



Office for Democratic Institutions and Human Rights

# UNITED STATES OF AMERICA

## GENERAL ELECTIONS

4 November 2008

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

16 - 21 June 2008



Warsaw  
29 July 2008

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**UNITED STATES OF AMERICA**  
**GENERAL ELECTIONS**  
**4 November 2008**

**OSCE/ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation<sup>1</sup> to the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 4 November 2008 elections, the OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Washington DC from 16 to 21 June 2008. The NAM was comprised of Nikolai Vulchanov, OSCE/ODIHR External Election Expert, Gerald Mitchell, Head of the OSCE/ODIHR Election Department, and Nicola Schmidt, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess preparations for the upcoming general elections<sup>2</sup>, and to advise on a possible OSCE/ODIHR election-related activity. This report should be read in conjunction with the OSCE/ODIHR Final Reports on the 2004 and 2006 elections in the United States of America.<sup>3</sup>

The OSCE/ODIHR NAM held meetings in Washington DC with representatives of the Departments of State, Justice and Defense, the Election Assistance Commission, the Federal Election Commission, the Democratic National Committee (DNC) and the Republican National Committee (RNC) and civil society organizations (see annex for list of meetings).

The OSCE/ODIHR is grateful to the State Department for its co-operation and support provided prior and during the OSCE/ODIHR NAM. The OSCE/ODIHR also wishes to express its appreciation to representatives of other state institutions, election administration, political parties and civil society organizations for their co-operation.

**II. EXECUTIVE SUMMARY**

General elections will take place in the United States of America on 4 November 2008, comprising elections to the President of the United States, congressional elections for 33 seats in the US Senate and for all 435 seats in the House of Representatives. In addition, elections for state and local government authorities will also take place.

The United States of America has a long-standing tradition of democratic elections conducted under a system of decentralized government characterized by the rule of law, with free media and an active civil society. While federal legislation determines a number of minimum standards for the conduct of elections in the USA, elections for national office are largely regulated by state legislation reflecting the decentralization of government.

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<sup>1</sup> Letter of Ambassador Julie Finley, Head of the United States Mission to the OSCE, to the former OSCE/ODIHR Director, Ambassador Christian Strohal, 19 March 2008.

<sup>2</sup> The 2008 general elections include presidential, congressional and other elections.

<sup>3</sup> All reports from previous OSCE/ODIHR activities in the United States of America are available at: <http://www.osce.org/odihr-elections/14676.html>

These minimum standards for elections include protection of voting rights, voter registration and, following the adoption of the 2002 Help America Vote Act (HAVA), electoral reform. Deadlines to fully implement HAVA requirements have expired and states, with few exceptions, have achieved HAVA's targets. Issues remain regarding the establishment of state-wide voter registration databases, particularly in the state of New York.

The HAVA facilitated the introduction of direct recording electronic (DRE) machines for voting. Procedures and equipment vary across states. More than half of the states use DRE systems, with different requirements for voter verified paper audit trail (VVPAT). Some states use paper-based voting systems, primarily optical scan systems, and the state of New York still uses lever-voting machines. In recent years, there has been some return to paper-based voting systems, resulting in some states having to adapt to different voting technology in the upcoming elections.

Several states have moved towards introducing more stringent voter identification requirements. Some controversy, largely defined along party lines, surrounds this issue. Debate focuses on the importance of enfranchisement versus ballot integrity. A recent Supreme Court ruling which upheld the state of Indiana's voter identification law may influence passage and implementation of new voter identification laws in other states. A number of OSCE/ODIHR NAM interlocutors argued that voter ID requirements would disproportionately affect certain groups of the electorate.

Despite some recent changes in states' laws, some 5.3 million current and former felons remain disenfranchised due to prohibitive legal regulations, or cumbersome procedures requesting reinstatement of voting rights. In addition, only citizens of states are entitled to vote for congressional representation with full voting rights, leaving approximately 600,000 US citizens in Washington DC alone without full representation in Congress.

Legislation of a few states provides for the possibility of 'unopposed' candidates to become elected by default, since it is presumed that such a candidate would vote for her/himself. As in previous elections, due to delimitation of district boundaries, some congressional races are likely to remain uncompetitive.

