

## **INTERNATIONAL ELECTION OBSERVATION MISSION United States of America – Mid-term Congressional Elections, 8 November 2022**

### **STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

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#### **PRELIMINARY CONCLUSIONS**

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The November 8 mid-term congressional elections were competitive and professionally managed, with active voter participation. However, the noted efforts to undermine voters' trust in the electoral process by baselessly questioning its integrity can result in systemic challenges. Campaigning was free but highly polarized and marred by harsh rhetoric. In many cases, partisan redistricting resulted in uncompetitive constituencies. Disclosure mechanisms for campaign finance are generally comprehensive, but loopholes in the regulatory framework make the impact of money in politics less transparent. Many in the diverse media landscape made efforts to present accurate information, but polarization and widespread disinformation affected voters' ability to inform themselves. Election administrators enjoyed general confidence, but the politicization of the offices of chief election officials and the intimidation of election workers are of concern. Restrictions on international observers in some states are at odds with OSCE commitments.

The electoral legal framework is complex and diverse, with states adopting and applying their own laws and regulations on most aspects. The Constitution and a number of federal laws establish a broad framework for federal elections and form a sound basis for the respect of fundamental civil and political rights. The federal legal framework has not changed since the 2020 elections. States enacted more than 400 separate bills or amendments since the last elections. Citizens living in the District of Columbia and U.S. territories lack full voting rights, and restrictions remain on the voting rights of convicted criminals and persons with intellectual disabilities, contrary to OSCE commitments. A number of other ODIHR priority recommendations remain unaddressed.

Following the 2020 population census, the 435 House seats were reapportioned among the states, and electoral districts were redrawn. Redistricting is highly political, with state legislatures responsible for delimitation in 33 states, and external commissions in the remaining 11. A total of 78 legal challenges were filed against congressional district maps, often alleging partisan or racial gerrymandering and court decisions changed district maps in 8 states. In designing the maps, competent bodies use algorithms which at times take into account politically favourable variables, including past voting results and racial demographics at precinct level. As currently implemented, redistricting does not fully ensure competitiveness, representativeness, and the fair representation of minorities, which is at odds with international standards.

States are responsible for managing elections, with some 6,460 entities administering elections in jurisdictions across the country. In 41 states, elections are completely or partly managed by elected or appointed officials, many of whom ran for re-election. While International Election Observation Mission (IEOM) interlocutors generally expressed trust in the work of election administrators, the political affiliation of the chief election administrators is at odds with international standards, possibly creates conflicts of interests and may diminish trust in the electoral process.

Harassment, threats and instances of violence against candidates, their families, and election officials were of concern, as was voter intimidation. Congress allocated funds for election security, including to counter threats against election administrators, and a joint taskforce of the Department of Justice (DoJ) and the Federal Bureau of Investigation was created to gather information on threats and to address these at the federal level. Numerous ODIHR Limited Election Observation Mission (LEOM) interlocutors expressed concerns with the lack of local resources for effective organization

of elections in specific jurisdictions and in some states threats against election workers created problems recruiting and maintaining staff. In most cases, the funds available from the states were severely limited, while federal funding was mainly earmarked for equipment and security.

Voting rights are subject to numerous restrictions. Some 4.1 million citizens residing in the District of Columbia and U.S. territories lack full representation in Congress. In all but two states, as well as the District of Columbia, and Puerto Rico, the voting rights of inmates and former felons are restricted. Some voters with intellectual incapacities remain disenfranchised in all but ten states. Such restrictions contravene OSCE commitments and international standards for universal and equal suffrage.

Voter registration is active, and implemented at the state level, with rules varying between states. Thirty-five states require some form of voter identity document (ID). Voter ID requirements are in line with good practice and safeguards for election integrity. However, in some states, voter IDs were not equally accessible to all eligible citizens, often as the result of the selective application of rules, with some minorities and economically disadvantaged communities disproportionately affected, thus infringing on their right to equal suffrage, challenging OSCE commitments.

A total of 1,277 candidates, among them 335 women, stood for Congress. Women remain under-represented in political office. Seventeen House candidates ran unopposed. In some states, burdensome requirements for registration, including a high number of supporting signatures, limited the opportunities for smaller political parties and independent candidates to run, which is at odds with OSCE commitments and international standards.

Alternative voting methods include early in-person and absentee voting, providing multiple options for voters to cast their ballots. Early voting of some type is allowed in 47 states, and absentee voting is possible in all states with variations in eligibility. While absentee voting does not guarantee the secrecy of the vote, the convenience of these methods was seen by the majority of ODIHR LEOM interlocutors as increasing participation in the electoral process, and most were confident of their integrity. Disproven claims by politicians and commentators in the media that absentee ballots and the use of ballot drop boxes resulted in fraud in the 2020 elections negatively impacted trust in the current election process.

The campaign was highly competitive, with discussion of the economy and inflation, as well as abortion rights, prominent across the country. Political campaigns by both major parties were intensely divisive and used inflammatory rhetoric. Some candidates and prominent commentators invoked racist and transphobic tropes. A number of Republican candidates in key races, including candidates for secretary of state who would have direct responsibility for overseeing future elections in their states, challenged, or refused to accept the legitimacy of the 2020 results. This had a harmful effect on public discourse and decreased confidence in a system that largely relies on public trust. Threats of violence or aggressive behaviour were reported by interlocutors, or in the media in 23 of the 30 states observed, targeting voters, election administrators, officials, campaigners, and media representatives.

Campaign finance is regulated by federal law and enforced by the Federal Election Committee (FEC) and the DoJ. The disclosure of incomes and expenditures by candidates, party, and 'independent' committees provides reasonable transparency of their funding. This is undermined by the lack of disclosure by tax-exempted organizations involved in the campaign, raising concerns over the undue influence of interest groups over candidates, and obscuring voters' awareness of the influence such interest groups may have on candidates and elected officials. Furthermore, the legally required separation between campaigns and 'independent' committees is easily circumvented and has limited effect. The FEC's enforcement capability is frequently affected by the inability to muster

the votes required to make a decision and by the FEC's prosecutorial discretion to dismiss administrative complaints, leaving complainants without the right to judicial review.

While pluralistic and diverse, the media landscape is highly polarized. Derogatory comments and legal action against media by certain political actors, compounded by online misinformation and disinformation, have contributed to declining trust in traditional news media. Overall, the media provided a wide range of election-related information. National media coverage of the elections was extensive and vibrant, with a focus on competitive Senate races and dominant campaign topics such as the economy, inflation, abortion rights, crime, and the state of democracy. The findings of ODIHR LEOM media monitoring showed a clear dominance of the two major parties, with competitive Senate races receiving the most coverage in the national media. In addition, President Biden received significant media coverage, largely neutral in tone, while most of the monitored media criticized former President Trump, mostly out of the context of these congressional campaigns.

Major social networks adjusted their policies for restricting the spread of misleading and harmful content, but these policies did not prevent candidates and others from disseminating inflammatory rhetoric. Some niche social networks, purposefully avoiding the content moderation policies of the more established platforms, allowed election-related hate-speech. Misleading information was widely present, and though primarily related to the unsubstantiated voter fraud allegations concerning the 2020 presidential election, it had the effect of diminishing trust in the current electoral process.

Lawsuits were brought against new electoral legislation and implementing regulations. Litigation was largely driven by the diverging interests and perspectives of the two main parties. While broad legal standing and multiple avenues provided for electoral dispute resolution, late decisions pertaining to key issues including voter identification and registration, as well as voting and counting procedures might result in inconsistent and potentially selective implementation. Cases relating to whether state courts have the competence to review congressional district maps adopted by state legislatures, and whether the use of racial demographics in redistricting in order to provide for fair representations of minorities should be maintained, remain pending before the U. S Supreme Court.

Election observation is regulated by state law, with the rules regulating observers' access to the different stages of the process varying widely between states. Fifteen states do not allow for international election-day observation. The wide variance of rules for observer access and their different application, detract from the transparency of the election process and are at odds with OSCE commitments.

The use of New Voting Technologies is extensive and varies considerably across and within states. Ballot scanners combined with automatic tabulation are used in almost all jurisdictions. Voters in jurisdictions in six states must use machines which do not provide a paper record and cannot be audited. Most states require or have the option for post-election audits (PEAs), which are a crucial in identifying possible malfunctioning of tabulating equipment. However, not all states that conduct PEAs are required to complete them before the certification of an election. Federal and state authorities introduced numerous initiatives to help secure election technologies and mitigate potential cybersecurity risks. Overall, ODIHR LEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cybersecurity risks.

IEOM observers assessed election day as calm, peaceful and orderly overall. IEOM observers reported no cases of threats of violence against election officials or voters from polling stations where they observed. Poll workers in the limited number of polling stations visited by IEOM observers were knowledgeable, and well-prepared overall, with almost all polling stations visited accessible for voters with disabilities. Prescribed procedures were generally followed, although in

some instances, the secrecy of the vote was not always maintained. The partisan poll watchers whom IEOM observers encountered at polling stations during voting hours acted in an orderly and professional manner. IEOM observers assessed the closing of polling stations, the vote count, and the initial stages of the tabulation of results, in places observed, as professional, orderly, and efficient.

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## **PRELIMINARY FINDINGS**

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### **Background and Political Context**

On 8 November, in line with the U.S. Constitution, mid-term congressional elections were held for all 435 voting members of the House of Representatives, and for 35 of the 100 seats in the Senate. Elections were also held for 36 governors, other positions in state and local executives, and a total of 6,279 seats in 88 of 99 chambers of state legislatures. In 36 states, votes were held on a total of 129 ballot measures.

The previous congressional elections, held in November 2020, resulted in the Democratic Party having a total of 50 senators and 222 representatives and the Republican Party holding 50 seats in the Senate and 213 in the House.<sup>1</sup> Of the states that held gubernatorial elections in these elections, 20 were governed by Republicans and 16 by Democrats.<sup>2</sup> Women remain under-represented in political office; the vice president and five of the 15 departmental heads in cabinet are women, as are 24 per cent of the Senate and 28 per cent of the current House, and only nine governors are women.<sup>3</sup> Racial and ethnic minorities comprise 36 per cent of citizens but only 23 per cent of the current members of Congress, despite increases compared to previous elections.<sup>4</sup> There are four governors from racial and ethnic minorities.

These elections were marked by unsubstantiated claims regarding the integrity of the outcome of the 2020 presidential elections. The IEOM assessed the 2020 general elections as “competitive and well managed despite legal uncertainties and logistical changes.”<sup>5</sup> Political, economic, and social issues discussed in the months before the elections included concerns about inflation and potential economic recession; the June 2022 Supreme Court decision in *Dobbs v. Jackson Women’s Health Organization* regarding the right to abortion; gun control; crime; and immigration policy. Despite numerous recounts, investigations, and court cases which disproved claims of widespread fraud, former President Donald Trump, Republican candidates, and commentators continued to question the results of the 2020 elections.<sup>6</sup> In the run-up to these elections, the former president was subpoenaed by the House of Representatives committee investigating the violent attack on the U.S. Capitol on 6 January 2021, and also faced law enforcement and judicial investigations into his actions dating from before, during and after his presidency, which kept him at the centre of political debates and contributed to a political discourse which has remained marred by a high degree of polarization.

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<sup>1</sup> According to the Constitution, the vice president has the casting vote if there is a tie in the Senate; accordingly, the Democrats have the status of majority, allowing them to chair committees giving them other congressional advantages. At the time of these elections, as a result of three vacancies in the House, and special elections held since November 2020, the Democrats had 220 representatives, and the Republicans 212. The 117<sup>th</sup> Congress continues in office until 3 January 2023.

