Trump campaign event, as this violated the Hatch Act.<sup>82</sup> ODIHR LEOM interlocutors reported the uneven enforcement of the Hatch Act, citing precedent of lower-level federal employees having been subject to discipline, with higher-level officials having gone without sanction.<sup>83</sup>

*The Hatch Act should be uniformly and consistently applied across all levels of government, including senior-level administration officials and political appointees.*

### XIII. CAMPAIGN FINANCE

Campaign finance regulation is shaped by federal legislation and U.S. Supreme and lower-level courts decisions. The Federal Election Campaign Act (FECA) of 1971 established a well-developed campaign finance regulatory regime. The Supreme Court's decision on *Buckley v. Valeo* of 1976 upheld the FECA limits on campaign contributions and disclosure, but struck down campaign expenditure limits, including for the so-called third-party or "independent" spending, as being against the freedom of speech.<sup>84</sup> In 2010, the *Citizens United v. FEC* decision by the Supreme Court, on the same grounds, established the right of corporations and trade unions to "independently" spend

---

<sup>79</sup> See the video message from [5 October](#) and [transcript](#) of the [21 October press conference](#).

<sup>80</sup> At a 23 September press conference, when asked whether he would commit to a peaceful transfer of power, President Trump stated that he would "see what happens", claiming that postal voting would lead to fraud. On the same day, he called the election a "scam" and said that the result would have to be decided by the US Supreme Court. At a rally on 13 September, the incumbent president said that his opponent could only win through a rigged election. On 20 August, at a rally, he said "the only way they're going to win is by a rigged election." On 19 July during an interview, the president refused to answer if he would accept a defeat in the elections.

<sup>81</sup> See the joint [appeal](#) from a bipartisan coalition of civil society organizations, a group of former Democrat and Republican officials, as well as [faith leaders](#) across the country.

<sup>82</sup> See a [letter](#) from the Office of Special Counsel.

<sup>83</sup> See, for example, the [alleged contraventions](#) of the Hatch Act by Ivanka Trump during the campaign.

<sup>84</sup> By law, the term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate, that is not made in concert or co-operation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

for political campaigns. The 2010 lower court ruling *SpeechNow.org v. FEC* allowed for third-party Political Action Committees (referred to as Super PACs) to receive unlimited contributions, including from corporations. The 2011 *Carey v. FEC* decision ordered that individual organizations could engage in campaign expenditures that are coordinated with an official candidate's campaign as well as those that are "independent" from the official campaign. These developments have created inconsistencies that render the campaign finance system vulnerable to circumvention and complicated to enforce. The application of such inconsistent legal framework has been aggravated by the fact that the campaign oversight body, the Federal Election Commission (FEC), has been politically deadlocked or unable to make decisions for almost a decade.

The FEC is a six-member bipartisan commission, required to have at least four commissioners to make decisions. Commissioners are appointed by the President and confirmed by the Senate. Since August 2019 (with the exception of May and June 2020), only three commissioner seats have been filled and the FEC has therefore been unable to launch any new investigations, issue advisory opinions, promulgate rules and render decisions on pending enforcement actions, creating a substantial backlog of unaddressed matters.<sup>85</sup> In 2018, a bi-partisan group of members of Congress expressed a concern that the FEC dysfunction adversely affects election integrity and called the President to fill its vacancies.<sup>86</sup> However, the failure to nominate commissioners by the Republican Senate leadership negatively affected campaign finance oversight.

*Consideration could be given to reviewing the formula for the composition of the FEC in order to promote effective and independent oversight and enforcement of campaign finance law.*

Presidential and congressional candidates become subject to campaign finance regulations when their campaign income or spending reaches USD 5,000 per election. Individual donations to candidates are limited and must be disclosed to the public.<sup>87</sup> Disclosure is required for donations above USD 200 and all such donations were promptly published on the FEC's website. Additionally, the law prohibits foreign and anonymous donations, and donating in another person's name; direct donations from corporations and trade unions to official campaign committees are prohibited. Despite the above regulations, the overall inconsistency of the campaign finance system provides avenues for circumventing these prohibitions.

All entities participating in campaign spending are subject to regular reporting requirements and the information is promptly published on searchable FEC-managed on-line databases. This information was actively scrutinized by civil society and the media, which regularly reported on campaign income and spending. In total, campaign expenditure for the 2020 General Election was projected to reach USD 14 billion.<sup>88</sup>

Presidential candidate committees for the 2020 elections were required to file monthly income and expenditure reports. By the last pre-election reporting deadline of 14 October, President Trump's campaign committee raised USD 595 million, of which 45 per cent were "small and very small" contributions (below USD 200). Former Vice President Biden raised USD 937 million of which 39 per cent came from contributions below USD 200. Federal candidate campaigns significantly availed themselves of opportunities offered by online donation platforms. The ActBlue and WinRed platforms for the Democrats and the Republicans respectively attracted 22 percent of all donation

---

<sup>85</sup> See the [State of the Federal Election Commission, 2019 End of Year Report](#).

<sup>86</sup> Representatives Derek Kilmer (D-WA) and Ken Buck (R-CO) led a bipartisan [call to President Trump to fill the vacant seats on the FEC](#).

<sup>87</sup> Individuals can donate up to USD 2,800 to a candidate and up to USD 5,000 to a Political Action Committee (PAC).

<sup>88</sup> See the [projection](#) by the Center for Responsive Politics.

amounts below the reporting limit of USD 200. In general, the high level of participation of individual donors illustrates their high interest and engagement, especially in the presidential race.

Along with official candidate campaign committees and political action committees (PAC), ‘independent’ spenders played a prominent role in the campaign. ‘Independent’ spenders may receive unlimited donations from corporations and trade unions, but are prohibited from co-ordinating with candidates on how they intend to spend such funds. In practice, the legal requirements prohibiting co-ordination are easily and regularly circumvented and are not adequately enforced.<sup>89</sup> As it lacked quorum, the FEC has not been able to issue regulations specifying non-coordination requirements and initiate investigations in cases brought to its attention. As of 29 October, it was reported that ‘independent’ spending for the 2020 general election campaign had reached USD 1.7 billion.<sup>90</sup>

The risk that corporate donations may be used for foreign funding was brought to the attention of the ODIHR LEOM by various interlocutors. This risk was accentuated by a well-publicized case of foreign nationals creating a shell company to finance political campaigns in 2018.<sup>91</sup> In addition, in accordance with FEC interpretation, U.S. subsidiaries of foreign companies may establish PACs and also engage in independent spending.<sup>92</sup> Although some initiatives had been previously suggested to mitigate the lack of transparency in corporate political spending, since 2016 there has been a concerted effort to ensure that the participation of corporations in campaign finance remains minimally regulated and that no additional measures to enhance transparency are enacted. The Appropriations Act passed in January 2018 explicitly prohibited the Securities and Exchange Commission from enabling shareholders to request the disclosure of political spending by publicly traded companies, while the Financial Services and Government Appropriations Act of 2019 prohibited any requirement that may oblige government contractors to disclose their political spending.

Insofar as campaigning is not the organization’s primary activity, tax-exempt social welfare organizations may engage in political campaigns. The income of such tax-exempt organizations is only subject to disclosure if donations are specifically earmarked for political communication.<sup>93</sup> As such, unearmarked donations to such organizations are often used to avoid disclosure.<sup>94</sup> These not for profit organizations can themselves donate to other independent spenders.<sup>95</sup> In total, such organizations spent some USD 101 million during these elections.

*To improve the transparency of campaign finance, non-profit organizations that engage in campaign activities should be required to disclose all their sources of funding within a time frame that would permit genuine oversight. In addition, FEC rules regarding co-ordination should be*

---

<sup>89</sup> See for instance this [publication](#) by the American Bar Association.

<sup>90</sup> According to data filed with FEC and summarized by [the Center for Responsive Politics](#).

<sup>91</sup> A U.S. Southern District New York Court indicted nationals of Ukraine, Belarus and Russia, for creating a shell company to finance political campaigns in 2018. See [U.S. vs Lev Parnas et al.](#)

<sup>92</sup> By [FEC regulation](#), this cannot be done upon the initiative of the foreign parent company, and the PAC must employ only U.S. nationals.

<sup>93</sup> See [Citizens for Responsibility and Ethics in Washington \(CREW\) v. FEC and Crossroads Grassroots Policy Strategy](#).

<sup>94</sup> See [reports](#) by the Center for Responsive Politics, from previous election cycles.

<sup>95</sup> See paragraph 256 of OSCE/ODIHR-Venice Commission Guidelines on Political Party Legislation, 2nd edition, 2020: “it is important that some forms of regulation, with comparable obligations and restrictions as apply to parties and party candidates, be extended to third parties that are involved in the campaign, to ensure transparency and accountability. Third parties should be subjected to similar rules on donations and spending as political parties to avoid situations where third parties can be used to circumvent campaign finance regulations”.

*reviewed to ensure that spending by third parties and independent spenders (super PACs) is genuinely independent and that the principle of non-coordination is genuinely enforceable.*

All campaign advertisements are required by law to include a disclaimer indicating the entity financing the campaign message and taking responsibility for the content and its placement. However, the current regulation addressing online media dates back to 2006, and does not take into account the considerable and continuously evolving nature of the internet space, with social media not regulated at all. In an effort to address foreign electoral influence in online media and social networks, as well as to require disclosure, a bipartisan Honest Ads Act was introduced in the Senate in 2017, but was not passed. Some social media companies, which supported the adoption of this law, seeing it as creating a level playing field for all social media companies, have voluntarily applied some of the measures outlined in the bill including mandatory disclaimers, transparency and the vetting of buyer origin.

*Authorities should consider introducing legally binding requirements for all online and social media to place clear disclaimers indicating the entity paying for campaign advertisements. The social media companies should also maintain publically accessible and user-friendly databases of placed political ads and vetting of buyers' origin.*

The Department of Justice (DoJ) is tasked with the oversight of criminal liability related to campaign finance and has in the past co-operated with the FEC in order to enforce campaign finance regulations.<sup>96</sup> However, following the allegations in July 2019 that President Trump had requested the government of Ukraine to investigate the work of Vice President Biden's son in that country, the chairperson of the FEC and the DoJ took opposing approaches in their interpretation of the definition of campaign contributions. The FEC chair on 26 September 2019 viewed President Trump's request as a solicitation of a campaign contribution, while the DoJ maintained that the request could not be construed as such.<sup>97</sup> ODIHR LEOM interlocutors were concerned that the differences of opinion arising from the divergent interpretations damaged co-operation between the two key institutions and, as a consequence, weakened campaign finance oversight. Notwithstanding the above, the DoJ informed ODIHR LEOM observers that necessary measures to ensure campaign finance integrity were taken for these elections.

Some USD 103.7 million in public funding per presidential candidate were available to candidates. Access to these funds requires candidates to forgo any additional funding and agree to an automatic audit. No presidential candidate applied for public funding, as the amount would not be commensurate with their spending needs and the possibilities of current campaigns to raise much more resources.

