



Office for Democratic Institutions and Human Rights

UNITED STATES OF AMERICA

MID-TERM CONGRESSIONAL ELECTIONS
2 November 2010

OSCE/ODIHR Election Assessment Mission Final Report



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I. EXECUTIVE SUMMARY

In line with OSCE commitments, the Mission of the United States to the OSCE in Vienna invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 2 November 2010 US mid-term congressional elections. Based on the recommendations of a Needs Assessment Mission, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for these elections.

The mid-term congressional elections were administered in a professional manner and generally enjoyed the confidence of election stakeholders, despite some reoccurring deficiencies in the electoral framework. Many of these shortcomings are consequences of a highly decentralized and complex system of conducting federal elections.

Congressional elections are primarily governed by state election legislation, with broad variances in voting rights and election procedures between and within states. Federal election laws, which have remained essentially unchanged since 2002, provide only minimal standards, leaving room for differing interpretations and implementation by states. The 2009 Military and Overseas Voter Empowerment Act established deadlines for states to deliver overseas ballots which were, in practice, impossible to meet by several states due to late primaries. In some states, overseas voters continue to have an option to waive the secrecy of their vote if they wish to fax or email their ballots. This runs contrary to the principle of secrecy of the vote enshrined in paragraph 7.4 of the 1990 OSCE Copenhagen Document and Article 25(b) of the International Covenant of Civil and Political Rights.

The autonomy of states in conducting elections and the lack of consensus among the main political parties do not help to address some reappearing concerns, even when they are widely acknowledged by government, judiciary, press, and civil society. One of the long-term challenges which remains unresolved is the disenfranchisement of certain categories of voters, notably US citizens residing in the District of Columbia and US territories, as well as felons and ex-felons.

All 435 seats of the House of Representatives and 37 out of 100 Senate seats were up for election. Primary elections for the Democratic Party and Republican Party resulted in a significant increase of new candidates due to resignations of incumbents or their defeat during the primaries. The campaign was highly competitive and focused primarily on domestic issues such as the economic crisis. Like all congressional elections at the middle of a presidential term, these elections were also seen as a referendum on the policies of President Barack Obama and his administration.

One reason for the increased competitiveness was the emergence of the Tea Party, a conservative libertarian movement comprising many small organizations close to the Republican Party. The Tea Party was able to mobilize thousands of volunteers and supporters, and their campaign activities attracted significant media coverage.

The pluralistic media environment with thousands of print outlets, TV and radio stations, as well as the Internet, offered citizens very broad access to information about the candidates, their platforms and the overall election process. It was also noticeable that the media tended to organize debates only between candidates of the two strongest parties, thus limiting access of third-party contestants. Negative advertising prevailed in the contest between the Democratic and Republican parties.

The importance of the elections was also underscored by the role that newly elected state officials will play in the reapportionment of the House of Representatives' seats and redistricting, scheduled for 2011. There is a broad perception that as a result of previous district delimitations, a significant number of districts have become non-competitive as the outcome of the election could be easily predicted. In 2010, candidates for the House of Representatives ran unopposed in 27 districts.

Attempts to introduce new voter identification and proof of citizenship requirements are heavily politicized, split on the issue of enfranchisement versus integrity of the vote. A broad variety of procedures exist within and between states which has, at times, resulted in an unequal treatment of voters.

These elections were the first held after the US Supreme Court decision, *Citizens United v. Federal Election Commission*, which ruled that corporations and unions can spend unlimited amounts to advocate for the election or defeat of candidates as a right to free speech. It is disputable to what extent this decision contributed to the record 4 billion USD spent on campaigning during these elections. However, the transparency of campaign financing was noticeably undermined by the increased contribution of certain types of organizations that are not required by law to disclose their donors.

The 2010 elections were characterized by an increased popularity in alternative voting arrangements that allow voters to vote before election day, either in person or by mail. The traditional event of election day has therefore changed into a voting period, sometimes several weeks long. Early voting arrangements resulted in different conditions for early voters, as many vote several weeks before the end of the campaign. Moreover, the secrecy of the vote could be compromised, as absentee by-mail voters mark their ballots in an uncontrolled environment.

While electronic voting equipment is widely used, its shortcomings have been publicly discussed, resulting in efforts to improve voting system integrity, including a continuing trend to return to paper ballots and optical scanners.

Active participation of domestic observers ensured transparency of the electoral process and accountability of election administration. A sophisticated judicial system and vigorous election-related litigation provide a further safeguard of the electoral process.

In keeping with its OSCE commitments, the United States has regularly invited the OSCE/ODIHR to observe elections for federal office. However, legal conditions for access of international observers varied widely from one jurisdiction to another, falling short of OSCE commitments in some states.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Mission of the United States (US) to the OSCE in Vienna and based on the recommendations of a Needs Assessment Mission,¹ the OSCE/ODIHR deployed an EAM for the 2 November 2010 mid-term congressional elections.

The OSCE/ODIHR EAM was deployed from 11 October to 5 November 2010. It was led by Mr. Miklós Haraszti and consisted of 13 experts from 13 participating States. Since 2002, the OSCE/ODIHR has deployed five election observation and assessment missions to US elections. Previous OSCE/ODIHR reports offered a number of recommendations to bring the electoral process fully in line with OSCE commitments. This report should be read in conjunction with past OSCE/ODIHR reports, which provide additional details on US elections and whose recommendations remain applicable.²

The OSCE/ODIHR EAM would like to thank the Department of State, the Department of Justice, the Department of Defense, the US Commission on Security and Cooperation in Europe and the National Association of Secretaries of State for their co-operation and assistance, as well as other organizations, institutions and individuals who took time to meet with the mission.

III. BACKGROUND AND ELECTORAL SYSTEM

The US is a federal state comprising 50 states, the District of Columbia (DC) and six territories.³ Legislative power rests in Congress, a bicameral body consisting of the Senate and House of Representatives. The President is vested with the executive power and the US Supreme Court is the highest judicial authority. The political context is dominated by the two main political parties, the Democratic Party and the Republican Party.

Every two years, all Representatives and one third of the Senators are elected by popular vote in their respective states on the basis of universal and equal suffrage through a first-past-the-post system. Senators serve staggered six-year terms and Representatives serve two-year terms. The congressional candidates representing the Democratic and Republican parties are selected in primary elections which take place on different dates in different states. Primaries were held between May and September.

On 2 November, 37 out of a total of 100 Senate seats⁴ and all 435 House of Representative seats were up for election.⁵ At stake was the reversal of majority in one or both houses of Congress, away from the President's party, the Democrats, to the opposition Republican Party. In addition, a number of state governors, state legislatures, secretaries of state, as

¹ OSCE/ODIHR Needs Assessment Mission Report is available at:
http://www.osce.org/documents/odihr/2010/07/45273_en.pdf.

² OSCE/ODIHR reports on previous elections in the US are available at:
<http://www.osce.org/odihr-elections/14676.html>.

³ Puerto Rico, Guam, the US Virgin Islands, American Samoa, Swains Islands and Northern Mariana Islands.

⁴ These included three special elections to fill the vacated seats of Vice-President Joseph Biden in Delaware, the US Secretary of State Hilary Clinton in New York and the seat of the late Senator Robert Byrd from West Virginia, as well as the seats of all 34 class III Senators.

⁵ At least one Representative per state; the remaining seats are allocated proportionally to states' population, on the basis of population data collected during the latest decennial census.

well as numerous other state and local offices, were also contested. The OSCE/ODIHR EAM only followed the conduct of state and local elections to the extent that they affected the congressional elections.

IV. LEGAL FRAMEWORK

A. OVERVIEW

The US system of government is highly decentralized, including jurisdiction over federal elections. Federal laws, which have remained essentially unchanged since 2002, provide only minimal standards for elections and leave room for differing interpretations and implementation by states. The states have primary power to regulate elections. State election laws vary widely, which impact differently on a range of issues related to voting rights and election procedures.

It is recommended that Congress consider additional federal regulation of election procedures to increase clarity, fairness, and consistency in federal electoral processes.

Election-related court decisions at all levels also form part of the legal framework. The US has a sophisticated justice system, with both state and federal courts, that is widely and effectively used to challenge the validity of laws and to enforce rights and freedoms. Although interpretations of federal and state laws by various courts add complexity to the legal framework, overall, the US justice system provides an important safeguard to the integrity of the electoral process.

B. FEDERAL ELECTORAL LEGISLATION

The 2002 Help America Vote Act (HAVA) was the last piece of significant election reform legislation enacted federally. The Act provides *inter alia* minimum standards on voting systems, statewide voter registration databases, use of provisional ballots, and access for voters with disabilities. New York was the last state to fully comply with the voting system requirements under HAVA, changing over from its long-standing lever machines to optical scan devices during the 2010 primary elections.

The 1993 National Voter Registration Act (NVRA) was enacted to facilitate and regulate aspects of voter registration, notably voter registration database maintenance. Civil rights groups are pursuing litigation against public service agencies which apparently failed to fulfil NVRA requirements to provide voter registration forms and assistance to clients, with pending cases in New Mexico and Indiana.⁶

The 2009 Military and Overseas Voting Empowerment (MOVE) Act amended the 1986 Uniformed and Overseas Citizens Voting Act (UOCAVA) which regulates absentee voting for federal elections by military and civilians living abroad. The MOVE Act, which was implemented for the first time in these elections, requires states and territories to send out overseas ballots at least 45 days prior to a federal election, with the intention of addressing problems encountered in past elections when many overseas ballots were returned too late

⁶ *AAPD v. Herrera*, US District Court for the District of New Mexico, Case 1:08-CV-00702 (filed in 2008), *ACORN v. Murphy*, US District Court for the Southern District of Indiana, Case 1:09-CV-00849-TWP-DML (filed in 2009).

to be counted. Under certain circumstances, a waiver of the 45-day deadline may be granted.