<sup>2</sup> Most of these were last contested in 2018. New Hampshire and Vermont are the only two states with two-year terms of office for their governors.

<sup>3</sup> See a [press release](#) and [data](#) from the Center for American Women in Politics.

<sup>4</sup> See a report by the [Pew Research Center](#).

<sup>5</sup> See the International Election Observation Mission’s [Statement of Preliminary Findings and Conclusions](#).

<sup>6</sup> See fact checking coverage by Reuters of [state recounts](#) and [unsuccessful lawsuits alleging electoral fraud](#).

## Legal Framework

The U.S. is party to international and regional instruments related to democratic elections.<sup>7</sup> The Constitution establishes the fundamental law of the country. It sets out a broad framework for federal elections as well as fundamental civil and political rights. These are supplemented by various federal laws that protect the voting rights of racial and linguistic minorities, and that regulate campaign finance, voting by persons with disabilities, and military and overseas voting. Federal laws also provide minimum standards for New Voting Technologies (NVT).<sup>8</sup> A number of previous ODIHR priority recommendations remain unaddressed, such as those relating to the disenfranchisement of citizens living in the District of Columbia and U.S. territories, as well as restrictions on the voting rights of convicted criminals and persons with intellectual disabilities.

State laws prescribe virtually all detailed aspects of the electoral process and, as such, a variety of laws and regulations exist across states, resulting in an electoral framework that is complex and diverse. In addition, decisions by courts interpreting federal and state laws have the ability to change important aspects of the electoral process. The Purcell principle affirms the stability of law by ruling that courts should proceed cautiously when deciding whether to intervene in the lead-up to an election.<sup>9</sup> However, case law does not define the “proximity” to an election, which has resulted in varied interpretation and uneven application of the principle, with some cases litigated in the days leading up to elections.<sup>10</sup> Across states, parties to litigation initiated or joined cases shortly ahead of the elections, thereby impacting the timeliness of court decisions. Late changes to the legal framework in some cases negatively impacted electoral participants’ understanding of the jurisprudence and may undermine the credibility of electoral processes, contrary to international good practice.<sup>11</sup>

The federal legal framework has not changed since the 2020 elections, but numerous bills addressing a broad range of election-related issues are pending in both the House and Senate. Most notably, two comprehensive electoral reform bills, the For the People Act and the John R. Lewis Voting Rights Advancement Act, were passed in the House in 2021 but failed to reach the floor of the

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<sup>7</sup> The U.S. has signed but not ratified the [1979 Convention for Elimination of All Forms of Discrimination against Women](#) (CEDAW) and the [2006 Convention on the Rights of Persons with Disabilities](#) (CRPD). The [1966 International Covenant on Civil and Political Rights](#) (ICCPR) was ratified in 1992, with a number of [reservations and declarations](#). In particular, the Senate declared that “the provisions of Article 1 through 27 of the Covenant are not self-executing.” Thus, while the ICCPR is binding upon the U.S. as a matter of international law, it does not necessarily form part of domestic law. The U.S. is also a member of the Council of Europe’s Group of States against Corruption and the European Commission for Democracy through Law (Venice Commission). The US has signed, but not ratified the American Convention on Human Rights.

<sup>8</sup> These include the [1965 Voting Rights Act](#) (VRA), the [1984 Voting Accessibility for the Elderly and Handicapped Act](#) (VAEHA), the [1986 Uniformed and Overseas Citizens Absentee Voting Act](#) (UOCAVA), the [1990 Americans with Disabilities Act](#) (ADA), the [1993 National Voter Registration Act](#) (NVRA), the [2009 Military and Overseas Voting Empowerment Act](#) (MOVE), the [2002 Help America Vote Act](#) (HAVA).

<sup>9</sup> See *Purcell v. Gonzalez* (2006), in which the U.S. Supreme Court established (i) that federal district courts ordinarily should not enjoin state election laws in the period close to an election; and (ii) that federal appellate courts should stay injunctions when lower federal courts contravene that principle. In *Reynolds v. Sims* (1964), the Supreme Court also ruled that “[i]n awarding or withholding immediate relief, a court [...] should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles”.

<sup>10</sup> For example, due to late challenges, litigations on regulating absentee ballots and mail-in ballots were ongoing in New York and Pennsylvania, respectively, while voting by these means was already under way.

<sup>11</sup> Section II.2.b. of the Venice Commission’s 2002 [Code of Good Practice in Electoral Matters](#) recommends that “the fundamental elements of electoral law [...] should not be open to amendment less than one year before an election.” Paragraph 63 of the [Explanatory Report to the Code of Good Practice](#) states that “[s]tability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy.”

Senate.<sup>12</sup> As proposed, the bills would have addressed a number of long-standing ODIHR recommendations. Congress has yet to enact an alternative formula for determining jurisdictions required to undergo preclearance by the Department of Justice (DoJ) before making changes to their election procedures.<sup>13</sup>

States have enacted more than 400 new bills or amendments, similarly to previous election cycles.<sup>14</sup> Some bills expand the use of alternative voting mechanisms, including for persons with disabilities, while others remove such possibilities that were largely introduced during the 2020 elections, in response to the COVID-19 pandemic.<sup>15</sup> A number of new bills impose proof of citizenship or voter identification as a precondition for voting. Some states criminalize intimidation of voters and election officials. Other states impose civil and criminal penalties for various election irregularities.<sup>16</sup> While such penalties have the stated aim of upholding the rule of law, their extensive mandate and enforcement mechanisms in some states may have an intimidating effect on election workers and voters, including former felons.<sup>17</sup>

## Electoral System and Redistricting

Congress consists of the Senate and the House of Representatives. Congressional elections are held every two years to elect one third of the 100 senators and all 435 representatives. Senate electoral districts correspond to the entire state, with each state electing two senators. Representatives are elected from single-member districts. All states have at least one representative in the House, with additional seats allocated in proportion to the population, based on the most recent census. Some 4.1 million U.S. citizens resident in the District of Columbia and five U.S. territories lack full representation in Congress as they each elect a non-voting member to the House but have no representation in the Senate.

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<sup>12</sup> The [For The People Act](#), as introduced, sought to address perceived obstacles to voting in federal elections, the partisan redistricting of congressional districts, as well as overhauling federal campaign finance laws, increasing safeguards against foreign interference, and strengthening government ethics rules. The [John R. Lewis Voting Rights Advancement Act](#) proposed a new formula for determining jurisdictions required to undergo preclearance for changes to voting laws and practices based on a history of voting discrimination which had been invalidated by [Shelby v. Holder](#) in 2013. In 2022, New York enacted the [John Lewis Voting Rights Act](#), which requires jurisdictions to seek preclearance for changes to important election policies and practices.

<sup>13</sup> The [Voting Rights Advancement Act](#), adopted by the House of Representatives in 2019 and proposing new criteria for preclearance, is currently pending in the Senate.

<sup>14</sup> Lawsuits on some provisions of these bills were initiated in at least 12 states. Some of these laws have been overturned. Most notably, a federal court blocked enforcement of a new Arizona law that would have required election officials to cancel prior voter registration. The Montana Supreme Court blocked two restrictive voting laws that would have eliminated same-day registration on election day and made the state's voter identification law much stricter. The Delaware Supreme Court struck down legislation which established no-excuse mail voting and same-day voter registration.

<sup>15</sup> For example, at least 13 states expanded access to mail ballot drop-off locations, while at least 5 states restricted such access. At least eight states expanded mail voting access for voters with disabilities. Also, at least 30 states expanded or improved access to mail voting, while at least 15 states passed legislation to restrict mail voting access, impacting voters with disabilities.

<sup>16</sup> Most notably, California, Colorado, Maine, New Hampshire, and Oregon made it unlawful for anyone to threaten or intimidate an election official. New York introduced civil liability for voter intimidation. Florida introduced criminal liability for collecting more than two mail ballots other than the person's own ballot or those of immediate family members, and South Carolina for returning more than five ballots.

<sup>17</sup> Paragraph 7.7 of the [1990 OSCE Copenhagen Document](#) calls on OSCE participating States to "ensure that [...] neither administrative action, violence nor intimidation prevents the voters [...] from casting their vote free of fear of retribution." For example, in October 2022 the Office of Election Crimes and Security in Florida arrested a number of ex-prisoners who, allegedly, had registered and voted illegally in 2020. Charges against one of the arrested voters [were dismissed by the Miami eleventh circuit court](#) on 21 October.

The Constitution grants states the authority to determine the rules by which they elect members of Congress. The respective electoral systems vary: forty-six states determine the winners by plurality vote ('first-past-the-post' contests); Georgia and Louisiana elect their members by majority vote, with a run-off if no candidate receives an absolute majority; while Alaska and Maine use ranked-choice voting.<sup>18</sup> State constitutions and legislation regulate the conduct of state and local elections.

The Constitution and federal legislation require that all congressional districts across the U.S. be as equal in population as practicable and that redistricting is conducted in a manner which does not result in denial or abridgement of the right of any citizen to vote on account of race or colour.<sup>19</sup> State constitutions and laws prescribe a variety of additional principles for the delineation of district boundaries, including compactness, contiguity, preserving administrative boundaries and 'communities of interest.' Some state laws explicitly prohibit using partisan data and delimiting boundaries in a manner that favours one party. The U.S. Supreme Court ruled that partisan gerrymandering claims present political questions beyond the reach of the federal courts.<sup>20</sup>

Based on the 2020 census, seats in the House of Representatives were reapportioned between states. As a result, six states gained, and seven states lost, seats.<sup>21</sup> Following reapportionment, redistricting was undertaken in all 44 states with more than one congressional seat. Deviations in the size of districts within states, are within the limits permitted by the constitution and case law.<sup>22</sup>

Redistricting is carried out by various bodies in the different states and is highly politicized. In 33 of the 44 states with more than one congressional district, state legislators are responsible for drawing the district maps. In 30 of these states, the governor can veto the map, but the legislature can overrule the governor's veto. The remaining 11 states use external commissions, of which three are exclusively composed of bipartisan representatives, and 8 are composed of bipartisan and non-affiliated members. In two states, the maps drawn by these external commissions require legislative approval. The number of external commissions has grown from 5 in 2000 to 11 in 2020. External commissions are seen by some IEOM interlocutors as a way to reduce the influence of political

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<sup>18</sup> Maine adopted a citizens' initiative in November 2016 to move the state toward a system of ranked-choice voting for the Congressional elections in 2018. Alaska enacted ranked choice voting via [Alaska Ballot Measure 2](#) in 2020. The Supreme Court of Alaska upheld the use of ranked choice voting in February 2022, with the [full opinion](#) issued on 21 October 2022. The court's decision was based on a legislative challenge from 2020, in which the plaintiffs had argued that the new voting system was unconstitutional.

<sup>19</sup> The Apportionment Clause of Article I, Section 2 of the U.S. Constitution requires that all congressional districts be as equal in population as practicable. In [Harris v. Arizona Independent Redistricting Commission](#) (2016), the U.S. Supreme Court held that challenges of maps with a deviation of over 10 per cent are more likely to "reflect the predominance of illegitimate reapportionment factors" and are thus to be upheld. The case referred to state legislative districts. See also [U.S. Department of Commerce et Al. v. Montana](#) (1992) and [Wesberry v. Sanders](#). The court cited Article I.2 of the U.S. Constitution but ruled that equal voting power is not required within states. The U.S. Supreme Court in [Thornburg v. Gingles](#) (1986) set the preconditions for establishing whether a redistricting plan dilutes the strength of minority voters under Section 2 of the VRA. The plaintiff must demonstrate that (a) minority voters are geographically compact and numerous enough to constitute a majority in a differently drawn district; (b) minority voters in the area are politically cohesive; and (c) the majority usually votes to defeat the minority-preferred candidate.

