



INTERNATIONAL ELECTION OBSERVATION MISSION United States of America – General Elections, 3 November 2020

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The 3 November general elections were competitive and well managed despite legal uncertainties and logistical challenges. In a highly polarized political environment, acrimonious campaign rhetoric fuelled tensions. Measures intended to secure the elections during the pandemic triggered protracted litigation driven by partisan interests. Uncertainty caused by late legal challenges and evidence-deficient claims about election fraud created confusion and concern among election officials and voters. Voter registration and identification rules in some states are unduly restrictive for certain groups of citizens. The media, although sharply polarized, provided comprehensive coverage of the campaign and made efforts to provide accurate information on the organization of elections. Arrangements put in place by the election administrators, including for early and postal voting, together with committed civic engagement, allowed for high voter participation despite challenges posed by COVID-19 pandemic. Counting and tabulation is ongoing and should continue in accordance with the law and OSCE commitments. Baseless allegations of systematic deficiencies, notably by the incumbent president, including on election night, harm public trust in democratic institutions.

On 3 November, federal elections were held for the president and vice-president, 35 of 100 senators, and all 435 representatives. The U.S. Constitution and its amendments establish a framework for federal elections, with additional federal laws buttressing the protection of voting rights and providing minimum standards for voter registration, election technologies and the regulation of campaign finance. At the federal level, there have been no election-related legislative changes since the last elections, despite previous recommendations. Several bills relating to electoral security, voter registration and online advertisements, as well as proposed amendments of the Voting Rights Act, were not passed by the Senate. The COVID-19 pandemic led to a plethora of amendments at the state level in order to protect the health of voters and election administration officials. However, almost all these changes were challenged in courts and several emergency rulings that were issued during the weeks prior to election day led to last-minute procedural amendments.

There was an unprecedented volume of litigation over voting processes in the months before the elections, with over 400 lawsuits filed in 44 states, some still before the courts a few days before elections. The legal uncertainty caused by this ongoing litigation placed an undue burden on some voters wishing to cast their ballots and on election administration officials. The majority of lawsuits focused on issues arising from the health crisis, such as the expansion of early voting, extension of deadlines for the receipt of postal ballots, placement of drop boxes for absentee ballots, signature requirements for postal ballots, and limitations on those qualifying for absentee ballots. Circuit courts reversed, suspended or rendered void several state or district court decisions that aimed to minimize COVID-19 related health risks of in-person voting, following protracted litigation seeking to maintain previous arrangements despite new challenges. There was a widespread perception that federal judges often voted on election-related matters along partisan principles.

States are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. Election officials worked under difficult circumstances due to the pandemic and in a highly politicized environment. For these elections, USD 400 million in emergency funds were distributed to the states in order to address election-related issues stemming from the pandemic. The allocated federal funds alone were not sufficient to address the additional strain aggravated by the unprecedented rise in online voter registration and postal voting, and officials at all levels acknowledged that election

infrastructure is generally underfunded. Private organizations and individuals provided additional substantial grants to election administration bodies. The majority of election administrations noted that the recruitment of a sufficient number of poll workers was a significant challenge, which was addressed through comprehensive initiatives in some jurisdictions, but remained of concern in others. The numbers of polling stations for these elections were reduced by 21,000 nationwide or some 20 per cent. Despite these numerous and compounding challenges, the work of the election administration at all levels enjoyed general confidence.

Legislation and practices deprive some categories of citizens of their right to vote. More than 4.5 million citizens residing in District of Columbia and U.S. territories, 90 per cent of whom are ethnic and racial minorities, lack full representation in the Congress. Despite some changes in state laws to reverse felony disenfranchisement, an estimated 5.2 million citizens are effectively disenfranchised due to a criminal conviction, with about half of them having already served their sentences. These restrictions on voting rights of felons and ex-felons contravene principles of universal suffrage, and the principle of proportionality in the restriction of rights, as provided for by OSCE commitments and other international standards.

Voter registration is active, conducted most often at the county level, with minimum conditions set by federal law. Sixteen states implemented ‘automatic voter registration’, five more than in 2018. Voter registration deadlines were extended in some states in order to overcome challenges arising from the COVID-19 pandemic. Online voter registration was available in 40 states, providing an effective and accessible voter registration modality during the pandemic. However, some citizens, such as Native Americans and persons from economically disadvantaged groups, had more difficulties in accessing voter registration modalities both online and in person.

Voter identification remained a politically divisive issue, contrasting an emphasis on the protection of electoral integrity with concerns that photo identification documents are not readily available to all categories of voters. Voters were required to show some sort of identification document in 34 states, 18 of which require photo ID. In the remaining 16 states and the District of Columbia, verification is done through other methods, including checking of signatures or asking for personal information. Efforts to ensure the integrity of the vote are important, but should not lead to the disenfranchisement of eligible voters.

