
INTERNATIONAL ELECTION OBSERVATION MISSION United States of America – General Elections, 8 November 2016

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The 8 November general elections were highly competitive and demonstrated commitment to fundamental freedoms of expression, assembly and association. The presidential campaign was characterized by harsh personal attacks, as well as intolerant rhetoric by one candidate. Diverse media coverage allowed voters to make an informed choice. Recent legal changes and decisions on technical aspects of the electoral process were often motivated by partisan interests, adding undue obstacles for voters. Suffrage rights are not guaranteed for all citizens, leaving sections of the population without the right to vote. These elections were administered by competent and professional staff, including on election day, which was assessed positively by IEOM observers, despite some instances of long queues and malfunctioning voting equipment.

The legal framework for general elections is highly decentralized and complex, with significant variation between states. A number of previous OSCE/ODIHR priority recommendations remain unaddressed and certain deficiencies in the legal framework persist, such as the disenfranchisement of citizens living in various territories, restrictions on the voting rights of convicted criminals and infringements on secrecy of the ballot. In 2013, provisions of the Voting Rights Act were struck down, removing a timely and effective safeguard for the protection of rights for racial and linguistic minorities. As a result, a wide range of electoral litigation remains ongoing.

Individual states are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. The elections were administered by competent and committed staff and enjoyed broad public confidence. The work of the Election Assistance Commission (EAC) has had a positive impact for state and county officials, enabling the exchange of best practices and providing standards for New Voting Technologies. A number of practical recommendations made by the 2014 Presidential Commission on Election Administration were addressed.

US citizens 18 years of age and older are eligible to vote. Some 4 million residents of US overseas territories and 600,000 residents of the District of Columbia do not have voting representation in Congress. In addition, residents of US overseas territories do not have the right to vote in presidential elections. More than 6 million convicts, including those who have served their sentences as well as many still facing trial, are widely disenfranchised, although several states have recently taken steps to restore their voting rights. These restrictions contravene the principle of universal and equal suffrage, as provided in OSCE commitments.

Voter registration is active and implemented at the state level. Various initiatives have been undertaken to improve voter list accuracy and inclusiveness, including online registration and inter-state projects to identify potential duplicate records and inaccuracies. Notwithstanding, more than an estimated 35 million eligible voters were not registered for these elections, underscoring the need for continued efforts to enhance voter registration, particularly among marginalized communities.

Voter identification rules are politically divisive and vary across the states, with 32 states requiring identification. A high volume of litigation regarding voter identification continued up to election day, generating confusion among voters and election officials regarding the application of rules. Efforts to

ensure the integrity of the vote are important, but should not lead to the disenfranchisement of eligible voters.

Candidate registration requirements vary considerably between states. A large number of candidates, including independents and representatives of small parties, were registered for congressional elections in an inclusive manner. This provided voters with a variety of choice. Four presidential candidates were registered in a sufficient number of states to be elected. Variations in rules make it cumbersome for third party or independent candidates to register across all states for presidential elections.

Women are underrepresented in elected office, holding only 20 per cent of seats in the outgoing Congress. This was the first time a major party nominated a woman as candidate for president. Some 17 per cent of congressional candidates were women. Women were well represented amongst electoral staff, including in decision-making positions.

A dynamic and vivid campaign demonstrated commitment to fundamental freedoms of expression, movement and assembly. The campaign was dominated by the presidential race. The two major candidates offered distinct policy alternatives, but often used highly charged rhetoric and employed personal attacks. Intolerant speech by one candidate about women, minorities and people with disabilities was frequent. Both candidates faced scandals during the campaign that provoked widespread public debate about their qualifications for office. Third-party candidates received minimal attention.

The Federal Election Commission (FEC) oversees a campaign finance regime that imposes few actual limits on donations and does not limit expenditure. All financial reports are published expeditiously, but transparency is diminished by the absence of disclosure for some types of non-profit organizations that play an important role in the campaign. Partisan decision making has limited the FEC's ability to reach decisions on key campaign finance issues.

The media is pluralistic and vibrant, although increasingly polarized. A robust system of protection for media independence is in place, but hostility towards the media's role as a critical watchdog was voiced by one presidential candidate. The media extensively covered the campaign and a series of presidential debates attained record viewership. OSCE/ODIHR EOM media monitoring revealed partisan campaign coverage, in particular on cable television. Overall, the media provided voters with a wide range of information and enabled them to make an informed choice.

Legal measures are available to public and private actors to address electoral disputes and access to the courts is open. There is no fixed timeframe for resolving election-related disputes, which puts into question the effectiveness of remedy provided for by OSCE commitments. Provisions on recounts vary widely and are often insufficiently defined, which could result in complaints not being addressed in a consistent and timely manner.

Most states do not comprehensively regulate election observation, with decisions on access often left to the discretion of state or county officials. Contrary to OSCE commitments, the IEOM was not allowed to freely observe early voting and election day in 17 states. Citizen observers and party representatives were active and widespread through the country, providing added transparency and confidence in the election process.

More than one-third of voters are estimated to have cast their vote before election day, either in person or by post, including citizens abroad. Early voting enjoys broad public trust and a number of measures were implemented to ensure security. However, secrecy of the vote was not always guaranteed for postal voting and out-of-country voting by electronic means, at odds with OSCE commitments.

New Voting Technologies are used extensively across the country. Contrary to good practice, 15 states use Direct Recording Equipment machines that do not provide a voter-verified paper audit trail. This does not allow voters to ensure their votes have been recorded properly or authorities to conduct possible recounts. Despite EAC guidance and a range of testing and security measures implemented across the states, concerns were voiced regarding security gaps due to outdated equipment. Many states paid additional attention to the security of voting machines, working with the Department of Homeland Security.

