

INTERIM REPORT
3–22 October 2018

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I. EXECUTIVE SUMMARY

- Mid-term congressional elections will take place on 6 November 2018 to elect 35 of the 100 Senators and all 435 members of the House of Representatives. A total of 1,262 candidates are standing for a seat in Congress, including a record high number of women.
- The electoral legal framework is complex and diverse. Detailed rules are only to be found at the state and sub-state level. There are few nationwide requirements for procedural uniformity. Several states have introduced amendments, principally regarding voter registration, early voting, and the voting rights of those with criminal convictions. Disputes regarding voter identification, documentary proof of citizenship, early voting, and criminal disenfranchisement procedures are the subject of ongoing litigation.
- States are responsible for administering elections, with duties often delegated to some 10,500 jurisdictions across the country. An expected 185,000 polling stations will be established. Early voting, in-person or by absentee ballot, is ongoing across the country. There is no federal body overseeing the entire electoral process.
- The use of new voting technologies is extensive and varies considerably across the country. While there is a general trend to return to paper-based voting, 15 states continue to use voting machines without a voter-verified paper trail, five exclusively.
- Efforts have been undertaken to enhance the security of election technologies, including the replacement of outdated voting machines, the creation of cyber-defense capacity, cyber-security trainings, and the installation of intrusion detection systems in most states. Most ODIHR Limited Election Observation Mission (LEOM) interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cyber-security risks. At the same time, some shared concerns about the possibility of real and alleged cyber-attacks and their potential impact on public confidence.
- The right to vote is subject to many limitations. Some 4.7 million citizens resident in the District of Columbia and in US territories are denied full representation in Congress. State laws disenfranchise an estimated 6.1 million citizens with criminal convictions, half of whom have served their sentences, with racial minorities disproportionately impacted. Restrictions on voting rights based on intellectual disability or guardianship are extensive and vary across the country.
- Voter registration is active and implemented at state level, with rules varying between states. Enhanced efforts to facilitate registration include online voter registration and the increasing use of automatic voter registration. Voter identification is a highly charged issue, divided largely along partisan lines on the balance between electoral integrity and inclusiveness. In the upcoming elections, 17 states will require voters to show photo identification.
- The election campaign is taking place within an increasingly polarized political environment at the national level. The recent confirmation process of a Supreme Court nominee further hardened political debate. The campaign is active and has seen a number of grassroots movements, based

around issues such as gender and race, gaining political traction among voters. Many ODIHR LEOM interlocutors expressed concerns with regard to possible online disinformation campaigns.

- Campaign finance is regulated and enforced at the federal level. The law includes clearly defined limits on amounts and sources of donations, but no expenditure limits. House candidates raised nearly USD 1.5 billion during the first nine months of 2018. While strict disclosure rules are being adhered to, some non-profit organizations are exempt, raising transparency concerns.
- The media landscape is pluralistic and diverse, albeit increasingly polarized. The legal framework favours self-regulatory mechanisms and few rules are in place regulating campaign coverage by broadcast media, and none for print and online media. Many media outlets have raised concerns about increased verbal attacks on news media and journalists.
- Election observation is regulated by state law. Explicit restrictions on observation of voting by international observers are in place in 18 states. While federal government departments and agencies have supported and facilitated the work of the ODIHR LEOM, several state political and electoral authorities have declined to meet with ODIHR LEOM observers.

II. INTRODUCTION

Following an invitation from the US government to observe the 6 November 2018 mid-term congressional elections, and based on the recommendation of a Needs Assessment Mission conducted from 21 to 25 May, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 3 October.¹ The LEOM, led by Tana de Zulueta, consists of a 13-member core team based in Washington, DC, and 36 long-term observers deployed throughout the country. Mission members are drawn from 16 OSCE participating States.

III. BACKGROUND

The US is a federal presidential republic comprising 50 states, the District of Columbia, and a number of overseas territories. The President holds executive power, serving as head of state and government, with legislative power vested in Congress, consisting of the Senate and the House of Representatives.