<sup>20</sup> In [Rucho v. Common Cause](#) (2019), which referred to district maps for the 2016 elections in North Carolina which had been ruled as partisan gerrymanders by district courts, the U.S. Supreme Court concluded that "Partisan gerrymandering is nothing new. Nor is frustration with it. [...] Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions". In [League of Women Voters of PA v. Pennsylvania](#) (2018), the Pennsylvania Supreme Court overturned the state legislature's congressional map as a partisan gerrymander, citing the state constitutional provision for free and fair elections, which is also present in many other state constitutions.

<sup>21</sup> Texas gained two seats, Colorado, Florida, Montana, North Carolina, and Oregon each gained one seat, while California, Illinois, Michigan, New York, Ohio, Pennsylvania, and West Virginia each lost one seat.

<sup>22</sup> The number of persons needed for one House seat varies from 542,113 in Montana to 989,948 in Delaware.

parties and increase public trust in constituency delimitation.<sup>23</sup> The composition and method of appointment of these commissions did not always ensure their independence and impartiality, as required by international good practice.<sup>24</sup>

The competent bodies use diverse tools such as redistricting software, which takes into account variables including racial and ethnic demographics and voting preferences at the precinct level.<sup>25</sup> Many stakeholders expressed concerns that these tools were often used to further partisan interests and limit the competitiveness of many districts.<sup>26</sup>

While racial and ethnic demographics were factored into redistricting to ensure representation of ethnic minorities and communities of colour, in keeping with Section 2 of the VRA, some IEOM interlocutors raised concerns that, in some cases, these variables were deliberately used to reduce representation of such populations.<sup>27</sup> Pursuant to two cases, the U.S. Supreme Court will decide whether the use of racial demographics in redistricting, intended provide for fair representation of minorities, as prescribed by federal legislation and in line with international standards, should be maintained.<sup>28</sup>

Seventy-eight challenges against congressional district maps of 28 states were filed, mainly by civil society groups and voters, in state and federal courts on various grounds.<sup>29</sup> Plaintiffs alleged unequal districts in terms of population in 15 states,<sup>30</sup> the dilution of the votes of minorities in nine states,<sup>31</sup> partisan gerrymandering in 12 states,<sup>32</sup> and both racial and partisan gerrymandering in four states.<sup>33</sup> First-instance state and federal courts ordered 13 states either to redesign the congressional maps or to adopt the maps suggested by the plaintiffs or designed by court-hired experts.<sup>34</sup> Second-instance

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<sup>23</sup> See research by the [Pew Research Center](#).

<sup>24</sup> See Section 2.2 of the Venice Commission [Code of Good Practice](#), which recommends that district boundaries should be drawn “taking account of the opinion of a committee, the majority of whose members are independent”.

<sup>25</sup> For instance, the applications [Maptitude for redistricting](#), [Plan Score](#), [Dave's Redistricting](#).

<sup>26</sup> See a [study](#) on competitiveness of the congressional districts by FiveThirtyEight and an [overview](#) of the U.S. House battlegrounds by Ballotpedia. Of the 354 incumbent representatives who stood in the 2022 primaries, only 7 were defeated. Of the 383 incumbents who stood in the 2018 primaries, only 4 were defeated in the primaries.

<sup>27</sup> For instance, in Alabama, the African American voting population amounts to 27 per cent but only one of the seven districts has an African American majority. Interlocutors pointed to the ‘cracking’ of predominantly African-American populations and the city of Montgomery into three separate districts. In Louisiana, North Carolina, and Florida, courts found that the district maps offered members of the African American community less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

<sup>28</sup> Section 2 of the VRA and [Thornburg v. Gingles](#) (1986). See paragraph 21 of the [1996 UNHRC General Comment No. 25](#), Article 1(4) and 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and General Recommendation No. 32 of the UN CERD Committee.

<sup>29</sup> Congressional district maps may be challenged to state courts on grounds of partisan and racial gerrymandering, and to federal courts on the latter grounds. See list of challenges compiled by [Loyola Law School](#).

<sup>30</sup> Districts of unequal population size were alleged in Alabama, Arkansas, Florida, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New York, Pennsylvania, South Carolina, Texas, and Wisconsin.

<sup>31</sup> Dilution of minority votes was alleged in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, North Carolina, and Texas.

<sup>32</sup> Gerrymandering in favour of the Republicans was alleged in Arizona, Florida, Kansas, Kentucky, North Carolina, Ohio, and Utah, and in favour of the Democrats in Maryland, Nevada, New Mexico, New York, and Oregon.

<sup>33</sup> Both racial and partisan gerrymandering were alleged in Arkansas, Florida, Kansas, and North Carolina.

<sup>34</sup> In Alabama, Connecticut, Florida, Kansas, Louisiana, Maryland, Minnesota, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, and Virginia.

courts mandated new congressional district maps in 8 states.<sup>35</sup> A number of cases were pending review through and after the primaries, and some remain undecided as there is no deadline for review, which creates uncertainty for candidates, voters and election administrators.<sup>36</sup> Overall, redistricting as currently implemented, does not fully ensure competitiveness, representativeness, and the fair representation of minorities, which is at odds with international standards.<sup>37</sup>

## Election Administration

The administration of elections is highly decentralized, with states responsible for their overall management, and with some 6,460 entities charged with implementing elections across the country.<sup>38</sup> At the central level, the main actors are the Federal Election Commission (FEC), which regulates campaign finance, and the Election Assistance Commission (EAC), which provides advisory support to state and local election offices, manages the National Mail Voter Registration Form, certifies voting equipment, and administers federal grants to improve election administration.

The administration of elections is decentralized to the county level, with variations in the extent to which jurisdictions determine election procedures within the general framework established by state law. As a result, procedures vary not only across states but also within most states. Decentralization is seen by most ODIHR LEOM interlocutors as a positive feature, because it allows election administrators to adapt procedures to conditions on the ground. Comprehensive and consolidated data related to the number of election officials, poll workers, and polling places are only released by the EAC months after the elections.

In 41 states, elections are entirely or partly managed by elected or appointed secretaries of state or lieutenant governors, while bipartisan election boards manage elections in the remaining nine states.<sup>39</sup> Twenty-five of the secretaries of state who are responsible for elections were up for election in 2022 (22 through direct elections and three depending on the election of the governor who appoints the secretary of state). Party affiliation of the chief election administrators is at odds with international standards as it may result in a conflict of interest and diminish trust in election processes.<sup>40</sup>

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<sup>35</sup> Courts upheld challenges overturning legislatures' maps in Maryland, New York, North Carolina, and Pennsylvania, while they ordered the use of special masters' maps to resolve legislative impasses in Connecticut, Minnesota, New Hampshire, and Virginia.

<sup>36</sup> The primaries began in March 2022. At that time, [cases](#) were pending in Alabama, Georgia, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York, Ohio, and Texas.

<sup>37</sup> Paragraph 21 of the [1996 UNHRC General Comment No. 25](#) states: "Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely". See also the [Venice Commission Report on Constituency Delineation and Seat Allocation](#). The applicable principles are: transparency, impartial boundary authority, equal voting power, representativeness, equality of opportunity of the contestants, and fair representation of minorities.

<sup>38</sup> See the [Election Assistance Commission \(EAC\) Election Administration and Voting Survey 2020](#).

<sup>39</sup> In 29 states, elections are administered by the secretary of state (24 of whom are elected on a party ticket, and 5 appointed by the governor), in 2 states by the elected lieutenant governor, and in 3 states by election officials selected by the legislature. In seven states, elections are under the dual responsibility of the secretary of state and a bipartisan election board, and in 9 states, they are administered by bipartisan election boards.

<sup>40</sup> Paragraph 20 of the [1996 UNHRC General Comment No. 25](#) states that "an independent electoral authority should be established to supervise the electoral process".

IEOM interlocutors generally expressed trust in the work of election administrators. Election offices received an unprecedented number of Freedom of Information Act (FOIA) requests regarding the electoral process, which in some cases placed an undue burden on election officials. Most ODIHR LEOM interlocutors highlighted concerns about the increasing number of threats of violence against election officials and premises at state and local level. Threats against election workers, in most cases through phone calls and social media, were cited as discouraging the recruitment of poll workers in some states.<sup>41</sup> Congress allocated USD 75 million through the EAC for activities to enhance election technology and improve election security, which could also be used for the physical protection of election workers. These funds were assessed by many ODIHR LEOM interlocutors as insufficient. A joint taskforce of the DoJ and the Federal Bureau of Investigation (FBI) on Election Workers Threats was created to investigate the relevant cases. The joint taskforce informed the ODIHR LEOM that it has received almost 2,000 reports of hostile or harassing contacts affecting election workers since 1 July 2021.<sup>42</sup>

State and county-level authorities mainly used their websites and social networks to disseminate voter information. These efforts were supported, to a considerable extent, by federal and local authorities, civil society associations, and traditional and social media companies.<sup>43</sup> As required by law, voter information was available in multiple languages.<sup>44</sup>

Resources to implement the elections at the local level come from federal, state and local sources.<sup>45</sup> Numerous ODIHR LEOM interlocutors mentioned that the lack of local resources could negatively affect how elections are being run in specific jurisdictions. In most cases, the funds available from the states for equipment and salaries were severely limited, while federal funding was mainly earmarked for equipment and security.

### **New Voting Technologies and Cybersecurity**

The use of NVT is extensive and varies considerably across and within states. Around 30 per cent of voters across the country do not have the option to mark their ballot by hand in a polling station.<sup>46</sup>

Ballot scanning combined with automatic tabulation is used in almost all jurisdictions. There has been a significant transition from the use of Direct Recording Electronic machines (DREs) to Ballot Marking Devices (BMDs) over the last decade, with BMDs making up 90 per cent of the voting machines used in 2022. Most jurisdictions have passed statutes or authorizations to replace DREs without Voter-Verified Paper Audit Trail (VVPAT), for future election cycles, however these machines remain in use in six states, against international good practice.<sup>47</sup>

BMDs allow voters to mark their choices for individual contests and correct errors and produce a printed ballot suitable for further processing by scanners. Usually, voter choices are encoded in a

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<sup>41</sup> Such cases were reported to ODIHR LEOM observers in Louisiana and Oklahoma. Also see [Brennan Center Local Election Officials Survey March 2022](#).

<sup>42</sup> See 1 August 2022 Joint Taskforce [statement](#). The ODIHR LEOM was informed that the number of reports increased considerably in the run up to the elections.

<sup>43</sup> See, for example, [usa.gov](#), [Rock the Vote](#), and [State Board of Elections Maryland](#).

<sup>44</sup> The EAC produced a [voter information guide](#) in 11 languages, and a [fact sheet](#) in 7 languages.

<sup>45</sup> Federal sources include [HAVA for election security](#), the [Edward Byrne Memorial Justice Assistance Grant \(JAG\) Program](#) for local law enforcement, and a [Homeland Security grant to prepare for emergencies](#).

<sup>46</sup> Arkansas, Delaware, Georgia, Louisiana, and South Carolina are 'all-machine' states.