Election day procedures were generally followed and assessed positively by IEOM observers. In a number of locations throughout the country, long queues to access polling stations were observed. In many instances, multiple citizens intending to vote at a polling station were not found on the voter list, underlining systemic concerns with voter registration. The IEOM deployed 298 observers to 932 polling stations in 33 states. Polling officials were mainly co-operative, even in those areas that do not clearly provide for international observation. IEOM observers could not, however, fully observe procedures in 73 polling stations across 19 states.

PRELIMINARY FINDINGS

Background

On 8 November, in line with the Constitution, elections were held for president and vice president, 34 of 100 senators, and all 435 representatives. Elections were also held for executive offices and judges at state and local levels, as well as various referenda and initiatives. The last presidential election was held in 2012, when the Democratic incumbent, President Barack Obama, was re-elected for a second and final term. The last congressional elections were held in 2014, resulting in a Senate comprised of 54 Republicans, 44 Democrats and 2 Independents, as well as a House of Representatives comprised of 247 Republicans and 188 Democrats.¹ Women hold only 20 per cent of seats in the outgoing Congress.

The general election process began in early 2016 with the selection of party candidates following nationwide caucuses and primaries. After the primary campaigns, which showed divisions within each of the main parties, Hillary Clinton won the nomination for the Democratic Party and Donald Trump for the Republican Party. This was the first time a major party nominated a woman as candidate for president. Only two other candidates, Gary Johnson of the Libertarian Party and Jill Stein of the Green Party, were registered in enough states to be able to win the election. While the presidential race received most of the national attention, control of both the Senate and House was at stake. Almost all OSCE/ODIHR EOM interlocutors agreed that these elections took place in an increasingly polarized environment and against the backdrop of political gridlock in Congress.

Electoral System

The president and vice president are elected jointly for a four-year term. The election is indirect, conducted through an Electoral College comprised of 538 electors. All 50 states have a number of electors equivalent to their total representation in Congress, while the District of Columbia has three. The electors are nominated by parties and elected through a popular vote, largely through 'winner takes all' contests.² The system allows for a candidate to win the popular vote nationwide while falling short

¹ The outgoing House of Representatives includes 246 Republicans, 186 Democrats and 3 vacancies.

² Maine and Nebraska are exceptions where Electoral College votes are split, with two votes allocated to the winner of the state-wide popular vote, and one vote allocated to the winner of each congressional district.

of the majority of Electoral College votes.³ There is no federal law requiring electors to vote in line with their nominating party, but some state laws provide sanctions for so-called “faithless electors”.⁴

Senators and Representatives are directly elected, principally in “first-past-the-post” contests. Each state constitutes a single electoral district for the Senate, and elects two Senators who serve staggered six-year terms. At most, one Senator from each state may be elected at any election. Seats in the House are proportionally allocated to states according to their population, with a minimum of one per state. Representatives serve two-year terms.

Elections to the House are conducted in districts that were last revised in 2010, following a nationwide census.⁵ While districts generally ensure equality of the vote, many OSCE/ODIHR EOM interlocutors reiterated longstanding concerns that redistricting is a largely partisan process, which has led to a number of uncompetitive contests. In these elections, 28 candidates for the House ran unopposed.

Legal Framework

In accordance with the federal system established in the Constitution, federal legislation provides minimum standards for elections, with implementation primarily regulated at state level. Electoral law, as a result, is decentralized and complex, with significant variations between states.

Federal legislation includes the 1965 Voting Rights Act (VRA), which outlaws discriminatory law and practice on the grounds of ethnicity and language; the 1986 Uniformed and Overseas Citizens Absentee Voting Act and 2009 Military and Overseas Voting Empowerment Act (MOVE), which facilitate out-of-country voting; the 1984 Voting Accessibility for the Elderly and Handicapped Act and 1990 Americans with Disabilities Act, which promote access to the polls for people with disabilities; the 1993 National Voter Registration Act (NVRA), which facilitates voter registration; the 1971 Federal Election Campaign Act and 2002 Bipartisan Campaign Reform Act, which regulate campaign finance; and the 2002 Help America Vote Act (HAVA), which establishes minimum standards for administering elections, including for new voting technologies. Federal and state court decisions also form an integral part of the legal framework.

In 2013, the Supreme Court, in *Shelby County v. Holder*, struck down sections of the VRA that required states and jurisdictions with a history of discrimination to obtain federal pre-clearance of changes to electoral law.⁶ Since then, a number of new registration, identification and voting arrangements were introduced, contributing to a high volume of litigation and a lack of clarity as to how specific requirements of federal law would be applied to state law for these elections. The *Shelby County* decision removed a longstanding, timely, and effective safeguard that protected racial and linguistic minorities from legal changes that have a discriminatory intent or impact. This raised particular concerns among African American, Hispanic, and Native American voters.⁷

³ [The National Popular Vote Act](#), which would ensure that the president is elected by popular vote, has been enacted in 10 states and the District of Columbia and it is on the legislative agenda in 12 other states.

⁴ A Democratic elector in Washington has declared that he will not support Ms. Clinton in the Electoral College.

⁵ In 2016, the Supreme Court in *Evenwel v Abbott*, held that the principle of “one-person one-vote” is complied with if states use the total population as a baseline, rather than the number of eligible voters. A number of legal cases regarding redistricting remain ongoing.

⁶ See *Shelby County v Holder*. The Court struck down Section 4(b) of the VRA which established the coverage formula for preclearance, a formula which was found to be unconstitutional in light of current conditions.

⁷ Article 5(c) of the 1965 [International Convention on the Elimination of Racial Discrimination](#) prohibits racial discrimination in the exercise of political rights, including the right to vote. See also, the 2007 [UN Declaration on the Rights of Indigenous Peoples](#) and 2016 Organization of American States’ [Declaration on the Rights of Indigenous Peoples](#).