Federal legislation provides for absentee voting for US citizens residing abroad, including members of the US uniformed services. Details are regulated by the states, enabling voters in some cases to return their marked ballots by electronic means, thereby forgoing secrecy in order to be able to cast a ballot. Turnout in the primary season was high due to increased efforts at voter registration and all OSCE/ODIHR NAM interlocutors expect voters, including voters abroad, to turn out in record numbers in November. This could lead to a lack of resources, especially voting equipment, and problems with the capacity of polling boards due to a lack of trained personnel.

A specific characteristic of US elections is its high level of campaign expenditure. The 2008 primaries saw unprecedented amounts of funds raised by the aspiring presidential candidates. Controversy ensues about the decision of one presidential candidate to opt out of the system of public financing of the general election campaign. OSCE/ODIHR NAM interlocutors expect further issues with campaign finance in the run up to the elections, especially with regard to the possibilities of campaign funding through

alternative means that are not clearly subject to the strict disclosure and transparency requirements for direct campaign funds.

OSCE/ODIHR NAM interlocutors have, as during previous OSCE/ODIHR NAMs, expressed concerns about reported intentional suppression of the vote through deceptive practices such as misinformation campaigns and organised challenges to the eligibility of voters in polling stations. These allegations underscore certain perceptions of fraudulent activities and likewise some deficiency of confidence in the process on behalf of some citizens.

The United States of America, in line with OSCE commitments, has regularly invited the OSCE/ODIHR to observe elections for federal office. Despite an absence of minimum standards for access of observers to elections in all states, the OSCE/ODIHR NAM was granted full support by all interlocutors to facilitate access of international observers throughout the United States. This reflects the good cooperation that the OSCE/ODIHR has received from the National Association of Secretaries of State in this regard.

The OSCE/ODIHR recommends the establishment of a Limited Election Observation Mission (LEOM) for the 4 November 2008 general elections. The OSCE/ODIHR LEOM will assess the upcoming elections in the context of the 1990 OSCE Copenhagen Document and other international standards for democratic elections. In addition to the deployment of a core team of election experts, the OSCE/ODIHR will request OSCE participating States to second 100 long-term observers to be deployed throughout the country for approximately one month. According to standard practice, an OSCE/ODIHR LEOM does not envisage comprehensive and systematic observation of election day procedures, although members of the OSCE/ODIHR LEOM will visit polling stations around the country on election day.

### **III. BACKGROUND**

The United States of America has a long-standing tradition of democratic elections. The 4 November 2008 elections comprise elections to the President of the United States of America, congressional elections for 33 seats in the Senate and for all 435 seats in the House of Representatives as well as other elections in various states and counties.

Incumbent President George W. Bush has completed two terms in office and is ineligible to stand for re-election. Following an intense primary election season, the presumptive candidates for the office of the presidency will be Republican Senator John McCain of Arizona and Democratic Senator Barack Obama of Illinois. Their nominations await confirmation at the respective national party conventions later this year.<sup>4</sup> Independent or third-party candidates are expected to run, even though their chances to win are overall perceived as limited.

It is likely that most attention will focus on the presidential race, which is expected to be eagerly contested after a fiercely fought primary race among Democratic Party contenders and controversies regarding the current administration's policies. Previous

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<sup>4</sup> The Democratic National Convention will take place from 25 to 28 August in Denver, Colorado, and the Republican National Convention from 1 to 4 September in Minneapolis-Saint Paul, Minnesota.

elections brought issues to the fore which resulted in increased reform efforts, especially after the 2000 presidential election, as underlined by HAVA legislation. These issues, however, have also contributed to perceptions about problems with the election process and a commensurate decrease in confidence on the part of some citizens.

The OSCE/ODIHR undertook Election Assessment Missions (EAMs) to follow the congressional mid-term elections in 2002, with a focus on the state of Florida, and in 2006. In 2004, the OSCE conducted an Election Observation Mission (EOM) of a targeted nature for the general elections. All elections were assessed in terms of their compliance with OSCE commitments contained in the OSCE 1990 Copenhagen Document and other international standards for democratic elections. The OSCE/ODIHR concluded that previous elections reflected the long-standing democratic tradition of the United States of America and mostly met OSCE commitments. Despite institutions governed by the rule of law, free and generally professional media and an active civil society, the OSCE/ODIHR identified some issues, as elaborated in its previous reports, which would benefit from attention by the relevant authorities and other election stakeholders.