The earliest piece of federal election legislation is the 1965 Voting Rights Act (VRA) enacted primarily to prevent and remedy racial and minority language discrimination in voting. Section 5 of the VRA requires states and jurisdictions where there is historical voting discrimination to obtain pre-clearance of changes to election laws and procedures from the Department of Justice (DoJ) or the federal district court in DC.⁷ In pending federal court cases, various jurisdictions covered by Section 5 are challenging its constitutionality, with the DoJ and civil rights groups defending the provision.⁸

The DoJ is responsible for the monitoring and enforcement of federal election laws, including the VRA, HAVA, NVRA, UOCAVA and the MOVE Act. The DoJ maintains that its decisions to pursue or not pursue particular election cases are often the subject of allegations of political bias, from both sides of the political spectrum, which can affect the decisions it takes on particular matters. A recent situation apparently exemplifying this issue is an investigation by the US Commission on Civil Rights (USCCR) into DoJ actions in a case of alleged intimidation of white voters by New Black Panther Party activists in a Philadelphia polling station at the 2008 general elections.⁹ In 2009, the DoJ obtained an injunction and declaratory judgment for violation of Section 11(b) of the VRA¹⁰ against one individual but dropped charges against another individual and the party apparatus due to lack of evidence. The USCCR investigation was launched after allegations by a former DoJ official that the DoJ did not thoroughly pursue the case and that it does not support holding minorities accountable for intimidation of white voters.

At present, numerous bills addressing a broad range of election-related issues are pending in the House and Senate at various stages of the legislative process. They address issues such as felon and ex-felon and DC voting rights, impartial election administration, voting systems, voter caging practices,¹¹ deceptive practices and voter intimidation, absentee and provisional ballots, military and overseas voting, voter registration and purging practices, and campaign finance. It is not expected, however, that any significant election law will pass prior to the 2012 federal elections.

⁷ In 2006, after extensive hearings on the current status of voting discrimination, Congress voted in favor of extending Section 5 of the VRA for another 25 years.

⁸ In *Northwest Austin Municipal Utility District Number One v. Holder*, 557 US __ (2009), the US Supreme Court declined to consider the broader question of constitutionality of Section 5, instead basing its ruling on a narrower decision to allow the particular jurisdiction to “bail out” from Section 5. Pending cases raising the constitutionality of Section 5 are: *Georgia v. Holder*, *Shelby County Alabama v. Holder*, and *LaRoque v. Holder*, US District Court for the District of Columbia, Cases 1:10-CV-01062, 1:10-CV-00651, 1:10-CV-00561 (filed in 2010).

⁹ The USCCR was established in 1957 to protect civil rights and was at the forefront of drafting the VRA. Some interlocutors claim that since the 1980s, the agency has moved away from its traditional role as civil rights protector to a more conservative agenda. The USCCR notes its move away from traditional voter rights issues such as minority discrimination toward more current issues such as voter fraud. The USCCR’s investigation report is expected to be published in early 2011.

¹⁰ Section 11(b) prohibits threats, coercion or intimidation of voters, or attempts thereof.

¹¹ Voter caging is a method of challenging the registration status of voters to potentially prevent them from voting in an election, often viewed as a means to suppress opposition votes.

C. DISENFRANCHISEMENT OF CITIZENS

US citizens resident in DC and the US territories do not have the right to political representation in the Congress,¹² thus denying a significant number of US citizens the right to representation and the equality of rights. Despite extensive efforts over the years, both through the justice system and by lobbying Congress, to secure political representation for DC citizens, the disenfranchisement continues.¹³ In April 2010, the DC House Voting Rights Act, a long-sought legislation to provide DC with a voting seat in the House, was set to move ahead for a House vote. However, after a last minute amendment to the bill by the Republicans that would have repealed most of DC's gun-control laws, the House Majority Leader and Democrat sponsor of the bill shelved the legislation.

*It is recommended that Congress provide full representation rights in Congress for all US citizens, including citizens resident in Washington DC and the US territories, in line with paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.*¹⁴

Felon voting rights are under the purview of state legislatures and there exists a patchwork of restrictions leaving some 5.3 million felons and ex-felons disenfranchised.¹⁵ Restrictions vary broadly, with some states denying voting rights to prisoners, others restoring voting rights only after probation, parole and all financial penalties have been satisfied, and some imposing a lifetime voting ban on all ex-felons.¹⁶ Although recent examples of loosening of restrictions at state level are a welcome development,¹⁷ many states continue to have undue restrictions. The Democracy Restoration Act, a pending federal bill, aims to automatically restore voting rights to felons nationwide immediately on release from prison.¹⁸

Civil rights groups continue to advocate for the restoration of felon and ex-felon voting rights, by lobbying state and national legislatures, lodging court challenges and submitting the issue to established international human rights forums.¹⁹ However, civil rights groups

¹² Citizens of DC and the US territories only have non-voting House representatives.

¹³ *Adams v. Clinton*, 531 US 941 (2000), ruled that voting rights were a matter for legislative, not judicial relief, effectively closing the judicial approach to voting rights for DC residents. The OSCE Parliamentary Assembly, in point 58 of its 2005 Washington Declaration, called on the US Congress to adopt "such legislation as may be necessary to grant the residents of Washington DC equal voting rights".

¹⁴ Paragraph 7.3 of the 1990 OSCE Copenhagen Document guarantees "universal and equal suffrage to adult citizens". Paragraph 24 provides that "the participating States will ensure that the exercise of all the human rights and fundamental freedoms... will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law, in particular the International Covenant on Civil and Political Rights, and with their international commitments, in particular the Universal Declaration of Human Rights. The restrictions have the character of exceptions."

¹⁵ See "Felon Disenfranchisement Laws in the United States", The Sentencing Project, 2010, http://www.sentencingproject.org/doc/publications/fd_bs_fdlawsinusMarch2010.pdf.

¹⁶ Some states require ex-felons to reapply for voting rights. This is often an onerous process and waiting periods may apply, for example, five years in Delaware and Wyoming and two years in Nebraska. Kentucky and Virginia impose lifetime voting bans on all ex-felons.

¹⁷ In 2009, Washington State removed the voting ban on ex-felons who have been released from prison but who still have outstanding financial obligations related to their conviction (but still disenfranchises ex-felons who are on probation and parole).

¹⁸ See "The Democracy Restoration Act: Addressing A Centuries-Old Injustice", 2010, American Constitution Society for Law and Policy, <http://www.acslaw.org/ACS%20Issue%20Brief%20Vagins%20and%20Wood.pdf>.

¹⁹ In 2009, submissions were made to the Inter-American Commission on Human Rights and the United Nations Human Rights Council by the Lawyers Committee for Civil Rights Under Law and the Sentencing Project. The American Civil Liberties Union joined the former submission.

met by the OSCE/ODIHR EAM were not confident that US courts would be at the forefront of restoring felon voting rights. On 7 October 2010, an 11-judge panel of a federal appeals court, in *Farrakhan v. Gregoire*, unanimously upheld Washington state's felon disenfranchisement law, which bans voting by felons who are still on parole or probation. The court ruled that the law was not racially discriminatory and is thus not a violation of Section 2 of the VRA, as had been argued, since the law was not intended to discriminate against minorities even if they are more likely to be convicted.²⁰ Other federal courts of appeal have also recently upheld ex-felon disenfranchisement laws.²¹ The US Supreme Court also refused an application to hear a challenge to Massachusetts' disenfranchisement of imprisoned felons as a violation of Section 2 of the VRA.²²

It is recommended that felon and ex-felon voting rights for federal elections be a matter of federal law to ensure consistency nationwide and that any restrictions on voting rights be clearly justifiable in line with paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

V. ELECTION ADMINISTRATION

A. ELECTION MANAGEMENT BODIES

The US election administration mirrors the decentralized system of government. Elections are conducted by the states. Each state has its own administrative arrangements with varying levels of bipartisan representation and oversight by the state executive, judicial and legislative branches. Further decentralization comprises counties which in some states enjoy a high degree of autonomy in administering the elections. Arrangements at county level may include voting methods and certification of election results.

Two federal electoral bodies with limited mandates are involved in the administration of elections for federal office; the Federal Election Commission (FEC) and the Election Assistance Commission (EAC). In addition, the DoJ is charged with enforcing the provisions of federal election legislation and the Federal Voting Assistance Program (FVAP), a programme run by the Department of Defense (DoD) to facilitate overseas voting.

Generally, the election administration is perceived to perform its duties in a professional manner. While it enjoys the overall confidence of stakeholders, the potential for possible conflict of interests of election administrators who run as party candidates remains.

²⁰ Section 2 of the VRA contains a general prohibition on voting discrimination. Congress amended this section in 1982, prohibiting any voting practice or procedure that has a discriminatory result, clarifying that proof of intentional discrimination is not required. Notably, an earlier ruling in *Farrakhan v. Gregoire* by a three-judge panel of the same court recognized that Washington's felon disenfranchisement law injected inequality from the criminal justice system into the political process and thus violated Section 2 of the VRA.