## **XIV. MEDIA**

### **A. MEDIA ENVIRONMENT**

The media landscape, while extremely polarized, is pluralistic and diverse with more than 17,000 commercial and public broadcast stations. Despite the large volume of media outlets, ownership of

---

<sup>96</sup> By law, if the Commission “determines that there is probable cause to believe that a knowing and willful violation has occurred, the Commission may refer such apparent violation to the Attorney General of the United States.”

<sup>97</sup> See [letter](#) by FEC Chairperson Ellen Weintraub and the [opinion](#) by the Department of Justice Office of Legal Counsel.

these outlets is concentrated in the hands of a few entities.<sup>98</sup> The environment is traditionally dominated by the major television networks ABC, CBS and NBC, while cable news channels, such as Fox News, CNN and MSNBC, are particularly popular within audiences predisposed to a particular ideological lens. Local TV channels serve as an important source of local political information.<sup>99</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. The federal support for public broadcast radio and television is delivered through a separate organisation, the Corporation for Public Broadcasting (CPB), based on the 1967 Public Broadcasting Act.<sup>100</sup> However, despite the highly valued educational and quality programming, CPB funding has not been increased over several years.<sup>101</sup>

*Consideration should be given to increasing funding for public broadcasters to enhance freely available quality public services as well as to support impartial news programming, including election-related reporting.*

Technological advancements over the last decade have reshaped citizens' habits of media consumption. The proliferation of online outlets and an overall tendency towards faster and more direct information accessibility have led to the enormous popularity of social networks, in particular Facebook, YouTube and Twitter.<sup>102</sup> Along with numerous other platforms and online messaging services, the prominent social media platforms are steadily becoming a source for politics-related information as well as a key communication tool for politicians and various interest groups. While a diversity of available information is highly commendable, the growing influence of social networks as the primary arena for information dissemination has accentuated concerns over extensive dissemination of false or misleading information, both coming from unconfirmed or widely unrecognised sources, but, significantly, also from government officials.<sup>103</sup>

With a steady shift in media consumption towards online content, the legacy media industry's figures have been in decline since the mid-2000s. Nevertheless, newspapers still compose a significant part of the American news landscape.<sup>104</sup> There are some 1,300 print publications, with several well-respected national newspapers, such as USA Today, the Wall Street Journal, the New York Times, the Washington Post and the Los Angeles Times.<sup>105</sup> Numerous publications, including

---

<sup>98</sup> There are six major companies that [currently](#) 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>99</sup> See the July 2020 Pew Research Center's [analysis](#). There are also several highly popular radio shows.

<sup>100</sup> According to the CPB [information](#) some 1,400 local public broadcasters (1,041 radio and 365 television stations) currently receive financial support. By law, 95 per cent of the federal appropriation received by the CPB is provided as grants to local television and radio stations, programming, and improvements to the public broadcasting system.

<sup>101</sup> According to the CPB [financial data](#), the federal appropriation has not changed since 2015 and will stay at the same levels until 2021.

<sup>102</sup> See the September 2018 Pew Research Center [analysis](#).

<sup>103</sup> See the Washington Post [fact checker](#) according to which President Trump has made more than 23,000 false or misleading claims, often via his Twitter account. Since May 2020, Twitter [adjusted](#) its approach of potentially harmful, misleading information related to COVID-19 and started to label such tweets.

<sup>104</sup> According to the July 2019 [Newspaper Fact Sheet by](#) Pew Research Center, the estimated daily newspaper circulation (print and digital combined) in 2018 was 28.6 million for weekdays on average and 30.8 million for Sunday.

<sup>105</sup> According to the data from [Cision](#) and [Statista](#), the tabloid New York Post is among the most popular national newspapers.

major nationwide newspapers, declared their political positions by officially endorsing or opposing individual presidential candidates.<sup>106</sup>

## B. LEGAL FRAMEWORK

The First Amendment to the Constitution guarantees freedom of the press and expression, providing for a robust system of protection for media independence. It is further strengthened by various self-regulation mechanisms and several Supreme Court decisions, including the 2010 Citizens United v FEC ruling, which affirmed that no limitations should constrain freedom of speech.<sup>107</sup> However, recent years have been characterized by hostility against the news media and individual journalists, with the systematic levelling of derogatory verbal attacks by the incumbent President aimed at eroding the credibility of the media.<sup>108</sup> This tendency has undermined the role of the media in a democratic society, raising significant concerns by numerous LEOM interlocutors, the media, as well as domestic and international organizations dealing with matters of freedom of expression.<sup>109</sup>

The 1934 Communications Act, the 1996 Telecommunications Act, and the FCC regulations outline the basic regulatory framework for broadcasters, including provisions pertaining to election periods. The Federal Communications Commission (FCC) oversees the implementation of the basic legal requirements pertaining to the broadcast media. The FCC does not conduct media monitoring, but responds to media inquiries and election-related complaints, through its Media Bureau. Other types of media are not bound by statutory requirements.

In 2017, the FCC adopted an Open Internet Order, which came in effect in June 2018, which allows internet service providers to intentionally block, slow down, prioritize or charge money for specific online content circumventing the principle of Net Neutrality.<sup>110</sup> In October 2020, the FCC reaffirmed its 2017 decision.<sup>111</sup>

During the campaign period for federal elections, commercial broadcasters must provide “reasonable access” to all legally qualified federal candidates who request to purchase airtime. Within the 60-day period prior to the general election, candidates can purchase paid political airtime at the lowest sum charged for a comparable commercial advertisement. The FCC maintain publicly accessible ‘political files’ of all requests to purchase airtime relating to politics, which ensures

---

<sup>106</sup> By election day, 211 newspapers, including, for the first time, the most circulated national newspaper USA Today, scientific and university publications, endorsed Vice President Biden, and 15 newspapers endorsed President Trump.

<sup>107</sup> In addition, on 28 May 2020, the incumbent president adopted [the Executive Order on Preventing Online Censorship](#) protesting content moderation adopted by several social media companies.

<sup>108</sup> See the April 2020 [report](#) by the Committee to Protect Journalists. President Trump has repeatedly called the press “fake news”, “the enemy of the people”, “dishonest”, “corrupt”, “low life reporters”, “bad people”, “human scum” and “some of the worst human beings you’ll ever meet”. As he told Leslie Stahl of CBS shortly after he was elected in 2016, he has been trying to demean the journalists and destroy the credibility of the news media.

<sup>109</sup> According to [the Digital News Report 2020](#) by the Reuters Institute and the University of Oxford trust in media fell from 25 percent to 13 per cent among conservative-leaning respondents. See also Reporters Without Borders, [World Press Freedom Index 2020](#); See also an August 2017 [statement](#) of the OSCE Representative on Freedom of Media.

<sup>110</sup> Some states since enacted net neutrality safeguards in their legislations. In October 2019 the District of Columbia Circuit Court of Appeals in *Mozilla v. FCC* upheld the 2017 FCC decision, and also ruled that the FCC cannot block state or local-level net neutrality enforcement.

<sup>111</sup> The 2020 FCC decision ([The Order on Remand](#)) was adopted as a response to the 2019 Appeal, in which the District of Columbia Circuit Court of Appeals ordered the agency to address some of the effects of its initial decision (that repealed the Net Neutrality principle).

transparency.<sup>112</sup> In addition, an ‘equal opportunity’ rule grants all candidates the right to request airtime on equal conditions to another candidate running for the same office. There are exceptions to the equal opportunity rule, so as to protect editorial freedom, including regarding appearance on newscasts including coverage of newsworthy events, scheduled interviews, and debates. As non-commercial broadcasters, public media are prohibited from airing paid advertisements.

The non-partisan Commission on Presidential Debates (CPD) scheduled three debates for the two presidential candidates who met the criteria to participate in the televised debates, as established by the CPD, and one for their vice-presidential running mates.<sup>113</sup> The conduct of the first presidential debate was controversial, with numerous stakeholders registering dismay at the aggressive tenor of the event.<sup>114</sup> The CPD announced the intention to hold the second debate virtually, in order to protect health and safety after President Trump and members of his campaign staff tested positive for the COVID-19. The debate was ultimately cancelled following the refusal by President Trump to participate in the online format claiming that the virtual debate was not necessary, while his campaign also accused the CPD of bias.<sup>115</sup> Instead, two separate town halls featuring each of the candidates were aired simultaneously, with the audience posing questions.<sup>116</sup> The third debate was conducted as initially planned. In response to the controversy arising from the first debate, the microphone of the opponent was muted during opening positions on the discussed topics.

### C. MEDIA MONITORING FINDINGS

Overall, freedom of expression was respected with a wide range of election-related information available, thus enabling voters to make an informed choice. National media coverage of the election was extensive and vibrant, focusing primarily on the presidential campaign and the COVID-19 pandemic, whereas reporting on congressional races was more visible in local media. The findings of the ODIHR LEOM media monitoring revealed the clear dominance of the two main parties and their candidates.<sup>117</sup> Third-party candidates were largely ignored by the major broadcast media and also reported problems with gaining access to local media. All monitored media dedicated systematic and comprehensive coverage related to voter information on various aspects of the electoral process, at times disputing statements by contestants.

The public broadcasters, PBS and NPR, provided extensive coverage to major presidential candidates with President Trump receiving 48 per cent of all politics-related news coverage on both

---

<sup>112</sup> See the FCC’s [Public Inspection Files](#).

<sup>113</sup> To be eligible, candidates must appear on a sufficient number of state ballots, have a mathematical chance of winning a majority vote in the Electoral College, and have a support of at least 15 per cent of voters as determined by the average of five national public opinion polls.

<sup>114</sup> The first debate, conducted on 29 September, was watched by 73 million people, making it the third most watched debate in the U.S. history (the vice-presidential debate was the second most watched vice-presidential debate with almost 58 million viewers).

<sup>115</sup> On 8 October, Ms. Erin Perrine, Director of Press Operation for the Trump Campaign referred to the CPD as ‘[...] clearly biased. It’s full of never-Trumpers and it’s full of swamp creatures [...]’. On 12 October, Ms. Ronna McDaniel, Chair of the RNC, referred to the CPD as “corrupt” and “in the pocket of Joe Biden”.

<sup>116</sup> Two separate town hall debates were aired at the same time on different channels, attracting together some 28.5 million viewers. A viewership of the last debate reached some 63 million.

<sup>117</sup> As of 5 October, the IEOM conducted its quantitative and qualitative assessment of political and election-related coverage by several major media outlets, as follows as: Public television PBS and radio NPR networks (main evening and morning news programmes, respectively); three television networks ABC, CBS and NBC (main evening news programmes); three cable television channels CNN, Fox News and MSNBC (author political shows between 20-22:00); three newspapers New York Times, USA Today and Wall Street Journal (main political sections) and three online news websites Breitbart.com, BuzzFeed.com and HuffPost.com (political sections). The IEOM also followed election-related content on social networks.

channels, largely critical.<sup>118</sup> Former Vice President Biden received 18 per cent of the overall coverage on PBS and 20 per cent on NPR, most of which was neutral. NPR offered its viewers continuous coverage on the importance of democratic institutions and processes as well as on combatting disinformation, including with respect to the allegations of election fraud. On the three national TV networks (ABC, CBS and NBC) President Trump received 63, 56 and 60 per cent of prime time politics-related news coverage, respectively, most of which was critical, while former Vice President Biden received 20, 25 and 22 per cent, respectively, mainly in a neutral tone.<sup>119</sup> In addition to their evening news programmes, all TV networks aired weekend current affairs shows that enjoyed high popularity.