Election Administration

There is no federal body that oversees the entire electoral process and individual states are responsible for administering elections, with duties often delegated to some 10,500 jurisdictions across the country.⁸ An estimated 180,000 polling stations were established for these elections.

The composition of election administration bodies at the state level varies widely. In 24 states the secretary of state is the chief election official, while others use a combination of appointed chief election officials and commissions. Many decisions are made by lower-level election officials at the jurisdiction level. Chief election officials of states and counties are often elected as party candidates, at times in elections they themselves administered, raising possible conflicts of interest. However, most OSCE/ODIHR EOM interlocutors generally expressed confidence in the impartiality of election administrators, despite their party affiliation.

Election staff at both the state and jurisdiction level, as observed by the OSCE/ODIHR EOM, were competent and committed, with many having several years of experience. However, some jurisdictions had problems recruiting sufficient poll workers. In most jurisdictions, training of poll workers by state or county boards was undertaken. Women were generally well represented amongst the electoral staff, including in decision making positions.

The bipartisan Election Assistance Commission (EAC) is a federal body that provides guidance on meeting HAVA requirements and serves as a clearinghouse for information about election administration. After functioning without commissioners since 2011, three commissioners were appointed in January 2015, making the EAC fully operational and addressing a prior OSCE/ODIHR recommendation. The work of the EAC had a positive impact for state and county officials, providing a valuable exchange of best practices, including guidance regarding standards for new voting technologies (NVT). In doing so, the EAC played a key role in addressing practical recommendations made by the 2014 Presidential Commission on Election Administration.⁹

Official information about polling station locations and voting procedures was mostly sent to voters by the jurisdictions. State and county websites were also used as platforms to provide voters with information on a variety of electoral topics. Political parties and civil society were also very active in providing voter information. In various parts of the country the number of polling stations was reduced, increasing the distances voters must travel to vote. This often had a disproportionate impact on marginalized groups.¹⁰

Voter Rights

US citizens who are eighteen years of age on election day are eligible to vote. While some 600,000 citizens residing in District of Columbia have the right to vote in presidential elections, they lack full representation in Congress.¹¹ Some 4 million residents of US overseas territories do not have full representation in Congress and do not have the right to vote in presidential elections.¹² An estimated 6.1 million citizens are disenfranchised due to a criminal conviction, including some 3.1 million who

⁸ A jurisdiction is a locality, generally a county or city, that is responsible for administering elections within a specific geographic boundary.

⁹ See, [2014 Report and Recommendations of the Presidential Commission on Election Administration](#).

¹⁰ Including for Native Americans and other marginalized groups in Arizona, Florida, Mississippi, Nebraska, Nevada, New Mexico, North Carolina and Utah.

¹¹ The District of Columbia has no representation in the Senate and only a non-voting delegate in the House.

¹² Including American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the US Virgin Islands.

have served their sentences, as well as citizens in pre-trial detention.¹³ This disproportionately impacts African Americans, as they are overrepresented in the criminal justice system.¹⁴ Positively, prior to these elections, several states restored voting rights to some convicted criminals.¹⁵ Access to voting rights for persons with mental and intellectual disabilities varies, with some states not providing any grounds for disqualification, while others may disqualify based on a court decision determining incapacity or guardianship status.¹⁶ These restrictions on voting rights contravene the principle of universal and equal suffrage, and the commitment to ensure proportionality in the restriction of rights, as provided in paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.¹⁷

Voter Registration

Voter registration is active and implemented at the state level. States are required to co-ordinate and match their records with other state and federal databases. State-wide voter registration databases were accessible to voters to check and update their status. All states allowed registration until at least 9 October, 11 states and the District of Columbia allowed for election day registration, and North Dakota did not require any registration.¹⁸ Voters could also register by post, using a federal form maintained by the EAC.¹⁹ Applications required a signed statement to confirm citizenship, under penalty of perjury.²⁰

Various state and civil initiatives were undertaken to improve voter list accuracy and inclusiveness, often with bipartisan support. A majority of states implemented online voter registration and five states authorised different types of automatic registration.²¹ An increased number of states also participated in inter-state projects to identify duplicate records and inaccuracies.²² Such projects are in line with a prior OSCE/ODIHR recommendation to provide effective facilitation of voter registration. Nonetheless, some concerns persisted regarding the removal of voters from lists and the lack of accompanying transparency and oversight.²³ In the run-up to these elections, online registration systems in Illinois and Arizona suffered hacking attacks and potential breaches of data.²⁴ The Department of Homeland Security offered cyber security assistance to all states, of which 33 and some additional jurisdictions accepted.²⁵

¹³ See, [6 Million Lost Voters](#), The Sentencing Project, 6 October 2016.

¹⁴ See, UN [Report of the Working Group of Experts on People of African Descent on its mission to the USA](#).

¹⁵ Including measures taken in 2016 in Maryland, Virginia and Alabama.

¹⁶ For example, the states of Alabama, Louisiana, South Carolina, South Dakota, Tennessee and Utah [deny voting](#) to persons who are the subject of guardianship orders.

¹⁷ See also paragraphs 11 and 14 of the 1996 UN Human Rights Committee (CCPR) General Comment No. 25 to Article 25 of the 1966 International Covenant on Civil and Political Rights (ICCPR), Article 29 of the 2006 UN Convention on the Rights of Persons with Disabilities, as well as the [Americans with Disabilities Act](#) which provides that the right to vote cannot be taken away without individual assessment.

¹⁸ In Florida, Georgia, North Carolina and South Carolina, deadlines were extended due to hurricane Matthew.

¹⁹ In all states except New Hampshire, North Dakota and Wyoming.