<sup>47</sup> In Indiana, Mississippi, New Jersey, Tennessee, and Texas, DREs without a VVPAT are used only in some jurisdictions. Louisiana uses these machines state-wide as the only option for voters. See Section 3.2.iv of the Venice Commission [Code of Good Practice](#), which states that "voters should be able to obtain a confirmation of their votes".

barcode or QR code that scanners read, and also provide a human-readable summary. However, voters cannot verify that the generated QR code matches their intent and corresponds to the human-readable summary on the printed ballot.

Post-election audits (PEA) can be conducted on voting systems that produce paper records (BMDs and DREs with VVPAT) to verify the integrity of the results. PEAs are a crucial practice to identify any possible malfunctioning of tabulating equipment. The nature and type of PEAs conducted in the U.S. varies significantly.<sup>48</sup> In line with procedures, a negative outcome from a PEA may lead to a full manual recount. Of the states where PEAs are required or authorized, not all are required to complete them before the certification of an election.<sup>49</sup> Furthermore, in some instances, states conduct PEAs for which, by law, discrepancies found do not have any effect on the final result of an election.<sup>50</sup>

The certification of voting equipment is carried out by accredited testing laboratories or by the states themselves. Requirements are set by the Voluntary Voting System Guidelines (VVSG) and cover only non-networked equipment such as voting machines and scanners.<sup>51</sup> There are no federal standards for certifying e-poll books, which are used in many states.<sup>52</sup> The certification processes, from the initial setting of requirements, through the accreditation of testing labs, and to the final certification of election equipment, are not sufficiently responsive to keep pace with the rapidly changing cybersecurity landscape.

Federal and state authorities introduced numerous initiatives to help secure election technologies. The DHS's Cybersecurity and Infrastructure Security Agency (CISA), the EAC and other institutions offer cyber-risk mitigation services such as risk assessment, vulnerability scanning, and cyber-resilience reviews, as well as related trainings for election administrations. In partnership with the FBI, CISA issued two public service announcements in early October.<sup>53</sup> Overall, a broad range of IEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cybersecurity risks.

### **Voting Rights, Voter Registration and Identification**

U.S. citizens with a registered residence in a state and who have reached the age of 18 years have the right to vote. The Constitution ensures each citizen's equal protection before the law. The Fifteenth Amendment and the VRA grant voting rights to citizens equally. The VRA explicitly permits each state to enact laws to deny the right to vote to individuals "by reason of criminal conviction or mental incapacity." These restrictions contravene principles of universal and equal

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<sup>48</sup> Information on PEAs is available from the [NCSL](#) and [VerifiedVoting](#).

<sup>49</sup> Post-election audits in Delaware, Florida, Michigan, Nebraska, North Carolina, Ohio, Oklahoma, and Wisconsin are conducted after the certification of an election.

<sup>50</sup> At least 12 states conduct such audits, including Arkansas, Delaware, Florida, Iowa, Maryland, Michigan, Montana, Nebraska, Tennessee, Vermont, Wisconsin, and Utah.

<sup>51</sup> The [VVSG 2.0](#) were adopted by the EAC in February 2021, following deliberations that had started in 2017, and 16 years after the adoption of initial version in 2005. To date, no VVSG 2.0-certified products have been brought to market, as the accreditation of the testing laboratories which would certify these products is still pending.

<sup>52</sup> According to the [NCSL](#), 13 states have established their individual certification scheme for e-poll books in 2019.

<sup>53</sup> The [first](#) warned of foreign misinformation in relation to malicious cyber and the [second](#) assessed the risks of cyber actors to compromise election infrastructure or to result in largescale disruptions or prevent voting as unlikely.

suffrage, as provided for in the 1990 OSCE Copenhagen Document, United Nations treaties, and other international obligations.<sup>54</sup>

In all but two states (Maine and Vermont), the District of Columbia, and Puerto Rico, citizens with current or previous criminal convictions forfeit the right to vote<sup>55</sup> with an estimated 4.6 million citizens remaining disenfranchised, regardless of the severity of the crime.<sup>56</sup> In addition, in some states those who have been released face legal barriers that prevent them from gaining full access to the ballot. Thus, additional conditions such as the payment of fines, fees, and restitution still apply in ten states, and another 15 states may, in certain circumstances, delay the restoration of voting rights because of unpaid court debts.<sup>57</sup> Some reports contend that these rules disproportionately affect racial and ethnic minorities in eight states.<sup>58</sup> Positively, a number of states eased restrictions by restoring the voting rights of prisoners or those under community supervision and parole.<sup>59</sup> Other states have mandated the respective authorities to notify affected citizens of their voting rights or to facilitate their registration.<sup>60</sup>

Restrictions on voting rights based on intellectual incapacity are in place in all but ten states.<sup>61</sup> The ADA prohibits a state from disqualifying any individuals without individualized assessment.<sup>62</sup>

Voter registration is active in all states except North Dakota.<sup>63</sup> Voters can register in person in the jurisdiction of their residence at the Department for Motor Vehicles (DMV), county election offices,

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<sup>54</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”. Paragraph 14 of the [1996 UNHRC General Comment No. 25](#) states that grounds for deprivation of voting rights should be “objective and reasonable.” While the U.S. has not ratified the CRPD and is therefore not legally bound by it, deprivation of the right to vote on the basis of intellectual incapacity is inconsistent with Articles 12 and 29 of the [CRPD](#).

<sup>55</sup> In 21 states, felons lose their voting rights while incarcerated and receive automatic restoration upon release. In 16 states, felons lose their voting rights during incarceration and for a period of time after release. In 11 states, felons lose their voting rights indefinitely for certain crimes.

<sup>56</sup> See a [report](#) from the Sentencing Project published on 25 October 2022.

<sup>57</sup> See a 2022 survey by the [Collateral Consequences Resource Center](#). The American Bar Association has [estimated](#) the burden these charges entail, including in some cases incarceration charges. For example, over 934,500 people who have completed their sentence (6 per cent of the voting-age population) remain disenfranchised in Florida due to outstanding legal financial obligations. In Arizona, over 3 per cent, and in Mississippi over 8 per cent of the voting-age population that served their sentence are deprived of the right to vote.

<sup>58</sup> According to the [Sentencing Project](#), these policies affect African Americans, with estimates that more than one in ten African American adults is disenfranchised in eight states – Alabama, Arizona, Florida, Kentucky, Mississippi, South Dakota, Tennessee, and Virginia.

<sup>59</sup> Connecticut, Hawaii, New York, and Washington restored voting rights to citizens on parole or supervision.

<sup>60</sup> This includes California, Hawaii, Illinois, Maryland, and New York.

<sup>61</sup> These are Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, New Hampshire, North Carolina, Pennsylvania, and Vermont.

<sup>62</sup> See the U.S. Department of Justice, Civil Rights Division, Disability Rights Section, [The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities](#). In [Doe v. Rowe \(2001\)](#), the Supreme Court ruled that a state that wishes to require individuals to have the mental capacity to vote cannot take away the right to vote from all people under guardianship without assessing whether each such individual has the capacity to vote. While not explicitly referring to persons with intellectual disabilities, President Biden in his March 2021 [Executive Order on Promoting Access to Voting](#) recognized that “[p]eople with disabilities continue to face barriers to voting and are denied legally required accommodations in exercising their fundamental rights and the ability to vote privately and independently.”

<sup>63</sup> North Dakota [does not require voter registration](#). Active registration means that the voter needs to take specific steps in order to register to vote.

state agencies, online, using the NMVRF, or through third parties.<sup>64</sup> The NVRA and HAVA set minimum conditions for registration and provide a registration form template.<sup>65</sup> Twenty-two states and the District of Columbia offer same-day registration, and 23 states implement ‘automatic’ or ‘motor voter’ registration.<sup>66</sup> In these cases, voters are automatically registered at the time of applying for or renewing a driver’s license, with states having limited possibilities for an immediate cross-match comparison. Ahead of these elections, 40 states and the District of Columbia offered online voter registration. While late and election-day registration allows for more inclusive participation, these procedures prevent collecting accurate voter register data, potentially resulting in duplicate entries which might lead to multiple voting, and are not in line with international good practice and previous ODIHR recommendations.<sup>67</sup>

HAVA requires first-time voters registering by post to provide proof of identity. At least four states have laws requiring documentary proof of citizenship, although these have been previously judged unconstitutional or unduly restrictive.<sup>68</sup>

The NVRA and HAVA provide the framework for voter list maintenance, including the removal of deceased persons from the voter rolls, as well as of individuals with criminal convictions and those who have been deemed incapacitated by a court decision. The NVRA also prohibits states from removing voters from the voter list during the 90 days prior to an election. HAVA requires states to establish state-wide voter registration databases and determines basic requirements for their maintenance. States co-ordinate with state agencies to remove duplicates from the voter list, due to felon status and deaths. These procedures vary across the states with 33 states and the District of Columbia taking part in the inter-state data sharing on identified inaccuracies via the Electronic Registration Information Center (ERIC).<sup>69</sup> The lack of a nationwide voter register or cross-comparison of data, as well as the non-uniform approach to updating voter registers during early and absentee voting may result in inaccuracies and the potential for voters voting in more than one state.<sup>70</sup>

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<sup>64</sup> Voters can use the NMVRF to register or update their data and mail it to a specific address in each state. States determine information required to register. New Hampshire allows its use only as part of their absentee voter mail-in registration form, while Wyoming does not permit mail registration.

<sup>65</sup> Based on the latest EAC [Election Administration and Voting Survey](#), DMV offices accounted for the largest share of registration applications in 2020 (39.3 per cent), followed by online registration (28.2 per cent); States that allowed same-day voter registration reported handling more than 1.6 million such applications in 2020.

<sup>66</sup> Montana changed the registration deadline from election day to the day before election day, which was challenged by civil-rights groups on behalf of the Native American community. The Montana Supreme Court [declared](#) on 21 September 2022 that three applicable laws passed in 2021 violate provisions of the state’s Constitution. The Delaware Supreme Court declared a bill allowing election-day registration to be in conflict with the Constitution.

<sup>67</sup> See Section 1.2.iv of the Venice Commission [Code of Good Practice](#), which states that “There should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day.”

<sup>68</sup> Alabama, Arizona, Georgia, and Kansas have laws requiring documentary proof of citizenship. Kansas’ law was judged unconstitutional. See [Fish v. Kobach](#) (2016) and [League of Women Voters v. Harrington](#) (2021). The DoJ [filed a lawsuit](#) against the State of Arizona over the restrictive requirement on proof of citizenship, contending that it violates provisions of the NVRA and disproportionately targets the Native American population.

<sup>69</sup> Before cleaning up the list of inactive voters, state authorities are required to send notices to the citizens concerned. Upon failure to respond and if citizens do not vote in a number of federal elections, their entries will be removed. Louisiana has suspended membership in ERIC.

<sup>70</sup> See for instance Pennsylvania’s inability to introduce e-poll books and [related concerns](#) over multiple voting. In addition, based on the EAC survey, only 17 states use e-poll books throughout the whole state, allowing for statewide matching of records.