On 6 November, voters will elect 35 of 100 Senators and all 435 Representatives.² The last Congressional elections, held in 2016, resulted in a Republican majority in both the Senate and House. Women are under-represented in Congress, holding some 20 per cent of seats and 25 per cent of leadership positions.³ Minorities and Native Americans are also underrepresented, comprising some 19 per cent of seats.⁴ Organizations working with persons with disabilities report that, while there are no accurate data, persons with disabilities remain underrepresented in elected office.⁵

The pre-electoral period was marked by a series of legal and congressional investigations regarding cyber security threats and foreign interference in US elections.⁶ In January 2017, the Department of

¹ See previous [ODIHR election-related reports on the United States](#).

² Thirty-three Senate seats are contested in regular elections and 2 (Minnesota and Mississippi) in special elections.

³ Women hold 5 of 19 leadership positions in the Senate, and 2 out of 9 in the House. See data from the [Center for American Women and Politics](#).

⁴ See data from the [Pew Research Center](#).

⁵ See data from the [National Council on Independent Living](#).

⁶ See the 8 May 2018 Senate Select Committee on Intelligence Summary of Initial Findings and Recommendations on "[Russian Targeting of Election Infrastructure During the 2016 Election](#)", and the 22 March 2018 House Select Committee on Intelligence Report on "[Russian Active Measures](#)" (redacted). There is an ongoing investigation by a [Special Counsel](#) appointed by the Attorney General in May 2017 to investigate "Russian interference with the 2016 presidential election and related matters".

Homeland Security (DHS) designated US election infrastructure as part of the nation's critical infrastructure (see *New Voting Technologies and Cyber Security* section).

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The Constitution sets out a broad framework for federal elections, as well as fundamental civil and political rights. A discrete body of federal law focuses on protecting the voting rights of racial and linguistic minorities, military and overseas voters, and persons with disabilities, as well as providing minimum standards for voter registration and comprehensive regulation of campaign finance. Otherwise, power to make election laws and conduct elections is largely decentralized. Detailed rules are only to be found at the state and sub-state level, resulting in an electoral legal framework that is complex and diverse, with few requirements of uniformity of practice. At the federal level, there have been no changes to electoral legislation since the last elections. Several states have, however, introduced amendments, principally regarding procedures for voter registration, early voting, and the voting rights of those with criminal convictions. The US is a party to many major international and regional instruments related to democratic elections.⁷

Responsibility for the enforcement of federal election law lies with the Department of Justice (DoJ). There is a legislative gap as the Supreme Court struck down the formula for determining what jurisdiction should be subject to preclearance of changes to electoral law or practice under the Voting Rights Act (VRA) in 2013, and Congress has failed to enact any alternative.⁸ Several ODIHR LEOM interlocutors expressed concern that the absence of a formula for preclearance is permitting new rules and procedures that have a discriminatory impact on minorities, with respect to all aspects of elections including voter registration and voting. Section 2 of the VRA, which prohibits discrimination in voting based on race or color, or language minority status, continues to apply. Actions may be initiated by private individuals or civic groups. While courts can adjudicate electoral disputes, the costs can be prohibitive and litigation may take several years to complete. There are actions currently before several state courts concerning voter identification, documentary proof of citizenship, early voting, criminal conviction disenfranchisement, absentee ballots, and voter registration.

Senators and Representatives are elected directly, primarily in first-past-the-post contests. Each state is represented in the Senate by two Senators who serve staggered six-year terms, with no state's two Senators scheduled to be elected in the same year. Each state is represented in the House by at least one Representative and the remaining seats are allocated to states proportional to their population. All Representatives serve two-year terms. The drawing of House districts is conducted by states. The Supreme Court dealt with four cases on redistricting this year, but in none has there been a substantive ruling on the matter.⁹ Instances of partisan and racial redistricting are alleged, with litigation having been initiated within states on boundary redrawing. Irrespective of judicial determinations, there will likely be no changes implemented before these elections.¹⁰ New methods of redistricting, principally through independent commissions, are on ballots in several states.