The coverage on evening prime time programming of news cable networks centred around political shows in which opinions were often presented, rather than more factual and impartial information. The monitored channels dedicated most of their coverage to the presidential contest. CNN dedicated 58 per cent of its overall election related coverage to Donald Trump, with coverage focusing on his role as the incumbent and less as a candidate, and generally casting him in a negative light. CNN dedicated 12 percent of its coverage to former Vice President Biden, 13 per cent to the Democratic Party and 5 per cent to the Republican Party in mostly balanced or neutral manner. MSNBC portrayed the incumbent president and the Republican Party very negatively, giving them some 40 and 12 per cent, respectively, while former Vice President Biden and the Democratic Party accounted for 15 and 20 per cent of the time, respectively, with the coverage being positive and neutral. Fox News showed open bias with demeaning vocabulary against former Vice President Biden, in particular within the Hannity Show. In total, former Vice President Biden received 38 per cent of almost exclusively negative content (more than 90 per cent negative). In contrast, the coverage of the President Trump, on Fox News (totaling 37 per cent of the coverage) was overwhelmingly positive.

There were numerous civic activities aimed at preventing the spread of disinformation and fostering civil online discourse.<sup>120</sup> Amidst growing public and legal scrutiny, major social media companies have adjusted their self-regulatory policies and practices aimed at tackling disinformation, particularly as it relates to elections.<sup>121</sup> Closer to elections, Facebook, Twitter and Pinterest amended their policies with a stated aim of address procedural and participation interference, allegations of fraud and delegitimization of election results.<sup>122</sup>

*Social media companies should continue to strengthen and make their internal policies more transparent in areas such as content moderation or decisions on user appeals.*

---

<sup>118</sup> All the figures for both President Trump and former Vice President Biden also include the coverage of their campaigns and respective vice-presidential candidates. In regard to President Trump the figure also include his coverage as the incumbent President. In all monitored media, the coverage of Mr. Trump as candidate, includes his coverage as the President.

<sup>119</sup> The remaining portion of the politics related coverage was given to political parties and congressional candidates, as well as federal and state officials.

<sup>120</sup> See more at [Common Cause](#), [First Draft](#) and [Election Integrity Partnership](#) websites.

<sup>121</sup> See also the 30 September 2020 report [Protecting the Vote](#), by the Open Technology Institute.

<sup>122</sup> See the 28 October 2020 [analysis](#) by the Election Integrity Partnership (EIP). Updates to policies were mostly done by platforms that already had some policies on election-related content (with the recent exception of Snapchat), including Facebook (and Instagram), Twitter, YouTube, TikTok and Nextdoor. Platforms that did not have election-related policies, including Parler, Gab, Discord, WhatsApp, Telegram, Reddit and Twitch, did not update their community standards policies to address election-related content. On election day, Facebook and Twitter suspended several accounts that posted information about election-related unrest and alleging issues with voting safety and reliability. Both of these platforms marked as potentially misleading posts by the incumbent president questioning the integrity of the elections.

Section 230 of the Communications Decency Act (CDA), as interpreted by court decisions, exempts social media from legal liability for content posted on their platforms.<sup>123</sup> However, there is an ongoing discussion on the responsibility of social networks, including concerns over content moderation and the level of disinformation spread on these platforms.<sup>124</sup> Disinformation became worrisome in the months leading up to the elections, particularly in connection with narratives that questioned voting procedures or election integrity, and especially where the enforcement of the social networks' policies is often belated, inconsistent or non-transparent.<sup>125</sup>

*Congress should consider establishing an enforcement mechanism aimed to protect and foster vibrant and a healthy digital public domain. Social media companies should implement policies that promptly address specific harmful content such as intolerant rhetoric, incitement to violence and content that is intended to undermine the electoral integrity.*

Newspapers, particularly the New York Times, the Washington Post and the Wall Street Journal, offered in-depth political analysis, investigative journalism, and op-eds, but often displayed marked political leanings. In the New York Times and USA Today, coverage of the incumbent president amounted to 45 and 32 per cent of total coverage, respectively, most of which was negative. Former Vice President Biden was shown predominantly in a neutral tone (with 17 and 19 per cent of total campaign coverage in the same publications, respectively). The Wall Street Journal's coverage of both the main candidates was more balanced (32 per cent of overall coverage on President Trump and 24 per cent on former Vice President Biden), with former Vice President Biden and the Democratic Party portrayed in a critical manner, while the incumbent president was presented in a neutral tone.

The monitored online media were decisively partisan, with BuzzFeed and Huffington Post highly critical of President Trump, and Breitbart of former Vice President Biden. While Breitbart covered the campaign extensively with a large number of shorter articles, the website regularly presented exaggerated or ungrounded messages, which were often amplified in social networks, primarily on Facebook.<sup>126</sup>

## XV. COMPLAINTS AND APPEALS

---

<sup>123</sup> In a [statement](#), on 15 October, the FCC chairperson questioned such special immunity and declared the FCC intention to move forward with rulemaking to clarify the interpretation of section 230. On 28 October, the Senate Committee on Commerce, Science, and Transportation held a hearing with CEOs of Alphabet/Google, Facebook and Twitter, concerning the CDA, content moderation exercised by the social media companies and its impact on freedom of speech. The incumbent president on several occasions, most recently during the hearing, [called](#) for repealing the section 230. Another similar hearing with the CEOs of Facebook and Twitter was held on 17 November by the Senate Judiciary Committee.

<sup>124</sup> Policies and community standards adopted by these tech companies, as well as their application, are of a self-regulatory nature. On 14 October, in one such instance, Facebook and Twitter limited the spread of the New York Post story about former Vice President Biden's son Hunter: Facebook questioned the story's validity and Twitter referred to its policies on hacked materials and private information. As such, Twitter temporarily locked the accounts of the Trump campaign as well as the newspaper. Twitter subsequently reversed its policies on hacked materials and how this policy is applied, and unlocked the newspaper's account on 30 October.

<sup>125</sup> On election day, Facebook and Twitter suspended several accounts that posted information about election-related unrest and highlighted issues with voting safety and reliability. Both of these platforms marked as 'potentially misleading' posts by the incumbent president questioning the integrity of the elections.

<sup>126</sup> Notably, one of the Breitbart website's main sections was titled 'cheat-by-mail battle'.

Following the declaration of the COVID-19 pandemic, state legislatures and governors began amending provisions of election legislation or issuing executive orders to safely hold the elections and reduce the health risks for voters and election officials. A significant number of these measures were challenged in state and federal courts. The challenges were largely brought by the Republican Party, while in a few states, where emergency measures were not adopted, civil society groups along with the Democratic National Committee requested the courts to amend laws in order to adapt to the new circumstances stemming from the pandemic. An unprecedented volume of litigation, more than 400 lawsuits filed in 44 states, over voting processes was still ongoing in the courts in the months and even days leading up to the election day.<sup>127</sup>

The majority of lawsuits were focused on issues arising from the health crisis, such as the expansion of early in-person, absentee and curbside voting, the extension of deadlines for the receipt of postal ballots, the placement of drop boxes for absentee ballots, signature requirements for postal ballots, witness and notary requirements and limitations on those qualifying for absentee ballots. A notably smaller proportion, approximately 40 cases, concerned issues unrelated to the health crisis, such as voter registration and identification, felony disenfranchisement and the order of candidates on the ballot.

Some state legislatures, governors and candidates, mostly Republicans, were successful in preventing the implementation of pandemic-related accommodations. These included limiting the number of days for tallying of ballots which arrived after election day in several battleground states, even if they had been postmarked within the permitted deadline.<sup>128</sup> In some states, extending voting possibilities or easing restrictions by state election officials (or both), was challenged by the State Attorney General or Governor.<sup>129</sup> At the circuit court level, several important state or district court decisions were reversed, suspended or rendered void after some ballots had already been cast, with the possible outcome of limiting the ability to cast ballots or have ballots counted.<sup>130</sup> One of the most litigated issues was the witness and notary requirement on absentee ballots,<sup>131</sup> which were

---

<sup>127</sup> Two of the very last rulings by the Texas Supreme Court and the Houston Division of the Texas District Court respectively were rendered within two days before election day and denied emergency requests filed by a voter and three Republican congressional candidates to exclude ballots cast at ten drive-through voting locations in Harris County from the vote count, while the second ruling denied the request to have all curbside voting applications for early and election day voting rejected. The plaintiffs immediately filed an emergency injunction against the district court's ruling to the Court of Appeals for the 5<sup>th</sup> Circuit, asking to have the drive-through voting on election day stopped. Although the court denied the emergency request, the ensuing legal uncertainty resulted in the Texas Harris County officials deciding to close 9 out of the 10 drive-through locations.

<sup>128</sup> In Wisconsin, Pennsylvania, New Hampshire, Georgia, Maine, South Carolina and Florida.

<sup>129</sup> For example, in Texas, South Carolina and Alabama.

<sup>130</sup> For instance in Court of Appeals for the 11<sup>th</sup> Circuit: [People First of Alabama v. Merrill](#), in which the court enjoined on appeal voting procedures that had been extended; also, [Jones v. DeSantis](#), the Pay-to-Vote case that was initially decided to favour ex-felons voting but reversed on appeal. Likewise, the [New Georgia Project v. Raffensperger](#) that was initially extended but limited on appeal. In the Court of Appeals for the 4<sup>th</sup> Circuit: [Wise v. North Carolina State Board of Elections](#), North Carolina Alliance for Retired Americans v. State of North Carolina; Moore v. Circosta, consolidated case regarding witness signatures on ballots that was extended by the state court and limited on appeal; also Andino v. Middleton, in which the state court enjoined witness requirement but the 4<sup>th</sup> Circuit denied and the U.S. Supreme Court reversed following a stay application. In the Court of Appeals for the 5<sup>th</sup> Circuit, [Texas Democratic Party v. Abbott](#), in which the district court required Texas officials to allow any qualified voter to do so by absentee ballot, without limiting it to voters above a certain age but was vacated on appeal. In Minnesota, on 29 October, the Court of Appeals for the 8<sup>th</sup> Circuit [reversed](#) a district court consent decree which had extended the deadline for receipt of absentee ballots. The circuit court ruled that all absentee ballots arriving after 8pm on election day should be set aside pending any further challenges.