Voter lists containing public records can be accessed by political parties, candidates, or by any citizen. Depending on the state, voter registration eligibility can be challenged by other voters, party observers, or election officials. There have been reports of mass challenges in Georgia, Iowa, Michigan, and Wisconsin, inquiring into the accuracy of the voter lists.<sup>71</sup> While international good practice recommends a procedure for remedy and correction of inaccuracies in the voter list, such mass challenges raised concerns about potential voter suppression.<sup>72</sup>

Voter identification requirements differ across states, with 35 states requiring identification in order to cast a ballot, while the remaining 15 states and the District of Columbia use ‘non-documentary’ proof of identity. These include signing an affidavit or the poll book, or providing personal information, which are generally unreliable and subjective means of identification. The requirement of an ID for registration and voting is in line with good practice and safeguards election integrity. However, such requirements in some states have resulted in effectively disenfranchising members of minorities, including Native Americans, African Americans and economically-disadvantaged communities, who often have trouble accessing the required documents.<sup>73</sup> ODIHR interlocutors noted that such cases lead to selective introduction of certain types of IDs, to which states did not adequately guarantee availability to all eligible citizens, often as the result of the selective application of rules, thus infringing on the right to equal suffrage, contravening OSCE commitments.<sup>74</sup>

## Candidate Registration

In order to run for the Senate, candidates must be at least 30 years old and have been a citizen for at

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<sup>71</sup> In Georgia, some 65,000 challenges have been filed, of which 37,500 in Gwinnett county alone. In Michigan, some 22,000 voters’ records were challenged, and in Wisconsin, a local group is claiming ineligibility of some 15,000 voters. In Gwinnett county, those challenges [were largely dismissed](#) following a [public meeting](#) and internal review of the matter, based on the relevant NVRA provision. Since 2020, Georgia legislation allows any voter to challenge as many registrations as they wish. Following these mass challenges, the state election director clarified that challenges must be filed in writing to the registrars and not with poll workers at the polling station.

<sup>72</sup> See the American Civil Liberties Union [report](#) on challenges to voters’ eligibility in Georgia. See also Section 1.2.iv and v of the Venice Commission [Code of Good Practice](#), which states that “There should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered; v. a similar procedure should allow voters to have incorrect inscriptions amended”.

<sup>73</sup> See the protracted litigation on the voter ID law S.B.824 in North Carolina from 2018, which is still ongoing. In the state suit [Holmes v. Moore](#), a county Superior Court found in September 2021 that “the evidence at trial [is] sufficient to show that the enactment of S.B. 824 was motivated at least in part by an unconstitutional intent to target African American voters.” The court also ruled that “[o]ther, less restrictive voter ID laws would have sufficed to achieve the legitimate nonracial purposes of implementing the constitutional amendment requiring voter ID, deterring fraud, or enhancing voter confidence.” The United States Supreme Court has allowed the State house of representatives to intervene in the case. [Lawsuits](#) challenging the new ID law in Missouri were filed on behalf of the League of Women Voters and the National Association for the Advancement of Colored People (NAACP); the latter [was denied](#) for lack of standing and for failure to plead a legally protectable interest. An Oklahoma [law](#) entering into force on 1 November 2022 allows for opening procedures for investigation should more than ten voters register at the same address, raising concerns of voter intimidation. The practice of purging inactive voters in Louisiana has been [criticized](#) by civil rights groups as resulting in inaccuracies, which disproportionately affects minority voters. The League of Women Voters of Florida, the Black Voters Matter Fund, and the Florida Alliance for Retired Americans successfully [challenged](#) Florida SB 90 at the State District Court on the basis that the law creates barriers to the access of the elderly, the disadvantaged, and minorities to the voting process.

<sup>74</sup> Paragraph 5.9 of the [1990 OSCE Copenhagen Document](#) states that “... all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”. Paragraph 7.3 commits participating States to guarantee “universal and equal suffrage to adult citizens”.

least 9 years. Candidates for the House of Representatives must be at least 25 years of age, and a citizen for at least 7 years. Congressional candidates must be residents of the state in which they are standing.

States allow ‘recognized parties’ to nominate candidates. The Republican and Democratic parties are recognized in all 50 states. To qualify for ‘recognized party’ status, however, smaller parties must meet a number of filing requirements, deadlines and regulations, including supporting signatures, set by ballot access laws. These regulations are enforced at state level with thresholds for such signatures and deadlines for submission varying across states. In some states, requirements for smaller parties to qualify include a share of votes cast in previous elections or a certain number of registered voters. Moreover, 16 states require that smaller parties and/or independent candidates submit supporting signatures in excess of 1 per cent of registered voters in the respective constituency.<sup>75</sup> Ballot access requirements and deadlines may disproportionately hinder access to the ballot for smaller parties or independent candidates.<sup>76</sup> This may limit opportunities for smaller parties and independent candidates to participate, which is at odds with OSCE commitments and international standards.<sup>77</sup>

All but seven states allow ‘write-in’ candidates.<sup>78</sup> Write-in candidates offer voters additional choice, but have historically had limited success in winning at the federal level.

A total of 169 candidates contested the 35 Senate seats, and 1,108 candidates ran for the House.<sup>79</sup> Out of these, approximately 24 per cent were from smaller parties or independent candidates. Seventeen House candidates ran unopposed. Thirty-four candidates for Senate and 301 candidates for the House were women (20 and 27 per cent, respectively).<sup>80</sup> Although the number of female

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<sup>75</sup> These include Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Missouri, Montana, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Wyoming.

<sup>76</sup> ODIHR LEOM observers noted that the Libertarian party faced a number of challenges to their registration and nomination of candidates. In Alabama, the Libertarians managed to collect signatures and furnish candidates for the House, which was assessed by local Libertarian party representatives as burdensome and draining resources from the campaign. Also see decisions by the Texas Supreme Court. A petition in [Georgia](#) was [denied](#) by the U.S. Supreme Court on 3 October. The Green Party successfully sought judicial relief on ballot access cases in [Montana](#) and North Carolina.

<sup>77</sup> Paragraph 7.5 of the [1990 OSCE Copenhagen Document](#) commits the participating states to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”. Furthermore, paragraph 7.6 points that states will “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”. See also Section 1.3.ii of the Venice Commission [Code of Good Practice](#), which states that “The law should not require collection of the signatures of more than 1 per cent of voters in the constituency concerned”, as well as paragraph 17 of [1996 UNHCR General Comment No. 25](#), which states that the minimum number of supporters for a nomination “should be reasonable and not act as a barrier for candidacy”.

<sup>78</sup> Write-in candidates are candidates whose name does not appear on the ballot but can be added to the ballot by voters. In some states, write-in candidates have to notify the election authorities in order to be eligible to be written on the ballot.

<sup>79</sup> In addition, eight candidates stood in the District of Columbia and the territories for non-voting delegate seats. The Libertarian candidate for U.S. Senate in Arizona withdrew on 1 November in favour of the Republican candidate.

<sup>80</sup> These figures include 52 female minor-party or independent candidates for the House, and 12 for the Senate. In the 117<sup>th</sup> Congress, there are a total of 147 women (107 Democrats and 40 Republicans). See the report from the [Center for American Women in Politics](#).

Democrat and Republican candidates for governors and state legislatures was higher than in any previous election, women were still under-represented among candidates.<sup>81</sup>

Racial and ethnic minorities comprise 36 per cent of citizens but only 23 per cent of the current members of Congress, despite increases compared to previous elections.<sup>82</sup> There are four current governors who are from racial and ethnic minorities as defined by the U.S. Census Bureau.<sup>83</sup> In these elections, the combined percentages of candidates from the two major parties who come from racial and ethnic minorities are 30 per cent for senators, 29 per cent for representatives, and 11 per cent for governors.<sup>84</sup>

### Alternative Voting Methods

Alternative voting methods include early in-person and absentee voting. Although absentee voting takes place in uncontrolled environments, which among other factors do not guarantee the secrecy of the vote, it is seen by the majority of ODIHR LEOM interlocutors as increasing the possibilities of participation in the electoral process, and most are confident in its integrity. Both methods were expanded in 2020 due to the COVID-19 pandemic, resulting in higher levels of use.<sup>85</sup> Unsubstantiated claims by politicians and in the media in the run-up to these election that absentee ballots were subject to systematic voter fraud appear to have had an impact on the level of trust in the current electoral process. A number of studies produced after the 2020 elections contradict these claims.<sup>86</sup>

Early voting of some type is allowed in 47 states.<sup>87</sup> The duration and timeframe of early voting varies greatly between states.<sup>88</sup> Early voting is a popular method for casting ballots due to its convenience, and election officials generally referenced the benefits of early voting in reducing their workload on election day.

Absentee voting is possible in all states; however, the conditions for voting by absentee ballot, including identification requirements, timeframes and deadlines for requesting and sending absentee ballots, and the processing and counting periods, vary significantly from state to state. Eight states are so-called all-mail states as is the District of Columbia, where all voters automatically receive absentee ballots by mail.<sup>89</sup> In 27 states, voters can request an absentee ballot without having to provide a justification, while in 15 states, a justification is required. Some states have a permanent

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<sup>81</sup> Article 7 of [CEDAW](#) reads that “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government”.

<sup>82</sup> See a report by the [Pew Research Center](#).

<sup>83</sup> Three of these incumbents, in New Hampshire, New Mexico and Oklahoma, ran for re-election. The governor of Hawaii is at the end of his term limit.

<sup>84</sup> Overall, 18 per cent of Republican candidates and 39 per cent of Democrat candidates were from minorities.

<sup>85</sup> According to the [Census Bureau](#), in 2004, 79.3 per cent voted on election day, 12.9 per cent by mail, and 7.8 per cent used early voting. In 2020, only 30.6 per cent voted on election day, while 43.2 per cent voted by mail, and 26.2 per cent used early voting.

<sup>86</sup> See, for example, [Center for Politics, University of Virginia](#). According to the Heritage Foundation, recorded fraud cases account to less than [100](#) out of 154 million votes cast in 2020.

<sup>87</sup> In some states, the early voting procedure is called in-person absentee voting, where voters put their ballots in an absentee envelope. Only Alabama, Connecticut and New Hampshire do not provide for early voting, nor in person absentee voting.

<sup>88</sup> According to the [NCSL](#), Minnesota and South Dakota allow for 46 days, while Kentucky allows for 3 days.

<sup>89</sup> California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington send ballots to all registered voters. Voters can send them back by mail, deposit them in ballot drop boxes, deliver them in person to early voting centres or elections offices, or on election day to a polling site.

absentee voting list, whereby voters automatically receive absentee ballots for each election once they are on the list.<sup>90</sup>

Drop boxes are used in 29 states, while in five additional states, counties may decide to use them.<sup>91</sup> Drop boxes became a topic of controversy during these elections, due to unproven claims made after the 2020 elections that they were used to commit electoral fraud. In Arizona, groups of armed people monitored drop boxes, photographed voters and took records of their vehicle registration. In response to a request alleging intimidation, a district court issued a restraining order prohibiting such groups from monitoring within 75 feet of the drop boxes.

The Department of Defense (DoD), under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voting Empowerment Act (MOVE), manages the Federal Voting Assistance Program (FVAP), which facilitates voter registration and ballot requests for military and overseas voters, and provides information to voters and election officials. States are required to distribute ballots to voters abroad at least 45 days prior to election day. Out-of-country voters who have not received a ballot in time to return it before election day can use a ‘back-up’ Federal Write-In Absentee Ballot (FWAB), which is accepted by all states and is available through the FVAP.