²¹ On 27 May 2010, *Coronado v. Napolitano*, US Court of Appeals for the Ninth Circuit, No. 08-17567, upheld an Arizona law that does not allow individuals with former felony convictions to register and vote until they have paid all their court costs, fines, and restitution associated with their sentence. On 28 October 2010, *Johnson v. Bredesen*, US Court of Appeals for the Sixth Circuit, No. 08-6377 ruled that Tennessee may continue to bar ex-felons from registering to vote if they owe child support or restitution payments.

²² *Simmons v. Galvin*, No. 09-920, 18 October 2010.

If an election official wishes to be a candidate, or to campaign or actively support a candidate or a party, consideration could be given to requiring the official to resign and to be replaced, due to perceived or real conflict of interest.

While the budgets of different election management bodies were reduced as part of overall expenditure-cutting policies, these reductions did not visibly affect the administration of the mid-term elections.²³ In line with HAVA and previous OSCE/ODIHR recommendations, election officials continued to recruit college students as poll workers to enhance their technological capacity in using new voting technologies.

B. VOTER REGISTRATION

1. Overview

Unlike the campaign for the 2008 general elections, voter registration issues featured less prominently during the 2010 mid-term elections. Federal legislation governing voter registration has not been recently amended.²⁴ Following the 2008 general elections, the Senate Rules and Administration Committee engaged in drafting a bipartisan bill to mandate automatic state voter registration systems that would systematically include all eligible citizens in the voter registers. The drafting, however, was not finalized as voter registration remains a highly partisan issue, pitting enfranchisement against the integrity of the vote. On the other hand, there was considerable analytical work on improving voter registration procedures and state-wide voter registration databases (SWVRD).²⁵ Several groups of neighbouring states have started to co-operate to prevent possible multiple registrations.²⁶ California is yet to achieve full HAVA compliance with regard to establishing a SWVRD.²⁷

Voter registration is conducted by the state and local authorities based on citizens' applications (active registration system). Voter registration has traditionally been supported by grass-roots groups of activists, mostly volunteers, working for the candidates and their parties. The active registration system is generally perceived as a means of making the vote a conscious political decision. However, the lack of a centrally maintained voter registration system is also the main reason for administrative deficiencies, which, in turn, can lead to unequal treatment and allow room for political manipulations aimed at disenfranchising certain categories of voters.

In June 2010, an out-of-court settlement was reached when Michigan agreed to stop two voter-purge programmes that in 2008 disenfranchised thousands of Michigan voters in violation of the NVRA. Based on the agreement, Michigan will no longer remove persons

²³ The budget of the DC Board of Elections and Ethics has been reduced on average by five per cent in the last three years. The EAC budget was reduced by 15 per cent for the 2011 fiscal year.

²⁴ This is despite intentions in Congress to pass new legislation such as the "Voter Registration Modernization Act of 2009", <http://www.electioncenter.org/Legislation/HR%201719--Lofgren--Internet%20registration.pdf>. However, the DoJ did approve revised guidelines on the implementation of the 1993 NVRA, http://www.justice.gov/crt/voting/nvra/nvra_qa.pdf.

²⁵ Examples include: "Maintenance of State Voter Registration Lists. A review of Relevant Policies and Procedures", report commissioned by NASS, 2009, <http://www.hss.caltech.edu/~rma/nass-report-voter-reg-maintenance-sept09.pdf> and "Improving State Voter Registration Databases", National Research Council of the National Academies, 2009, http://www.eac.gov/assets/1/workflow_staging/Page/52.PDF.

²⁶ Ibid, Report commissioned by NASS, 2009.

²⁷ Full HAVA compliance is projected to be achieved in 2015. See <http://www.sos.ca.gov/elections/votecal/pdf/votecal-spr-080310.pdf>.

from voter lists merely for having out-of-state driver licenses or having voter-identification records associated with incorrect mailing addresses. In October 2010, Colorado's Secretary of State was taken to court for using practices that removed 6,000 registered voters based on mail-outs being returned as non-deliverable. However, the federal district court denied the request to reinstate the removed voters, ruling that the procedure was not in violation of federal law.²⁸ One study estimates that more than two million voters were unable to cast a ballot in the 2008 federal elections due to registration problems.²⁹

Authorities could consider the automatic inclusion of all eligible citizens in unified, uniformly generated and regularly updated state-wide voter registers. This would remove the necessity for voters to proactively register. Further efforts to cross-check voter registration databases between states could also be considered.

2. Verification of Citizenship

When applying for voter registration, voters sign a statement, subject to penalty for perjury, that they are US citizens without the need to provide documentary proof. However, in recent years, proof of citizenship has become a matter of contention. In 2004, due to alleged cases of voter registration fraud, Arizona approved a state law requiring voters to show proof of citizenship when they apply to register. Civil rights groups estimate that 40,000 eligible voter registration applications were rejected under that law mainly due to lack of economic means to obtain citizenship documents.³⁰ In a key decision, on 26 October 2010, a federal appeals court ruled that Arizona's law requiring registrants to provide documentary proof of citizenship violates the NVRA provision that mandates all states to accept and use the federal voter registration form without additional documentation requirements.³¹

In August 2010, the DoJ pre-cleared a procedure in Georgia that allows administrative checks on citizenship of new voter registrants and requires documentary proof to be provided by those not verified as citizens.³² In 2009, Georgia also enacted a proof of citizenship law, not yet pre-cleared by DoJ. In relation to the implementation of HAVA-required matching procedures,³³ Georgia's Secretary of State sent a letter to some 5,700 voters for whom a mismatch with the Department of Driver Services records and citizenship information was established, and asked them to clarify their status with relevant county officials.

²⁸ *Common Cause of Colorado v. Buescher*, US Court of Appeals for the Tenth Circuit, No. 10-1546 (2010). This is one of several federal challenges regarding purged voters filed against the Colorado Secretary of State in recent years.

²⁹ See "Voter Registration Modernization", Pew Center for the States, 2009, http://www.pewcenteronthestates.org/uploadedFiles/Voter_Registration_Modernization_Brief_web.pdf. Data for 2010 is not yet available.

³⁰ Mainly due to the 10-100 USD fees for obtaining the required citizenship documents.

³¹ *Inter Tribal Council of Arizona, Inc. v. Bennett*, US Court of Appeals for the Ninth Circuit, No. 08-17115 (2010). On 16 November 2010, a motion for a rehearing *en banc* (entire bench of judges) was filed.

³² Previously, in 2009, the DoJ had twice rejected a similar procedure calling it "seriously flawed" because it subjected minority voters to "additional and more importantly erroneous burdens on the right to register or vote".

³³ Section 303(a)(5)(B and C) requires states to coordinate and match their SWVRDs with state and federal databases such as the Motor Vehicle Agency and the Social Security Agency.

C. VOTER IDENTIFICATION

Requiring presentation of identification documents (ID) to vote has been a hotly contested political issue in the US for many years. Republicans generally argue it is necessary to ensure the integrity of the vote and safeguard against voter fraud while Democrats are concerned about the discriminatory impact on poor and minority voters, and contend they are unnecessary to combat virtually non-existent voter fraud.³⁴

Challenges to state laws requiring voters to present ID continue in the courts. Following a 2008 US Supreme Court decision upholding the validity of Indiana's law requiring photo ID,³⁵ the same law was unsuccessfully challenged in Indiana's state court system as a violation of the State Constitution.³⁶ Consequently, the law remains in force.

Georgia's photo ID law was also challenged in both state and federal courts. In January 2009, a federal appeals court unanimously found that "the insignificant burden imposed by the Georgia statute is outweighed by the interests in detecting and deterring voter fraud."³⁷ On 7 September 2010, the Georgia Supreme Court heard arguments on whether the ID law violates the State Constitution and has six months from the date of the hearing to issue a decision.³⁸ On 26 October 2010, a federal appeals court upheld Arizona's requirement for voter ID.³⁹

Presentation of an ID is not required for voting absentee by-mail. This practice *de facto* results in unequal treatment of voters in the states which require ID for voting on election day.

Consideration could be given to upholding equal treatment with regard to identification requirements for absentee by-mail voters and voters who vote in the polling station on election day. For example, a copy of ID can be submitted with the request for absentee ballot or it could be attached when voters mail their voted ballot.

Since the ID requirements of Indiana, Georgia and Arizona were upheld in courts, OSCE/ODIHR EAM interlocutors anticipated that more states are likely to introduce stricter identification requirements.

³⁴ Due to the lack of comprehensive studies and analysis, it is very difficult to assess the scale of possible disenfranchisement and voter registration fraud in the US. For example, the US Government accountability office found in 2005 that up to three per cent of the 30,000 persons called for jury duty from voter registration rolls in one US district court were not US citizens. See "The Threat of Non-Citizen Voting; Legal Memorandum," July 2008, Hans von Spakovsky (published by the Heritage Foundation).

³⁵ *Crawford v. Marion County Election Board*, 553 US 181 (2008).

³⁶ *League of Women Voters v. Rokita*, Indiana Supreme Court, Case 49S02-1001-CV-00050 (2010), upheld the validity of this law. An earlier decision by an Indiana Appeals Court, Case 49A02-0901-CV-00040 (2009) had ruled that the photo ID requirement violated the state's Constitution because it unjustifiably exempted select groups – absentee voters and voters living in state-licensed care facilities – from having to comply with the law.