V. ELECTION ADMINISTRATION

The election administration is highly decentralized, with no federal body mandated to oversee the entire electoral process. States are responsible for administering elections, with duties often delegated to some 10,500 jurisdictions across the country. An expected 185,000 polling stations will be

⁷ However, although signed, the US has not ratified the 1979 Convention for Elimination of All Forms of Discrimination against Women and the 2006 Convention on the Rights of Persons with Disabilities. The US ratified the 1966 International Covenant on Civil and Political Rights in 1992, with a number of reservations, understandings, and declarations.

⁸ See [Shelby County v Holder](#).

⁹ See [Abbott v Perez](#), [Benisek v Lamone](#), [Gill v Whitford](#) and [Rucho v Common Cause](#).

¹⁰ [Purcell v Gonzalez](#) determines that election law cannot be changed close to elections.

established. At least 13 states allow for the establishment of vote centres, where voters may cast their ballots regardless of their residential address within a jurisdiction.

Overall authority to administer elections at the state level varies considerably. In 26 states, the chief election official is the elected secretary of state or lieutenant governor. In eight states, the chief election official is selected by the elected legislature or governor. In nine states, a bipartisan board oversees elections, while seven states use a combination of a chief election official and a board. A similar variety of electoral authorities exist at the sub-state level. In some states, chief election officials are contestants in the elections that they administer; this has been raised in media as a potential concern related to their impartiality, which can undermine public confidence.

The bipartisan Election Assistance Commission (EAC) provides guidance on meeting the requirements of the 2002 Help America Vote Act (HAVA) and serves as a clearinghouse for information about election administration. It is also tasked to develop guidelines to test and certify new voting technologies (NVT). Although the EAC does not currently have a quorum for decision making, it is proactively supporting states and counties in preparing for the upcoming elections.

State-level election officials met with by the ODIHR LEOM appear competent and committed to delivering elections in line with rules and established deadlines. Some officials indicated difficulties in recruiting and training poll workers. State and county websites are widely used as platforms to provide information on a variety of electoral topics to voters, as well as guidance and training materials for election officials. Various state and civil initiatives have been undertaken to inform people with disabilities about their rights and the particularities of voter registration, but some interlocutors have expressed concerns that some polling places may remain inaccessible.¹¹

VI. NEW VOTING TECHNOLOGIES AND CYBER SECURITY

The use of NVT is extensive and varies considerably across and within states and jurisdictions. Most states use more than one type of voting machine, either because of county variations or to accommodate voters with disabilities or language needs. There is a general trend to return to paper-based voting and 42 states and the District of Columbia currently use optical or digital scanners in conjunction with paper ballots. Direct Recording Electronic (DRE) voting machines without a voter-verified paper trail (VVPAT) are used in 15 states, with 5 states using it exclusively. In comparison, DREs with a VVPAT are in use in 17 states. To ensure the integrity of the results, 30 states and the District of Columbia require post-election audits, 3 states require risk-limiting audits (RLAs), and several counties are piloting RLAs.¹²

Federal and state authorities boosted a number of initiatives to help secure election technologies, including from cyber threats. Following the DHS designation of election infrastructure as critical infrastructure in January 2017, a new Sector Specific Agency was created to share information and good practice to prevent and respond to attacks on election infrastructure, particularly in respect of cyber security. In January 2018, Congress allocated USD 380 million to enhance technology and security in election administration. The funds were distributed in their entirety by the EAC to all 50 states, the District of Columbia, and the US territories.¹³ Funds were used to replace outdated voting machines, harden existing computer and network infrastructures, and to build cyber-security capacity.

¹¹ The [American Association of People with Disabilities \(AAPD\) opposes](#) closing polling places under the pretext that they are not “ADA accessible”.

¹² An RLA is a procedure for manually checking a sample of ballots or voter-verifiable paper records from an electronic voting device that will have a large, prespecified chance of correcting an erroneous election outcome.

¹³ California received the largest amount (USD 35.5 million), but no state received less than USD 3 million. See the [HAVA funds chart view](#).

Most ODIHR LEOM interlocutors expressed confidence in the integrity of election infrastructure and assessed positively efforts from all levels of administration to mitigate cyber security risks and conduct post-election audits. At the same time, some shared concerns about the possibility of real and alleged cyber-attacks and the impact that they may have on public confidence.