Four presidential candidates were registered in a sufficient number of states to feasibly be elected, including the incumbent President Donald Trump, nominated by the Republicans, and former Vice President Joe Biden, nominated by the Democrats. An additional 80 presidential candidates, including 27 women, appeared on various state ballots. There were 151 candidates, including 42 women, competing for the 35 Senate seats and 1,113 candidates, including 340 women, competing for the 435 House seats. Eleven candidates for the House stood unopposed. Some states eased signature requirements for candidate registration of smaller parties due to the COVID-19 pandemic, but smaller parties, such as the Greens and Libertarians, continue to face significant obstacles to ballot access in parts of the country.

The campaign was characterized by deeply entrenched political polarization, which often eclipsed policy and party-platform discussions. Since May, more than 12,000 protests, the vast majority of which were peaceful, took place to denounce police violence and demand racial justice. However, on a number of occasions protests and counter-protests turned violent and resulted in numerous injuries and some fatalities. The COVID-19 pandemic not only presented numerous challenges to the organization of the elections but also significantly impacted the conduct and content of the campaign. Starting from 12 October, the U.S. Senate held a hearing to confirm on 26 October a U.S. Supreme Court Justice, in a process that became one of the central topics in the campaign.

Animosity and heated rhetoric between candidates negatively affected the focus of campaigns on policies and party platforms. The two leading presidential candidates accused each other of corruption, fraud,

working for foreign interests, an inability to lead, and support for extremist groups. The incumbent president's use of discriminatory and pejorative statements against individuals on the grounds of their gender and origin was of particular concern. The distinction between state and party activities was not always respected, as the incumbent president repeatedly used his official capacity for political advantage. On several occasions, President Trump created an impression of refusing to commit to a peaceful transfer of power, claiming that the electoral process was systematically rigged, particularly in relation to postal voting, without presenting any substantial evidence of systematic malfeasance and contradicting election officials at all levels. Such statements by an incumbent president weaken public confidence in state institutions and were perceived by many as increasing the potential for politically motivated violence after the elections.

Campaign finance regulation is enforced at the federal level, with individual donations to candidates limited and fully disclosed, but with unrestrained expenditure, estimated to reach USD 14 billion for this election. Campaign finance regulation allows for 'independent' spenders (so-called Super PACs) which, unlike official campaigns, can receive unlimited donations from corporations as long as these Super PACs do not coordinate with candidates' campaigns, effectively undermining transparency. However, the legal prohibition of coordination is easily circumvented and has limited effect. Tax-exempt social welfare organizations may engage in political campaigns, provided that this is not the organization's primary activity. These organizations can themselves also donate to Super PACs and, in so doing, may obscure sources of campaign financing and provide avenues to avoid disclosure, further decreasing transparency.

The media landscape, while extremely polarized, is pluralistic and diverse, notwithstanding the concentration of media ownership. Constitutional guarantees, the U.S. Supreme Court decisions and self-regulation provide for a robust system of protection for media independence. Freedom of expression was respected, with a wide range of election-related information available, enabling voters to make an informed choice. Major media outlets made efforts to provide accurate information on the organization of elections, at times contrary to statements by contestants. The major television networks and cable channels dominate as sources of political information, but there is a steady shift in media consumption towards the content available online and on social networks. Amidst growing public and legal scrutiny, major social media companies have adjusted policies and practices aimed to tackle disinformation, in particular in relation to elections, but concerns about the high level of disinformation spread via social networks remained. ODIHR LEOM media monitoring revealed a clear dominance of the two main parties and their candidates in the media coverage. In the context of the presidential campaign, television channels frequently criticized President Trump, while Vice President Biden was largely covered in a neutral tone. President Trump claimed that the media was biased against his campaign. The cable networks were mostly relying on reporting opinions at the expense of balanced coverage. The conduct of the first presidential debate prompted controversy, with numerous election stakeholders dismayed by the tenor of the event. Third-party candidates were largely ignored by the major broadcast media and effectively excluded from participation in debates.

Election observation is regulated by state law, but some states leave it to the discretion of election officials. The elections were extensively observed by partisan and non-partisan observers which increased the transparency of the process, however, a number of states and counties do not allow citizen non-partisan and international observers inside polling premises. Concerns of intimidation by persons outside of polling stations acting as poll watchers incited to do so by accusations that there would be widespread voter fraud, were raised in the run up to the elections. Due to the COVID-19 pandemic, election officials in several jurisdictions limited the number of observers permitted. Legal restrictions on presence of international observers are in place in at least eighteen states, which is not in line with OSCE commitments. While the presence of IEOM observers was welcomed in the majority of states where observers were deployed, state election officials in three out of 30 states visited declined to meet with them or share their views.