³⁷ *Common Cause et al. v. Billups*, US Court of Appeals for the Eleventh Circuit, Case 07-14664 (2009). In response to concerns raised by the district court in the first instance and prior to the appeal court hearing, Georgia revised the law to provide for issuance of free photo IDs at the elections office.

³⁸ *Democratic Party of Georgia v. Perdue*, Georgia Supreme Court, Case S09A0201.

³⁹ *Inter Tribal Council of Arizona, Inc. v. Bennett*; the ID requirement is less stringent than other ID laws as it allows two pieces of non-photo ID in lieu of photo ID.

Consideration could be given to introducing state-issued IDs which could represent simultaneously proof of citizenship and identity, and thus help to resolve this issue. Such IDs could be distributed free of charge, at least to voters with lower income.

D. ALTERNATIVE VOTING ARRANGEMENTS

1. Overview

US elections for federal office take place during a working day. In order to maximize enfranchisement, most US jurisdictions offer voters several modalities to cast their ballots outside polling stations before election day. Such modalities are generically referred to as alternative voting arrangements (AVA). While AVAs have gained popularity, as they are considered convenient for voters and can reduce the workload for officials on election day, they do carry certain risks.

AVA voters cast their ballots prior to election day, at times several weeks ahead of the end of the campaign, transforming the traditional event of a single election day into a protracted voting period. Thus, early voters can cast their ballot before the withdrawal or possible sudden death of a candidate of their choice, or prior to important campaign events, such as debates, which might have influenced their choice.

US jurisdictions provide voters with two principal options for AVAs; early in-person voting and absentee by-mail voting. These arrangements do not provide some of the usual election day safeguards for the secrecy of the vote. While early in-person voters mark their ballot before election day in specifically designated polling stations, absentee voters mark their ballots outside a polling station which raises issues of possible undue influence and potential breaches of the secrecy of the vote.

Jurisdictions use different application procedures for absentee by-mail voting. Ballots can be sent to the voter electronically or by post, with 25 states requiring a justification to request an absentee ballot. Likewise, procedures for return of absentee ballots differ. In some states, a second envelope is not provided to protect the secrecy of vote. Deadlines for returning ballots vary, with some states accepting ballots until the close of polling stations on election day, whereas others require that the envelope containing the voted ballot must be postmarked by election day. In most counties visited by the OSCE/ODIHR EAM, returned absentee ballots were kept at the county clerk offices with no special security measures.

Protective measures to ensure the security of the ballots cast days or weeks before election day should be considered. This could include the use of secure storage facilities and the publication of the number of ballots received on a daily basis.

2. Overseas Voting

The DoD estimates that 4.8 million voters reside abroad. This includes military personnel, US Department of State officials, their families and other US citizens. The DoD is mandated with facilitating out-of-country voting through the FVAP for both military and civilians.

The MOVE Act requirement that absentee ballots must be sent to all overseas voters 45 days prior to election day was generally met. However, 11 states and territories requested a

waiver to this provision due to their primary elections being too close to the deadline. The DoD granted the waiver in six cases.⁴⁰

The DoJ took actions against those jurisdictions without waivers who failed to comply with the 45-day deadline. The DoJ reached an agreement with, or won out of court orders against, 14 states and territories with an estimated 65,000 affected overseas voters. Nine of those jurisdictions reached out-of-court settlements and four others agreed to consent decrees, essentially requiring these jurisdictions to allow for late receipt of ballots.⁴¹ A federal lawsuit against Guam resulted in an order to accept overseas ballots until 15 November.

State election administrators can transmit ballots to overseas voters by email in at least 28 states. Also, the FVAP, as stipulated by UOCAVA, provided a Federal Write-In Absentee ballot which could be downloaded from its website and which states are required to accept for all federal elections.

E. **SECURITY OF VOTE**

Some states continue to allow overseas voters to return their voted ballots by fax or email. If voters choose to fax or email their marked ballot, they are asked to sign a waiver of their right to secrecy.⁴² In addition, election officials transcribe manually faxed or emailed ballots into scan-readable ballot papers for counting and tabulation.⁴³

While the US Constitution does not expressly require vote secrecy,⁴⁴ the US has ratified the UN International Covenant for Civil and Political Rights (ICCPR)⁴⁵ and is bound by the 1990 OSCE Copenhagen Document, both of which include this fundamental principle. While the OSCE/ODIHR EAM was not aware of any attempts to purposefully breach the secrecy of the vote during the 2010 elections, faxing and emailing of voted ballots continue to raise concerns.

In order to comply with international obligations, consideration could be given to adopting federal legislation that ensures the secrecy of the vote in US elections.

F. **WRITE-IN CANDIDATES**

The election legislation in most states allows voters to write on the ballot the name of the candidate of their choice if they do not appear on the ballot. This option, commonly known as a *write-in*, is considered to provide additional opportunities for participation of candidates outside the party nomination processes, and to adapt to cases like a candidate's

⁴⁰ The DoD granted waivers to Delaware, Massachusetts, New York, Rhode Island and Washington, and rejected Alaska, Colorado, DC, Hawaii, Virgin Islands and Wisconsin.

⁴¹ For the former: Alaska, Colorado, DC, Hawaii, Kansas, Mississippi, Nevada, North Dakota, and the Virgin Islands. For the latter: Wisconsin, New Mexico, New York and Illinois.

⁴² 14 states allowed return via fax. A further 18 states allowed return by e-mail in addition to fax.

⁴³ Some states, like Ohio, have issued directives on how to transfer a faxed vote to a scan-readable ballot, ensuring bipartisan control of the process.

⁴⁴ Constitutions of some states contain specific requirements for ballot secrecy, for example Georgia.

⁴⁵ Article 25(b) of the ICCPR, and Paragraph 7.4 of the Copenhagen Document. The US Senate ratified the ICCPR in 1992, with a number of reservations, understandings, 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 United States as a matter of international law, it does not form part of domestic law.

sudden death or withdrawal. At times, party candidates defeated in primary elections may decide to run as *write-in* candidates. In some states, *write-in* candidates must submit a declaration of intent to run in order for the ballots cast for them to be counted.

Votes cast for all such candidates are typically counted altogether as a single *write-in* category. However, as there can be more than one *write-in* candidate, an additional, separate counting process is required to determine the validity of the vote and the total of each separate *write-in* candidate. Votes can be annulled if the name of the candidate is misspelled. This procedure may lead to a high number of invalid ballots and litigation among candidates.

Consideration should be given to undertaking verification of votes for write-in candidates during the ballot counting process in order to deliver results promptly and in similar conditions to those enjoyed by party or independent candidates.

This is particularly relevant when a *write-in* candidate has a reasonable chance to win an election, as was the case of the incumbent Senator Lisa Murkowski from Alaska. Ms. Murkowski lost her Senate nomination in the Republican primaries and decided to stand as a *write-in* candidate. In this case, the issue was how each vote would be counted if there were spelling errors on the ballots. According to Alaska's law, voters have to write on the ballot at least the last name of the *write-in* candidate as it appears on the persons' candidacy application for the vote to be counted. The OSCE/ODIHR EAM was informed by the Alaska Division of Elections that discretion to discern voter intent would be exercised and that ballots with minor misspellings of Ms. Murkowski's name would be accepted in an effort not to disenfranchise any voters.

The verification of votes for *write-in* candidates started in Alaska one week after the elections and, at the time of writing, the results had still not been certified by the State of Alaska.⁴⁶

VI. ELECTORAL DISTRICTS AND THE 2010 DECENNIAL CENSUS

Delimitation of congressional districts is a fundamental element of the election process to ensure respect of the equality of the vote. While electoral districts for Senators comprise entire states, boundaries of electoral districts' for House of Representatives (congressional districts) are updated every ten years, following a decennial census. The results of the ongoing 2010 decennial census will lead to a reapportionment of the 435 House of Representatives seats and redistricting of the existing congressional districts, on the basis of the new population figures.⁴⁷

Historically, districting has been based on a number of principles including that districts should have equal population, be compact and contiguous, respect administrative territorial divisions and preserve "communities of interest".⁴⁸ It is also noted that because

⁴⁶ If elected, Ms. Murkowski will be the third ever US Senator elected as a *write-in* candidate. The last was Strom Thurmond (South Carolina), in 1954.

⁴⁷ It is foreseen that, due to immigration and in-country migration, states in the South-West will gain more seats in the House of Representatives, while North-Eastern states will lose seats.

⁴⁸ See "State Districting Principles", <http://www.senate.leg.state.mn.us/departments/scr/RED/IST/red-us/Tab5appx.htm#MN%20C%20communities>. While there is no common definition of a "community of interest", the California First Voters Act for Congress defines it as "a contiguous

redistricting plans are typically drafted by elected governors and state legislatures, they may often reflect political realities in a manner that takes into account voters' political preferences.⁴⁹ As a result of this process, some districts have very unusual shapes, which could indicate that "gerrymandering" has occurred in order to favour one partisan interest.⁵⁰ In some cases, however, strange boundaries can emerge as a result of local geographic conditions or the taking into account of minority voting rights.