<sup>131</sup> In Alaska, Alabama, Louisiana, Minnesota, North Carolina, Oklahoma, Rhode Island, South Carolina, Virginia and Wisconsin. Requests for prepaid postage for postal ballots were universally rejected.

usually challenged together with restrictions related to the receipt deadlines of absentee ballots,<sup>132</sup> universal distribution of mail ballots, and the number or location of drop boxes.<sup>133</sup>

Several preliminary rulings were adopted on an emergency basis, with a significant impact on the process. Some courts refused to uphold or stayed last-minute injunctions, reasoning that voters had many months since the beginning of the COVID-19 pandemic to adjust to the election rules<sup>134</sup> and that difficulties attributable to the health crisis did not justify changes in electoral rules.<sup>135</sup> In their rulings, these courts frequently applied the *Purcell* principle<sup>136</sup> that seeks to prevent judicially-created confusion by counselling federal courts to exercise caution before changing election rules in the period immediately preceding an election,<sup>137</sup> as well as the *Anderson-Burdick* doctrine which requires courts to balance burdens that a state imposes on election participation against the benefits the state asserts such burdens might bring. However, these principles have not been consistently applied, and courts offered divergent interpretations of what constitutes the *status quo* to which the *Purcell* principle is applied or how to balance the imperatives outlined in *Anderson-Burdick*. Arguing that some courts treated *Purcell* as a prohibition against enjoining a potentially illegal voting rule based on the time of filing and examination of the application,<sup>138</sup> several legal scholars filed an *amicus curiae* brief to the U.S. Supreme Court<sup>139</sup> asking for clarifications on this doctrine.<sup>140</sup>

*In order to ensure that court orders and decisions are rendered well in advance of polling, so as to avoid legal uncertainty, consideration could be given to the adoption of legislative measures establishing reasonable and sufficient time limits for the proceedings and determination of election lawsuits filed at state and federal courts.*

In considering several applications related to permitting amending election rules by lower court decision during the ongoing election process, the U.S. Supreme Court denied them by majority decisions. In a case in October 2020, the Court emphasised the principle of judicial restraint, adding that individual judges may not amend the election rules, in the place of state legislatures.<sup>141</sup> U.S. Supreme Court Justice Kagan wrote in her dissenting opinion, that *Purcell* is “not a rule but a caution” as not every last-minute change to election processes may confuse voters and a court must also take other matters into account, such as “the presence of extraordinary circumstances (like a pandemic) and the extent of voter disenfranchisement threatened.”<sup>142</sup>

---

<sup>132</sup> Lawsuits have been filed in Alabama, Arizona, Florida, Georgia, Michigan, Missouri, Mississippi, Montana, North Carolina, Nevada, Ohio, Pennsylvania, South Carolina, Texas and Wisconsin. These cases fall into two groups: those that must be received by election day and those where state legislation sets a requirement to be postmarked by election day and received within specific deadlines.

<sup>133</sup> In Iowa, New Hampshire, North Carolina, New Jersey, Ohio, Pennsylvania and Texas.

<sup>134</sup> See [Common Cause Indiana v. Lawson](#).

<sup>135</sup> See [Republican National Committee v. Democratic National Committee](#), [Andino v. Middleton](#) and [Barbara Tully, Indiana Vote By Mail, Inc. v. Paul Okeson, S. Anthony Long et al.](#)

<sup>136</sup> See [Purcell v. Gonzalez](#).

<sup>137</sup> 4<sup>th</sup> Circuit: [Barbara Tully, Indiana Vote By Mail, Inc. v. Paul Okeson, S. Anthony Long et al.](#); [Democratic National Committee v. Marge Bostelmann, Wisconsin Legislature, RNC et al.](#); 7<sup>th</sup> Circuit: [Common Cause Indiana v. Lawson](#).

<sup>138</sup> [Barbara Tully, Indiana Vote By Mail, Inc. v. Paul Okeson, S. Anthony Long et al.](#); [Andino v. Middleton](#); [Common Cause Indiana v. Lawson](#), id.

<sup>139</sup> See [Swenson et al. v. The Wisconsin State Legislature, et al.](#)

<sup>140</sup> The *amicus curiae* [brief](#), asking the U.S. Supreme Court to clarify the *Purcell* principle, was filed on 16 October 2020 by six U.S. university professors.

<sup>141</sup> See, [U.S. Supreme Court, Democratic National Committee, et al. v. Wisconsin State Legislature, et al.](#)

<sup>142</sup> See the [dissenting opinion](#) by justice Kagan, joined by two other justices.

While jurisprudential differences and judicial philosophies are inevitable when examining complex issues of federal and constitutional law, it appears that in some split decisions and emergency orders, issued by the U.S. Supreme Court and courts of appeals, the judges often voted on election-related matters along traditional partisan principles.<sup>143</sup>

## XVI. ELECTION OBSERVATION

In line with OSCE commitments, the US Government invited ODIHR to observe these general elections. The vast majority of states have statutory provisions permitting partisan observers to observe all stages of the election process, which safeguards the transparency of the election process. Access to non-partisan citizen observers, as well as international observers varied widely across the country, and often left to the discretion of state or county election officials or their interpretation of the state law. According to the National Conference of State Legislatures (NCSL), 34 states explicitly allow non-partisan citizen observers to be present to observe all or some elements of the election process and 8 states explicitly forbid their presence in polling stations.<sup>144</sup> Observer accreditation is generally provided at the county level. Due to the COVID-19 physical distancing measures, election officials limited the number of observers allowed in a polling station at a given time.

Five states and the District of Columbia explicitly permit observation by international observers in their state laws.<sup>145</sup> Restrictions on observation are in place in eighteen states.<sup>146</sup> Such restrictions on election observers are not in line with OSCE commitments.<sup>147</sup> While the presence of ODIHR LEOM observers with access to all phases and operations of the process was welcomed in the majority of states where the observers were deployed, in some states, access was provided upon the discretion of election officials based on different interpretations of the law.

Election day was observed by numerous partisan and non-partisan citizen observers across the country, with rights and responsibilities ranging from observing signature and ballot verification to challenging the eligibility of a voter or of individual ballots. While partisan observers were generally permitted, citizen non-partisan observers were not always allowed inside polling premises.<sup>148</sup>

*The commitment to provide access for international and citizen observers to all stages of the electoral process should be clearly enshrined in the law.*

---

<sup>143</sup> See, for example, [Republican National Committee v. Democratic National Committee](#) and [Andino v. Middleton](#). See also, [Merrill, Alabama Secretary of State, et al. v. People First of Alabama, et al.](#) and [Democratic National Committee, et al. v. Wisconsin State Legislature, et al.](#)

<sup>144</sup> See the NCSL [website](#) for more information on state policies for observer access.

<sup>145</sup> California, Hawaii, Missouri, New Mexico and Utah.

<sup>146</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. In Georgia, the election officials permitted the ODIHR LEOM observers to observe the process as general public. The remaining 27 states have statutory language that may provide for international observers.

<sup>147</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”. The last resolution of the National Association of Secretaries of State welcoming OSCE international election observers expired in summer 2020 and was not renewed.

<sup>148</sup> According to [NCSL](#), non-partisan observers may not be present in polling stations in eight states.

A national, nonpartisan Election Protection coalition comprised of more than 300 local, state and national partners maintains a permanent hotline operated by some 43,000 volunteers in multiple languages to answer voters' concerns and question. It also provided immediate legal support nationwide in case of disputes during the polls and conducted election observation. According to its representatives, it deployed 45,000 observers for these elections.

## XVII. EARLY VOTING

The rights and opportunities to vote early vary significantly between and within the states. Due to the COVID-19 pandemic, ballot access was widely expanded and significantly facilitated voters' ability to participate and cast a vote.<sup>149</sup> An unprecedented 101 million American voters, 64 per cent of all who voted, chose to cast a ballot before election day either in-person or by post. Generally, voters benefited from increased access to early voting regardless of their political affiliation. Positively, groups with traditionally low voter participation rates, including Latino, Native American, and young voters, turned out in record numbers. Most changes to election procedures for these elections were introduced as temporary measures, due to the pandemic. Many ODIHR LEOM interlocutors, including election officials and civil society organisations, argued that some of these changes should be made permanent to facilitate and to increase voter participation in the long-term.

Most states provided a variety of options for voters to receive and cast their ballot, including multiple ways to request a ballot (in-person, by phone, by post, email and online form), automatic sending of absentee ballots to all voters, prepaid postage on return envelopes, as well as curbside and drive-through voting, and secure ballot drop boxes accessible at all times. However, ballot drop boxes were limited to one per county in Ohio and Texas regardless of the number of registered voters.<sup>150</sup> In line with a prior ODIHR recommendation, nearly all states provided envelopes to ensure ballot secrecy in these elections. However, clear guidance on the use of secrecy envelopes was not always systematically provided to voters, increasing the risk of ballot invalidation.<sup>151</sup> While secrecy of the vote is provided for in state constitutions and statutes nationwide, the ODIHR LEOM observed that curbside and drive through voting practices lacked safeguards for ensuring ballot secrecy.

*Election administrators should continue to enhance the secrecy of absentee and postal ballots when received by election officials, as well as during curbside and drive through voting.*

Measures promoting ballot access and inclusive participation were employed comprehensively, though some low-income citizens and Native Americans faced barriers to voting early, including distance from in-person early voting sites or the lack of access to transportation, as well as limited access to the internet, a printer or a postal service. Absentee ballots and applications were not always fully accessible to visually impaired voters.

---

<sup>149</sup> EAC, in cooperation with CISA and the Centers for Disease Control and Prevention (CDC), compiled and offered trusted [resources](#) to support election workers and officials to adapt and develop contingency plans for in-person and absentee voting in the context of the pandemic. These included lessons learned from the primary elections and good practices from states that use absentee voting as their primary voting method. Many states also referred to resources provided by the [National Vote at Home Institute](#).

<sup>150</sup> Some county-level election officials in Texas reported to the ODIHR LEOM that one ballot drop box per county (up to over four million) was insufficient to accommodate all voters who wanted to vote in this manner.

<sup>151</sup> In at least seven states, absentee and postal ballots not inserted in a secrecy envelope are invalidated upon receipt (so-called "naked ballots").

In total, 38 states and the District of Columbia allowed voters to cast an absentee vote without a justification (so-called no-excuse absentee votes), including three states on a temporary basis due to the pandemic.<sup>152</sup> In-person early voting was conducted in 39 states and the District of Columbia, with voting periods ranging in duration from 45 to 3 days. In some instances, very long queues were reported, often during the first and last days of early voting, and in locations with shorter early voting periods.<sup>153</sup>

All states provided voters with the option to cast a postal ballot, most of them upon request from the voter. Eleven jurisdictions sent ballots automatically to all registered voters, including those in the five states that conducted elections entirely or primarily by postal ballot (Colorado, Hawaii, Oregon, Utah, and Washington). Six states did so on a temporary basis due to the pandemic.<sup>154</sup>

Deadlines for requesting an absentee or postal ballot ranged from 49 days to 1 day before election day. Eight states set the deadline for submitting a ballot request by post less than a week before election day, which did not guarantee that the voters who adhered to the prescribed deadline would receive their ballots on time for them to be cast and counted.<sup>155</sup> While these voters could vote with a provisional ballot on election day, some may have been denied the possibility to vote through no fault of their own.