#### **IV. FINDINGS**

##### **A. LEGAL FRAMEWORK AND ELECTION SYSTEM**

###### **Election System**

The President of the United States is elected by a special body introduced in the Constitution of 1789, the Electoral College. The Electoral College consists of US citizens (Electors) elected by popular vote with the sole task of electing the President and Vice President of the United States. Each state elects a number of Electors equal to the sum of senators and the number of representatives of that state to the House of Representatives; Washington DC, which has no full representation in Congress, elects three Electors. With few exceptions, Electors are elected through the “winner takes all” system<sup>5</sup> whereby the list of Electors for a presidential candidate that wins the popular vote in a state takes all the Electors of that state. It is noteworthy that a presidential candidate can secure a majority of votes in the Electoral College without winning the popular vote nationwide.

The US federal legislature, the bicameral Congress, consists of the Senate and the House of Representatives. The Senate has 100 seats. Two members are elected from each state by popular vote, mostly according to the first-past-the-post system, to serve six-year terms. One third of the Senate is up for election every two years.<sup>6</sup>

The House of Representatives has 435 seats. Representatives are elected by popular vote in single-seat constituencies, according to the first-past-the-post system, to serve two-year terms. The number of seats in the House of Representatives that each state has varies according to the states’ populations and is updated every ten years, following a census, to ensure equal representation and at least one seat in the House per state. The next census is anticipated for 2010 and no redistricting will take place for the upcoming

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<sup>5</sup> Or first-past-the-post (FPTP) system.

<sup>6</sup> See Annex II for the list of the Class II Senators whose seats are up for election on 4 November 2008.

elections. There are increasing demands that redistricting be moved away from state legislators and towards independent entities, i.e. specially appointed commissions such as in the states of Arizona, Hawaii, Idaho, Montana, New Jersey and Washington. Some interlocutors expressed hope that such a shift would lead to more competitive election districts. However, previous proposals for reform of the redistricting process were defeated in state referendums in 2005.<sup>7</sup>

The electoral system of the United States is highly devolved to the states and even counties within each state. Elections are conducted according to respective state legislation in all 50 States and other territories; often polling procedures vary even in different counties in the same state. The electoral system thus reflects the principles of decentralization and autonomy which states enjoy under the federal system of government.

### Legal Framework

As determined by the Constitution of the United States<sup>8</sup>, implementation of elections is left to the states; federal law and oversight is limited to providing minimum standards. Details of the voting process are regulated by state laws and some decisions are taken at county level. This results in a significant number of different legal frameworks under which elections are conducted, impacting differently on voting rights, as well as on procedures, according to states. A number of interlocutors indicated that some more uniformity in the conduct of elections for federal office might benefit the electoral process overall.

There are several federal legal acts that regulate aspects of the election process. The 1965 Voting Rights Act (VRA) protects the right of racial and linguistic minorities by outlawing discriminatory practices. The validity of Section 5 of the Act which requires approval by Congress for changes made to election practices and procedures in certain states, and Section 203 requiring provision of bilingual materials and assistance in certain jurisdictions, was extended by Congress for another 25 years in 2006.

The 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, Overseas Voting Act) requires the Department of Defense to facilitate absentee voting by citizens living abroad, including those in the armed forces. The 1993 National Voter Registration Act (NVRA) introduced reforms intended to ease the voter registration process. The 1971 Federal Election Campaign Act (FECA) and the 2002 Bipartisan Campaign Reform Act (BCRA) regulate campaign income and expenditures, and provide for detailed reporting. Decisions of the judiciary interpreting legal provisions, such as decisions by the US Supreme Court, also constitute part of the legal framework for elections. The Supreme Court recently upheld Indiana's voter identification law and ruled as unconstitutional the Millionaires' Amendment of the McCain-Feingold Law passed in 2002. This amendment had increased contribution limits for candidates whose opponents have the means to contribute substantial sums from their personal funds to their own campaigns. Further cases pertaining to voting rights and election reform in front of the Supreme Court are expected.

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<sup>7</sup> See OSCE/ODIHR NAM Report for 2006 Mid-term Congressional Elections, available at: [http://www.osce.org/documents/odihr/2006/07/19987\\_en.pdf](http://www.osce.org/documents/odihr/2006/07/19987_en.pdf)

<sup>8</sup> Article 1, Section 4.