Nevertheless, there is a broad perception that a significant number of congressional districts are non-competitive as the outcome of the election could be predicted with a high degree of probability.⁵¹ In these mid-term elections, one senator and 27 candidates for members of the House were elected unopposed.⁵²

In California and Florida, state referenda were held on 2 November on issues related to redistricting. In both instances, proposals to reform existing redistricting practices were approved. In the run-up to the 2011 redistricting, the OSCE/ODIHR EAM reiterates the recommendation contained in the OSCE/ODIHR final report on the 2006 mid-term elections:

With a view to ensuring genuine electoral competition in congressional districts, consideration could be given to introducing procedures for drawing district boundaries that will be based on criteria other than voters' voting histories and perceived future voting intentions.

VII. NEW VOTING TECHNOLOGIES

The US has a long history of using voting technologies. Traditional voting systems included machines using punch cards as well as mechanical pull lever machines. Originally HAVA mandated states to replace outdated voting machines so as to fulfil specific requirements⁵³ and assisted them with federal funds until 1 January 2006.

A. IMPLEMENTATION OF NEW VOTING TECHNOLOGIES

For these elections, nearly all voters were able to vote using new voting technologies (NVTs).⁵⁴ These included Direct Recording Electronic (DRE) and touch screen voting

population which shares common social and economic interests that should be included within a single district for purposes of its effective and fair representation",

<http://www.voterguide.sos.ca.gov/propositions/20>.

⁴⁹ In many states, voter registration provides voters with a possibility to state their political affiliation.
⁵⁰ See "How to Draw Redistricting Plans That Will Stand Up in Court", Peter S. Watson, NCSL, 2009, <http://www.senate.leg.state.mn.us/departments/scr/REDIST/Draw/draw%207-22-09.pdf>.

⁵¹ According to media reports (see, for example <http://elections.nytimes.com/2010/house>), out of 435 congressional districts, only 48 were "toss-up", 28 were "leaning" Republican, 38 were "leaning" Democrat, and the remaining were either "solid" Republican or "solid" Democrat.

⁵² John Thume, Republican in South Dakota, was the sixth ever senator elected unopposed. There were 22 Republican and 5 Democrat representatives who were elected unopposed in Alabama, California, Florida, Georgia, Louisiana, Massachusetts, New York, Oklahoma, Pennsylvania, Texas, Virginia and Washington.

⁵³ These included provisions in regard to secrecy of the vote, supporting people with disabilities and speaking foreign languages as well as minimizing spoiled ballots due to "overvoting". An overvote occurs when an individual votes for more candidates than the maximum number permitted in a given contest.

⁵⁴ Only five counties in Idaho continued to use punch card systems.

systems, optionally equipped with voter verifiable paper audit trails (VVPATs), as well as hand- or computer-marked paper ballots that are counted using optical scanners. The trend to return to paper ballots in the voting process continues largely due to the persisting public discussion of voting system integrity.

Optically scanned paper ballots were used in 41 states, in 19 of them on a state-wide basis. Electronic voting systems which produce a VVPAT, in line with previous OSCE/ODIHR recommendations, were used in 19 states, in 2 of them on a state-wide basis. Thirteen states (down from 26 in 2008) used electronic voting systems that do not produce a VVPAT and in six states it was the only method of voting.⁵⁵

In order to ensure election integrity, NVTs should make use of paper and should additionally foresee mandatory hand-recounts of a meaningful number of paper ballots or VVPATs as well as specify procedures in case of deviation between electronic and hand counts. Rules for hand-recounts are already established in many states, but are not standardized.⁵⁶

The trend towards the use of new voting technologies which use either VVPATs or hand- or computer-marked paper ballots is positive. Authorities could consider adopting federal legislation for the mandatory use of a paper trail in elections, including federal standards on mandatory hand-recounts of paper ballots and VVPATs.

The state of New York was the last state to use pull-lever machines in the 2008 general elections. On 15 December 2009, the New York State Board of Elections decided to replace these machines with paper ballots to be counted using optical scanners. The Board certified optical scanning products of two vendors,⁵⁷ with the first use in the primaries in September. Due to the limited amount of time available, not all counties were able to conduct thorough testing. Elections in the five boroughs of New York City attracted extensive media attention, particularly due to reports of machine breakdowns and complaints of a lack of voter secrecy. The New York City Board of Elections was mostly able to address public concerns. However several polling stations reported defective machines to the OSCE/ODIHR EAM on election day.

In line with international good practice, NVTs should be introduced on a gradual basis and with testing under realistic conditions prior to election day. This would allow meaningful evaluation after each step, as well as help to build trust among stakeholders.

B. EVALUATION AND CERTIFICATION OF NEW VOTING TECHNOLOGIES

The evaluation and certification of NVTs helps build public trust and ensures that the technology complies with the requirements set by federal and state law. Due to the decentralized nature of election administration in the US, requirements vary greatly from state to state. The certification programme consists of two parts: 1) the development of a federal standard and 2) the establishment of federal laboratories which conduct evaluations against this standard.

⁵⁵ Delaware, Georgia, Louisiana, Maryland, New Jersey, South Carolina.

⁵⁶ See "State Recount Laws Searchable Database", Citizens for Election Integrity Minnesota, 2010, <http://ceimn.org/ceimn-state-recount-laws-searchable-database>.

⁵⁷ See "Minutes of the New York State Board of Elections", 15 December 2009, <http://www.elections.state.ny.us/NYSBOE/News/MeetingMinutes/Approved12152009minutes.pdf>.

The first set of requirements was established by the 1990 Voting Systems Standard (VSS), drafted by the FEC. In 2002, HAVA transferred the responsibility to the EAC, and mandated it to introduce a voluntary certification. In 2005, the EAC passed the Voluntary Voting System Guidelines (VVSG). Two years later, a revised draft of the VVSG was prepared but was never adopted by the EAC, which would have obliged systems to use paper. Currently the work on an updated version of the 2005 VVSG is in progress.

The EAC also certifies the test laboratories, which are responsible for conducting the product evaluations.⁵⁸ This evaluation is paid for directly by the vendor, which runs contrary to good practices and raises concerns of perceived or real conflicts of interest. Although evaluation procedures are reviewed by the EAC on a yearly basis, this issue has yet to be addressed.

Ensuring public funding of evaluation would enhance the credibility and independence of the certification process.

Certification procedures require time and commensurate funds. States are not required by law to have systems evaluated according to EAC standards and regrettably only a limited number of systems have been certified against EAC standards.⁵⁹ This has resulted in a heterogeneous landscape of systems certified according to different standards. In addition, only a few vendors are active due to the high certification costs involved.

The federal authorities could harmonize the certification requirements across states by introducing a mandatory set of minimum requirements. This would reduce both costs and time needed for evaluation of customized systems because state certification could build upon federal certification.

C. REMOTE ELECTRONIC (INTERNET) VOTING

Experiments with remote electronic voting started a decade ago in the US. In 2000, the Arizona Democratic primary election was one of the first elections worldwide to use internet voting, with votes legally binding. In 2001, the DoD started the Secure Electronic Registration and Voting Experiment (SERVE) with the aim to enable overseas military personnel to vote via the Internet in federal elections. Despite initial enthusiasm it was discontinued in 2004 after four members of the academic advisory board criticized the project.⁶⁰ Since then, several projects have been piloted to readdress remote voting via the Internet for US citizens living abroad.⁶¹

During the 2010 elections, West Virginia conducted a pilot project in eight counties to enable internet voting. Votes cast via the Internet were printed and then entered into a voting machine by a small bipartisan committee. No formal certification was conducted as only a small budget was available.

⁵⁸ Currently only three laboratories have been certified by the EAC: iBeta Quality Assurance, SLI Global Solutions, and Wyle Laboratories, Inc.

⁵⁹ Two systems are certified using the 2002 and a further two using the 2005 standards. Four more systems are currently under evaluation.

⁶⁰ See "A Security Analysis of the Secure Electronic Registration and Voting Experiment (SERVE)", David Jefferson *et al.* 2004, <http://www.servesecurityreport.org/>.

⁶¹ Pilot projects include Operation Bravo Foundation, <http://www.operationbravo.org>, and Democrats Abroad, <http://www.democratsabroad.org/>.

The DC Board of Elections initially planned to offer an Internet platform where voters would download the blank ballot, vote offline and later upload their marked ballot. The system was implemented with only 2.5 months of preparation time. Before the actual implementation, the board invited interested hackers to try to crack the system. Students from the University of Michigan were able to compromise the platform, which led the DC election administrators to stop the project and instead offer blank ballots to be delivered electronically.

Before starting projects on remote electronic voting, federal evaluation and certification of remote electronic voting products should be intensified prior to public test or even use. Pilot projects should be given the necessary time and financial resources to be tested comprehensively to ensure reliability, security and integrity.

VIII. CAMPAIGN ENVIRONMENT

The 2010 elections were conducted during an ongoing economic and financial crisis, thus issues of employment, economic growth, taxation, health care and a growing budget deficit dominated the political discussion. Voters were generally dissatisfied with the politics in the federal capital⁶² and these elections, in the middle of the presidential term, were seen as a referendum on the policies of the President and his administration.

Several new candidates emerged, defeating incumbent Representatives and Senators during primaries or following their resignation. In several Republican primary elections, a conservative grass roots movement, the Tea Party,⁶³ was able to mobilize many voters to support their candidates or to endorse conservative Republicans.