²⁰ Alabama, Arizona, Georgia and Kansas passed legislation requiring proof of citizenship with the application. Federal courts [temporarily ruled](#) against these measures, prohibiting states from requiring such evidence for federal elections.

²¹ The District of Columbia and 32 states offered online registration for these elections and 6 other states are in the implementation phase. For these elections, automatic voter registration was implemented only in Oregon.

²² There are two such projects: Electronic Registration Information Center (ERIC) includes 20 states and the District of Columbia, and the Interstate Voter Cross-Check Program (IVCP) includes some 25 states. Additionally, ERIC requires member states to send letters to those not on the voter register informing them of their rights.

²³ In Ohio, a federal court ruled on 23 September that the removal of voters from lists violated the NVRA and that those affected should be reinstated. In Georgia, an “exact-match” voter verification process resulted in a high rate of cancelled applications, leading to a court case. Numerous allegations of deceased persons on voter lists were publicized in the run up to the elections.

²⁴ See point two of the [EAC chairperson’s testimony before Congress from 28 September](#).

²⁵ See [statement](#) by the DHS Press Office.

According to the Census Bureau, there are some 220 million citizens eligible to vote. While the total number of registered voters will not be known until after the elections, some estimate that more than 35 million eligible citizens are not registered.²⁶ A number of OSCE/ODIHR EOM interlocutors noted that low-income voters, racial and linguistic minorities, Native Americans, and citizens with disabilities face greater obstacles in the registration process and continue to have lower than average registration rates. Collectively, despite some welcome improvements, these challenges underscore the need for continued efforts to enhance voter registration accuracy and inclusiveness across the country.²⁷

Voter Identification

Voter identification rules vary widely. In 32 states, voters were required to show identification before voting, of which 16 required photo identification. However, in 24 of these 32 states, voters could instead sign an affidavit or provide additional personal information to cast a provisional ballot, with eligibility established only after the close of the polls. In eight states, provisional ballots are counted only if the voter returns and shows an accepted form of identification. The remaining 18 states and the District of Columbia established the identity of voters by asking for personal information or comparing signatures to those provided at the time of registration.

Voter identification is a politically divisive issue. Republicans tend to view strict voter identification as key to preventing potential fraud and protecting election integrity. Democrats, on the other hand, largely believe that the risk of fraud is minimal and does not warrant restrictions that could disenfranchise voters. The Department of Justice (DoJ), a number of civil rights organizations and private plaintiffs have engaged in litigation to restrain the implementation of identification requirements that have a discriminatory impact in various states, including with respect to minorities, Native Americans and people with disabilities. This generated confusion among voters and election officials, particularly in states where repeated court orders were issued due to states' non-compliance.²⁸ Efforts to ensure electoral integrity are important but they should be clearly defined so as to avoid disenfranchisement of eligible voters.²⁹

Candidate Registration

Candidacy requirements are established in the Constitution. Presidential candidates must be natural born US citizens, at least 35 years of age, and resident in the US for at least 14 years. Candidates for the Senate must be at least 30 years of age and a citizen for at least 9 years, while candidates for the House of Representatives must be at least 25 years old and a citizen for at least 7 years. Members of both Houses of Congress are required to be residents of the states they represent.

Detailed registration requirements are established by state law, with considerable variation. All states offered the possibility for recognized political parties to nominate candidates. The definition of a 'recognized party' varies, depending either on the number of registered voters declaring their party association or the number of votes the party received in previous elections. Smaller political parties and independent candidates may run if they collect a certain number of supporting signatures, typically several months before the elections. In some states, prospective candidates must obtain signatures from

²⁶ See research from the [Pew Charitable Trust](#).

²⁷ Paragraph 11 of 1996 UN CCPR General Comment No. 25 to Article 25 of the ICCPR provides that "States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed".

²⁸ Federal courts in North Carolina, North Dakota, Texas and Wisconsin have made rulings restraining states from fully implementing discriminatory voter identification requirements. Litigation was also initiated in Alabama and Virginia.

²⁹ Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits participating States to "guarantee universal and equal suffrage to adult citizens".

more than one per cent of eligible voters.³⁰ The number of signatures required and the signature submission deadlines vary from state to state, which made it cumbersome for third party or independent candidates to register across all states for presidential elections. Both the Green Party and Libertarian Party challenged ballot access requirements in several states, with success in a few instances.³¹

Four presidential candidates were registered in a sufficient number of states to be elected through the Electoral College, with a total of 296 candidates appearing on various state ballots across the country. A total of 180 candidates, including 30 women, competed for the 34 Senate seats and 1,168, including 204 women, competed for the 435 House seats. This provided voters with a variety of choices. Two transgender women ran for a major party for the first time.

Campaign Environment

Campaigning took place in an open atmosphere with respect for fundamental freedoms of expression and assembly. The campaign was dominated by the presidential race that centred on immigration, trade, healthcare, job creation and foreign policy, while congressional races primarily focused on local issues. The main presidential candidates largely focused on undecided voters in a small number of so-called “battleground” states, although the number of competitive states increased in the run-up to election day.³² Presidential and congressional candidates used campaign rallies, canvassing, advertising, social media, yards signs and phone calls to extensively reach out to voters and provide campaign information. Mr. Trump’s campaign departed from traditional methods, largely neglecting direct mail or canvassing and relying on his ability to leverage airtime. Third-party candidates received minimal attention.