VII. VOTER RIGHTS, REGISTRATION, AND IDENTIFICATION

The right to vote is subject to many limitations. Some 4.7 million citizens resident in the District of Columbia and in US territories are denied full representation in Congress. State laws disenfranchise an estimated 6.1 million persons with criminal convictions, half of whom have served their sentences. Further, even for those who are not legally deprived of the right to vote, voting facilities are rare in jails and prisons. These laws and practices have a disproportionate impact on racial minorities, whom are overrepresented in the penitential system.¹⁴ Restrictions on voting rights based on intellectual disability or guardianship are extensive and vary across the country.¹⁵

Voter registration is active and implemented at state level, with minimum conditions provided by the 1993 National Voter Registration Act. Voters may register in person, by post or through an authorized third party. Voter registration rules vary from state to state and several initiatives have been undertaken to facilitate registration. Online voter registration is possible in 37 states and the District of Columbia. Similarly, automatic voter registration has been introduced ahead of these elections in four states and the District of Columbia. In contrast to these initiatives, the Supreme Court in June 2018 ruled that removals from voter lists due to inactivity, as practiced in Ohio, do not violate federal voter registration law.¹⁶

Voter registration databases are used in electronic poll books to identify voters in polling stations in 32 states, and at least 17 of these states do not require polling stations to maintain a paper backup of electronic poll book databases. Vulnerability of voter registration databases to possible cyber-attacks was raised as a concern by many ODIHR LEOM interlocutors. States allowed registration until at least 7 October. Considerable efforts were undertaken to inform voters about the necessity to register and to motivate them to do so. In many states, registration continued after 7 October. Seventeen states and the District of Columbia allow same-day voter registration before and on election day.

State laws and procedures for maintaining voter lists vary. HAVA mandates states to co-ordinate and match their voter registration databases with state and federal databases.¹⁷ Many states participate in inter-state projects such as the Electronic Registration Information Center (ERIC) and the Interstate Voter Cross-Check Program (IVCP).¹⁸ Various state initiatives undertaken to improve voter list accuracy have raised concerns among civil society, at times perceived as an attempt to limit access to the vote for certain social groups. For example, the registration of 53,000 people was put on hold in the state of Georgia because of mismatches in their documents.

For the upcoming elections, 34 states will require voters to show some form of identification before voting, 17 of which require photo identification.¹⁹ While there has been just one legal change to photo identification requirements since the last elections, voter identification remains a highly charged issue,

¹⁴ [Report](#) of the Sentencing Project on Racial Disparities in the US Criminal Justice System, March 2018. Measures of [reform to restore voting rights](#) are being introduced across the US. There is an initiative on the ballot in Florida to restore the voting rights of those with convictions for all but the most serious of crimes, which, if passed, would restore the rights of around 1.4 million people.

¹⁵ Twenty-five states disqualify based on court adjudication of [incapacity or guardianship](#) status.

¹⁶ See [Husted v. Randolph](#).

¹⁷ Databases include the state databases of the Motor Vehicle Authority and the federal database of the Social Security Agency, as well as state records of deceased people and prisoners.

¹⁸ Currently, 24 states and the District of Columbia participate in [ERIC](#), and 30 states participate in [IVCP](#).

¹⁹ Alabama, Arkansas, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Rhode Island, South Dakota, Tennessee, Texas, Virginia, and Wisconsin.

divided along partisan lines on the balance between electoral integrity and inclusiveness. HAVA requires that provisional ballots be provided to voters who believe they are registered at a locality but cannot be found on the voter list. State regulations and deadlines for verifying and counting provisional ballots vary widely. On 9 October, the Supreme Court ruled to uphold a North Dakota voter identification law that requires a residential address on a driver's license or ID to vote and will not accept a post office box address, except with supplementary proof of a residential address.²⁰ Several organizations of Native Americans expressed the view that this newly applicable law unduly impacts access to vote for certain parts of the population.