The lack of uniformity and standardized election procedures impedes on the right to equal participation nationwide. In addition, election procedures are often unclear to voters, which detracts from the overall transparency of the election process. The high volume of litigation related to election procedures resulted in last-minute changes to newly introduced voting procedures (see *Complaints and Appeals* section of this report). This further contributed to voter uncertainty and created unnecessary burdens for election workers and administrators. Last-minute changes also hindered the ability to clearly convey voter information despite significant efforts made by election officials and civil society organizations to explain changes in the voting procedures.

*Last minute changes to deadlines and election procedures should be avoided in all cases in which they would have a detrimental impact on voters' understanding of procedures or their ability to vote.*

All states and the District of Columbia provided election workers with training on how to process absentee and postal ballots, contributing to an efficient and professional management of such ballots, including in states and localities which did not have prior experience with processing high

---

<sup>152</sup> Alabama, Connecticut and Delaware. Of the 12 remaining states that require voters to submit a justification to vote absentee, 6 states allowed all voters to use the pandemic as an excuse to vote absentee (Arkansas, New Hampshire, South Carolina, Kentucky, New York and West Virginia) and the remaining six states required a justification to vote absentee (Louisiana, Indiana, Texas, Mississippi, Tennessee and Missouri).

<sup>153</sup> For example, voters waited in queues of up to 11 hours in Georgia (12 October), 5-6 hours in Texas (13 October) and New York (24 October) and 7 hours in Virginia (31 October). Many election officials provided voters with estimated waiting times online.

<sup>154</sup> California, New Jersey, Montana, Nevada, Vermont and the District of Columbia had prior experience with automatic sending of postal ballots, as they maintain permanent absentee voter lists and Vermont did not. In addition, in Nevada, ballots were sent to all active voters. In Montana, 45 out of the 56 counties chose to send ballots automatically to all registered voters.

<sup>155</sup> In Connecticut, South Dakota and Wyoming, voters could submit a request for a ballot until the day before the election. According to the USPS [post-election report](#) released on 19 January 2021, 99.89 per cent of ballots were delivered from voters to election official within seven days.

volumes of postal ballots. Despite these efforts, some delays and localized issues were reported, including with regards to third party ballot printing and delivery.<sup>156</sup>

The Federal Voting Assistance Program (FVAP), under the Department of Defense, supports states and counties in administering out-of-country voter registration and voting, including ballot requests, as well as providing information to voters and training to election officials. Not all states provided for the possibility to send voter registration applications electronically or to receive the ballot electronically, increasing the time needed for overseas mailing. Conversely, thirty-two states permitted electronic submissions, including some form of electronic submission of marked ballots.<sup>157</sup> Voters had to waive their right to secrecy in instances in which they submitted their ballots via email or by fax, which is contrary to the OSCE commitments.

*Federal authorities should continue creating conditions to allow out-of-country voters adequate time to submit their ballots while ensuring the secrecy of the vote. In order to reduce mailing periods, all states should consider allowing for electronic requests for postal ballots and the possibility for voters to receive ballots electronically.*

Absentee and postal ballots have additional integrity measures, including the requirement for voters to sign the envelope, to include personal information, an affidavit or a copy of the voter identification document (depending on the jurisdictions' voter identification requirements), or a witness signature and personal information.<sup>158</sup> In light of the pandemic, Alaska, Minnesota, Rhode Island and Virginia temporarily waived their witness requirement while North Carolina and Oklahoma eased them.<sup>159</sup>

Some states have notarization requirements for mail-in or absentee ballots, which may include authentication of voters' signatures, administering an oath or affirmation to an absentee voter or witness voter completing their ballots.<sup>160</sup> Several ODIHR LEOM interlocutors, including election officials and civil society organization, were of the opinion that notary requirements posed an unnecessary burden to the right to vote.

Overall, the measures introduced to safeguard the integrity of absentee and postal ballots made these voting methods prone to errors by the voter. Positively, 42 states and the District of Columbia provided voters with the opportunity to fix mistakes (so-called 'ballot curing') which led to otherwise legible ballots not being discarded for having minor technical mistakes. Most of these states either clarified or introduced guidance to voters and signature verification procedures for election workers.

In 23 states, ballots postmarked by election day at the latest could be counted even if received after election day, thereby mitigating the major cause for ballot rejection.<sup>161</sup> However, in some states inconsistencies between election procedures and practices by the U.S. Postal Service (USPS) may

---

<sup>156</sup> As reported in Georgia, Maryland, New York, North Carolina, Pennsylvania, Ohio, South Carolina and Utah.

<sup>157</sup> Extraordinary use of diplomatic pouch and forms of electronic submission were promoted in other states.

<sup>158</sup> In addition, the USPS looks for patterns in coordination with the FBI and Homeland Security, which would immediately start an investigation.

<sup>159</sup> Witness and notary requirements were challenged in court in Alabama, Alaska, Minnesota, Missouri, Mississippi, New Hampshire, North Carolina, Rhode Island, South Carolina, Texas, Virginia and Wisconsin, with various outcomes.

<sup>160</sup> Including Alaska, Alabama, Maine, Mississippi, Missouri, Oklahoma and South Dakota. Notary requirements were waived for all out-of-country voters in 2009.

<sup>161</sup> In these states, postmarked ballots can be processed and counted if received 1 to 21 days after election day, depending on the state.

have resulted in some ballots being rejected.<sup>162</sup> A significant majority of election officials informed the ODIHR LEOM observers that cooperation with local-level USPS offices had been very beneficial.<sup>163</sup>

The USPS reported to the ODIHR LEOM that it incurred significant costs in order to fulfill its obligations for these elections. However, controversies over delays in postal services raised increased concerns among voters over the timely delivery of their postal ballots.<sup>164</sup> Election officials reported that ballot tracking options as well as in-person voting and delivery of ballots, including through the use of secure official ballot drop boxes, alleviated some of these concerns. According to election officials, the use of ballot drop boxes also mitigated long queues for voters depositing their ballot in person and the risks of ballot rejection due to last-minute submissions. Given the volume of absentee and postal ballots, most states and the District of Columbia by law permitted ballots to be processed before election day to avoid unnecessary delays in determining election results.<sup>165</sup>

## XVIII. VOTING TECHNOLOGIES

Voting technology solutions are used extensively, with types of technology varying considerably across the country. In line with a previous ODIHR recommendation, and to address a problem of using machines that do not provide a meaningful possibility for audit, there is a tendency to move away from using entirely electronic voting machines and towards paper-based voting solutions. It is estimated that at least 90 per cent of all voters had access to paper-based voting arrangements. However, some counties and jurisdictions in 48 states and the District of Columbia continued to use optical or digital scanners in conjunction with paper ballots as their main voting method.

Some jurisdictions in eight states continued to use voting machines which do not provide for a voter-verified paper audit trail (VVPAT).<sup>166</sup> These systems make it impossible for voters to verify their votes have been recorded as cast, and for authorities to establish that votes have been counted as cast through a post-election audit or recount. As post-election audits are crucial for ensuring integrity and trust in the election process, using equipment that does not allow the results to be audited runs contrary to good electoral practice.<sup>167</sup> In addition, according to LEOM interlocutors, approximately

---

<sup>162</sup> The audit [report](#) of USPS processing readiness for the 2020 general elections identified that some postmark requirements, deadlines for requesting and submitting ballot applications or ballots, and untimely updates of voter addresses could result in ballots being rejected or not received on time to be counted.

<sup>163</sup> The USPS assigned election mail coordinators to liaise with local election officials as well as mailpiece analysts to help election officials to adapt the format of election mail to prevent processing problems. The USPS also prioritized election mail, delivered it even when unpaid or short paid and, with the permission of election officials, allowed supervisors to personally deliver it directly to election officials.

<sup>164</sup> In August 2020, a House Oversight Committee hearing was held with the Postmaster General to address allegations that recent operational changes were made to purposefully sabotage the USPS ahead of the general elections. In total, 22 states and the District of Columbia sued the USPS over operational changes impacting postal delays. Following a lawsuit and a motion for a preliminary injunction against the USPS filed by 14 states over postal delays, a US district court ordered on 17 September a temporary nationwide injunction to reverse recent changes, including to replace, reassemble or reconnect any removed mail-sorting machines needed to ensure timely processing and delivery of election mail.

<sup>165</sup> Only eight states required absentee ballot processing to start on election day.

<sup>166</sup> Direct Recording Electronic devices (DREs) without VVPAT were used in some jurisdiction in Indiana, Kansas, Kentucky, Mississippi, New Jersey, Tennessee, and Texas. Louisiana used exclusively DREs without a voter-verified paper-trail statewide.

<sup>167</sup> Section 3.2 iv of the 2002 Venice Commission's [Code of Good Practice in Electoral Matters](#), recommends that "voters should be able to obtain a confirmation of their votes."

one third of jurisdictions use ageing voting equipment that is at least 10 years old. Outdated devices raise security concerns, and often lead to usability and reliability issues.

*To help address security and reliability concerns of ageing equipment, the election jurisdictions should be mandated to review and periodically upgrade or replace existing outdated voting technology solutions. Such equipment should have a voter-verified paper audit trail to support methods to verify the machine-based vote counts.*

Ballot Marking Devices (BMDs) are used to mark the choice that the voter makes electronically on the ballot paper. These devices were originally developed to cater for accessibility voting needs for persons with disabilities but are also increasingly used in many jurisdictions during early voting and on election day for all voters.<sup>168</sup> Voters in Arkansas, Georgia, Delaware and South Carolina exclusively used BMDs for marking their ballots. Many polling places offered parallel voting opportunities with traditional paper ballots and BMDs.

BMDs are user-friendly and in many cases were thoroughly tested before the voting process. However, several LEOM interlocutors noted that the complexity of the design of ballots generated by BMDs may lead to confusion among some voters when marking the choices on the ballot. Only machine-readable (rather than human readable) codes are scanned during vote counting. However, there is no possibility for the voter to verify that the generated QR code matches the voter's choice at the time of voting, for example through the use of checking it with a smart device. Some studies have suggested that the indication of choices on a screen may lead to voters neglecting to verify whether the printed ballot correctly reflects their selection.<sup>169</sup>

*Jurisdictions using Ballot Marking Devices for voting should provide comprehensive voter information to ensure that voters check that their ballots were marked as intended.*

*In order to enhance transparency and voter confidence, jurisdictions should consider the use of ballots in which all elements indicating voter's choices are human readable.*

The EAC maintains the Voluntary Voting System Guidelines (VVSG) that provide guidance on functionality and security of voting technologies. However, the VVSG have not been updated since 2015 despite the fact that the use of technology in elections has diversified considerably and there is an evolved awareness with respect to election cybersecurity.<sup>170</sup> Electronic poll books were broadly used for identifying and marking voters who voted, but these were not subject to the VVSG.<sup>171</sup> Several cases of malfunction of these devices led to interruptions, delays, and significant increase of waiting time to vote.<sup>172</sup> While these interruptions did not have an effect on the integrity of the systems, they do indicate a need for improved contingency planning, advanced polling staff training and extended unified guidelines for auxiliary or backup voting equipment.<sup>173</sup> In addition,

---

<sup>168</sup> BMDs print the complete ballot with the final voter's choices on a blank ballot paper which carries also a machine-readable bar code or a QR code with the encoded voter's choices on it. Only the code is scanned during counting of votes. During post-election audits, the human legible choices can also be scrutinized by an operator.