The problems identified during the 2000 general elections prompted unprecedented bipartisan action on electoral reform, resulting in the 2002 Help America Vote Act (HAVA). HAVA stipulates a number of minimum standards for federal elections and includes measures aimed at addressing the above-mentioned problems. HAVA's requirements primarily related to voting system standards, provisional ballots, voting information, state-wide voter registration databases, voter identification requirements for by-mail registration of first time voters and access for voters with disabilities. All deadlines for implementation of HAVA expired on 1 January 2006 and all federal funds released under HAVA have been appropriated.

The Department of Justice (DoJ) monitors compliance by states with provisions of HAVA and the VRA. A number of states missed the deadlines for establishment of state-wide voter registration databases resulting in DoJ lawsuits against these states in federal courts. Most resulted in agreements reached with the states in question and extension of deadlines for full compliance. At the time of writing, only the state of New York remains behind in implementation of HAVA requirements and is involved in an ongoing lawsuit with the DoJ. Some interlocutors criticized the DoJ as politicized and applying laws selectively focusing on specific states.

## **B. ELECTION ADMINISTRATION**

Reflecting the decentralized nature of the election system in the United States, each state has its own election administration arrangements with ultimate authority often resting with the Secretary of State of the respective state. Lower levels of election administration may also vary within a state. Often, election administrators occupy elected positions, usually on party tickets. While there would appear to be widespread confidence in the performance of election administrators, the Carter-Baker Report on Federal Election Reform recommended the introduction of non-partisan election administration bodies.<sup>9</sup> OSCE/ODIHR NAM interlocutors attributed potential problems to lack of training and a widespread shortage of poll workers rather than to partisanship.

There is no central election administration body responsible for the conduct of elections across the United States. Rather, there are two federal election bodies with limited and specific mandates; both are appointed by the President and confirmed by the Senate.

The bi-partisan four-member Election Assistance Commission (EAC), established by HAVA, is an advisory body, issuing guidelines and recommendations, most recently polling manuals and information for poll workers in different minority languages. The EAC also administered payments to states for meeting the HAVA requirements. A few OSCE/ODIHR NAM interlocutors expressed concern that the EAC is moving towards more partisan decision-making than has previously existed in the commission.

The Federal Election Commission (FEC) is an independent regulatory agency that administers and enforces the federal campaign finance legislation. It has six voting members including the chairperson, three Democrats and three Republicans, and about 350 staff. After a standoff over the appointment of new commissioners that lasted several months, the FEC was fully functioning again as of 27 June. For several months, the FEC included only two commissioners rendering it unable to pass important decisions for which four votes are needed. During this period, the FEC staff continued

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<sup>9</sup> Building Confidence in U.S. Elections, Report of the Commission on Federal Election Reform (Carter-Baker Commission), 2005, available at: <http://www.american.edu/ia/cfer/>.



their tasks, including the collection and disclosure of monthly campaign finance reports from the candidates. The FEC is sometimes criticized as being designed for deadlock; however, the OSCE/ODIHR NAM was informed that most decisions are taken unanimously.

### **C. ELECTORAL REFORM**

The past years have witnessed efforts at electoral reform, underscored by HAVA legislation outlining the main areas of reform required. Other reform initiatives included the Commission on Federal Election Reform (the Carter-Baker Commission) which issued a comprehensive report on modernizing the electoral system, as well as recommendations to raise confidence in the system. The conduct of election reform and relevant policy making has been the focus of criticism by some who view reform as being hampered by partisanship and suspicion.

Six years after HAVA, legislation may be discussed in Congress to require electronic voting systems to provide independent verification of each ballot cast by different means, including by a paper, electronic, or other independently produced record. Such legislation may also require audits and disclosure requirements for vendors of voting equipment and the adoption of standards for integrity as well as training of poll workers, contingency plans, voting system testing and certification, and improved ballot design.

HAVA was criticized by some OSCE/ODIHR NAM interlocutors as having provided public financing without proper conditionality, but overall is thought to have effected important changes in election administration across the United States.