VIII. CANDIDATE REGISTRATION

Candidacy requirements are provided in the Constitution with additional registration requirements established by state law. All states offer the possibility for recognized political parties to nominate candidates. The definition of a 'recognized' party varies, depending either on the number of registered voters declaring their association with the party or the number of votes that the party received in previous elections. Smaller political parties and independent candidates may run if they collect a certain number of supporting signatures, typically several months before election day. The number of signatures required and the deadline for submitting signatures vary by state. Several ODIHR LEOM interlocutors noted that, in some states, meeting these requirements may be challenging for smaller parties or independent candidates who as a rule have more limited financial and human resources. The majority of states also allow for voters to 'write-in' candidates.

Following primary elections held between March and September, a total of 1,262 candidates are standing in the congressional elections. Forty-two House candidates from one of the main two parties are running unopposed. A record number of women are standing in elections for both chambers. In the 35 seats for the Senate, of the 53 women who filed as candidates, 23 are running as candidates on 6 November, while for the House, out of 476 women who filed, 239 are running as candidates. At least 11 persons with disabilities are standing as candidates in these elections.²¹

IX. ALTERNATIVE VOTING METHODS

Early voting is underway across the country, with modalities and deadlines varying from state to state. While all states mail an absentee ballot to voters on request, Colorado, Oregon and Washington conduct elections entirely by postal ballot. Early voting is conducted in person in 37 states and the District of Columbia, with the early voting period starting from 45 days before election day.

Overseas voters may register and request an absentee ballot, including by Federal Post Card Application (FPCA). In line with the law, states distribute ballots to voters abroad at least 45 days prior to election day. If the ballot is not received in time to return it before election day, voters can use a 'back-up' Federal Write-In Absentee Ballot (FWAB). Alternatively, 31 states allow electronic transmission to return the absentee ballots through web portal, email, fax, and mobile voting applications, requiring voters in some instances to waive the secrecy of their vote. The Federal Voting Assistance Program (FVAP), under the Department of Defense (DoD), supports states in administering out-of-country voting by facilitating voter registration and ballot requests, as well as providing information to voters and election officials.²² The DoD informed the ODIHR LEOM that it simplified the FPCA and FWAB, to make them easier for voters to complete, and conducted training for voting assistance officers abroad.

²⁰ The voter ID law was introduced in 2013, but a court stay meant that it was not in effect for the 2016 elections.

²¹ See [National Council on Independent Living](#).

²² The FVAP estimates the total number of out-of-country voters to be above 3 million.

X. CAMPAIGN ENVIRONMENT AND CAMPAIGN FINANCE

These elections take place within an increasingly polarized political environment. The recent confirmation of a Supreme Court nominee appears to have amplified existing political party divisions in a campaign already characterized by sharp and intolerant rhetoric. Candidates increasingly tailor their platforms to appeal more to their respective core party bases than to undecided voters.²³ On the Republican side, President Donald Trump and former President George W. Bush were observed campaigning heavily across the country, visiting a number of battleground states in support of congressional and state-level candidates.²⁴ On the Democratic side, former Presidents Barack Obama and Jimmy Carter, former Vice President Joe Biden, former Secretary of State Hillary Clinton and former First Lady Michelle Obama campaigned extensively in support of Democratic candidates.²⁵

Since the 2016 elections, a large number of established or newly emerging grassroots movements began to gain further political prominence, campaigning on issues related to women's rights, racial equality, gun control, and reducing federal government intervention.²⁶ In particular, groups dealing with women's participation played a pivotal role in terms of energizing women to be candidates and active voters. Some of the main campaign issues include the economy, illegal immigration and control of borders, healthcare reform, education, and a range of prominent local issues.