Electronic Absentee Voting (EAV) methods are used to handle ballot requests and delivery and to transmit information between voters and election offices, by systems that include online portals, email, or fax.<sup>92</sup> EAV transactions have significant shortcomings including lack of secrecy, and susceptibility to interception and manipulation.<sup>93</sup> Nevertheless, the use of EAV methods continues to expand. While HAVA mandates the EAC to conduct certification of voting systems, as well as the accreditation of voting system testing laboratories, the EAC has no such mandate with regards to EAV in order to align the system with international good practices.<sup>94</sup>

States require different types of identification to be included with returned absentee ballots.<sup>95</sup> These requirements have significantly increased the rates of rejected ballots. Twenty-four states allow for ‘curing’ or processing of absentee and provisional ballots with missing details, enabling voters to appear with the necessary documentation or information within a short period after election day thereby decreasing rejection rates for absentee ballots. States have been promulgating laws either expanding or restricting absentee and early voting options, with the number of states expanding or restricting voting access being roughly equal.<sup>96</sup>

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<sup>90</sup> This is the case in five states for all voters, and in another 11 states for persons with disabilities.

<sup>91</sup> The number of drop boxes varies greatly between states; in Georgia, for example, there is one drop box per county or every 100,000 registered voters, while in New Jersey there are 10 per county and municipality/college with more than 5,000 residents.

<sup>92</sup> Overseas voters registered in 31 states and voters with disabilities in 13 states can also return ballots electronically.

<sup>93</sup> The [2020 EAC-DoD-NIST-CISA](#) report states that “Electronic ballot return faces significant security risks to the confidentiality, integrity, and availability of voted ballots. These risks can ultimately affect the tabulation and results and, can occur at scale”. See also a 2018 [report](#) of the National Academies of Sciences, Engineering, and Medicine.

<sup>94</sup> See Section 3.2.2.3 of the Venice Commission [Code of Good Practice](#): “Electronic voting methods must be secure and reliable. They are secure if the system can withstand deliberate attack; they are reliable if they can function on their own, irrespective of any shortcomings in the hardware or software”.

<sup>95</sup> Twenty-seven states verify the voter’s signature, 9 confirm there is a signature on the return envelope, 9 require signature of a witness, 3 require that the voter’s signature be notarized, 1 requires a copy of the voter’s ID, and 1 required an ID number (for example of a driver’s license).

<sup>96</sup> See a [review](#) by the Center for Public Integrity.

Some Native Americans living on remote reservations have more difficulties accessing absentee and early voting methods than other groups, due to the lack of standard mailing addresses, the limited number of early voting sites and short early voting periods make it difficult for members of these communities to cast their vote.<sup>97</sup>

## Campaign Environment

The U.S. has strong protections for fundamental freedoms of expression, assembly, and association. Political campaigns were at times intensely divisive, including allegations by some political leaders and candidates that their opponents were seeking to subvert democracy.<sup>98</sup> Widespread ongoing denial of the 2020 election results, and of the integrity of the 2022 voting process by former President Trump, some Republican candidates and other commentators in campaign rallies, in the media and on social networks, negatively affected both the campaign and voters' trust in electoral processes.<sup>99</sup>

Some of the statements made in rallies, and on posters and social networks observed by the ODIHR LEOM sought to de-legitimize the other party, and in repeated instances, Republican candidates invoked racist and transphobic tropes.<sup>100</sup> A number of Republican and some independent candidates used rhetoric which law enforcement agencies indicate has been associated with radicalization towards domestic terrorism.<sup>101</sup> In 23 of the 30 states in which ODIHR LEOM observers were deployed, threats of violence or aggressive behaviour were reported by interlocutors, or in the media, targeting voters, election administrators, officials, campaigners, and media representatives. A man was charged with attempted murder following an attack on the husband of the Speaker of the House, and there were several other violent attacks and threats against candidates from both major parties. The Capitol Police called for additional resources to protect politicians from threats.<sup>102</sup>

Party structures in the U.S. are highly decentralized, and candidate selection takes place in primaries. Neither of the major parties had a full federal policy platform for these elections, leading to distinct campaigns at state and lower levels. Some Democrats running in rural districts, or in close state-wide contests, tended to be more likely to distance themselves from the Biden administration, particularly on economic issues. Smaller parties, independent and write-in candidates ran in a variety of contests, but with a few notable exceptions, their impact was limited. The campaign included large rallies headlined by national political figures, including, for Democrats, President Biden, former President Barack Obama and Senator Bernie Sanders. Former President Trump organized rallies through his Save America Political Action Committee (PAC), which endorsed some Republican candidates, though others were criticized by him.<sup>103</sup> Some governors campaigned beyond their states, including California Governor Gavin Newsom, who placed billboards in other states, and Florida Governor Ron DeSantis, who organized rallies in Pennsylvania and Ohio. Some,

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<sup>97</sup> See: [Report of the Interagency Steering Group on Native American Voting Rights](#), and [Voting Access for Native Americans: Case Studies and Best Practices](#).

<sup>98</sup> See contrasting speeches from [23 August 2022](#) and [1 September](#) by President Biden, referring to former President Trump, and a [3 September](#) speech by former President Trump, referring to President Biden.

<sup>99</sup> Polling by [IPSOS](#) suggested that 39 per cent of Republicans, and 26 per cent of Democrats agreed with the statement that if their party did not win in the mid-term elections, election fraud may be the reason.

<sup>100</sup> The ODIHR LEOM observed multiple rallies in which Republican candidates made inflammatory xenophobic remarks, while other campaign points were transphobic and sought to conflate LGBT acceptance with child 'grooming'.

<sup>101</sup> See reports by the [National Security Council](#), the [Department of Homeland Security](#), and the [University of Chicago](#).

<sup>102</sup> See [press release](#) from the Capitol Police. The [Carnegie Endowment for International Peace](#) and media sources claimed a tenfold increase in threats against members of Congress between 2016 and 2021.

<sup>103</sup> The ODIHR LEOM observed rallies organized by former President Trump in Arizona, Iowa, Nevada, Ohio, Pennsylvania, and Texas.

but not all candidates for high office debated on television; in several instances, the debates included minor-party or independent candidates.<sup>104</sup>

A number of Republican candidates in key races, including 10 candidates for secretary of state, 9 of which would have direct responsibility to oversee future elections in their states, and 20 out of 36 Republican gubernatorial candidates, challenged or refused to accept the legitimacy of the 2020 results.<sup>105</sup> Parties campaigned on platforms of ensuring electoral integrity but with markedly diverging emphases. Republicans highlighted the perceived need to prevent the registration of ineligible voters and the casting and counting of invalid or illegal votes, while Democrats focused on preventing what they see as the potential rejection of legitimate votes, and voter suppression, particularly of minorities. ODIHR LEOM interlocutors noted that through these statements, the parties contributed to a diminishing confidence in a system which relies on trust in election administration.<sup>106</sup> In 11 of the 32 Republican rallies observed by the ODIHR LEOM the 2020 results were denied or questioned by candidates.<sup>107</sup>

The elections took place against a backdrop of concerns about inflation and the perception of rising crime. Republican campaigns drew attention to the fact inflation was at a 40-year high, blaming the Biden administration and the policies of Democrats in Congress. Their other key campaign points criticized the President, the Speaker of the House, tax policy, illegal immigration, and promoted the right to gun ownership. Democrats focused a large part of their campaign on abortion rights, and to a lesser extent on healthcare, gun control, and employment. Both parties used aggressive and emotionally charged language on these issues. Campaign rhetoric for many seats in the House was generally more radicalized and divisive than competition for the Senate.

Mainstream social networks had policies designed to reduce the spread of false narratives concerning elections. Rules concerning hate speech were less effectively enforced, particularly in non-English language content, according to ODIHR LEOM interlocutors.<sup>108</sup> Social network platforms' policies demonstrated different emphases and concerns; and not all companies had clear policies on misleading information concerning about the elections, such as the time, place or methods of voting. Some smaller right-wing focused social networks purposefully minimize content moderation and had far higher levels of hate-speech, some of which was directly connected to the elections.<sup>109</sup> Section 230 of the Communications Decency Act (CDA), as interpreted by court decisions, exempts social media companies from legal liability for third-party content posted on their platforms.<sup>110</sup> In addition to continuing public and legal discourse on freedom of speech and permissible limits on its moderation, other aspects of social networks' operation, in particular,

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<sup>104</sup> Among candidates who did not agree to debate were the Democrat governor candidate for Arizona and the Republican candidates for governor of Nebraska and Ohio. See [The Brookings Institution's report](#).

<sup>105</sup> The [Washington Post](#) published research indicating that of 591 Republican candidates for high office, 291 had at some point cast doubt on the legitimacy of the 2020 results.

<sup>106</sup> See for instance the Republican National Committee's [Election Integrity Report](#) from August 2021, which found no evidence of election fraud, although it did note that COVID-19 in 2020 resulted in measures easing access to the electoral process, which they claimed may have weakened safeguards.

<sup>107</sup> ODIHR LEOM observers attended a total of 72 rallies and campaign events; of these, 33 were Democrat events, and 32 Republican.

<sup>108</sup> Hate speech policies from [Facebook](#) and [Twitter](#) could be interpreted to support banning fear-mongering narratives about non-citizens from racial minority groups. However, ODIHR LEOM monitoring indicates almost 100 tweets since 1 August by congressional or statewide candidates that use the term "invasion" in relation to immigration, a key tenet of the 'great replacement' theory. See the Open Technology Institute [assessment of ten internet social platforms](#), and the Integrity Institute's [Elections Integrity Program](#).

<sup>109</sup> See [press release](#) by Truth Social from 26 October 2021.

<sup>110</sup> On 3 October 2022, the Supreme Court admitted the *Gonzales v. Google* case, which is seen as a test of the current legal non-liability *status quo*.

accountability for harmful content and transparency of their enforcement mechanism, have come under increased scrutiny.<sup>111</sup>

## Campaign Finance

The key legal acts pertaining to campaign finance, the Federal Election Campaign Act (FECA) and the Bipartisan Campaign Reform Act (BCRA), regulate the sources and limits of donations as well as the disclosure requirements. The scope of limitations to campaign financing has incrementally narrowed following U.S. Supreme Court rulings, including *Buckley v. Valeo* (1976), which removed limits on campaign expenditures, and *Citizens United v. Federal Election Commission* (2010), which gave corporations the right to independent campaigning by ruling that spending constitutes freedom of speech.<sup>112</sup> These rulings result in a disproportionate amplification of the voices of bigger donors and the candidates they support, against international good practice.<sup>113</sup> Most recently, in May 2022, in an appeal made by Senator Ted Cruz in relation to federal legislation and Federal Election Commission (FEC) regulations, the Supreme Court ruled that restricting the amount that candidates may be repaid from post-election contributions for loans made to their own campaign ahead of the election abridged the candidate's First Amendment rights by deterring them from making such loans. The FEC argued that these limits had served to prevent unrestricted post-election donations being used to repay such loans once the candidate is elected, which provides an avenue for quid pro quo transactions.<sup>114</sup>

Election campaigns can receive limited contributions from individuals, political parties, and Political Action Committees (PACs).<sup>115</sup> Trade unions and corporations cannot donate directly to candidates but can sponsor PACs, with some limitations in place. Although foreign donations are prohibited in campaigns for candidates, they are allowed in campaigns for ballot measures following a 2021 decision by the FEC.<sup>116</sup> The law allows for 'independent' campaigning entities, so-called Super PACs, which do not have to observe donation limits but are subject to disclosure requirements and are prohibited from co-ordinating their campaigns with candidates or their committees. Civil society campaign-finance watchdogs and the media underline that the non-coordination provisions are easily circumvented which in effect results in candidates' campaigns benefiting from unlimited funding.<sup>117</sup> Some tax-exempted organizations, which are neither bound by donation limits nor by public disclosure requirements, can also engage in campaigning, provided that this is not their

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<sup>111</sup> In 2021, two bills were introduced in Congress (the Platform Accountability and Transparency Act and the Online Consumer Protection Act) that would require social media companies to provide researchers and the public with access to certain platform data, and platforms to disclose their content moderation policies. Neither law was passed.