#### **Voter registration**

HAVA required states to compile state-wide voter registration databases. With the exception of the state of New York, all states appear to be in compliance with this requirement. Nevertheless, OSCE/ODIHR NAM interlocutors identified problems with the database and voter list maintenance also in Alabama, Colorado, Indiana, Texas and Wisconsin. Some interlocutors expressed doubts as to the functioning of the databases and the matching standards employed by states for the database against other records, for example motor registration or civil records. As the compilation and maintenance of the database is the individual state's responsibility, there is neither a uniform system of compiling the database nor uniform matching standards.

Some interlocutors also expressed concerns whether voters who newly registered during registration drives during the primary season will be on the voter register for general elections. Possible undue purges of eligible voters from the voter lists due to matching errors were also mentioned as a concern.

#### **Voting equipment**

Substantial funds were made available under HAVA to update or replace voting systems and machines with new voting equipment, mostly direct-recording electronic (DRE) machines encouraged by HAVA, and optical scan technology. HAVA mandated that the EAC accredit voting system test laboratories and certify voting equipment upon voluntary participation by the states. Four voting system testing laboratories are currently accredited by the EAC. In 2005, the EAC published the Voluntary Voting

System Guidelines which provide specifications and requirements against which voting systems can be tested, and establish evaluation criteria for the certification of voting systems. Currently, 39 states use these guidelines in their voting system certification process.

The transition to different voting machines following the adoption of HAVA was of some concern to OSCE/ODIHR interlocutors, who worried about technical malfunctions, lack of training for poll workers in their usage and a lack of contingency plans by polling boards in cases of malfunctioning. According to interlocutors, paper-based optical scan systems seem to enjoy more trust than DRE systems, but interlocutors expressed concerns regarding transparency and functionality.

The use of touch-screen DRE devices appears to be receding in favour of paper-based optical scan systems. Currently, 17 states use paper-based voting systems, primarily optical scans, and 32 states use DRE systems with different requirements for voter verified paper audit trails (VVPAT). Use of VVPAT was recommended by the OSCE/ODIHR in its reports on previous US elections. However, approximately 15 states do not have a paper trail for their voting system. The state of New York still uses lever-voting machines.

### **Provisional ballots**

HAVA provides that provisional ballots must be provided to voters who, upon arrival at the polling station, believed that they were registered but did not find their names on the voter list. The procedures for issuance, verification and counting of provisional ballots, as well as deadlines for the latter activities, vary across and within states. Some OSCE/ODIHR NAM interlocutors expressed concerns about the potential impact of this aspect of decentralization on the election day procedures for the upcoming elections.

### **Voter identification**

HAVA introduced voter identification requirements for first-time voters who did not provide a copy of their photo ID when they registered by mail. Such voters have to show a photo ID on election day. Other voter identification requirements vary from state to state, with states accepting different forms of identification. However, several states have moved towards requiring photo ID, with some requiring proof of citizenship from voters, for example Arizona. Notably, the Carter-Baker Report recommended the introduction of national identification documents for US citizens free of charge.

A recent Supreme Court ruling which upheld the state of Indiana's voter identification law may influence passage and implementation of new voter identification laws in other states. Some OSCE/ODIHR interlocutors expressed concerns about the implementation of the Supreme Court decision, which does not rule on the constitutionality of the Indiana law as such, as stakeholders may be searching for new facts to bring to the attention of the Court in the hope of reversing the ruling.

There is a long-standing debate on voter identification throughout the United States. This debate is largely defined along party lines and focuses on the issues of enfranchisement versus electoral safeguards and ballot integrity. Republicans generally argue that voter ID requirements are necessary to uphold the integrity of the ballot, as means for prevention of impersonation and possible multiple voting. So far, mostly

Republican-dominated state legislatures have passed voter ID laws. Democrats argue that voter ID requirements can lead to disenfranchisement and intimidation of citizens. It is also argued that voter ID requirements would disproportionately affect certain groups, cited as potential supporters of the Democratic Party, such as lower-income citizens, African-Americans and the elderly. Due to the sometimes costly procedure of acquiring the necessary document, voter ID requirements are criticized by some as a modern day poll tax which would be unconstitutional.<sup>10</sup>

#### **D. OTHER FINDINGS**

##### **Absentee, out of country and by mail voting**

All states provide voters with the possibility of absentee voting by mail. In addition, several states allow early or in-person absentee voting. Oregon votes entirely by mail, and Washington and California do so to a large extent. As with other aspects of the election process, the administration of absentee ballots varies from state to state.