The campaign was characterized by a high degree of partisan hostility between the two major presidential candidates. Both candidates used a tone that was confrontational, often employing personal attacks during campaign events and characterising each other as unfit for the office of president. Mr. Trump frequently used offensive and intolerant language against women, ethnic and racial communities, and people with disabilities. Mr. Trump also stated that, if elected, he would seek to put Ms. Clinton in jail. Ms. Clinton referred to a number of supporters of Mr. Trump as “deplorable”. The negative rhetoric was often reflected in tightly contested congressional races. A few cases of disruption at rallies were reported.³³

Mr. Trump alleged media bias against his campaign and repeatedly claimed that the electoral process was rigged. On several occasions, he appealed to his supporters to watch the polls and prevent fraud, raising fears of intimidation on election day.³⁴ Mr. Trump’s allegations of electoral fraud and his

³⁰ See Section 1.3.ii of the 2002 Venice Commission Code of Good Practice in Electoral Matters, which recommends that “the law should not require collection of the signatures of more than one per cent of voters in the constituency concerned.” The majority of states also allow for voters to “write-in” unregistered candidates on election day.

³¹ In [Libertarian Party of Arkansas v Martin](#) a law was struck down that required new parties to choose nominees at least a year before an election. In [Green Party v Georgia](#) a threshold of one per cent of registered voters for ballot access was found to be too high. Both cases were decided by Federal Courts in 2016.

³² Including Arizona, Florida, Georgia, Iowa, Michigan, Nevada, New Hampshire, North Carolina, Ohio and Pennsylvania.

³³ Other isolated incidents included a firebomb attack against a Republican Party office in North Carolina and an arson attack on an African American church in Mississippi with graffiti supporting the Republican presidential candidate.

³⁴ On 26 October, the Democratic National Committee charged the Republican National Committee and Mr. Trump with violating a 1982 New Jersey court order with nationwide scope, restraining “ballot security activities” that amount to voter intimidation.

refusal to say that he would accept the election results were widely denounced as undermining the electoral process, including from within the Republican Party.³⁵

Mr. Trump's candidacy was deeply divisive among Republicans. The release of an audio tape on 7 October where Mr. Trump is heard boasting about having non-consensual sexual contact with women led many senior Republicans and congressional candidates to distance themselves from Mr. Trump.³⁶ In response, Mr. Trump accused the Republican party leadership, including the Speaker of the House, of being disloyal. In the final days of the campaign, however, several senior Republicans rejoined Mr. Trump's campaign. The discord within the Republican Party contrasted with the sustained support lent by high profile Democrats to Ms. Clinton, including from President Obama and the First Lady.

The release by WikiLeaks on 7 October of thousands of emails from Ms. Clinton's campaign chairperson prompted renewed public discussion of her ties to financial institutions and wealthy donors, as well as her judgment on handling of matters of national security. US intelligence agencies accused the Russian government of being behind the hacking of the emails.³⁷ On 28 October, the Federal Bureau of Investigation (FBI) announced that it received evidence from an unrelated case, that appeared to be "pertinent to the investigation" into Ms. Clinton's use of a private email server while Secretary of State. This featured prominently in last days of the campaign. On 6 November, the FBI concluded that there is no case to bring against Ms. Clinton. Many electoral stakeholders opined that this contravened DoJ guidelines to remain neutral and maintain confidentiality in ongoing investigations in an election year.³⁸

Campaign Finance

Campaign finance is regulated by federal law under the supervision of the six-member, bipartisan Federal Election Commission (FEC). However, partisan voting has limited the FEC's ability to reach decisions on key campaign finance issues, limiting its effectiveness to provide guidance and issue sanctions. Campaigns can be funded by individuals, parties and Political Action Committees (PACs). Limits on aggregated donations were struck down by the Supreme Court in 2014, allowing citizens to make contributions to as many different candidates and political parties as they wish.³⁹ Some OSCE/ODIHR EOM interlocutors reported that women congressional candidates faced greater difficulties raising funds than their male counterparts. Federal public financing for presidential, but not congressional, elections is available, but it imposes limits on how much candidates may raise and spend. Ms. Stein is the only candidate who used public financing for this election.

There are no limits on campaign spending, as the Supreme Court has previously held that any limitation would constrain free speech, as enshrined in the First Amendment to the Constitution.⁴⁰ In 2010, in *Citizens United v. FEC*, the right to "independent speech" was extended to outside groups such as corporations and unions, allowing them too to spend without limit. In order to be considered "independent", outside groups cannot co-ordinate spending with a candidate or party. However, many OSCE/ODIHR EOM interlocutors noted gaps in enforcing this law in practice. The *Citizens United* ruling remains politically divisive, with Ms. Clinton pledging to overturn the decision if elected. It is

³⁵ The criticism came from both the [Democratic and the Republican Parties](#). See also [Statement by the National Association of Secretaries of State](#) from 18 October.

³⁶ Including candidates in Arizona, Minnesota and Pennsylvania, as well as the National Republican Congressional Committee.

³⁷ See, [joint statement by the DHS and the Office of the Director of National Intelligence](#).

³⁸ See paragraph 1-4.410 of the [US Attorneys' manual from 1953, as revised in 1997](#) which prohibits DoJ officials to use their authority or influence to interfere with or affect the result of an election.

³⁹ See, [McCutcheon v FEC](#).

⁴⁰ See, [Buckley v Valeo](#).

estimated that some USD 6.6 billion was spent by candidates, parties, and PACs in these elections.⁴¹ Some OSCE/ODIHR EOM interlocutors raised concerns that large donations are concentrated in the hands of a few wealthy donors, giving them undue influence over policy and law-making.