Jurisdictions across eight states continue to use voting machines which do not provide for a voter-verified paper trail, making it impossible to ensure an adequate recount or post-election audit. While problems

with voting equipment setup before elections and during early voting were noted in isolated cases, the design of some devices may lead to confusion among voters when marking their choices and to compromise their ability to review whether ballots were marked as they intended. Reports of foreign interference impacted public confidence, but a broad range of election stakeholders expressed overall confidence in the integrity of election infrastructure and efforts to mitigate cyber-security risks.

The rights and opportunities to vote early were considerably expanded due to the COVID-19 pandemic, allowing adequate opportunities for voters to cast their vote in-person or by post. Early voting was conducted in-person in 39 states and the District of Columbia, with voting periods ranging from 45 to 3 days. Long queues were reported in a number of states. All states provided voters with the option to cast a postal ballot, most of them upon request, with 38 states and the District of Columbia not requiring a reason for the request. By election day, more than 100 million voters had already cast their votes. However, there were numerous concerns and questions from voters raised over the timely delivery of their postal ballots due to controversies over delays in postal services. In 23 states, postmarked ballots can be counted if received after election day, thereby mitigating one of the major causes of ballot rejection. Despite numerous public statements by the incumbent President over the integrity of postal voting, the number and scale of alleged and reported cases of fraud associated to absentee ballots remained negligible.

Election day was orderly and took place in a peaceful atmosphere without unrest or intimidation. Mitigating measures against the pandemic were generally in place and followed. Polling stations were suitable for independent access by persons with disabilities, and equipment and materials were sufficient for the conduct of the polls with polling officials knowledgeable of the procedures. A few jurisdictions experienced critical problems with electronic poll-books or voting machines, leading to interruptions during polling that were quickly addressed. Some ten million voters received automated disinformation phone calls advising them to stay at home or come to vote the following day. In the limited number of polling stations where the vote count was observed, polling officials conducted these processes professionally, efficiently and openly. The counting and tabulation of results is ongoing in several states and is expected to last for several days. On election night the two main presidential candidates gave opposing messages about the outcome of the presidential election. Despite the fact that the results of the election were still inconclusive, the incumbent president again questioned the integrity of the process and declared victory.

PRELIMINARY FINDINGS

Background and Political Context

On 3 November, in line with the constitution, federal elections were held for the president and vice-president, 35 of 100 senators, and all 435 representatives.¹ Elections were also held for state and local executive offices, state legislatures in 44 states, as well as 66 state judges in 31 states, along with various referenda and initiatives. The last presidential election was held in 2016, when a Republican candidate Donald Trump was elected over former Secretary of State Hillary Clinton nominated by the Democratic Party. The last congressional elections were held in 2018, resulting in a Senate composed of 53 Republicans, 45 Democrats and two Independents, as well as a House of Representatives composed of 235 Democrats and 199 Republicans.² Women are under-represented in the legislative branch, holding 24

¹ Thirty-three senate seat are contested in regular elections, and two in special elections, following the death of Senator John McCain of Arizona and resignation of Senator Johnny Isakson of Georgia.

² The seat in North Carolina's 9th District was not certified by the North Carolina Board of elections following accusations of postal vote fraud. A special election was held in January 2019 and the seat was filled by Republican Mark Harris.

percent of all congressional seats and approximately 25 percent of seats in state legislatures. Minorities and Native Americans also remain under-represented, despite increases compared to previous elections.³

The official selection of presidential candidates began in February 2020 with a series of nationwide state-level caucuses and primaries. The incumbent President Trump's nomination was confirmed on 27 August in a ceremony in front of the White House. His major challenger is former Vice President Biden, who was nominated by the Democratic Party on 18 August.

The pre-election period was marked by protests across the United States against police brutality and demanding racial justice. The protests erupted after a video emerged in May showing the death of George Floyd, an African American man, while he was being restrained by a Minneapolis police officer. According to Amnesty International, by September more than 12,000 protests had been held in all states, with the vast majority of them peaceful. On a number of occasions however, protests and counter-protests turned violent and resulted in numerous injuries and at least 19 fatalities.⁴

The COVID-19 pandemic presented significant challenges to the organization of these elections, impacting the campaign and permeating political discourse. Diverging perspectives on the measures taken in response to the pandemic exacerbated the already high degree of political division and polarization in the country.