<sup>169</sup> See research from [University of Michigan](#), [University of California, Berkley](#) and [Georgia Institute of Technology](#), and [a notification from security experts in California](#).

<sup>170</sup> Plans for adopting VVSG 2.0 are still in deliberation phase. The VVSG continues to be developed by the EAC in co-operation with the National Institute of Standards and Technology, as well as computer security and election experts. The basis for the guidelines, the VVSG 1.0 stems from year 2005.

<sup>171</sup> Electronic poll books were used in many jurisdictions across 39 states, for early voting and on election day.

<sup>172</sup> For example, in jurisdictions in Georgia and Texas during early voting and in jurisdictions in Georgia and Ohio on election day.

<sup>173</sup> Election management solutions including voter registration solutions, electronic poll books and ballot-on-demand solutions are not covered in the EAC certification mandate.

the ballot-on-demand and results transmission systems are not considered under the VVSG, which limits the scope of good practice that jurisdictions can consult when considering which technologies, equipment and processes to utilize.

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

Election authorities made various efforts to strengthen public confidence in the integrity and accuracy of the election process and results when using voting technologies. LEOM interlocutors indicated confidence in the applied measures of pre-election testing, chain of custody procedures for safekeeping of equipment and the good practice of keeping voting solutions offline. However, in the preparation phase and the run-up to the elections, several cases raised issues of equipment management and arrangement of voting solutions that could have had implications on the public trust in the electoral process.<sup>174</sup>

*To prevent unauthorized access to voting equipment due to security gaps, election officials in all jurisdictions should consider detailed and formalized examination of their maintenance, storage, testing and set-up procedures to facilitate trust in the conduct of elections.*

Most jurisdictions have set up secondary result verification methods to guarantee the accuracy of preliminary results, supplementing the already present result tabulation methods of Voting Technology systems. In addition to traditional post-election audits, Risk Limiting Audits (RLAs) have been established and piloted in several states.<sup>175</sup> To ensure the integrity of the results, 34 states and the District of Columbia require some form of post-election audits prior to certification of results, 7 of these states either require or allow the option of RLAs.<sup>176</sup>

*All jurisdictions relying on technology for voting, counting of votes and tabulation of results should mandate some form of a post-election audit as a results verification method.*

## **XIX. ELECTION DAY**

The election day atmosphere was peaceful, with no substantial incidents of unrest recorded. In the limited number of polling stations visited, voting proceeded in an orderly manner and was assessed positively by the ODIHR LEOM observers. Polling officials were knowledgeable about the procedures and election equipment and materials were generally available, with the exception of a few jurisdictions where equipment failures were noted but were ultimately addressed. Despite the earlier concerns about recruitment of polling staff, the ODIHR LEOM did not observe any shortages

---

<sup>174</sup> For example a [break-in and theft](#) of a laptop and USB drives used for elections from a voting machine storehouse in Philadelphia (Pennsylvania), a last minute firmware update of Georgia [BMDs](#) and [pollbooks](#), a [wrong date programmed](#) in the voting equipment in Fort Bend County (Texas), and the [letter](#) of 30 IT experts about the vulnerability of ballot scanners used in 49 counties in Florida.

<sup>175</sup> The RLA manually checks a sample of ballots or voter-verifiable paper records produced by Voting Technology solutions, until there is sufficient evidence that the reported outcome is correct. The RLA could lead to a full manual recount of all ballots if there is not enough evidence to prove that the reported outcome is correct. See [an EAC report for an explanation on practical application of RLAs](#).

<sup>176</sup> Several counties in 5 states are piloting the use of RLAs in the 2020 General Elections.

of polling officials that would negatively impact the election process. There were queues at a quarter of polling stations observed, but voters generally waited less than 30 minutes to cast their ballots.

The ODIHR LEOM received reports of a number of voters who requested to vote by provisional ballots fearing that the postal ballots they had already sent would not be received on time for them to be counted. In addition, ODIHR LEOM observers witnessed a number of cases when voters could not be found on the voter list and were therefore issued a provisional ballot.

Electronic poll-books were widely used to mark voters on the voter list and, in general, this method for identifying and marking voters on the voter lists performed well. Some problems with the functioning of the electronic poll-books were reported from a few jurisdictions, especially in the morning of election day, leading to interruptions and extended waiting times for voters.<sup>177</sup> ODIHR LEOM observers noted cases in which polling officials did not have backup solutions for voter lists as a contingency for malfunctions. While in general the election technology infrastructure performed well, critical issues with voting equipment were also reported in some jurisdictions, which caused delays.<sup>178</sup>

On the morning of election day, various media reported that millions of voters across the country received automated calls (so-called robocalls) and text messages advising them to “stay home and stay safe”.<sup>179</sup> In at least one county in Michigan, these calls advised voters to come to vote the next day, in order to avoid lines on election day.<sup>180</sup> DHS officials stated that the FBI launched an investigation.<sup>181</sup>

ODIHR LEOM observers noted that the measures to mitigate against the COVID-19 pandemic were evident at the polling stations. Polling was generally organized in spacious premises, without any observed cases of overcrowding, and physical distancing and the use of face masks were mandated. In many cases, see-through panels were also installed to serve as barriers between polling officials and voters. These measures did not appear to have negative impact on the flow of voters and waiting times. In general, persons present at polling premises had a clear view of the election process. In more than a third of polling stations visited by the ODIHR LEOM, legally prescribed procedures permitting voters to cast their ballots outdoors were observed.

Partisan poll-watchers were generally present both inside and outside the polling stations, thereby increasing the transparency and serving to safeguard the election process. Poll-watchers from civil society organizations were also present in many locations. Despite concerns raised before the elections, the ODIHR LEOM observers did not observe nor receive any reports of the presence of

---

<sup>177</sup> For example, in Morgan County and Spalding county (Georgia), Franklin County (Ohio) and Christian County (Montana).

<sup>178</sup> In Spalding County (Georgia), all BMDs were inoperative and voters voted with provisional ballots. In Albany and Syracuse Counties (New York), issues with voting machines led to switching to paper-based voting. In Upshur County (Texas), polling was interrupted for two hours due to issues with the DREs. In Lee County (Florida), ballot scanners were not reading the voters choices for the races on reverse side of the ballot paper. In Green County (Ohio), BMDs were not functional from 7am to 11am. In Scranton (Pennsylvania) ballot scanners were inoperative for some time and voters were offered to complete a ballot that would be scanned later.

<sup>179</sup> Listen here to [an example](#) of such robocalls. A Washington Post [article](#) estimated that some 10 million people were affected. Various reports indicated that the calls were especially numerous in Florida, Iowa, Kansas, Michigan, New Jersey, Nebraska, New York and North Carolina.

<sup>180</sup> See a [tweet](#) by the governor of Michigan.

<sup>181</sup> See [article](#) by the Associated Press.

armed individuals at the polling locations.<sup>182</sup> Where permitted to do so by law, ODIHR LEOM observers were able to conduct their work without hindrance.

Poll closing times were extended in some locations to allow voters still queuing to vote. The counting process was almost entirely automatic through the use of technology. In the limited number of polling stations where the vote count was observed, polling officials conducted this process professionally, efficiently and openly. Media began announcing official preliminary results after the closing of the polls in east-coast states at 7pm, while voting was still ongoing in many states across the country. In keeping with longstanding tradition, various media organizations called the results of presidential elections using statistical methods, in the majority of states, and in many cases before all unofficial results had been provided by election officials. However, due to the lengthy process of counting postal ballots, at least five states could not be called on the election night and the result of the presidential election remained undetermined by the following morning.<sup>183</sup>

During election night the two main presidential candidates gave opposing messages about the outcome of the presidential election. Despite the fact that the results of the election were still inconclusive, the incumbent president again questioned the integrity of the process and declared victory.<sup>184</sup> He made a speech in the early morning following the election in which he claimed to have won the election.<sup>185</sup> The incumbent president then made allegations of fraud which had the potential to harm public trust in democratic institutions.

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

In Georgia, on 5 January, the second round of elections for both U.S senators took place, in accordance with the state law, as no candidate won 50 per cent of votes in the first round. The results of these run-off elections were certified on 19 January and the two new senators, both from the Democratic Party, were sworn in on 20 January.

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

### **A. POLITICAL DEVELOPMENTS**

The post-election period was largely peaceful, with demonstrations outside a few counting centers causing minor disruptions. Throughout November, the incumbent president made allegations of widespread fraud concentrating mostly on statements related to the battleground states in which he

---

<sup>182</sup> According to an [overview](#) by NCSL, ten states (Arizona, California, Florida, Georgia, Louisiana, Mississippi, Missouri, Ohio, South Carolina and Texas), the District of Columbia and Puerto Rico explicitly prohibit guns and other weapons in polling stations.

<sup>183</sup> Including in the battleground states of Georgia, Michigan, Nevada, Pennsylvania and Wisconsin.

<sup>184</sup> Paragraph 7.4 of the 1990 OSCE Copenhagen Document stipulates that the participating States will “ensure that votes [...] are counted and reported honestly with the official results made public”. Paragraph 7.9 provides that the participating States will “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office [...]”.

<sup>185</sup> After midnight, Vice President Biden said that he is “optimistic about the outcome” and that “we have to be patient, and it’s not over until every vote is counted.” President Trump held a press conference after 2 am and said “We did win this election” and “We want the law to be used in a proper manner, so we’ll be going to the U.S. Supreme Court. We want all voting to stop.”

lost, in a mix of tweets and press conferences held by his campaign representatives, without presenting relevant findings to support such claims.<sup>186</sup> According to a report, by 16 November, the incumbent president has posted over 300 tweets attacking the integrity of the 2020 election since election night.<sup>187</sup> Consequently, according to some post-election opinion polls, three-quarters of Trump voters and a third of all voters believed former Vice President Biden's win was due to election fraud.<sup>188</sup>

As the counting and tabulation process was ongoing according to official procedures, four days after the elections, some media was able to project a winner, using statistical methods, per long-established tradition. During that time, both presidential candidates held several press conferences forecasting their win, with President Trump explicitly claiming victory.<sup>189</sup> On 7 November, most media outlets projected that former Vice President Biden had secured enough Electoral College votes to win the election with the most votes ever cast for a presidential ticket. In an address to the nation on the same day, Mr Biden issued a call for unity, and reaffirmed the priorities for the upcoming administration.