In addition to traditional media and in-person campaigning, the use of social media by candidates, political parties and outside interest groups continues to increase, both as a means to communicate directly to voters, as well as to place targeted advertisements. Many ODIHR LEOM interlocutors have expressed concerns related to online disinformation campaigns, including from foreign sources and bots, and their effect on the current electoral process. ODIHR LEOM interlocutors have also expressed concern about the transparency of online advertising. However, it was noted that there are legislative initiatives to enhance disclosure of online advertisements in Congress and state legislatures as well as a number of policy revisions made by some of the main social media networks.²⁷

Campaign finance is regulated by federal law, which includes clearly defined limits on amounts and sources of donations but no expenditure limits. There is no public funding for congressional elections. Campaigns may be funded by individuals, political parties, and Political Action Committees (PACs). Foreign or anonymous donations are prohibited, as are donations from corporations and trade unions. Court rulings, however, have confirmed the right of corporations and trade unions to finance PACs and non-profit organizations as a form of "independent speech". Non-profit organizations, for which political campaigning is not the primary purpose, are not obliged to disclose their donors, which raises transparency concerns, with the sources of so-called "dark money" unknown. Strict disclosure and reporting requirements imposed on candidates, political parties and PACs are being adhered to. House

²³ On 2 October in a rally in Mississippi, President Trump mocked the testimony of one woman who had claimed that the Supreme Court nominee had sexually assaulted her during college. On 12 October, in Kentucky, former Vice President Biden criticized President Trump for "trashing American values". On 12 October, the Virginia state Republican Party posted on social media that one of the Democratic House candidates "hates veterans, hates [Immigration and Customs Enforcement], hates Israel" and that "basically, [the candidate] hates America."

²⁴ For example, Arizona, Florida, Iowa, Kentucky, Maine, Minnesota, Ohio, Tennessee, Texas and West Virginia.

²⁵ During the campaign, former President Obama has issued two rounds of endorsements to Democratic candidates.

²⁶ Examples of progressive leaning movements working in this area include [#MeToo](#), [Emily's List](#), [Black Lives Matter](#) and [March for Our Lives](#), while conservative-aligned movements include the [National Rifle Association](#), [Americans for Prosperity](#), [American Action Network](#), [Susan B. Anthony List](#) and [Freedom Works](#).

²⁷ See [Honest Ads Act](#) introduced in Congress. In Maryland, the [Online Electioneering Transparency and Accountability Act](#) came into effect on 1 July, while other states, such as Connecticut, Seattle and Washington, are considering similar policy initiatives. Social media advertising remains largely unregulated. California passed regulations on online advertising, while Facebook and Twitter have undertaken some self-regulation.

candidates together have raised nearly USD 1.5 billion, the most money ever raised at this stage in a House campaign.²⁸

The Federal Election Commission (FEC) enforces campaign finance law. Due to current vacancies, unanimity of the four members is required to reach new policy decisions. Many ODIHR LEOM interlocutors assess that this negatively affects the FEC's work. The FEC issued new guidance on reporting by persons that make independent expenditures aggregating in excess of USD 250 with respect to a given election in a calendar year, following the Supreme Court decision in *CREW v FEC*.²⁹ New reporting rules are applicable to the Senate for this election, requiring electronic filing of returns, which should expedite public disclosure. The FEC has conducted extensive outreach activities to assist candidates to comply with their obligations.

XI. MEDIA

While the media landscape is highly polarized, it is at the same time pluralistic and diverse. Major cable TV channels and local TV channels belonging to the major television networks dominate the consumption of political news, but there is an increasing shift towards online media and social networks. There are two major public networks: Public Broadcasting Service (PBS), a TV network, and National Public Radio (NPR). They enjoy a growing audience, in particular NPR.³⁰

The legal framework for media provides sound protection for media independence, with Supreme Court decisions and self-regulation mechanisms affirming that no limits should constrain freedom of speech. The 1934 Communications Act, the 1996 Telecommunications Act, and Federal Communications Commission (FCC) regulations outline the basic regulatory framework for broadcasters, including provisions pertaining to election periods. The FCC oversees broadcast media implementation of the regulations but does not conduct systematic media monitoring. Print and online media are not bound by statutory requirements. The FCC repeal of the 2015 Open Internet Order, which barred providers from blocking or slowing down access to content or charging consumers more for certain content, went into effect in June 2018.