Under the Overseas Voting Act, all 50 states and five territories are required to provide United States citizens living abroad with the possibility to vote. The Federal Voting Assistance Program of the Department of Defense facilitates this process and undertakes impressive efforts to ensure the right to vote of an estimated 6 million voters abroad, including 2 to 3 million uniformed services personnel. These include access to voter registration and ballot request forms, as well as receipt of ballots via a secure internet site. The Overseas Voting Act stipulates that voters who have not received a ballot in time to send it back for election day can use a 'back-up ballot', the Federal Write-In Absentee Ballot (FWAB). This ballot is accepted by all states for the general elections; some states also allow the FWAB to be used for other elections.

To ensure the right to vote for citizens abroad, states can make specific arrangements for returning voted ballots and their counting, including accepting transmission of voted ballots by fax or email and late counting of absentee ballots. In case of electronic transmission of voted ballots, the voter has to waive the secrecy of the vote, raising concerns over secrecy and security of the marked ballot.

##### **Unopposed candidates**

Several states include modalities for candidate nomination and election providing for so-called 'unopposed candidates', when there is only one candidate either in the primary or general election for congressional office. Some states' legislation presumes that the candidate will vote for her/himself; the candidate is therefore deemed elected by default. Such unopposed candidacies may be a result of pragmatic approaches to elections in constituencies which provide little electoral competition. In the 2006 mid-term congressional elections a reported 34 candidates had no opponents, and several of them became members of the House by default.<sup>11</sup> The OSCE/ODIHR NAM was not informed of intentions to change this practice.

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<sup>10</sup> Amendment XXIV of the US Constitution provides that the right to vote shall not be denied "by reason of failure to pay any poll tax or other tax".

<sup>11</sup> See OSCE/ODIHR Election Assessment Mission Final Report, 2006, p. 9, and The New York Times, 6 November 2006: [www.nytimes.com/2006/11/06/us/politics/06unopposed.html](http://www.nytimes.com/2006/11/06/us/politics/06unopposed.html)

## **Allegations of voter suppression**

Several OSCE/ODIHR NAM interlocutors raised concerns alleging intentional suppression of the vote through deceptive practices such as systematic challenges of voters, local misinformation campaigns disseminating incorrect information on timing and places of voting, insufficient numbers of voting machines in lower-income communities, and introduction and application of stringent voter ID requirements. There is no legal prohibition of such deceptive practices, and it is difficult to establish evidence of such instances or attribute them to organized efforts. However, such allegations reflect perceptions of fraud and some deficiency of confidence in the process on the part of some citizens.

## **Voting Rights**

Each state regulates restriction of voting rights in its legislation. It is estimated that some 5.3 million United States citizens are prohibited from voting because of a felony conviction; some 2 million of these have completed their sentence.<sup>12</sup> Only two states permit prison inmates to vote while 48 states and Washington DC prohibit citizens from voting while incarcerated for a felony offense. Two states permanently disenfranchise people with a felony conviction and eight states disenfranchise some offenders unless the respective governor approves special applications to have their right to vote restored.

While improvement was reported regarding the restoration of voting rights for ex-felons, there is no automatic re-enfranchisement once the sentence is completed and the process of restoring voting rights often remains cumbersome. The OSCE/ODIHR NAM was informed that ex-felons rarely take advantage of the possibility to reinstate their right to vote and are particularly vulnerable to voter list purges.

According to the Constitution, United States citizens who are not citizens of one of the 50 states are not able to vote for members of Congress who have full voting rights in Congress. It is estimated that up to 600,000 citizens in Washington DC alone, without including citizens in US territories, are subject to US laws including taxation and permitted to vote in the presidential election, but cannot fully exercise their voting rights for Congressional representation. Legislation granting citizens living in Washington DC voting representation in Congress was passed by the House of Representatives in April 2007 but has yet to be passed by the Senate.

## **Campaign Finance**

Campaign spending in US elections is essentially unlimited by law, as freedom to spend on campaigning is equated with freedom of speech. The high level of campaign expenditure is a striking feature of US elections. Despite interest in alternative models of campaign finance, constraints resulting from the First Amendment to the Constitution, which enshrines the right to free speech, have made it difficult to introduce effective legal limits on campaign spending.