Candidates, parties, and PACs regularly filed reports to the FEC, disclosing funds raised and spent. The reports identified individuals who donated in excess of USD 200 and were published online by the FEC within 48 hours of receipt, providing an important level of transparency.⁴² However, some non-profit organizations can make unlimited independent campaign expenditures without any disclosure, provided that campaigning is not their primary activity.⁴³ This diminishes an otherwise transparent system by allowing donors to circumvent disclosure rules, at odds with international obligations.⁴⁴

Media

The media landscape is pluralistic and diverse, albeit increasingly polarized. The broadcast media include 1,780 commercial and public television stations and 15,489 radio stations. While public media, in particular National Public Radio, have a dedicated audience, the environment is traditionally dominated by major television networks including CBS, NBC, ABC, with cable channels, such as Fox News, CNN and MSNBC, growing in popularity. There are some 1,300 print publications, but media consumption, including on politics, is shifting towards online media and social networks, primarily Facebook and Twitter.

The First Amendment to the Constitution guarantees freedom of the press and expression, providing for a robust system of protection for media independence. Growing fragmentation of the media leading to economic difficulties and lower professional quality, as well as national security measures, pose various challenges to the media environment. Recently, the OSCE Representative on Freedom of the Media (RFoM) welcomed legal reform that improved transparency and access to information, addressing issues which had previously criticized by media organizations.⁴⁵

Commercial broadcasters were required to provide “reasonable access” to all federal candidates who want to purchase airtime. In addition, an “equal opportunity” rule stipulates that if a candidate for public office is granted airtime, other candidates in that contest must be afforded equal conditions. There are, however, a number of exemptions to this rule, such as newscast appearances, debates and scheduled or on-the-spot interviews. As a consequence, commercial media exercised wide discretion with editorial policy. Public broadcasters are subject to a general prohibition from endorsing or opposing candidates for public office and cannot air paid advertisements. In contrast, numerous publications, including major nationwide newspapers in an unprecedented manner, declared their political stance by officially endorsing or opposing presidential candidates.⁴⁶

The Commission on Presidential Debates (CPD) organized debates between the two leading presidential and vice presidential candidates. The criteria for participating in the debates resulted in

⁴¹ The figures are based on a projection by the [Center for Responsive Politics](#), which uses FEC data for its analysis. It includes USD 498 million raised by Ms. Clinton and USD 248 million raised by Mr. Trump for the presidential race, as well as USD 775 million raised by Republicans and USD 713 million by Democrats for the congressional races.

⁴² FEC published [reports](#) for presidential and Congressional races on its website on a regular basis.

⁴³ Section 501(c) of the Internal Revenue Code lists 29 types of organisations which fit into this category. They include social welfare organizations and chambers of commerce.

⁴⁴ See Article 7(3) of the 2003 [UN Convention against Corruption](#).

⁴⁵ See [The OSCE RFoM statement](#) from 4 July 2016.

⁴⁶ Out of the 100 newspapers with the widest circulation, 57 endorsed Ms. Clinton and 2 endorsed Mr. Trump.

only candidates from the two main parties participating.⁴⁷ The debates were aired by all the major networks and attracted a large audience.⁴⁸

The media election coverage was vibrant, extensive, and often visibly partisan, in particular on cable networks. A hostile atmosphere towards media marked the electoral campaign, where their role as a critical watchdog was challenged by Mr. Trump and his campaign.⁴⁹ The findings of the OSCE/ODIHR EOM quantitative and qualitative assessment revealed that the monitored media clearly prioritized candidates from the two main parties, while the other two candidates each received less than two per cent of coverage on major broadcast media.⁵⁰ Nevertheless, overall media reporting allowed voters to access a wide range of information on candidates and their positions, thus enabling them to make an informed choice.

The public broadcasters covered the candidates in a similar manner, airing documentaries produced by PBS and informative and analytical podcasts by NPR. In their newscasts, PBS and NPR gave more political news reporting, with neutral and negative coverage to Mr. Trump (42 and 38 per cent respectively) and neutral coverage to Ms. Clinton (31 and 27 per cent respectively).

The three main national television networks provided the candidates with similar news coverage to the public broadcasters. Overall, Mr. Trump and his campaign, received between 42 to 48 per cent of prime-time news coverage, mostly neutral or negative in tone. Ms. Clinton received between 36 and 41 per cent of mainly neutral political coverage. In contrast, cable networks, in particular Fox News, often took a highly-partisan approach, especially in talk shows. Newspapers and online media often took a partisan approach in their coverage.

Complaints and Appeals

Legal redress is available to both public and private actors. The DoJ has the power to enforce federal law, including the VRA, HAVA, and MOVE, and may initiate court actions in instances where allegations of non-compliance are made. A variety of measures are available, including court orders and the imposition of fines. Campaign finance complaints may be made to the FEC. Despite a previous OSCE/ODIHR recommendation, provisions on recounts vary widely and are often insufficiently defined, which could result in complaints not being addressed in a consistent and timely manner.

Rules for access to the courts are open. Individuals, political parties, civil society organizations and interest groups may all bring civil suits in state and federal courts if they consider their rights to have been affected. Final appeal lies with the Supreme Court, but the current absence of a complete bench creates uncertainty as to the resolution of potential electoral disputes.⁵¹ Meaningful engagement with the courts requires legal counsel, which can be costly and may present a barrier to some putative plaintiffs. In addition, there is no fixed timeframe within which election-related disputes must be

⁴⁷ Besides other conditions, which they complied with, two other national candidates did not have a level of support of at least 15 per cent, aggregated as an average of five selected national public opinion polls. On 31 August 2015 and 5 August 2016, a District of Columbia District Court dismissed separate complaints filed jointly by candidates Mr. Johnson and Ms. Stein against the FEC and CPD requesting an invitation to the presidential debates.

⁴⁸ The first debate, on 26 September, was watched by 84 million people, making it the [most watched](#) presidential debate in US history, while the debate on 19 October was the [third most watched debate](#).

⁴⁹ In a 13 October rally at West Palm Springs, a *Swastika* sign was placed at the media tables. [Numerous](#) media-related comments were made by Mr. Trump's on his Twitter account and at campaign events.