The emergence of the Tea Party in the US political scene featured prominently during the campaign. The Tea Party is composed of groups of different sizes, objectives and levels of organization, unified by the idea to make a joint conservative front against politics in Washington. The Tea Party received strong support from influential conservative think-tanks and publicists.⁶⁴ The efforts of the movement were not always welcomed by the Republican Party establishment, which had concerns that overly conservative candidates would not attract sufficient support from moderate voters to win their races. In two high profile cases, Republican candidates defeated in the primaries by Tea Party representatives decided to stay in the senatorial race as independent or *write-in* candidates.⁶⁵

An additional feature was the popularity of early and absentee voting,⁶⁶ which forced candidates to adapt their campaign strategy. Electoral contestants invested significant funds to influence early voters through numerous advertisements in media outlets and the Internet.

⁶² A selection of polls in October 2010 showed that, on average, 71 per cent of citizens were dissatisfied with the work of Congress, <http://www.realclearpolitics.com/polls/>.

⁶³ The Tea Party takes its name from the Boston Tea Party of 1773, a demonstration against unfair taxation of tea by the British crown which led to the American Revolution. The name reflects the libertarian orientation of the movement and its emphasis on individual liberty.

⁶⁴ The most prominent were the organization "FreedomWorks", run by the former house majority leader Dick Armey, as well as the Fox TV channel moderator Glenn Beck.

⁶⁵ In Alaska the incumbent Senator Lisa Murkowski participated as a *write-in* candidate, while the Governor of Florida Charlie Christ ran as an independent candidate (see pp. 12-13 of this report).

⁶⁶ It is widely estimated that one third of voters used these options in 2010.

Much media attention was given to several close races like the Senate seat of Illinois previously held by President Obama, the challenge of Senate Majority leader Harry Reid in Nevada, and the very expensive race in California between incumbent Democratic Senator Barbara Boxer and her Republican challenger, a well-known businesswoman, Carly Fiorina.

The campaign was vibrant and highly competitive. The parties mobilized thousands of activists for door-to-door canvassing, telephone calls and large-scale rallies. President Obama and the First Lady campaigned for Democratic incumbents in some of the strategic races for the Senate and gubernatorial posts. One of the Tea Party organizations, the Tea Party Express, rallied in states and districts across the country where their candidates were running. In response to an earlier Tea Party event, some 200,000 people representing a wide range of various liberal groups gathered three days before the elections in Washington, DC for a mixture of a comedian show and a political rally.⁶⁷

As in previous campaigns, the use of negative advertisements was widespread and, at times included harsh personal attacks. There were several examples of insulting advertisements trying to undermine the integrity of the competitor, which were both quoted in and criticized by the media.

IX. CAMPAIGN FINANCE

The campaign for the 2010 mid-term elections was among the most expensive in the history of US congressional elections. Its financing was partially affected by the January 2010 US Supreme Court decision, *Citizens United v. FEC*,⁶⁸ which ruled that corporations and unions could spend unlimited amounts to support or oppose candidates, in line with the principle of freedom of speech as guaranteed in the US Constitution.⁶⁹ The impact of this ruling remained a controversial issue during the campaign and is difficult to assess fully at this early stage. The 2010 elections were marked by significant campaign spending by organizations not legally tied to candidates or parties.

A. CAMPAIGN FINANCE REGULATIONS

Unlike other areas of election legislation in the US, campaign finance is regulated by federal laws under the supervision of the FEC. The FEC also issues advisory opinions, which represent important interpretations of election laws.

There are no spending limits in congressional elections for candidates, parties, or independent organizations and groups. The US Supreme Court, since the 1976 *Buckley v. Valeo* decision, has held that there must be a limit on contributions to candidates in order to prevent real or perceived corruption of the electoral process, but that a limit on overall expenditures of candidates would not serve the same goal, as this would constrain free speech.

⁶⁷ The “Rally to Restore Sanity and/or Fear”, hosted by Jon Stewart and Stephen Colbert.

⁶⁸ *Citizens United v. FEC*, 558 US 50 (2010), <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>.

⁶⁹ Freedom of Speech is guaranteed by the First Amendment to the United States Constitution, which reads “Congress shall make no law ... abridging freedom of speech...”

In US congressional elections there are three main sources of campaign funding. The most important source is the funds of the candidates, either collected through donations or taken from their own money. The second source of funding is from political parties, which also collect donations. Thirdly, there are numerous groups of individuals and organizations, which are not legally tied to a candidate or party but do campaign for or against candidates. Their activity is usually referred to as “independent expenditures”.

Donations are largely subject to a range of monetary limitations.⁷⁰ Donations from corporations and from abroad are forbidden.⁷¹ No one may make a contribution in another person's name. Cash donations are permitted in amounts up to 100 USD. Although public funds are available for presidential election campaigns, and for some state and local contests, they are not available for congressional elections.

B. *CITIZENS UNITED V. FEC*

Until 2010, corporations and unions were allowed to campaign on specific issues, but could not directly favour or oppose candidates. The Bipartisan Campaign Reform Act (BCRA)⁷² prohibited all corporations and unions from financing a “broadcast, cable, or satellite” communication that mentioned a candidate within sixty days of a federal election or thirty days of a primary.

However, the *Citizens United v. FEC* decision declared the above prohibitions were unconstitutional. The Supreme Court ruled in a 5-4 decision that, like individuals and media outlets, corporations or unions should enjoy freedom of expression and should therefore not be prohibited from independent expenditures which expressly advocate for the

⁷⁰ For the 2010 elections, the size of a donation from an individual to a candidate was limited to 2,400 USD for each primary election and 2,400 for each general election. A national party committee was allowed to give 5,000 USD to each candidate per election, the state, district, and local party committees were allowed to give a total of 5,000 USD to each candidate, and the limits for different kinds of Political Action Committees (Any group of citizens, which received contributions or made expenditures in excess of 1,000 USD for the purpose of influencing a federal election, became a Political Action Committee, PAC) were between 2,000 and 5,000 USD per election. An individual was allowed to donate up to 30,400 USD to the national party committee per calendar year, up to 10,000 USD in total to the state, district, and local party committees per calendar year, and up to 5,000 USD to a PAC. The total overall biennial limit of all the donations for an individual was set at 45,600 USD to all the candidates and 69,900 USD to all PACs and parties, which totals 115,500 USD. Additionally, donations given by the national party to the Senate candidate was limited to 42,600 USD per campaign. (FECA, also 2 USC. § 431(4)).

See: http://www.fec.gov/pages/brochures/fecfeca.shtml#Contribution_Limits.

⁷¹ Including foreign governments, political parties, corporations, associations, and partnerships. Foreign nationals who hold permanent US residence are permitted to make contributions.

⁷² The 2002 BCRA, also called the McCain–Feingold Act, is a federal law which amended the Federal Election Campaign Act of 1971.

election or defeat of a candidate.⁷³ The decision overruled several precedents which had upheld restrictions on campaign spending by corporations and unions.⁷⁴

The decision, however, did not affect the federal ban on direct contributions from corporations or unions to candidate campaigns or political parties. In addition, the Court also upheld requirements for disclaimer and disclosure by sponsors of advertisements.

Several OSCE/ODIHR EAM interlocutors expressed the opinion that the legal implications of *Citizens United v. FEC* would be limited for the 2010 elections. First, the court ruling contributed to an existing judicial trend in the US of drawing on the right of freedom of speech to protect expenditures in support of political campaigns. Second, the majority of campaign expenditures by corporations and unions would continue to come through intermediary, “independent” organizations.

C. ROLE OF “INDEPENDENT” ORGANIZATIONS

Most corporations, rather than sponsoring advertisements directly, tended to make contributions to intermediary organizations. Prior to 2010, the most common type of organization was the Political Action Committees (PAC), a group of private citizens organized to support a political candidate. PACs may make direct contributions to a party or candidate, and are required to register with the FEC and disclose their contributions and expenditures on a regular basis.

Several other types of organizations also increased their involvement in campaigning for these elections as a result of the *Citizens United v. FEC* ruling. These included a range of non-profit “501(c)” organizations which could, for the first time, make independent expenditures to advocate for the election or defeat of a candidate, so long as these expenditures were not co-ordinated with either the candidate or a political party.⁷⁵ In contrast to PACs, “501(c)” organizations do not have to disclose their donors.

Another type of organization emerged in 2010, known as the “independent expenditure-only committees”.⁷⁶ They emerged after the *SpeechNow.org v. FEC* court decision, which reaffirmed the *Citizens United v. FEC* ruling that independent expenditures by corporations or unions do not pose a threat of corruption and should not be prohibited. Furthermore, the court added that donations from corporations, unions, and individuals to groups that

⁷³ In light of the *Citizens United v. FEC* ruling some states enacted corresponding laws, while in other states the validity of state campaign finance laws are being challenged in the courts. Cases pending in federal courts also challenge other federal finance provisions and argue for additional freedoms to raise and spend money for political campaigns and to loosen disclosure requirements; for example, *Republican National Committee v. FEC*, and *Blumen v. FEC*. The latter case challenges the constitutionality of the federal ban on foreign spending in US elections. In response, the Democrats drafted a bill, known as the Disclose Act, to require corporations, unions and other interest groups to provide more details about their political spending. The bill, however, did not pass a divided Senate. In addition, a number of formal complaints were lodged with the DoJ, the FEC, and the Internal Revenue Service.