<sup>112</sup> See [Buckley v. Valeo](#) and [Citizens United v. Federal Election Commission](#). According to paragraph 19 of the 1996 UN Human Rights Committee general comment No. 25 "reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party."

<sup>113</sup> See paragraph 78 and 79 of the 2017 Report of the UN Human Rights Council Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow up mission to the United States of America.

<sup>114</sup> See the [2021 FEC Jurisdictional Statement](#) in the *FEC v. Ted Cruz for Senate* case, presented to the Supreme Court.

<sup>115</sup> Individuals can donate up to USD 2,900 per candidate and up to USD 5,000 per PAC. Donations above USD 200 must be disclosed.

<sup>116</sup> In October 2021, the FEC [ruled](#) that ballot measures are not elections, thus their campaign committees are not bound by the FECA prohibition. The Committee of Ministers of the Council of Europe [recommends](#) that states "specifically limit, prohibit or otherwise regulate donations from foreign donors".

<sup>117</sup> See for instance the [Campaign Legal Center](#) and the [New York Times](#) analysis of so-called 'red-boxing' – a practice of candidates providing the aligned Super PACs with campaign messages for specific target groups and negative information about opponents.

primary activity.<sup>118</sup> Such undisclosed contributions raise concerns over the undue influence of interest groups over candidates, and obscure voters' awareness of the influence such interest groups may have on candidates and elected officials.<sup>119</sup> The Democracy Is Strengthened by Casting Light on Spending in Elections Act of 2021 (Disclosure Act of 2021), which would require any entity to disclose donors that contributed more than USD 10,000 in an election cycle, failed to summon the required majority to advance the bill to the Senate floor in September 2022.<sup>120</sup>

The legal requirement for campaign advertising to contain a disclaimer stating who commissioned and takes responsibility for the presented message does not extend to social networks; nevertheless, some states take measures to regulate and enforce the disclosure of political advertising on digital platforms.<sup>121</sup> Of the key social networks, Twitter and TikTok ban political advertising, with the latter recently also blocking politicians and political parties from fundraising on its platform.<sup>122</sup> Alphabet and Meta introduced different measures, such as ad libraries, with the stated aim of increasing transparency. The system for reporting on expenditures to the FEC makes it impossible to retrieve aggregate amounts spent by campaigns on advertising in broadcast media and social networks.

Oversight of campaign finance is vested with the FEC, the bipartisan campaign finance oversight body. It is composed of six commissioners appointed by the president and confirmed by the Senate, with no more than three commissioners representing one party, and four votes needed to pass decisions on the regulatory framework and complaints. The FEC lacked a quorum in 2019 and 2020; it has only operated in its full composition since December 2020 and has been faced with a backlog of complaints. The adjudicated penalties are not sufficient to deter non-compliance by campaign committees.<sup>123</sup> The difficulty of reaching bipartisan agreements affects the FEC's enforcement capability, further weakening the dissuasive effect of sanctions provided by the law.<sup>124</sup> The FEC can use prosecutorial discretion to dismiss a plaintiff's administrative complaint; a complaint thus

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<sup>118</sup> Reporting by [Open Secrets](#) assessed that such non-profit organizations spent over USD 1 billion on campaigning in the 2020 election cycle. According to paragraph 256 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Legislation](#), "third parties that are involved in the campaign [...] 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".

<sup>119</sup> According to Article 7.3 of the [UN Convention Against Corruption](#), "Each State Party shall consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

<sup>120</sup> Initiatives to extend the disclosure requirements to non-profit organizations are undertaken at state level. Alaska endorsed, through a 2020 ballot initiative, a requirement that persons and entities contributing to a campaign committee more than USD 2,000, which themselves derive from donations, need to disclose the sources of the initial contribution. In these elections, Arizona voters were deciding whether to introduce a donor disclosure obligation for any entity or person that spends over USD 50,000 on a state-wide campaign.

<sup>121</sup> For instance, in May 2022, the Louisiana State Legislature [extended](#) the disclosure requirements to political advertising placed on digital platforms. In October 2022, the King County Superior Court [issued](#) a USD 24.7 million fine to Meta for violation of the Washington state disclosure [provisions](#), which require that all written political advertising shall include the sponsor's name and address. Meta contravened the provisions on 822 occasions between 2019 and 2021.

<sup>122</sup> TikTok updated its [policies](#) for political accounts on 21 September 2022.

<sup>123</sup> The civil penalties foreseen in the FECA cannot exceed USD 50,000, or 1,000 per cent of the amount involved in a violation. The cases considered by the FEC over the [2022 fiscal year](#), resulted in USD 3.3 million in penalties, with an average civil penalty with conciliation agreement amounting to USD 51,700. According to paragraph 273 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Legislation](#), "sanctions must bear a relationship to the violation and respect the principle of proportionality".

<sup>124</sup> Out of 398 Matters Under Review (MUR) closed between 1 January 2020 and 31 July 2022, in 177 cases the FEC failed at some point to reach the four votes required for making a decision. In 36 out of the 177 cases, the MUR file was closed solely with split votes, and therefore without a decision.

dismissed cannot be subject to judicial review, contrary to international commitments.<sup>125</sup> The DoJ is tasked with the oversight of criminal liability related to campaign finance.

In an election year, campaign committees are required by law to report to the FEC on a quarterly basis and must also submit pre-election reports 12 days before, and post-election reports 30 days after election day.<sup>126</sup> By the end of September, expenditures by congressional candidates, parties, PACs and Super PACs amounted to USD 6 billion.<sup>127</sup> By mid-October, spending by Super PACs reportedly surpassed the USD 1.3 billion spent during the 2018 mid-term elections. The most substantial shares of funds spent by Super PACs in the senate races in Pennsylvania, Georgia, Nevada, Wisconsin, and Arizona, respectively.<sup>128</sup> At the recorded rate of spending these elections are set to be the most lucratively funded mid-term elections in history.

## Media

While pluralistic and diverse, the media landscape in the U.S. is highly polarized. Despite having over 18,000 media outlets, the most prominent media outlets and networks are owned by a relatively small number of entities. Digital media, including online media, social networks, and podcasts have become the dominant sources of political information.<sup>129</sup> The major television networks ABC, CBS, and NBC remain traditional sources of information, while cable news channels such as CNN, Fox News, and MSNBC mostly provide political coverage. There are several well-respected national newspapers, and local media serve as an important source on local politics; but the impact of both is declining. There are two public networks, Public Broadcasting Service (PBS) and National Public Radio (NPR). The latter in particular enjoys high audience ratings.

The First Amendment to the Constitution guarantees, freedom of the press and expression. The U.S. Supreme Court decisions, in conjunction with media self-regulation, provide for robust protection of media independence. Derogatory comments, including at Republican campaign events observed by the ODIHR LEOM, and a legal action against traditional news media, compounded by pervasive online disinformation, have contributed to declining trust in traditional media.<sup>130</sup> The OSCE Representative on Freedom of the Media has also raised concerns over journalists' safety in recent years.<sup>131</sup>

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<sup>125</sup> Out of 398 MURs closed between 1 January 2020 and 31 July 2022, the [FEC dismissed](#) 106 cases (26 per cent) as matters of prosecutorial discretion. On 9 April 2021, the U.S. Court of Appeals for the District of Columbia Circuit [ruled](#) that the FEC's exercise of prosecutorial discretion is not subject to judicial review, unless based solely on legal interpretation. Pursuant to paragraph 5.10 of the [1990 OSCE Copenhagen Document](#), "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

<sup>126</sup> Different reporting requirements apply to candidates' authorized committees.

<sup>127</sup> According to reports submitted to the FEC for the [third quarter of 2022](#), congressional candidates spent USD 2.7 billion, party committees- USD 1.3 billion, PACs – USD 840,000,000 and 'independent entities' including Super PACs USD 1.1 billion.

<sup>128</sup> See FEC [campaign finance data](#) and Open Secrets [assessment](#).

<sup>129</sup> On 27 October, businessman Elon Musk finalized the acquisition of Twitter, initiated in April 2022. While "no major content decisions" were announced until the convening of a new 'moderation council', the head of legal policy, trust and safety who was overseeing areas of misinformation and harmful speech, was dismissed immediately after the takeover.

<sup>130</sup> On 3 October, former President Trump sued CNN, seeking USD 475 million in damages, saying the network had defamed him and used its considerable influence to defeat him politically.

<sup>131</sup> See OSCE Representative on Freedom of the Media, Regular [report](#) to the OSCE Permanent Council, November 2021, as well as a [statement](#) from 27 October 2021 addressing several aspects of journalists' safety referring to "more than a hundred journalists assaulted by protestors during public demonstrations, several having their equipment damaged" and "law enforcement officials arresting or detaining more than fifty journalists."

The Federal Communications Commission (FCC) oversees the implementation of the 1934 Communications Act, the 1996 Telecommunications Act, but it does not conduct media monitoring. During the 60 days prior to election day, commercial broadcasters must provide ‘reasonable access’ to all qualified federal candidates who request to purchase airtime.<sup>132</sup> In addition, an ‘equal opportunity’ rule grants a candidate the right to use airtime on equal conditions with other candidates, with exceptions aimed at protecting editorial freedom. Print and online media are not bound by statutory requirements.

Freedom of expression was respected, with a wide range of election-related information available. National media coverage of the elections was extensive and vibrant, focusing primarily on competitive Senate and governor races, as well as on overarching topics such as election integrity, including the investigation of the 6 January 2021 attack on the U.S. Capitol.<sup>133</sup> In local media, reporting was dominated by state-based races, including coverage of debates.<sup>134</sup> Some of the monitored media outlets, in particular public PBS, provided useful voter information, covering various aspects of the electoral process.

Public PBS and NPR provided moderate amounts of campaign coverage in their newscasts, with the Democratic Party receiving 31 per cent and 35 percent of all news coverage related to politics on the respective stations, and the Republican Party receiving 35 and 33 per cent respectively; most coverage for both parties on public stations was neutral in tone. The three national TV networks (ABC, CBS, and NBC) presented similar, mostly neutral coverage of the major parties, with the tone more critical of the Republican party. President Biden and his administration received approximately 14 per cent of the coverage, mainly in a neutral tone, while former President Trump received approximately 10 percent of coverage which was largely negative.

The evening prime-time programming on cable networks is composed of political shows presented by well-known anchors, often combining the coverage of events with politically charged commentaries and opinions. Such partisan coverage was observed on MSNBC, which presented its viewers with highly negative coverage of the Republican party and former President Trump. Fox news was particularly partisan presenting largely negative information, often using demeaning and mocking language, against President Biden and the Democrats. In addition, Fox News and to some extent Daily Wire, regularly repeated the unfounded narratives of voter fraud surrounding the 2020 election, which were often amplified in affiliated websites and other platforms.<sup>135</sup> Newspapers and online media, including The New York Times, The Washington Post and the Wall Street Journal which regularly offered in-depth political analysis, often displayed political leanings.

## Complaints and Appeals

The available complaints mechanisms, including broad legal standing and multiple avenues, provide for effective dispute resolution prior to election day, but late decisions pertaining to key issues

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<sup>132</sup> The FCC maintains a record of such requests in its [Political File](#) through its [Public Inspection File](#). As non-commercial broadcasters, PBS and NPR are prohibited from airing paid advertisements.