⁵⁰ The OSCE/ODIHR EOM media monitoring commenced on 7 October and included: public TV broadcaster, *PBS*, three TV networks, *ABC*, *CBS* and *NBC*, two cable television channels, *CNN* and *Fox News*; three newspapers, *The New York Times*, *The Wall Street Journal* and *USA Today*; and *National Public Radio*. The OSCE/ODIHR EOM also followed five online media, *Breitbart*, *Huffingtonpost*, *Politico*, *The Hill* and *Washington Post*.

⁵¹ Justice Antonin Scalia died in February 2016. Chief Judge Merrick Garland was nominated by President Obama in March 2016 but has yet to be confirmed by the Senate.

resolved. This means that complaints may not be finally adjudicated for several years, contrary to the OSCE commitments.⁵² Temporary injunctions are readily available, which tend to preserve the status quo and protect plaintiffs from harm. A wide range of electoral litigation remained unresolved before election day, with the DoJ and civil society groups challenging many measures introduced in the wake of *Shelby County*, particularly with respect to voter registration and voter identification.

Citizen and International Observers

In line with its OSCE commitments, the US Government invited the OSCE/ODIHR and OSCE PA to observe these elections.⁵³ In 2015, the National Association of Secretaries of State renewed its resolution, welcoming “OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law.” Three states and the District of Columbia explicitly provide for international observers by law. Most state law is silent on observation, leaving discretion to election officials. Restrictions on observation of early voting and election day are in place in 17 states.⁵⁴ This is not in line with the commitment to provide for international observation.⁵⁵

Observation was widespread through the country, both from political party representatives and civil society groups, adding an important layer of transparency. Many of these groups had lawyers to provide immediate legal support in case of disputes, as well as volunteers to facilitate voter access. The DoJ deployed monitors to 28 states, based on concerns arising from past, or potential risks of electoral law violations. As a result of *Shelby County*, the DoJ deployed fewer monitors than in previous elections, with powers to be present in polling places authorized by court order.⁵⁶

Early Voting

It is estimated that more than one-third of voters cast their vote prior to election day, either in person or by post. In general, OSCE/ODIHR EOM interlocutors expressed trust in election authorities to administer early voting in an impartial and secure manner. In jurisdictions observed by the OSCE/ODIHR EOM, adequate measures were implemented to prevent unauthorized access to ballots cast early, including overnight storage.

All states provided some voters with the possibility of postal voting, with 27 states and the District of Columbia not requiring voters to provide reasons for their request. Colorado, Oregon and Washington conduct general elections entirely by post.⁵⁷ In a positive effort to address potential issues of loss, misdirection or late delivery of postal ballots, the US Postal Service (USPS) produced guidance for election administrators related to election mail design and procedures.⁵⁸ Some states, however, did not provide voters with a secrecy envelope, which meant that the ballot was returned in a single envelope

⁵² Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have an effective means of redress against the administrative decisions”. See also Article 2.3(a) of the 1966 ICCPR.

⁵³ Paragraph 8 of the 1990 OSCE Copenhagen Document provides that “the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place”.

⁵⁴ Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia and Wyoming.

⁵⁵ Paragraph 25 of the 1999 Istanbul Document reaffirms that OSCE participating States “will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings”.

⁵⁶ Court orders applied throughout the State of Arkansas, and for the jurisdictions of Evergreen in Alabama and Charles Mix County in South Dakota.

⁵⁷ Colorado and Washington provide a limited number of polling stations for in-person voting, including for voters with disabilities, while Oregon election officials conduct home visits for assisted voting.

⁵⁸ See [USPS guidance](#) from 17 March 2016.

that contained voter information, potentially violating the secrecy of vote as provided by paragraph 7.4 of the 1990 OSCE Copenhagen Document.

In person early voting was available in 34 states and the District of Columbia. The early voting period ranged from 3 to 45 days, depending on the state. During early voting, long queues were reported in some locations, often attributed to a limited number of polling locations and opening hours, as well as complex ballots with numerous races to consider.⁵⁹

The Federal Voting Assistance Program (FVAP), under the Department of Defense, supports states in administering out-of-country voting by facilitating voter registration and ballot requests, as well as providing extensive information to voters and guidance to election officials. The MOVE Act requires states to distribute ballots to voters abroad at least 45 days before election day, which all states fulfilled. Thirty-two states allowed for electronic submission of marked ballots from out-of-country voters, which requires voters to waive the secrecy of their vote, contrary to OSCE commitments.

New Voting Technologies

New Voting Technologies (NVT) are used extensively across the country. Most states use more than one type of NVT as the authority to purchase equipment is in many cases delegated to counties. All states provided NVT at polling stations to assist voters with disabilities and language minorities cast ballots in secrecy and independently. In 2015, in a positive step, the EAC updated the 2005 Voluntary Voting System Guidelines (VVSG), to provide guidance on NVT security and functionality, which was used in 47 states in some form. Thirty-seven states and the District of Columbia used federally prescribed testing and certification of equipment.⁶⁰ In addition, the Department of Homeland Security convened an Election Infrastructure Cybersecurity Working Group to further address these issues. Despite the use of the VVSG and a range of testing and security measures implemented across the states, a number of concerns were raised regarding security gaps due to outdated equipment that may lead to lost or inaccurately counted votes.⁶¹ Many election officials noted that NVT have not been replaced due to a lack of resources at the federal, state and local level.

The trend to paper-based voting continues and optical or digital scanners were used in 44 states and the District of Columbia in polling stations to count paper ballots. The use of Direct Recording Electronic (DRE) machines has reduced in recent years, however, they are still used in one or more jurisdictions in some 30 states. Contrary to good practice, 15 states still use DRE machines that do not provide a voter-verified paper audit trail (VVPAT) and in five states such machines are used in all jurisdictions.⁶² This makes it impossible for voters to ensure their votes have been recorded as cast, and for authorities to establish that votes have been counted as cast through a post-election audit or recount.