Numerous ODIHR interlocutors noted that the judiciary has become highly politicized and indicated that this would have an impact on the rules governing the holding of these elections and possibly the outcome. Starting from 12 October, the U.S. Senate held a hearing to confirm on 26 October a U.S. Supreme Court Justice, in a process that became one of the central topics in the campaign.⁵

Legal Framework and Electoral System

The U.S. Constitution and its amendments establish a framework for federal elections, with additional federal laws focusing on the protection of voting rights and providing minimum standards for voter registration, election technology and the regulation of campaign finance.⁶ A diverse body of state election laws and regulations exists across the states, with further variations between counties in certain states. Federal and state court decisions form an integral part of the legal framework. The U.S. is a party to major international and regional conventions relating to democratic elections.⁷

³ See the [report](#) from February 2019 by Pew Research Center.

⁴ On 20 October, Amnesty International, Human Rights Watch, Human Rights First, and Physicians for Human Rights called on U.S. municipal governments to adopt measures to prevent armed individuals or groups from intimidating or threatening protesters or voters during and following the elections. See the [press release](#). See also the OSCE PA [statement](#).

⁵ Following the death of Justice Ruth Bader Ginsburg on 18 September, President Trump nominated Judge Amy Coney Barrett to fill the vacant seat on the Supreme Court. While the Republicans argued that the sitting Senate has the constitutional right to confirm the nomination at any time, Democrats argued that a nomination should not be rushed so close to a national election.

⁶ Federal legislation includes: the 1965 Voting Rights Act ([VRA](#)), [the 1986 Uniformed and Overseas Citizens Absentee Voting Act](#) and the 2009 Military and Overseas Voting Empowerment Act ([MOVE](#)), [the 1984 Voting Accessibility for the Elderly and Handicapped Act](#) and the 1990 Americans with Disabilities Act ([ADA](#)), the 1993 National Voter Registration Act ([NVRA](#)), [the 1971 Federal Electoral Campaign Act](#) and [the 2002 Bipartisan Campaign Reform Act](#), the 1939 [Hatch Act](#) and its amendments, and the 2002 Help America Vote Act ([HAVA](#)).

⁷ Including the 1966 International Covenant on Civil and Political Rights (ratified in 1992 with a number of reservations), the 1965 Convention on the Elimination of all forms of Racial Discrimination the 2003 UN Convention against Corruption, the 2004 Council of Europe Convention on Cybercrime. The U.S. is also a member of the Council of Europe's Group of States against Corruption and European Commission for Democracy through Law (Venice Commission). The U.S. has signed but not ratified the 1979 Convention on the Elimination of All Forms of Discrimination against Women, the 2006 Convention on the Rights of Persons with Disabilities and the 1969 American Convention on Human Rights.

At the federal level, there have been no election-related legislative changes since the last elections, despite previous recommendations. Several bills relating to electoral security, voter registration and online advertisements were submitted to Congress, but none were adopted.⁸ The COVID-19 pandemic led to a plethora of state level amendments which would allow the elections to be held while protecting the health of voters and election administration officials. A significant proportion of these measures were challenged in courts, mostly by the Republican Party, resulting in protracted litigation seeking to maintain previous arrangements. This in turn produced a great deal of legal uncertainty even in the days leading up to the elections. Notwithstanding the imperatives of securing the election during a pandemic, the litigation of election processes so close to the election day and the attending legal uncertainty is contrary to international good practice, presents an additional burden on election administration and may ultimately result in some voters not being able to cast their ballots.⁹ (See also *Complaints and Appeals*).

The Department of Justice (DoJ) monitors the implementation of federal election law and can initiate or join enforcement lawsuits in cases of non-compliance. In 2013, the U.S. Supreme Court ruled as unconstitutional the formula determining which jurisdictions fall under the preclearance requirement of the Voting Rights Act (VRA). Following the removal of the preclearance requirements, some states enacted laws which were perceived as effectively compromising voting rights for disadvantaged groups, which may be at odds with the VRA.¹⁰

The president and vice president are elected jointly for a four-year term through an indirect election conducted by an Electoral College of 538 electors.¹¹ The system allows for a candidate to win the national popular vote while falling short of the majority of electoral college votes. Several states have each passed a National Popular Vote (NPV) Act, in which these states would award their electoral votes to a winner of the national popular vote regardless of the vote in that state. However, these NPV laws remain inactive until they are passed in a sufficient number of states for them to take legal force.¹² While there is no federal law requiring electors to cast their vote for the candidate for whom they have pledged to vote, some states have laws providing for sanctions or the replacement of these “faithless electors”.¹³

Senators and representatives are elected directly, primarily through first-past-the-post contests. Each state is represented in the Senate by two senators and by at least one representative in the House, with the remaining seats allocated to states in proportion to their population. While Senate electoral districts correspond to the entire state, representatives are elected from single-member districts.