President Trump refused to concede by the time all results were finalized and the Electoral College voted to elect the president in all 50 states and the District of Columbia, on 14 December. Initially, the incumbent president's challenge of election results led to bureaucratic repercussions that impeded some of the activities of president-elect Biden's transition team.

## **B. RECOUNTS AND POST-ELECTION LITIGATION**

The possibility to request a recount is not universally available in all states, and procedures vary across the country. In 39 states, candidates can request recounts, but in 12 of these, results must be within a certain margin.<sup>190</sup>

By state law, Georgia conducted its first ever risk limiting audit (RLA). The Georgia Secretary of State decided to conduct a full manual tally of all ballots to meet the audit requirements in terms of statistical sampling, given that the preliminary results of the presidential election had a margin of only 12,780 votes, or 0.3 per cent between the two leading candidates. The audit took place from 11 to 19 November confirming the initial results and victory of former Vice President Biden, and showed a small variation from the initial results, mainly attributable to human organizational errors during the vote-count and resulted in the final margin between the two candidates being 12,284 votes for Mr. Biden.<sup>191</sup>

Following the establishment of results, the Trump campaign requested a recount in Georgia and a partial recount in Wisconsin, on 21 and 18 November, respectively.<sup>192</sup> In Georgia, the recount was completed on 4 December without any change to the election results.<sup>193</sup> In Wisconsin, the hand

---

<sup>186</sup> Most significantly, in Georgia, Michigan, Nevada, Pennsylvania and Wisconsin.

<sup>187</sup> See the [analysis](#) by the New York Times.

<sup>188</sup> Also see the [Monmouth University Poll](#).

<sup>189</sup> [Tweets](#) by President Trump claiming victory were subsequently deleted following the suspension of his account on 8 January.

<sup>190</sup> See the NCSL's [overview](#) of possibilities for recount across the country.

<sup>191</sup> See the [report](#) on Georgia's Risk-limiting Audit.

<sup>192</sup> In Georgia, official campaigns may request a recount if the difference is within 0.5 per cent of votes, and the recount is conducted by an automated machine recount. In Wisconsin, the campaigns may request a hand recount if the difference is below 1 per cent, but have to cover costs of the recount process, as determined by the state.

<sup>193</sup> See the [official results](#) of the recount.

recounts were conducted in the two largest counties (Dane and Milwaukee) and finished on 30 November (a day before the deadline), confirming the initial results and the victory of Mr. Biden in that state.<sup>194</sup>

By the time of the Electoral College vote on 14 December, 59 lawsuits had been filed by President Trump's election campaign or the Republican Party and their supporters in Arizona, Georgia, Michigan, Minnesota, Nevada, Pennsylvania and Wisconsin, alleging fraud and irregularities, not properly-followed counting procedures and limited access to Republican party observers. Overall, the U.S. Supreme Court, and federal and state courts rejected the majority of President Trump's election campaign and Republican Party's lawsuits for lack of evidence, while some were withdrawn by the plaintiffs. In most cases, once they were under oath during court hearings, plaintiffs did not repeat allegations of fraud and misconduct that they had voiced publicly.<sup>195</sup>

In five lawsuits focusing on the invalidation of absentee and mail-in ballots in Pennsylvania on the grounds of technical details that were not diligently followed by voters or election officials, the Pennsylvania Supreme Court ruled on 23 November that minor technical violations do not warrant "the wholesale disenfranchisement of thousands of Pennsylvania voters."

The incumbent president's campaign and the Republican Party claimed in some lawsuits that limited access was provided to their observers and requested to halt the count of ballots.<sup>196</sup> In relation to this, the Pennsylvania Supreme Court ruled that the provisions of the state election code do not set a minimum distance between party observers and counting activities and argued that "the absence of proximity parameters reflects the legislature's deliberate choice to leave such matters to the informed discretion of county boards of election".<sup>197</sup>

### C. TALLY OF ELECTORAL COLLEGE VOTES AND DECLARATION OF RESULTS

According to the timeline set by the Constitution, Electoral College delegations met in their respective states and the District of Columbia on 14 December and voted for president and Vice President by casting ballots. All electors cast their ballots for the candidate who won the election in their respective states (see also *Section IV. Electoral System*). Following the tally of the vote, the delegations produced six copies of Certificates of the Vote which were delivered to the President of the Senate (the Vice President), to the Secretary of State or to the equivalent highest election officials of the state, to the state Archivist and to the district court of the district in which the electors met, by the deadline of 23 December.

---

<sup>194</sup> The results of the recount showed a gain of 45 votes, and 132 votes loss for Mr. Trump in Dane and Milwaukee counties, respectively. Trump's campaign paid USD 3 million to have the recount conducted (a recount of the entire state would have cost USD 7.9 million).

<sup>195</sup> Notably, in five decisions by the Philadelphia Court of Common Pleas regarding President Trump's petitions for not counting absentee and mail-in ballots, the judge noted in an [order](#) from 13 November that "the Petitioner is not contending that there has been fraud, that there is evidence of fraud or that the ballots in question were not filled out by the elector in whose name the ballot was issued, and it further appearing that Petitioner does not allege fraud or irregularity in the canvass and counting of the ballots". In another [order](#) of 25 November, the Commonwealth Court of Pennsylvania pointed out that "there are absolutely no allegations of any fraud, impropriety, misconduct, or undue influence, that anyone voted who was not eligible to vote, or that the secrecy of the ballots cast was jeopardized." In a significant [decision](#) issued on 21 November by the District Court for the Middle District of Pennsylvania, the judge dismissed President Trump's lawsuit asking the court to invalidate almost seven million votes, by pointing out that "[...]this Court has been presented with strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence."

<sup>196</sup> Party observer access was litigated in six different cases in Michigan, Nevada and Pennsylvania.

<sup>197</sup> See the 17 November [opinion](#) of the Supreme Court of Pennsylvania.

As set by law, on 6 January 2021, the U.S. House of Representatives and the U.S. Senate met in a joint session presided over by the Vice President, in order to count the Electoral College votes state by state (and the District of Columbia), tally the electoral votes, to declare the winner of the presidential and vice-presidential elections. The House and the Senate conducted the separate and simultaneous sessions to address written objections to results in some states. Objections against the results from Arizona and Pennsylvania were raised by some House and Senate representatives of the Republican Party, citing allegations which had been rejected in previous litigation.

While these proceedings for the counting of Electoral College votes were taking place, the incumbent President attended a rally occurring on the Ellipse and persisted in his accusations that the election had been stolen, urging his supporters to pressure representatives to overturn the counting of electoral college votes.<sup>198</sup> The protest turned violent as rioters attempted to enter the building, overwhelming the forces guarding the building. Rioters managed to break the security barriers and enter into the building, resulting in altercations with police, ransacking of some of the quarters and looting. The House and Senate members, who were in session at that time, were evacuated from the chambers to other parts of the building or stayed locked in their offices for several hours until the security forces cleared the building. As a result of the breaking into the building of the Congress and violence that ensued outside and inside the building, five persons died, including four rioters and one police officer. The Congress resumed the process of counting the same night, once the Capitol building had been secured. Following the incursion into the Capitol building, a number of Republican senators reversed their objections to the vote tallies in some states. Vice President Mike Pence declared former Vice President Joe Biden as the winner of the presidential election early on the morning of 7 January. While ultimately unsuccessful, the riots constituted an attempt to circumvent the democratic process and challenged the commitment announced in paragraph 7.9 of the Copenhagen agreement to “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office”.

## XXI. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in the United States and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations, in particular from the 2016 and 2018 Final Reports, which remain to be addressed. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.<sup>199</sup> ODIHR stands ready to assist the authorities to further

---

<sup>198</sup> See the [transcript](#) of President Trump’s speech at the rally.

<sup>199</sup> According to the paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by the ODIHR EOM as follows: recommendations 13, 26 and 31 from the final report on the 2016 general election (2016 Final Report), as well as 12 from the final report on the 2018 mid-term elections (2018 Final Report) are fully implemented. Recommendations 6, 15, 18 and 27 of the 2016 Final Report, as well as 7, 13, 14, 19, 35 and 36 from the 2018 Final Report are mostly implemented. Recommendations 1, 3, 5, 9, 12, 17, 23, 24, 29, 30 and 33 from the 2016 Final Report, as well as recommendations 4, 6, 8, 16, 17, 22, 26, 28, 29, 30, 32 and 33 from the 2018 final report are partially implemented. See also the ODIHR [Electoral Recommendations Database](#).

improve the electoral process and to address the recommendations contained in this and previous reports.

**A. PRIORITY RECOMMENDATIONS**

1. In keeping with the principle of equality of the vote, the United States authorities should review the Electoral College system for the election of the president and vice-president.
2. State authorities should consider establishing independent redistricting commissions to draw district boundaries in a manner that is independent from partisan considerations. Districts should be determined well in advance of an election, following broad public consultations and allowing adequate time for potential judicial review.
3. In line with OSCE commitments, consideration should be given to ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) as a means to further protect and promote the electoral rights of women and persons with disabilities.
4. The basic electoral procedures should be codified at the Federal Level in order to provide consistent standards and stability of electoral law. Federal election law could be enacted to regulate several critical issues, including time limits for voter registration, early voting deadlines and procedures, rights of observers and deadlines for the adjudication of pre- and post-election lawsuits.
5. Congress should consider passing legislation in order to ensure timely and effective safeguards preventing legal changes that may have discriminatory intent or impact against racial and linguistic minorities, such as through reactivating the preclearance regime of the Voting Rights Act.
6. Citizens resident in the District of Columbia and U.S territories should be provided with full representation rights in Congress. In addition, the right to vote in presidential elections should be extended to citizens resident in the U.S. territories.
7. Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate and that rights be restored upon completion of sentences. Pre-trial detainees should be provided with the possibility to vote and informed about their voting rights and ways to exercise them.
8. Authorities should review existing measures to further reduce the number of unregistered voters, including addressing burdensome procedures and obstacles faced by disadvantaged groups.
9. States should make every effort to ensure that voter identification requirements are equally accessible to all voters. Consideration should be given to harmonizing federal standards for voter identification for both in-person and postal voting, in order to comply with the Voting Rights Act and to avoid possible discrimination.
10. Public officials, political parties, their candidates and supporters should refrain from using inflammatory and discriminatory rhetoric.

11. Consideration could be given to reviewing the formula for the composition of the Federal Election Commission in order to promote effective and independent oversight and enforcement of campaign finance law.
12. Congress should consider establishing an enforcement mechanism aimed to protect and foster vibrant and healthy digital public domain. Social media companies should implement policies that promptly address specific harmful content such as intolerant rhetoric, incitement to violence and content that is intended to undermine the electoral integrity.
13. In order to ensure that court orders and decisions are rendered well in advance of polling, so as to avoid legal uncertainty, consideration could be given to the adoption of legislative measures establishing reasonable and sufficient time limits for the proceedings and determination of election lawsuits filed at state and federal courts.
14. The commitment to provide access for international and citizen observers to all stages of the electoral process should be clearly enshrined in the law.