During the 60 days prior to federal elections, commercial broadcasters must provide “reasonable access” to all legally qualified federal candidates who request to purchase airtime. Candidates can purchase paid political airtime at the lowest sum charged for a comparable commercial advertisement on a channel-by-channel basis. In line with the law, advertisements include sponsorship identification and all broadcasters are maintaining a publicly accessible ‘political file’ of all requests to purchase airtime.³¹ FCC regulations also provide for an ‘equal opportunity’ rule, granting a candidate the right to request airtime on equal conditions offered by a broadcaster to another candidate running for the same office. These rules apply only to candidates and not to their supporters, and there are exceptions to the equal opportunity rule, so as to protect editorial freedom, including regarding appearance on newscasts, scheduled interviews, and debates. As non-commercial broadcasters, PBS and NPR are prohibited from airing paid advertisements.

²⁸ From January to September 2018 Democrat House candidates had raised USD 876 million, while Republican House candidates had raised USD 597 million. Figures [published by Center for Responsive Politics](#), based on filings reported by the FEC.

²⁹ The [Supreme Court decision](#) from 18 September 2018, allowed an order of the US District Court for the District of Columbia to vacate Commission regulation 11 CFR 109.10(e)(1)(vi) to come into effect. New guidance, 316 F. Supp. 3d 349, was issued to fill the gap.

³⁰ See the 6 June [Public Broadcasting Fact Sheet](#) by the Pew Research Center.

³¹ See the [FCC Report and Order from 28 January 2016](#). All [files](#) are accessible to the public.

Many media outlets have raised concerns about increased verbal attacks on news media and journalists, politicians being selective in which outlets they talk to, and a general decline in trust in the media.³²

On 17 October, the ODIHR LEOM commenced its quantitative and qualitative assessment of political and election-related coverage by several major media outlets.³³

XII. ELECTION OBSERVATION

In line with its OSCE commitments, the US Government invited ODIHR to observe the upcoming elections. Federal government departments and agencies have supported and facilitated the work of the ODIHR LEOM. However, observation is regulated by state law, which usually does not explicitly provide for international observers.³⁴ California, Missouri and New Mexico and the District of Columbia provide for international observers by law, and four additional states have statutory language that is inclusive of many types of observers, which may include international observers.³⁵ At least eight states allow the public to observe elections, while other state laws are silent on observation, leaving it to the discretion of election officials. Explicit restrictions on observation of voting by international observers are in place in 18 states.³⁶ Since the 2017 designation of elections as critical infrastructure, concerns regarding the presence of international observers have been raised, and the political and electoral authorities of several states have declined to meet with ODIHR LEOM observers. The DoJ intends to deploy monitors to follow state compliance with federal election law. Election day observation by political parties and civil society is expected to be widespread and is widely seen to add an important layer of oversight and transparency.

XIII. ODIHR LEOM ACTIVITIES

The ODIHR LEOM commenced its work in Washington, DC, on 3 October. The Head of Mission has met with the Department of State, Department of Justice, Federal Election Commission, National Association of Secretaries of State, National Association of State Election Directors, and members of the diplomatic community, among others. The ODIHR LEOM has also established contacts with the election administration at various levels, government institutions involved in the electoral process, as well as representatives of political parties, citizen observers, media and civil society. The OSCE Parliamentary Assembly (PA) will deploy an observer delegation for election day observation. The OSCE PA President, Mr. George Tsereteli, has been appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observer mission.

³² At the Republican rally in Montana on 18 October, the president praised the unprovoked assault on a journalist by the state's congressman, Greg Gianforte.

³³ The sample includes the following broadcast media: *PBS*, *NPR*; three television networks – *ABC*, *CBS* and *NBC*; three cable television channels – *CNN*, *Fox News* and *MSNBC*; the newspapers *New York Times* and *USA Today*; the online news websites *Politico.com*, *HuffingtonPost.com*, *Vox.com*, *Breitbart.com* and *TheDailyCaller.com*. In addition, the LEOM is following state-level and local media.

³⁴ A National Association of Secretaries of State resolution welcomes “OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law”.

³⁵ Hawaii, North Dakota, South Dakota and Virginia.

³⁶ Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Indiana, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia and Wyoming.