While districts are generally of equal population size, there are widespread concerns that over the years district lines have been progressively manipulated in ways that favour partisan outcomes. In 2019, the

⁸ A comprehensive draft law on federal level, [For the People Act](#), was adopted in House in December 2019 but is still pending in the Senate. Likewise, in May 2020 the House adopted the [Heroes Act](#), aiming to detail postal voting procedures and absentee vote requirements, enhance online voter registration, and appropriate USD 3.6 billion for election officials to address all COVID-19 related measures. This act is also pending in the Senate.

⁹ See Paragraph 63 of the Guidelines and Explanatory Report of the Venice Commission’s [Code of Good Practice in Electoral Matters](#).

¹⁰ See [Shelby County v. Holder](#). Under the VRA preclearance requirement, jurisdictions that had a history of discrimination should obtain the approval of the DoJ before changing any election laws or procedures. In December 2019, the U.S. House of Representatives adopted the [Voting Rights Advancement Act](#), envisioning new formula. The bill is currently pending in the Senate. The Congress is yet to establish criteria for determining which jurisdictions should be under preclearance.

¹¹ All states have a number of electors equivalent to their total representation in Congress, while the District of Columbia has three.

¹² The Act (NPV) has been enacted in 16 states and the District of Columbia, totalling in 196 electoral votes. For the NPV to take effect, states with a combined total of at least 270 electoral votes must join the initiative.

¹³ These laws, present in various forms in 32 states and District of Columbia, either impose a fine to an elector who fails to vote according to the statewide or district popular vote or replace them. In July 2020, the U.S. Supreme Court confirmed as constitutional state laws punishing or replacing faithless electors.

U.S. Supreme Court ruled that “partisan gerrymandering claims present political questions beyond the reach of the federal courts.”¹⁴ However, where such redistricting can be determined to have been conducted along racial lines, this constitutes a violation of the VRA and can still be examined by federal courts.

Election Administration

Election administration is highly decentralized, with no federal body mandated to oversee the entire electoral process. States are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. Most election bodies are appointed by the governing party in the state. Conversely, 20 states and the District of Columbia have election management bodies which are either bipartisan or independent.

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 administer, raising questions of impartiality. However, most IEOM interlocutors generally expressed confidence in the impartiality of election administrators.

In general, IEOM interlocutors expressed a high level of confidence in the work of the election administration at all levels. Election officials worked under difficult circumstances considering the COVID-19 pandemic and a highly politicized election environment. Despite these challenges, elections were generally administered in a professional and transparent manner.

The bipartisan Election Assistance Commission (EAC) is a federal body that provides guidance on meeting the requirements of the Help America Vote Act (HAVA) and serves as a clearinghouse for information about election administration. For these elections, the EAC was tasked by Congress with distributing USD 400 million in emergency funds to the states in order to address issues stemming from the COVID-19 pandemic. In general, IEOM interlocutors were of the opinion that the allocated federal funds alone were not sufficient to meet the needs of election administrations during the pandemic, due to an increased workload related to a substantial rise in online voter registration and postal voting. Officials at all levels acknowledged that election infrastructure is generally underfunded. Some 2,500 local election administrations supplemented the financial shortfall with funding provided by a few private donors, most notably by the Center for Tech and Civic Life (CTCL).¹⁵ While this initiative was welcomed by most local election administrations, and was carefully considered in many jurisdictions, regulation to further protect election processes from private interference and safeguard the independence of the election administration is currently not in place.

The majority of election administrations spoken to by IEOM observers noted that the recruitment of a sufficient number of poll workers was a significant challenge due to the COVID-19 pandemic. In addition to the regular polling staff, election administration had to plan for reserve staff to be able to meet urgent needs. Comprehensive initiatives such as the National Poll Workers Recruitment Day launched by the EAC encouraging students to engage as poll workers generally had positive results, however in some jurisdictions recruiting sufficient staff remained a problem.¹⁶ According to available data, the number of polling locations was reduced by approximately 21,000 across the country or some 20 per cent, mainly due to the consequences of the COVID-19 pandemic.¹⁷ The reduction of the polling stations affected the

¹⁴ [Rucho et al. v. Common Cause et al.](#)

¹⁵ The [CTCL COVID-19 Response Grants Program donated up to USD 350 Million.](#)

¹⁶ For example, as reported to the IEOM in some jurisdictions in California, Indiana, Utah.