<sup>133</sup> From 11 October, the ODIHR LEOM conducted its quantitative and qualitative assessment of political and election-related coverage by several major media outlets. The monitored media included: Public television PBS and public radio NPR; three television networks (ABC, CBS, and NBC); three cable television channels (CNN, Fox News, and MSNBC); two newspapers (The New York Times and The Wall Street Journal); and five websites [DailyWire.com](#), [HuffPost.com](#), [TheEpochTimes.com](#), [USAToday.com](#) and [WashingtonPost.com](#).

<sup>134</sup> While numerous debates took place, there were several candidates, 2 Republican candidates and 1 Democratic candidate declined to participate. On 12 April, during the mid-term primaries, the RNC withdrew from the bipartisan Committee for Presidential Debates, claiming a bias of the panel in relation to the 2020 presidential election debates.

<sup>135</sup> See reporting by [The Righting](#).

including voter identification and registration, voting, and counting procedures detracted from the effectiveness of election dispute resolution. Concerns were raised that stakeholders including county election boards might not be fully informed of such court orders, resulting in inconsistent and potentially selective implementation. Requests for recounts are permissible in 39 states.<sup>136</sup> In addition to state and federal courts, complaints may be filed, inter alia, with county election boards, election supervisors, secretaries of state, law enforcement agencies, and attorney general offices. Dispute resolution is governed by state laws, including those on administrative procedure. County election boards are often granted discretionary powers under state laws to apply their own procedures, and their decisions are subject to judicial review. Following the 2020 general elections, some states established additional mechanisms for investigation and prosecution or strengthened existing ones, often coupled with criminalization of certain irregularities.<sup>137</sup>

Information on complaints filed is not systematically published and comprehensive information on complaints filed is not readily available to the public.<sup>138</sup> Challenges against legislation were filed in 28 states since 2021.<sup>139</sup> In total, 78 challenges were brought against congressional district maps. Some 130 lawsuits were brought in 2021 and 2022 against new electoral legislation and implementing regulations, including those issued by secretaries of states. The legislation challenged pertained, inter alia, to voter identification, voter registration, early voting, postal and absentee voting, ballot drop boxes, use of technologies, and counting.<sup>140</sup> The lawsuits were filed by groups affiliated to the main parties as well as independent groups. Republicans challenged rules aimed at expanding voting alternatives, alleging that these are contrary to state laws and create potential for election fraud. Democrats challenged more rigorous procedural rules citing potential discrimination and possible disenfranchisement of eligible voters. Complaints to courts and county election boards challenging the accuracy of voter rolls in two states and the registration of thousands of individual voters, were also filed, mainly by Republican-affiliated groups.<sup>141</sup>

The U.S. Supreme Court received three cases on congressional district maps. The court issued a temporary order in favour of the congressional district maps drawn by the legislatures of Alabama

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<sup>136</sup> In 39 states, candidates may request recounts, while in Massachusetts and Pennsylvania recounts must be requested via a petition by a prescribed number of voters. State laws in Arizona, Connecticut, Florida, Hawaii, Illinois, Mississippi, New York, and South Carolina do not provide for requests for recounts but prescribe automatic recounts in case of close results. Tennessee does not provide for requests nor for automatic recounts. See [Automatic Recount Thresholds by State](#).

<sup>137</sup> For instance, Election Integrity Units with the attorney general in Arizona, Florida, Georgia, Michigan, Ohio, Texas, and Virginia, and the Office of Election Crimes and Security within the Florida Department of State, voter fraud hotlines, and law enforcement officers assigned to districts. In past elections, there were some criminal convictions for unlawful voter registration, ineligible, multiple and proxy voting, fraudulent use of absentee ballots, vote buying, altering the vote count, which occasionally resulted in court orders to overturn elections.

<sup>138</sup> Court decisions are published on official databases, and universities and think tanks operate databases. While there is no uniform practice regarding the publication of information on disputes handled by counties and secretaries of state, some counties publish information and videos of sessions on complaints on their websites.

<sup>139</sup> Approximately 50 lawsuits were filed in 2021, and more than 80 in 2022.

<sup>140</sup> For instance, a lawsuit was brought against the secretary of state of Minnesota for permitting the counting of postal ballots arriving up to one week after election day. Another lawsuit was brought by Honest Elections against the secretary of state of Michigan, alleging improper maintenance of the voter register; the case was resolved with an agreement resulting in deregistration of 64,000 voters.

<sup>141</sup> For instance, lawsuits on deadlines for receipt of postal ballots in Minnesota, the maintenance of voter registers and a ban on use of mobile phones during the absentee ballot counting in Michigan, the requirement to date postal ballots and ballot curing in Pennsylvania, restrictions on observers' rights and hand-count rules in Nevada, the use of DRE for counting in Alabama, Arizona, Nevada and Oregon, the maintenance of the voter register in Texas, counting of absentee ballots in New York, the requirement for first-time voters lacking ID to cast an affidavit ballot in New Hampshire, proof of residence requirements for voter registration in Indiana, counting of provisional ballots cast in wrong precincts in Illinois, and the collection of postal ballots in Alabama, Arizona, and Colorado.

and Louisiana, which had been deemed racially gerrymandered by federal district courts, resulting in the maps being used for these elections.<sup>142</sup> In its order, the U.S. Supreme Court cited the Purcell principle as preventing courts from changing district maps in the period leading up to an election.<sup>143</sup> In the absence of legal deadlines for review, the cases are pending review on merits. The U.S. Supreme Court received a third appeal, of a state court decision which deemed the congressional district map of North Carolina a partisan gerrymander. The appeal claims that congressional maps should be exempt from judicial review by state courts.<sup>144</sup> If the appeal is upheld, partisan gerrymandering will be completely exempt from judicial review while cases pertaining to racial gerrymandering and the equality of vote while remain under the purview of federal courts.

## Election Observation

Election observation is regulated by state legislation, resulting in a significant variance of rules and practices regulating observers' access to the different stages of the electoral process. At least 34 states and the District of Columbia provide for domestic observers.<sup>145</sup> Only 11 states and the District of Columbia explicitly provide for international observation, while 15 states prohibit election-day observation for international observers, in 15 there are some limitations or access is left to the discretion of the state or county, one has no explicit provisions, while procedures are open to the public in eight states.<sup>146</sup> Some states only allow voters registered in the respective state or county to act as observers.<sup>147</sup> The prohibition of election observers in law in 15 states and in practice in many other jurisdictions detracts from the transparency of the election process and is at odds with OSCE commitments.<sup>148</sup>

The DoJ deployed federal monitors to 64 jurisdictions in 24 states to assess compliance with federal voting rights law.<sup>149</sup> The Governors of Florida and Missouri announced that they would not permit DoJ observers to polling places in their states. Non-partisan groups across the country assist voters with legal advice, registration, and guidance on accessing polling stations, and also provide advocacy. The Carter Center observed elections in Georgia, Michigan and North Carolina.<sup>150</sup> While partisan poll watchers and challengers play a key role in enhancing transparency and oversight of the electoral process, concerns were raised publicly and to the IEOM that in light of growing scepticism of the integrity of election administration, some partisan observers may deliberately or

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<sup>142</sup> The U.S. Supreme Court issued temporary stay orders in [Ardoin v. Robinson](#) in Louisiana and [Merrill v. Milligan](#) in Alabama. In *Merrill v. Milligan*, the court will decide whether Alabama's 2021 congressional redistricting plan, which contains only one majority-African American district, diminishes the opportunity of African American voters to elect a representative of their choice and thus violates Section 2 of the [Voting Rights Act](#). The ruling will also apply to Louisiana.

<sup>143</sup> The complaint was filed on 21 November 2021 to the district court, which decided on 24 January 2022. The appeal was filed on the same day, and the U.S. Supreme Court issued the temporary order on 7 February.

<sup>144</sup> The hearing for [Moore v. Harper](#) is scheduled for 7 December. Article I, Section 4, Clause 1 of the U.S. Constitution states that: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

<sup>145</sup> See NCSL [Policies for Election Observers](#).

<sup>146</sup> Based on ODIHR LEOM long-term observers' findings, and research and reports on election observation by the [Carter Center](#) and [NCSL](#).

<sup>147</sup> For instance, Alabama, Alaska, Illinois, Indiana, Louisiana, North Carolina, Pennsylvania, Texas, and Utah.

<sup>148</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. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law".

<sup>149</sup> See [DoJ press release](#).

<sup>150</sup> See Carter Center [U.S. Elections](#) project.

through a misunderstanding of election procedures unduly interfere in the process on election day or potentially intimidate voters.<sup>151</sup>

## Election Day

The atmosphere in and around the limited number of polling stations visited by IEOM observers on election day was calm, peaceful and orderly overall. IEOM observers reported no cases of threats of violence against election officials or voters from polling stations where they observed. Voters turned out in high numbers, with queues noted in some instances. Almost all polling stations visited by IEOM observers were accessible, including for voters with disabilities, and voter information was widely available.

IEOM observers reported that most of the polling stations visited were adequately staffed, though shortages in numbers of poll workers were noted in some places. Poll workers were knowledgeable and well-prepared overall. Prescribed procedures were generally followed, but IEOM observers noted, in some instances, problems with the secrecy of the vote, mostly when voters were feeding ballots into ballot scanners. IEOM observers also reported some cases of voting machines or ballot scanners malfunctioning; these were mostly limited in impact and were resolved quickly.

Some IEOM observers reported instances of voters' names not being found on the voter list. In most such cases, affected voters were either redirected to another polling station or issued provisional ballots. Where election-day registration was possible, voters made use of this opportunity. IEOM observers noted or were informed about a few cases in which voters' eligibility was challenged, and they observed only a few instances of voters being turned away due to problems related to their identity documents. The partisan poll watchers whom IEOM observers encountered throughout election day acted in an orderly and professional manner.

IEOM observers assessed the closing of polling stations, the vote count, and the initial stages of the tabulation of results, in places observed, as professional, orderly, and efficient, with occasional minor technical issues that were swiftly resolved.

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<sup>151</sup> Interlocutors shared specific concerns with ODIHR IEOM observers in Alabama, Arizona, Florida, Georgia, Nevada, North Carolina and Texas. Florida, Georgia, Iowa, Kentucky, Montana, New Hampshire, New York and Texas [have passed bills to expand rights and access](#) to poll watchers and challengers.

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**MISSION INFORMATION & ACKNOWLEDGEMENTS**

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Washington D.C., 9 November 2022 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly (OSCE PA). The assessment was made to determine whether the elections complied with OSCE commitments, international obligations and standards for democratic elections, and with national legislation. Each of the institutions involved in this International Election Observation Mission has endorsed the 2005 Declaration of Principles for International Election Observation.

Margareta Cederfelt was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observer mission. The OSCE PA delegation was led by Pere Joan Pons. Tana de Zulueta is the Head of the ODIHR LEOM, deployed from 26 September.

This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some two months after the completion of the electoral process. The OSCE PA will present its report at its next meeting.

The ODIHR LEOM includes 17 experts in the capital and 40 long-term observers deployed throughout the country. On election day, 194 observers from 48 countries were deployed, including 62 observers deployed by ODIHR, as well a 132-member delegation from the OSCE PA. There were 35 per cent of women among observers.

The IEOM wishes to thank the United States government for the invitation to observe the elections and for their assistance. The IEOM wishes to also express their appreciation to other state institutions, political parties, media and civil society organizations, and the international community representatives for their co-operation.

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