Election Day

The IEOM deployed 298 observers to 932 polling stations in 33 states. Polling officials were mainly co-operative, even in those jurisdictions that do not clearly provide for international observation. IEOM observers, however, could not fully observe procedures in 73 polling stations across 19 states. Party affiliated and citizen observers had a clear view of procedures in 97 per cent of observations, although in some instances polling officials limited their movement within polling stations.

⁵⁹ For example, in Arizona, District of Columbia, Florida, Georgia, Maryland, North Carolina and Texas.

⁶⁰ See the updated [VVSG 1.1](#) and [VVSG 1.1, vol.2](#) from 31 March 2015.

⁶¹ See, [2014 Report and Recommendations of the Presidential Commission on Election Administration](#).

⁶² Delaware, Georgia, Louisiana, New Jersey and South Carolina. The Venice Commission's Code of Good Practice in Electoral Matters section 3.2 iv recommends that "voters should be able to obtain a confirmation of their votes".

The opening of polling stations was assessed positively in almost all observations. Polling stations opened on time and polling officials were generally aware of procedures and acted in a collegial and transparent manner. While few significant procedural problems were observed, in most observations the ballot boxes were not shown to be empty and sealed securely.

Voting was assessed positively by IEOM observers in 96 per cent of observations. Polling officials largely adhered to procedures and voters were familiar with the process. Election officials worked in a professional and open manner. In 73 per cent of observations, the ballots and voting information were provided in languages other than English, where required. Polling stations were accessible for disabled voters and special voting equipment was widely available for their use. In 9 per cent of observations IEOM observers noted overcrowding in polling stations. In a number of locations long queues to access polling stations were observed, which in 10 per cent of these cases resulted in more than 30 minutes of waiting time. In many cases these queues were exacerbated by a lack of staff and high voter turnout, especially in the morning and before the polls closed.

IEOM observers noted that multiple citizens intending to vote at a polling station were not found on the voter list in almost half of polling stations observed, which underlines systemic concern regarding the effectiveness of voter registration methods. However, these voters often had the possibility of casting provisional ballots. In 55 per cent of observations, the authorities used electronic voter lists that helped election officials redirect voters in case they were registered at a different polling station.⁶³ In 16 per cent of observations in states where documents were required for identification, election officials did not apply procedures consistently.

In 13 per cent of observations, IEOM observers noted malfunctions with electronic voting equipment, which may be attributed to outdated and poorly maintained equipment, and inadequate pre-election testing procedures.⁶⁴ In some cases, voters informed election officials that their votes were not accurately recorded on the screens of DRE voting machines, which, according to the EAC, could occur with poorly calibrated equipment. Mr. Trump claimed, without presenting evidence, that Republican votes automatically changed to Democratic in various voting machines across the country. No security breaches, including hacking of voting equipment, were reported on election day.

Secrecy of the vote was not always guaranteed. In 7 per cent of observations, voters did not vote in secret. This included voters not being provided with ballot sleeves to preserve the secrecy of their vote when using ballot scanners to cast their vote. In some cases, provisional ballots were not put in secrecy envelopes before being inserted in envelopes containing voter information. In 5 per cent of observations, there were indications that voters were taking photographs of their ballot.⁶⁵

Campaigning is permitted on election day and continued throughout the day, often in the vicinity of polling stations. Despite widespread concerns that voters would be intimidated at the polls, no serious incidents were observed by the IEOM or reported to it. However, in some states, politically-charged tension among voters waiting in line was noted. In several instances, individuals were reported to be openly carrying firearms at polling stations.

In general, election officials extended working hours to allow those queuing, to vote. The vote count was almost entirely automatic through the use of NVT and was assessed positively in most polling stations observed. Procedures were generally followed, however, results were not usually announced at

⁶³ The [Voting Information Project](#) implemented by Pew and Google allowed voters to input their addresses in google.com to determine their polling station information, including its address and opening hours.

⁶⁴ Media also reported significant problems with equipment malfunctions, for example, in Colorado, North Carolina, Tennessee and Utah.

⁶⁵ Photographing ballots is prohibited in 16 states.

the polling station, reducing transparency in the process. Due to time zone differences, preliminary results for various races were announced by the media while some voters had yet to vote.

There is no authority in charge of compilation of election results on the national level. The process of tabulating results at the county and state level, is continuing with the processing of provisional and any remaining absentee ballots.

MISSION INFORMATION & ACKNOWLEDGEMENTS

Washington, DC, 9 November 2016 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Parliamentary Assembly (OSCE PA). The assessment was made to determine whether the elections complied with OSCE commitments and other international obligations and standards for democratic elections and with national legislation.

Christine Muttonen was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and Leader of the OSCE short-term observer mission. Makis Voridis headed the OSCE PA delegation. Audrey Glover is the Head of the OSCE/ODIHR Election Observation Mission (EOM), deployed from 4 October.

Each of the institutions involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its Bureau Meeting on 7 December 2016.

The OSCE/ODIHR EOM includes 13 experts in the capital and 26 long-term observers deployed throughout the country. On election day, 298 observers from 44 countries were deployed, including 192 long-term and short-term observers deployed by the OSCE/ODIHR, as well as a 106-member delegation from the OSCE PA. Opening was observed in 88 polling stations and voting was observed in 932 polling stations across the country. Counting was observed in 77 polling stations.

The observers wish to thank the authorities for their invitation to observe the elections, and the Department of State and National Association of Secretaries of State for the assistance. They also express their appreciation to other state institutions, political parties, civil society organizations and the resident international community for their co-operation.

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