¹⁷ See this [report](#). The EAC publishes the total number of polling locations only after elections. In 2016 General Elections, [there were](#) 116,990 polling places.

participation of certain categories of voters, particularly Native Americans¹⁸ and some African American communities.¹⁹

Election administrations took considerable steps to counteract disinformation intended to confuse voters or discourage turnout. State and county level authorities mainly used their websites and social media to counteract such disinformation and to disseminate voter information. These efforts were considerably supported by federal and local authorities, civil society associations and traditional and social media companies. As required by law, voter information was available in multiple languages.²⁰

Federal legislation prohibits discrimination and provides for equal opportunities for persons with disabilities in political and electoral life.²¹ It is estimated that one-seventh of the voting-age population has some form of disability. Even though election administrations equipped polling stations with the necessary material to facilitate independent voting, IEOM interlocutors reported that due to the COVID-19 pandemic, most persons with disabilities preferred to cast their vote by post.²²

Voter Rights

U.S. citizens at least 18 years of age on election day are eligible to vote. While more than half a million citizens residing in the District of Columbia have the right to vote in presidential elections, they and some four million citizens resident in U.S. territories, over 90 per cent of whom are ethnic and racial minorities, lack full representation in the Congress.²³ An estimated 5.2 million citizens are disenfranchised due to a criminal conviction, with many of them having already served their sentences.²⁴ These restrictions disproportionately affect racial minorities and it is estimated that 1.3 million African Americans are unable to vote as a result of these policies. Convicted felons and those on parole are deprived of their voting rights in 48 States, while those convicted of a crime in Maine, Vermont and the District of Columbia do not have their voting rights revoked.²⁵ In Florida, following a referendum in 2018, an amendment was passed to the state's constitution automatically restoring voting rights for an estimated 1.4 million former criminal offenders who had completed their sentence. However, the Florida state legislature enacted a law requiring citizens with past convictions to pay all court costs, fees and fines in full, as a condition to register to vote. Restrictions on voting rights of felons and ex-felons contravene principles of universal suffrage, and the principle of proportionality in the restriction of rights, as provided for by the OSCE commitments and other international standards.²⁶

Current restrictions in 39 states and the District of Columbia disenfranchise people with psychosocial and intellectual disabilities under guardianship or who have had their voting rights revoked by a court decision, often on the basis of a medical diagnosis or legal guardianship status. There are an estimated 1.5 million

¹⁸ In Indiana and Minnesota.

¹⁹ In Arkansas and Georgia.

²⁰ EAC provided with voter information guide in 12 languages and the national voter registration application form in 15 languages. See [Voter's Guide to Federal Elections](#).

²¹ See [guidance](#) provided by the DoJ listing numerous federal laws, including the Voting Rights Act, Americans with Disabilities Act, Voting Accessibility for the Elderly and Handicapped Act, and Help America Vote Act.

²² As reported in Nevada, Colorado, Minnesota, Texas, Wisconsin, Michigan, Ohio.

²³ American Samoa, Guam, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, Puerto Rico and District of Columbia have no representation in the Senate and only non-voting representatives in the House.

²⁴ See 14 October 2020 [report](#) from the Sentencing Project.

²⁵ Voting rights are automatically restored in 36 states with variations in timeframes. In 11 states people with criminal convictions are permanently disenfranchised unless pardoned by the state governor.

²⁶ Paragraphs 7.3 and 24 of the [1990 OSCE Copenhagen Document](#) states that participating States will “guarantee universal and equal suffrage to adult citizens,” and that “...any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.” See also the 2003 Inter-American Commission on Human Rights (IACHR) decision in [Statehood Solidarity Committee v. U.S.](#)

adults under legal guardianship across the country, but it is unclear how many lost their right to vote.²⁷ Some of these practices are contrary to international standards on the rights of persons with psychosocial and intellectual disabilities.²⁸

Voter registration

Voter registration in the United States is active, i.e. citizens must register in order to cast a ballot.²⁹ The registration is conducted in the jurisdiction of their residence, most often on the county level.³⁰ Voters can register in person, online or through a third party. In an increase of five states since the 2018 elections, 16 states implemented ‘automatic voter registration’.³¹ Twenty states and the District of Columbia allow voter registration at the time of voting, with necessary safeguards in place. Voter registration deadlines were extended in some states to overcome challenges arising from the COVID-19 pandemic.³² While there were no federal regulations to prevent citizens from registering in more than one state, 30 states and the District of Columbia participated in an inter-state Electronic Registration Information Centre (ERIC) project to identify duplicate records and inaccuracies, and to ensure the integrity of voter registers. While exact figures are not known due to the possibility of election-day registration, in 2018 the number of citizens eligible to vote was estimated to be 254 million.³³

Online voter registration was available in 40 states and it has been a particularly accessible method during the COVID-19 pandemic as public buildings were shut through significant registration periods. Election authorities, civil society groups and social networks made considerable efforts to disseminate voter registration information. Initiatives such as National Voter Registration Day resulted in the registration of around 1.5 million voters while 4.4 million voters were registered through the "Voting Information Center" established by Facebook. However, some citizens, such as Native Americans and persons from economically disadvantaged groups, have had more difficulties in accessing voter registration modalities both online and in person.³⁴ Voter registration websites in four states were inaccessible during important voter registration periods, running the risk of excluding some voters and raising concerns over the robustness of voter registration servers and the adequacy of risk mitigation solutions.³⁵

Voter Identification

Voter identification requirements vary across the states, and in 34 states voters are required to show identification before voting, with 18 of these requiring photo ID.³⁶ In the remaining 16 states and District of Columbia, other identifying information, such as verification of signatures or asking personal information, may be used at the polling station.