## **B. OTHER RECOMMENDATIONS**

### **Election Administration**

15. Election administration should be able to work in an atmosphere free from threat and coercion. Any cases of threats and personal attacks on election administrators should be promptly investigated by federal and state law enforcement agencies, and sanctioned in accordance with the law.
16. To meet international standards and safeguard the impartiality of the election administration, election officials at the state and county level should not supervise elections in which they are contesting.
17. The Federal and State governments should ensure sufficient funds to meet the administrative needs of the election management bodies.
18. In order to safeguard the independence of election administration, private donations should be avoided. Where such funding is permitted it should be strictly regulated, corresponding to rigorously defined needs, and fully disclosed in order to ensure transparency and accountability.

### **Cyber Security**

19. In order to further increase cyber security capacity at state and lower levels, Cybersecurity and Infrastructure Security Agency (CISA) and other relevant cyber security organizations should continue expanding their services and training efforts to encompass all election jurisdictions.

### **Voter Rights**

20. States should consider reviewing their legislation regarding voting rights for persons with disabilities. The legal frameworks should be harmonised with international standards, by removing any restrictions on electoral rights on the basis of intellectual or psychosocial disability.

### **Voter Registration**

21. Authorities should develop clear procedures for the collection, aggregation and dissemination of information regarding the number of eligible and registered voters, updates made to the voter lists, and other relevant voter registration and participation figures at the national level before election day.
22. To improve the accuracy of the voter registers all states should participate in inter-state voter information exchange.

### **Candidate Registration**

23. In line with good practice, the number of supporting signatures for candidate nomination could be revised so as not to exceed one per cent of registered voters. Additionally, federal legislation could clarify rules on nomination, such as appropriate advance deadlines, thereby establishing greater certainty for candidates.

### **Election Campaign**

24. The Hatch Act should be uniformly and consistently applied across all levels of government, including senior-level administration officials and political appointees.

### **Campaign Finance**

25. To improve the transparency of campaign finance, non-profit organizations that engage in campaign activities should be required to disclose all their sources of funding within a time frame that would permit genuine oversight. In addition, FEC rules regarding co-ordination should be reviewed to ensure that spending by third parties and independent spenders (super PACs) is genuinely independent and that the principle of non-coordination is genuinely enforceable.
26. Authorities should consider introducing legally binding requirements for all online and social media to place clear disclaimers indicating the entity paying for campaign advertisements. The social media companies should also maintain publicly accessible and user-friendly databases of placed political ads and vetting of buyers' origin.

### **Media**

27. Consideration should be given to increasing funding for public broadcasters to enhance freely available quality public services as well as to support impartial news programming, including election-related reporting.
28. Social media companies should continue to strengthen and make their internal policies more transparent, in areas such content moderation or decisions on user appeals.

### **Early Voting**

29. Election administrators should further enhance the secrecy of absentee and postal ballots when received by election officials, as well as during curbside and drive through voting.
30. Last minute changes to deadlines and election procedures should be avoided in all cases in which they would have a detrimental impact on voters' understanding of procedures or their ability to vote.
31. Federal authorities should continue creating conditions to allow out-of-country voters adequate time to submit their ballots, while ensuring the secrecy of the vote. In order to reduce mailing periods, all states should consider allowing for electronic requests for postal ballots and the possibility for voters to receive ballots electronically.

### **Voting Technologies**

32. To help address security and reliability concerns of ageing equipment, the election jurisdictions should be mandated to review and periodically upgrade or replace existing outdated voting technology solutions. Such equipment should have a voter-verified paper audit trail to support methods to verify the machine-based vote counts.
33. Jurisdictions using Ballot Marking Devices for voting should provide comprehensive voter information to ensure that voters check that their ballots were marked as intended. In addition, scanning technologies that read and allow voters to verify their printed choices could be considered to ensure that there is no discrepancy of scrutinizing the ballots.
34. In order to enhance transparency and voter confidence, jurisdictions should consider the use of ballots in which all elements indicating voter's choices are human readable.
35. The Election Assistance Commission's mandate on certification of voting machines could be broadened to include the authority to decertify voting technologies based on emerging cyber security threats. The Commission's mandate on certification should be extended to voter registration systems, electronic poll books, ballot-on-demand solutions and results transmission systems.
36. To prevent unauthorized access to voting equipment due to security gaps, election officials in all jurisdictions should consider a detailed and formalized examination of their maintenance, storage, testing and set-up procedures to facilitate trust in the conduct of elections.
37. All jurisdictions relying on technology for voting, counting of votes and tabulation of results should mandate some form of a post-election audit as a results verification method.

### **Voting Technologies**

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

## ANNEX I: FINAL ELECTION RESULTS<sup>200</sup>

### Presidential and Vice-presidential elections

Presidential Candidate	Vice Presidential Candidate	Political Party	Electoral College		Popular Vote	
			Votes	%	Votes	%
Joseph R. Biden Jr.	Kamala D. Harris	Democratic	306	56.9	81,283,485	51.4
Donald J. Trump	Michael R. Pence	Republican	232	43.1	74,223,744	46.9
Jo Jorgensen	Spike Cohen	Libertarian	0	0	1,865,873	1.2
Howie Hawkins	Angela Walker	Green	0	0	399,116	0.3
Other candidates			0	0	439,862	0.3

### Election for Senate – Class II Senators<sup>201</sup> and Special Elections<sup>202</sup>

Political Party	Incumbent	Total Seats	Seats Won	Gain/Loss
Democratic	45	48	15 <sup>203</sup>	3
Republican	53	50	20 <sup>204</sup>	-3
Independent	2	2	0	0

### Elections for the House of Representatives

Political Party	Incumbent	Total Seats	Gain/Loss
Democratic	231	222 <sup>205</sup>	-9
Republican	197	211 <sup>206</sup>	+10
Other	1	0	-1

<sup>200</sup> Source: [Associated Press](#).

<sup>201</sup> Regular senate elections were conducted in 33 states: Alabama, Alaska, Arkansas, Colorado, Delaware, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming.

<sup>202</sup> There were also two special elections, one in Arizona and one in Georgia.

<sup>203</sup> Including 2 women.

<sup>204</sup> Including 5 women.

<sup>205</sup> Including 88 women or 40.0 per cent.

<sup>206</sup> Including 13 women or 6.5 per cent.

---

**ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION  
OBSERVATION MISSION**
**OSCE Parliamentary Assembly**

Michael Georg	Link	Special Co-ordinator	Germany
Kari	Henriksen	Head of Delegation	Norway
Ditmir	Bushati	MP	Albania
Ferran Joaquim	Costa Marimon	MP	Andorra
David	Stogmuller	MP	Austria
Reinhold	Lopatka	MP	Austria
Lukas	Mussi	MP	Austria
Andreas	Baker	OSCE PA Secretariat	Canada
Karla	Marikova	MP	Czech Republic
Pavel	Plzak	MP	Czech Republic
Silvia	Andrisova	MP	Czech Republic
Peter	Juel-Jensen	MP	Denmark
Malte	Larsen	MP	Denmark
Pia	Kauma	MP	Finland
Vilhelm	Junnila	MP	Finland
Stephanie	Koltchanov	OSCE PA Secretariat	France
Dorothee	Martin	MP	Germany
Katja	Keul	MP	Germany
Andrej	Hunko	MP	Germany
Andreas	Nothelle	OSCE PA Secretariat	Germany
Paul	Podolay	MP	Germany
Christoph	Neumann	MP	Germany
Freyja	Koci	MP	Germany
Gergely	Arato	MP	Hungary
Guido	Almerigogna	OSCE PA Secretariat	Italy
Paolo	Grimoldi	MP	Italy
Massimiliano	Ferrari	MP	Italy
Luigi	Augussori	MP	Italy
Vito	Vattuone	MP	Italy
Mauro	Del Barba	MP	Italy
Francesco	Mollame	MP	Italy
Roberto	Montella	MP	Italy
Gustave	Graas	MP	Luxembourg
Marie Josee	Lorsche	MP	Luxembourg

---

Claude	Haagen	MP	Luxembourg
Abdelkrim	El Hamss	MP	Morocco
Farahnaz	Karimi	MP	Netherlands
Luis Miguel	Da Graca Nunes	MP	Portugal
Andre	Guimaraes Coelho	MP	Portugal
Paolo	Rondelli	MP	San Marino
Michele	Muratori	MP	San Marino
Miodrag	Pančeski	OSCE PA Secretariat	Serbia
Gustavo	Pallares	OSCE PA Secretariat	Spain
Margareta	Cederfelt	MP	Sweden
Carina	Odebrink	MP	Sweden
Johan	Buser	MP	Sweden
Lars	Thomsson	MP	Sweden
Josef	Dittli	MP	Switzerland
Manuchekhr	Salokhudinov	MP	Tajikistan
Mykyta	Poturaiev	MP	Ukraine
Sergii	Rakhmanin	MP	Ukraine
Pavlo	Frolov	MP	Ukraine
Vitalii	Rudenko	MP	Ukraine

#### ODIHR LEOM Long-term Observers

Rigers	Bena	Albania
Gayane	Hovhannisyan	Armenia
Vusal	Behbudov	Azerbaijan
Elchin	Hagverdiyev	Azerbaijan
Aleksandar	Vasiljević	Bosnia and Herzegovina
Eliska	Flidrova	Czech Republic
Pavel	Herot	Czech Republic
Michal	Kucera	Czech Republic
Moreta	Bobokhidze	Georgia
Ingo	Buettner	Germany
Jana	Bürgers	Germany
Thomas	Fröhlich	Germany
Kristian	Kampfer	Germany
Natalie	Krieger	Germany
Janina	Markewitsch	Germany
Benjamin	Smale	Germany

---

Silke	Tittel	Germany
Christoph	Wiedemann	Germany
Veaceslav	Balan	Moldova
Aleksandra	Pajević	Montenegro
Filip	Pejović	Montenegro
Marija	Raspopović	Montenegro
Vidosava	Vulanović	Montenegro
Zoran	Ilievski	North Macedonia
Aleksandar	Sofronijoski	North Macedonia
Ružica	Jovanović	Serbia
Nenad	Marinković	Serbia
Johanna	Estermann	Switzerland
Martin	Minder	Switzerland
Zouhal	Avzalchoeva	Tajikistan

#### ODIHR LEOM Core Team

Urszula	Gacek	Head of Mission	Poland
Anna	Papikyan		Armenia
Vania	Angelova		Bulgaria
Priit	Vinkel		Estonia
Stéphane	Mondon		France
Caroline	Gonthier		France
Mikheil	Golijashvili		Georgia
Eirini-Maria	Gounari		Greece
Ahmad	Rasuli		Kyrgyzstan
Lolita	Cigane		Latvia
Goran	Petrov		North Macedonia
Jane	Kareski		North Macedonia
Ranko	Vukčević		Serbia
Ivan	Godársky		Slovakia
Farrukh	Juraqulov		Tajikistan

## ABOUT ODIHR

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

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

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

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

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

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

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

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

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