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<sup>12</sup> According to The Sentencing Project and the American Civil Liberties Union:  
[www.sentencingproject.org/IssueAreaHome.aspx?IssueID=4](http://www.sentencingproject.org/IssueAreaHome.aspx?IssueID=4) and  
[www.aclu.org/votingrights/exoffenders/statelegispolicy2007.html#text](http://www.aclu.org/votingrights/exoffenders/statelegispolicy2007.html#text).

The 2008 presidential primary season highlighted this phenomenon with over 900 million US Dollars (USD) raised so far by all presidential candidates participating. The presumptive Democratic nominee, Senator Obama, has reportedly succeeded in raising unprecedented funds via the internet through small donations by individual donors. Presidential candidates can use public funds in their campaign; candidates who accept the grant of 84.1 million USD agree not to raise private contributions and to limit their campaign expenditures to the amount of public funds they receive. For the first time in a general election since the introduction of the current public funding system in 1974, one of the presumptive candidates, Senator Obama, has decided to opt out of receiving public funds. This move was criticized by commentators and highlights controversy surrounding campaign finance in the US elections. In addition, a complaint is pending with the FEC by the Democratic National Committee against the presumptive Republican nominee, Senator McCain, for violating campaign finance provisions during the primaries.

While there are limits to individual campaign contributions, there are no limits on spending unless candidates accept public money for their campaign. The FECA of 1971 and the BCRA of 2002 regulate financial activity and provide for transparency of campaign expenditure, but do not regulate contributions and activities by so-called “501c” and “527” organizations, named after the Internal Revenue Code sections defining their federal tax status. These organizations have been active in previous elections, providing opportunities to candidates to circumvent campaign finance regulations. Controversy about their activities in the upcoming elections is expected. However, OSCE/ODIHR NAM interlocutors expect that with new guidelines issued by the Internal Revenue Service, activities may be subject to more scrutiny.

## **Turnout**

Several OSCE/ODIHR NAM interlocutors expected high turnout in the upcoming elections and anticipate potential problems with the capacity of polling boards due to a lack of trained personnel. Voter registration drives during the primaries have resulted in increased participation and this increased number of voters may lead to a lack of resources, especially voting machines, and more voter challenges during the general election. It is also expected that overseas voters will participate in record numbers, raising concerns about the timely return and counting of their ballots. Efforts are underway to train poll workers, including students as college poll workers.

## **E. ELECTION OBSERVATION**

In keeping with its commitments as an OSCE participating State, the United States of America have regularly invited the OSCE/ODIHR to observe elections for federal office. However, there are no minimum standards for access of observers to US elections and most states have yet to introduce specific legislation to regulate election observation. In previous elections, OSCE/ODIHR observers were, in most cases, granted access to all levels of the election administration. The resolution of the National Association of Secretaries of States (NASS) of 24 July 2005 welcoming “international observers from OSCE member countries to the United States”, providing access for observers, and encouraging election administrators to support international election observation, remains valid. All OSCE/ODIHR NAM interlocutors welcomed an observation activity by the OSCE/ODIHR and have committed their support to ensure access of international observers as relevant.

The Department of Justice deploys federal observers to monitor states' compliance with VRA and HAVA requirements, and whether provisions of previous lawsuits are implemented.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

While the United States of America has a long-standing tradition of democratic elections, several issues raised in previous OSCE/ODIHR reports, and those highlighted by OSCE/ODIHR NAM interlocutors, merit further attention. The OSCE/ODIHR therefore recommends the establishment of a Limited Election Observation Mission (LEOM) for the 4 November 2008 general elections. The OSCE/ODIHR LEOM will assess the upcoming elections in the context of the 1990 OSCE Copenhagen Document and other international standards for democratic elections. In addition to the deployment of a core team of election experts, the OSCE/ODIHR will request OSCE participating States to second 100 long-term observers to be deployed throughout the country for approximately one month. According to standard practice, an OSCE/ODIHR LEOM does not envisage comprehensive and systematic observation of election day procedures, although members of the OSCE/ODIHR LEOM will visit polling stations around the country on election day.