²⁷ See also this [guide](#) to Voting Rights of People with Mental Disabilities, 2016

²⁸ The 1990 American with Disabilities Act provides that the right to vote cannot be taken away without an individual assessment. See Articles 12 and 29 of the 2006 CRPD. See also paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011, which states that “Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention”.

²⁹ Voter registration is required in 49 states but not in North Dakota where there is no registration process.

³⁰ Other units of jurisdiction, in some states, may be cities, towns or villages.

³¹ In many of these cases, voters are automatically registered at the time of applying for or renewing a driver’s license.

³² Voter registration deadlines were extended for three weeks in Arizona. After the extension and in a last-minute change, a [court ruling](#) reversed the decision and reduced the deadline to 10 extra days.

³³ See the voter registration [estimates](#) for 2018 mid-term elections.

³⁴ See [report](#) by the Native American Rights Fund.

³⁵ In Louisiana during Voter Registration Day on 21 September. In Florida and Virginia on the last day of voter registration (registration was extended). Technical problems were registered in Pennsylvania in the first weekend of October.

³⁶ See the [overview](#) provided by National Conference of State Legislatures (NCSL).

Voter identification is a politically divisive issue. Proponents of stricter voter identification requirements argue that such measures strengthen the integrity of electoral processes by deterring and detecting electoral fraud with no overall impact on turnout.³⁷ Opponents of stricter identification rules express concerns that voter identification laws do not respond to credible threats to the electoral process and effectively suppress certain categories of voters that often face challenges in obtaining identification documents.³⁸ These groups include Native Americans, people with disabilities, the homeless, economically disadvantaged groups with racial and ethnic minorities disproportionately affected, and transgender people.³⁹ The inability to present a valid ID often leads to people belonging to these groups not being able to cast votes. Efforts to ensure the integrity of the vote are important, but should not lead to the disenfranchisement of eligible voters.

Candidate Registration

Under the constitution, presidential and vice-presidential candidates must be natural born US citizens, at least 35 years old, and resident in the US for at least 14 years. Senate candidates must be at least 30 years old and citizens for at least 9 years. Candidates for the House of Representatives must be at least 25 years of age and citizens for at least 7 years. Both senators and representatives, when elected, must be residents of the state in which they are elected.

All states offer the possibility for recognized political parties to nominate candidates.⁴⁰ Smaller political parties and independent candidates may run if they collect a certain number of supporting signatures, usually before a deadline occurring several months before election day. In many states, prospective candidates must obtain signatures that amount to more than one percent of registered voters, which is contrary to international good practice and may pose an unreasonable obstacle for ballot access.⁴¹

Some states temporarily eased candidate signature requirements due to the COVID-19 pandemic, by extending deadlines for collecting supporting signatures, waiving the requirement to collect signatures or decreasing the number of signatures required.⁴² Twenty-four separate lawsuits were filed in 16 states and the District of Columbia in response to these measures, with varying outcomes.⁴³ However, representatives from the Green and Libertarian Parties informed the IEOM that this process remained very challenging given health-related restrictions affecting physical contact with voters.

Eighty-eight presidential candidates, including 27 women, appeared on various state ballots. Four presidential candidates were registered in a sufficient number of states to have a chance to be elected.⁴⁴ Individual candidates stood unopposed in 11 House races.⁴⁵ There were 151 candidates, including 42

³⁷ See [report](#) by the Heritage Foundation.

³⁸ See a [fact sheet](#) by the American Civil Liberties Union.

³⁹ See a recent [study by the UCLA School of Law, Williams Institute](#).

⁴⁰ The definition of a 'recognized' party varies by state, either on the basis of the number of registered voters declaring their association with the party or the number of votes received by the party in previous elections.

⁴¹ See Section 1.3 of the [2002 Venice Commission Code of Good Practice in Electoral Matters](#).

⁴² Candidate signature requirements were cancelled in Vermont and decreased in some states, including Maryland, Michigan, New Hampshire and Virginia.