⁷⁴ Including: *Austin v. Michigan Chamber of Commerce*, 494 US 652 (1990) and *McConnell v. FEC*, 540 US 93 (2003).

⁷⁵ “501c” groups are named after the Internal Revenue Code sections which defines their federal tax status. They include “501(c)(6) business league” or “501(c)(6) chamber of commerce”, both of which can be involved in politics but not as their primary purpose and “501(c)(4) civic leagues” which have the primary goal of promoting various social and civic issues.

⁷⁶ These organizations are often colloquially named “SuperPACs”. SuperPAC, however, is a misnomer since PACs give money to candidates, but these groups do not.

promote independent speech should therefore not be limited.⁷⁷ Like the “501(c)” organizations, these organizations are required to work independently from candidates and do not donate directly to the candidates, but can spend unlimited amounts to campaign in favour of or against a candidate. Unlike regular PACs, they can receive unlimited donations. However, like regular PACs and unlike the “501(c)s”, they must disclose their donors.

In 2010, independent spending grew significantly compared to previous elections, by some 489 per cent since the last mid-term elections in 2006.⁷⁸ Conservative-leaning independent groups spent almost twice as much during the 2010 campaign than liberal-leaning independent groups.⁷⁹

D. 2010 CAMPAIGN SPENDING

The amounts of funds raised by different candidates in the 2010 elections varied considerably. In the races with no strong opposition to the incumbent, the amount spent for the campaign was usually low. On the other hand, where the challenger was strong and had a large campaign budget, the incumbent also spent a lot. Consequently, the combined budgets of candidates varied by more than 3,000 per cent from district to district as did the structure of the funds raised by different candidates.⁸⁰ Some candidates relied primarily on a large number of small donations from individuals while the campaigns of others were paid mostly by donations made by state or national parties or from their private money.

The spending levels in 2010 exceeded those in previous elections. From the total 4 billion USD spent on campaigning in 2010, the candidates spent directly about 2 billion USD, which is around 40 per cent more than what they spent in 2006.⁸¹

OSCE/ODIHR EAM interlocutors advanced several reasons for this rise in spending. In 2010 an unusually large number of House seats were highly contested which resulted in significant spending in those districts. Additionally, they argued that the *Citizens United v. FEC* decision enabled corporations and interest groups to expressly advocate in favour of or, more commonly, against a candidate, thus increasing the need for candidates to raise additional money to respond to these outside groups.⁸²

Although the highest-spending candidates won elections in an overwhelming majority of districts, the percentage was actually lower than in the past.⁸³ Notably, most self-financing candidates lost.⁸⁴

⁷⁷ *SpeechNow.org v. FEC*, US Court of Appeals for the DC Circuit. No. 08-5223 (2010).

⁷⁸ Independent spending was 57.6 million USD in 2006 and 281.8 million in 2010. Data from FEC, www.fec.gov.

⁷⁹ In 2010, conservative-leaning independent groups have spent 188.9 million USD this election season compared with 92.9 million USD spent by liberal-leaning independent groups, according to the Center for Responsive Politics analysis, which is based on FEC data, www.opensecrets.org.

⁸⁰ Compare, for instance, Minnesota’s 6th district, where candidates raised 19.1 and spent 17.2 million USD, and Virginia’s 3rd district, where candidates raised 537.6 and spent 525.1 thousand USD, with a difference of over 3,200 per cent. Based on FEC data, www.fec.gov.

⁸¹ See “Bad News for Incumbents”, Open Secrets, 4 November 2010, <http://www.opensecrets.org/news/2010/11/bad-night-for-incumbents-self-finan.html>.

⁸² See David Donnelly, National Campaign Director for the Public Campaign Action Fund, quoted in “Records broken for fundraising”, Washington Post, 26 October 2010.

⁸³ In about 85 per cent of House races the candidate who spent the most won elections. By comparison, in 2008 the biggest spender was victorious in 93 per cent of the House races, in 2006 in 94 per cent, and in 2004 in 98 per cent of the races.

⁸⁴ See “Bad News for Incumbents”, Open Secrets, 4 November 2010.

E. CAMPAIGN FINANCE TRANSPARENCY

Despite some deficiencies, fundraising and spending in US election campaigns are highly transparent. Candidates, party committees and PACs have to file detailed quarterly reports (and daily reports in the final weeks before the elections) with the FEC which are published on its website in a timely manner. In addition to the information on level of funds raised and spent, the reports contain a list of all donors who donated over 200 USD, along with their address, employer and job title.

Laws also provide for various ways by which voters are informed of who is paying for a television or radio advertisement, as well as printed campaign materials. The requirement for disclaimers and disclosure of the sponsors in the advertisements paid by the independent groups was challenged in *Citizens United v. FEC* but the Supreme Court upheld its constitutionality.

The *Citizens United v. FEC* decision, however, did not oblige the “501(c)” groups to disclose the sources of their funds to the FEC. The Supreme Court stated that the decision would not alter the transparency of the system, and that modern communication technologies could enable the necessary oversight. However, although relatively limited compared to overall spending levels, the amount of independent expenditures increased substantially, raising issues of transparency. Of the nearly 281.8 million USD spent by independent groups attempting to influence the election, 42 per cent was spent by the “501(c)” groups who did not disclose the sources of the funds.⁸⁵ Undisclosed spending raises concerns as it lowers the level of transparency of the financial sources of the political system.

It is recommended that Congress considers ways to increase transparency of independent campaign spending under the supervision of the FEC. Donor disclosure rules should apply to all persons, groups, and entities engaged in electoral campaign activities regardless of their form.

X. MEDIA

A. MEDIA LANDSCAPE

The media landscape in the United States is pluralistic and characterized by an abiding tradition of freedom of speech and media independence.

According to the data provided by the Federal Communications Commission (FCC), in 2008, 1,759 television channels and 13,977 radio stations operated in the United States, in a regionalized and segmented market. Commercial television and radio stations dominate the broadcasting sector, while the Public Broadcasting Service has more limited audiences and reach. The major commercial television companies include NBC, CBS, ABC, Fox Broadcasting Company and CNN. Most commercial radio stations are controlled by media conglomerates. Newspapers are structured along local markets with all the major metropolitan areas having their own publication. The main national newspapers include

<http://www.opensecrets.org/news/2010/11/bad-night-for-incumbents-self-finan.html>.

⁸⁵ “Who’s Buying This Election? Close to Half the Money Fueling Outside Ads Comes From Undisclosed Donors”, Megan R. Wilson, Open Secrets, 2 November 2010, <http://www.opensecrets.org/news/2010/11/whos-buying-this-election.html>.

USA Today, the New York Times, the Washington Post, the Los Angeles Times and the Wall Street Journal.

There is a growing role of the Internet as a source of information on elections and candidates. Almost a quarter of the population, and 42 per cent of those aged 18 to 29, receive information about the campaign from the Internet, nearly twice as much as during the 2004 campaign.⁸⁶ Compared to past campaigns, a decreasing number of voters rely on traditional print or broadcast media to follow election races.

The National Public Radio (NPR) is the only exception to this trend. Since 2000 it has shown a significant and constant growth in the number of voters stating that they turn to NPR to receive information about elections, from 12 per cent in 2002 to 18 per cent in 2010.⁸⁷ However, some privately owned network media and Republican politicians⁸⁸ voiced demands during the campaign that federal funding for NPR⁸⁹ should be withdrawn in light of what they saw as a “liberal bias”.

Given the important role of NPR, consideration could be given to strengthening rather than weakening the not-for-profit, public-service arm of the media, so to provide space for impartial election reporting.

B. REGULATORY PROVISIONS

The legal framework for election coverage is a mix of statutory rules and self-regulation. The Communications Act of 1934, as amended by the Telecom Act of 1996,⁹⁰ and the related implementing regulations issued by the FCC set forth the rules for candidates, parties, and groups to access the media.

Print media are not bound to any statutory requirements related to paid access of candidates, however, broadcasters must comply with a number of obligations. In the 60 days prior to general elections, commercial broadcasters must provide “reasonable access” to all candidates for federal office.⁹¹

Candidates fulfilling certain criteria enjoy a ceiling on advertising rates, based on the lowest sum charged for a similar advertisement.⁹² Stations are also required to keep a publicly accessible “political file” reporting all requests to purchase airtime, and they are not allowed to censor the content of a candidate’s spot. No limits to the amount of media

⁸⁶ See “Internet's Broader Role in Campaign 2008”, The Pew Research Centre for the People and the Press, <http://people-press.org/report/384/internets-broader-role-in-campaign-2008>.

⁸⁷ Ibid.

⁸⁸ For example, Fox News TV, former Alaska Governor Sarah Palin, and Eric Cantor (Virginia).

⁸⁹ Approximately ten per cent of NPR revenue comes from Corporation for Public Broadcasting (CPB) grants. CPB is a private, non-profit corporation which receives a federal appropriation. See: <http://www.npr.org/about/aboutnpr/publicradiofinances.html>.

⁹⁰ Both the Communications Act and the Federal Election Campaign Act (FECA) incorporated amendments introduced by the Bipartisan Campaign Reform Act (BCRA).

⁹¹ FCC Rules, Section 73.1944 (47 CFR §73.1944). Commercial broadcast stations are not required to provide reasonable access to state and local candidates. In addition, both cable systems and non-commercial educational broadcast stations are exempt from providing reasonable access to any candidates.