## **ANNEX I – LIST OF MEETINGS**

### **U.S. State Department**

Daniel Fried, Assistant Secretary of State for Europe and Eurasia

David Kramer, Assistant Secretary of State for Democracy, Human Rights and Labor

Bruce I. Turner, Deputy Director, Office of European Security and Political Affairs

John M. Underriner, Deputy Director/ OSCE Coordinator

Rene BeBeau, OSCE Special Advisor

J. Andrew Plowman, OSCE Desk Officer

### **U.S. Department of Justice, Civil Rights Division**

Asheesh Argawal, Deputy Assistant Attorney General

Emily B. Smith, Attorney, Voting Section

### **Department of Defense**

Polli Brunelli, Director, Federal Voting Assistance Programme

J. Scott Wiedmann, Deputy Director, Federal Voting Assistance Programme

### **Federal Election Commission**

Ellen L. Weintraub, Commissioner

### **Election Assistance Commission**

Rosemary E. Rodriguez, Chair

Thomas R. Wilkey, Executive Director

### **National Association of Secretaries of State**

Leslie D. Reynolds, Executive Director

### **United States Senate Committee on Rules and Administration**

Veronica M. Gillespie, Elections Counsel

### **U.S. Commission on Security and Cooperation in Europe**

Fred L. Turner, Chief of Staff

Ronald J. McNamara, International Policy Director

John J. Finerty, Staff Advisor

### **U.S. Commission on Civil Rights**

David P. Blackwood, General Counsel

Robert Lerner, Assistant Staff Director

Leonore Ostrowsky, Attorney Advisor, Office of the Staff Director

### **Democratic National Committee**

Joseph E. Sandler, Attorney at Law

Anna Martinez, Deputy Political Director, Voter Protection

Paola Luisi, Executive Assistant to the Executive Director

### **Republican National Committee**

Tom Josefiak, OF Counsel

## **Civil Society Organizations**

### AEI/Brookings Election Reform Project

John C. Fortier, Research Fellow, American Enterprise Institute  
Thomas E. Mann, Senior Fellow and the W. Averell Harriman Chair Governance Studies, Brookings

### Common Cause

Lauren Coletta, Director of International Programs  
Tova Wang, Vice President of Research  
Susannah Goodman, Director – National Campaign for Election Reform

### American University, Center for Democracy and Election Management

George M. Guess, Scholar in Residence in Public Administration and Policy, Co-Director  
Alison L. Prevost, Project Manager, Carter-Baker Commission on Federal Election Reform  
Vassia Gueorguieva, Ph.D. Candidate in Public Administration

### Electionline.org

Doug Chapin, Project Director



## ANNEX II – LIST OF SENATORS WHOSE TERMS EXPIRE IN 2009<sup>13</sup>

Senators in Class II were elected to office in the November 2002 general election. Their terms run from the beginning of the 108th Congress on January 3, 2003 to the end of the 110th Congress in January 2009.

### Democrats

Baucus, Max (D-MT)  
Biden, Joseph R., Jr. (D-DE)  
Durbin, Richard (D-IL)  
Harkin, Tom (D-IA)  
Johnson, Tim (D-SD)  
Kerry, John F. (D-MA)  
Landrieu, Mary L. (D-LA)  
Lautenberg, Frank R. (D-NJ)  
Levin, Carl (D-MI)  
Pryor, Mark L. (D-AR)  
Reed, Jack (D-RI)  
Rockefeller, John D., IV (D-WV)

### Republicans

Alexander, Lamar (R-TN)  
Allard, Wayne (R-CO)  
Chambliss, Saxby (R-GA)  
Cochran, Thad (R-MS)  
Coleman, Norm (R-MN)  
Collins, Susan M. (R-ME)  
Cornyn, John (R-TX)  
Craig, Larry E. (R-ID)  
Dole, Elizabeth (R-NC)  
Domenici, Pete V. (R-NM)  
Enzi, Michael B. (R-WY)  
Graham, Lindsey (R-SC)  
Hagel, Chuck (R-NE)  
Inhofe, James M. (R-OK)  
McConnell, Mitch (R-KY)  
Roberts, Pat (R-KS)  
Sessions, Jeff (R-AL)  
Smith, Gordon H. (R-OR)  
Stevens, Ted (R-AK)  
Sununu, John E. (R-NH)  
Warner, John (R-VA)

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<sup>13</sup> Source: [http://www.senate.gov/pagelayout/reference/two\\_column\\_table/Class\\_II.htm](http://www.senate.gov/pagelayout/reference/two_column_table/Class_II.htm)