⁹² These criteria include *inter alia* that a candidate’s voice or image must appear in the advertisement and that the advertisement be purchased either by candidates themselves, their campaign committee, or their authorized representative.

campaign expenditures are in place, but there are detailed rules ensuring financial accountability and transparency of election-related advertising.

Advertisement has to be provided to candidates with respect of the key principle of “equal opportunity”.⁹³ When a broadcaster offers paid airtime to one candidate, it must provide similar conditions to their opponents. There are several exceptions to this rule, aimed at non-interference with broadcasters’ editorial freedom. The main exemptions include candidates’ appearances on newscasts, regularly scheduled news interviews, and news events such as candidate debates. The scope of these exemptions has been constantly expanded over the years to include a greater variety of entertainment and current affairs programmes. The OSCE/ODIHR EAM reiterates the recommendation contained in the OSCE/ODIHR final report on the 2008 general elections:

Establishment of clearer criteria and definitions as to which kinds of programmes qualify for exemption from the principle of equal opportunity should be considered as the programming that falls under the exemption to the equality doctrine is broad and, as a result of past FCC decisions, has been eroded as a clear regulatory benchmark.

C. MEDIA COVERAGE OF THE ELECTIONS

Media coverage of the 2010 elections was extensive, and provided voters with diverse information, views and opinions. Candidates were covered in a variety of programmes, including paid advertisements, debates and news. However, frequently the debates only took place between the candidates of the two main political parties, thus limiting access of third-party candidates.

According to the Center for Media and Public Affairs, the tone of the media campaign and the discussion between the main political forces was often negative and even aggressive. Comments about Democrats were 32 per cent positive and 68 per cent negative; comments about Republicans were 31 per cent positive and 69 per cent negative. The Tea Party candidates received 37 per cent of positive comments and 63 per cent negative.⁹⁴

Negative and confrontational campaigning was a predominant feature also in relation to paid advertising during the 2010 mid-term campaign. One report showed that, “attack advertising” accounted for 32 per cent of the overall campaign advertising.⁹⁵ Furthermore, the above analysis revealed that 20 per cent of “attack advertising” focused exclusively on the personal characteristics of the opponent.

XI. PARTICIPATION OF WOMEN

Women are active in US politics but are generally under-represented in state institutions. In the outgoing Congress, 17 per cent of Senators and Representatives were women. Ms. Nancy Pelosi was the first woman to serve as Speaker of the House of Representatives,

⁹³ FCC Rules, Section 73.1941 (47 CFR §73.1941).

⁹⁴ “Media Have Bad News for Both Parties”, Center for Media and Public Affairs, October 2010, http://www.cmpa.com/media_room_10_20_10.html.

⁹⁵ “Negative Ads Prominent, Increasing in Number, But 2010 No More Negative Than Previous Election Year”, October 2010, Wesleyan Media Project, <http://election-ad.research.wesleyan.edu/2010/10/14/release3/>.

however, Ms. Pelosi lost this position following the 2010 elections which saw control of the House of Representatives switch to the Republican Party.

The 2010 elections were remarkable for the high participation of women candidates. A record high of 36 female candidates took part in Senate elections, with 19 Democrats and 17 Republicans standing. US House races also noted a record 262 female candidates, including 134 Democrats and 128 Republicans. Despite this, and for the first time since 1979, the number of women in Congress fell slightly, from 17 per cent to 16 per cent.⁹⁶

XII. PARTICIPATION OF MINORITIES

Despite an increase in minority participation during the presidential election in 2008, electoral under-representation of minority groups remains a contentious issue in US elections. The relevance of this issue is underscored by recent lawsuits against the constitutionality of the VRA and ongoing legal challenges against practices that might be considered particularly discriminatory, such as felon and ex-felon disenfranchisement and voter ID requirements.

In addition, civil society groups continue to voice concerns regarding deceptive practices targeting ethnic minorities to deliberately mislead or intimidate voters in order to discourage them from voting. A high profile case in the 2010 mid-term elections was an advertisement by a Latino NGO calling Latino voters to boycott the elections in Nevada, claiming that both parties did not deserve the votes of the Latino population. Civil society organizations, media and the Democratic Party criticized the advertisement as misleading the Democratic-leaning Latino community in Nevada in order to help the Republican candidate win.⁹⁷ Two major Spanish language media networks in Nevada refused to broadcast the advertisement.

Another controversial issue was the focus of Tea Party groups on voter fraud and voting by non-citizens, which many civil society groups considered as voter intimidation.⁹⁸ In response to the announcement by some Tea Party groups to send poll watchers to areas with a high percentage of voters from ethnic minorities to challenge alleged illegal voters, the DoJ decided to monitor these areas for potential voter intimidation.

The US election administration is undertaking significant efforts to provide voter and civic education in languages other than English. As required by Section 203 of the VRA, jurisdictions produce ballots in particular minority languages.

XIII. ELECTION OBSERVATION

In keeping with its OSCE commitments, the US has regularly invited the OSCE/ODIHR to observe federal elections. However, despite repeated OSCE/ODIHR recommendations, US federal law does not provide minimum standards for access of observers to US elections.

⁹⁶ Data from the Center for American Women and Politics, www.cawp.rutgers.edu.

⁹⁷ "Latinos for Reform" is lead by a former Republican Party collaborator and is located in Virginia.

⁹⁸ Tea Party groups in Houston and Minnesota displayed posters showing people behind bars for illegal voting, offered 500 USD for information leading to voter fraud convictions and announced the deployment of poll watchers on election day.

State laws vary significantly with regard to observation, resulting in uneven, and at times, restricted access for international observers.

In a welcome development, the National Association of Secretaries of State (NASS) adopted a resolution on 20 July 2010, renewing its resolution from 2005, whereby the NASS “welcomes OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law”.

The adoption of minimum federal standards for observer access to federal elections would ensure full compliance with Paragraph 8 of the 1990 OSCE Copenhagen Document. Follow up efforts by the authorities are necessary to ensure changes in the election legislation to allow for presence of international observers in all states.

Civil society plays a key role in the electoral process, significantly contributing to its transparency and to the accountability of election officials. Civic groups monitor all aspects of the election process, including media, human rights, minority and women’s participation, and election day procedures.⁹⁹ During these mid-term elections, the largest non-partisan election assistance and monitoring group, the Election Protection Coalition, brought together more than 10,000 volunteers.¹⁰⁰ Political parties also deployed large numbers of lawyers and poll-watchers on election day, further contributing to the scrutiny and transparency of the process.

In line with its mandate, the DoJ Civil Rights Division deployed more than 400 federal observers to 30 jurisdictions in 18 states on election day.¹⁰¹ It also opened a toll-free telephone number to receive complaints related to ballot access, voter intimidation or voter coercion.

XIV. ELECTION DAY

In accordance with its methodology for election assessment missions, the OSCE/ODIHR EAM did not conduct systematic and comprehensive observation of election day procedures, although members of the mission visited a limited number of polling stations in California, Maryland, New York, Virginia and DC. OSCE/ODIHR EAM members had full access to polling stations on election day in New York City, California and DC, and limited access in Maryland and Virginia. Mission members could not observe election day procedures in Florida, as access to polling stations in that state is restricted by law to election officials, party agents, voters and law enforcement officers. This contravenes paragraph 8 of the 1990 OSCE Copenhagen Document in which OSCE participating States have committed to inviting observers to their electoral proceedings.

In most polling stations visited, poll workers were experienced and well trained. Voters were able to cast their votes in a mostly professional and efficiently administered process,

⁹⁹ The exact number of domestic observers is unknown but it is widely accepted that civil society groups have systematically deployed several thousand observers in recent elections.

¹⁰⁰ Election Protection Coalition projects included a nationwide voter information campaign, hotlines to assist voters in exercising their right to vote and to register complaints, and deployment of election observers in selected jurisdictions, <http://www.866ourvote.org/about>.

¹⁰¹ Alabama, Alaska, Arizona, California, Florida, Georgia, Hawaii, Illinois, Mississippi, Nebraska, New Jersey, New York, New Mexico, Ohio, Pennsylvania, South Dakota, Tennessee and Texas.

which became lengthy in some counties due to the large number of issues on the ballot.¹⁰² Long lines of voters were reported in some counties.

In some of the polling stations, the secrecy of the vote was compromised by the layout of the polling booths or electronic voting equipment, which were placed very close to each other and allowed voters to see each other vote. The secrecy was also at stake in some polling stations due to the manner in which ballots were inserted into the optical scan devices, for example in California and DC. Notwithstanding the concerns, voters seemed confident in the secrecy of their vote.

Although it was noticeable that in a number of polling stations visited there were inoperative voting machines, this problem did not generally influence a smooth voting process. In New York City, the design of the ballot paper and the instructions on how to complete were confusing. In line with HAVA requirements, all polling stations visited were equipped with special voting devices for people with disabilities to ensure that they could vote independently and in secret.

Closing procedures and counting in the few polling stations visited were completed promptly and without major problems, although in some polling stations visited in DC, poll workers did not reconcile and aggregate the results from the different voting machines. Contrary to the good practice implemented in many OSCE countries, polling station results were not publicly displayed outside visited polling stations.

¹⁰² In some of the counties visited in Maryland there were 13 questions on the ballot.

ABOUT THE OSCE/ODIHR

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

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

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

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

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

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

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

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

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