⁴³ In Maryland, New York, Connecticut, Pennsylvania and District of Columbia, requests to modify registration requirements were denied by the courts, as restrictions had already been eased in light of the pandemic, including reducing the number of signatures required and extending deadlines for submitting the signatures. In Rhode Island, Virginia and Georgia the requirements were modified as the lawsuits requested. In Ohio, injunctive relief was denied in one case because signature collection qualifies as "an essential service" so the plaintiff was not overly restricted by the confinement measures. In California, injunctions were denied because alternative methods pre-dating COVID-19 pandemic were already available to make getting signatures easier thus plaintiffs were not overburdened. In Alaska, Hawaii, Arizona, Maine, Arkansas and Oklahoma the cases were withdrawn or dismissed on technical grounds.

⁴⁴ The incumbent president and Republican nominee Donald Trump, the Democratic Party nominee Joseph Biden, Jo Jorgensen of the Libertarian Party and Howie Hawkins of the Green Party.

⁴⁵ Five Democrat and six Republican candidates in House districts across 10 different states.

women, competing for the 35 Senate seats and 1,113 candidates, of whom 340 are women, competing for the 435 House seats.⁴⁶ At least 27 LGBTI candidates across 21 states and 13 persons with disabilities in 11 states appeared on the ballot for federal elections.

Campaign Environment

Notwithstanding measures in place to prevent the spread of infection, campaigning took place in an open atmosphere in which the fundamental freedoms of expression, assembly and association were respected. Public safety measures impacted the capacity of candidates to present their programs at in-person public events. On the national level, the campaign was dominated by the two main presidential candidates and focused on the current administration's response to the COVID-19 pandemic, the economic recovery, healthcare and the appointment of a new U.S. Supreme Court justice as central campaign themes. Congressional races also focused on local issues.

Both major parties limited in-person activities, such as canvassing, and focused instead on advertising, social media, text messages and phone calls to reach out to voters. Rallies held during these elections were significantly smaller and fewer than in previous elections. IEOM observers noted that Republican candidates held more in-person events than Democratic candidates. Notably, the president held more in-person rallies and events at which physical distancing was not mandated, even after he tested positive for COVID-19 on 2 October and was hospitalized for three days. Non-traditional rallies were devised in the context of the pandemic including drive-in events and those held at airports.⁴⁷ Third-party presidential and congressional candidates were generally less visible.

The campaign was characterized by deepening political polarization, extremely negative campaigning and hostility between the two major presidential candidates. Animosity between the candidates negatively affected the focus of the campaign on policies and party platforms. The two leading presidential candidates accused each other of corruption, fraud, working for foreign interests, an inability to lead, and of supporting extremist groups. The incumbent president's use of discriminatory and pejorative statements against individuals on the grounds of their gender and origin was of particular concern.

Negative campaigning by most candidates was frequently exacerbated by the misrepresentation of facts, especially from the incumbent president, thereby detracting from the ability of voters to accurately appraise the candidate's views and qualifications. There were some isolated but notable bipartisan initiatives to de-escalate the negative rhetoric and refocus the campaigns on policy discussions.⁴⁸

President Trump repeatedly made allegations of media bias against his campaign. The President also alleged on multiple occasions that the electoral process, and postal voting in particular, would be open to widespread fraud, while not providing any further information or evidence of a systematic threat to election credibility. Further to these allegations, on several occasions President Trump incited his supporters to watch the polls, thereby raising concerns of the IEOM interlocutors that unofficial poll watching would devolve into voter intimidation on election day. In contrast to these allegations, national security agencies issued statements attempting to reassure citizens about the integrity of the election process.⁴⁹

On a number of occasions, when asked whether he would commit to a peaceful transfer of power, the President refused to do so thereby raising concerns among election stakeholders about integrity of this

⁴⁶ This was the highest number of nominations of women candidates for the House until now, including among the two major parties. See the [data and analysis](#) provided by the Center for American Women and Politics.

⁴⁷ Forty rallies and campaign events were observed in the pre-election period by the ODIHR LEOM observers.

⁴⁸ See the [bipartisan add](#) from governor candidates in Utah, [Tweet](#) from Senator Mitt Romney.

⁴⁹ See the video message from [5 October](#) and [transcript](#) of the [21 October press conference](#).

central facet of the democratic process.⁵⁰ Statements of this nature by a presidential candidate risk eroding public confidence in democratic institutions and delegitimizing the outcome of the election.

The distinction between state and party activities was not always respected, as the incumbent president repeatedly used his official capacity for political advantage. Some IEOM interlocutors expressed concerns over the use of administrative resources for campaigning, citing the fact that the COVID-19 economic relief checks sent to voters in April contained a letter signed by the president. This was the first time a president's name had appeared on an Internal Revenue Service (IRS) disbursement. The U.S. Department of Agriculture initiative to buy fresh food and ship it to families in need also included a signed letter on the White House letterhead. On 8 October, the Office of Special Counsel (OSC) requested that the Secretary of Agriculture reimburse costs related to his participation in a Trump campaign event, in violation of the Hatch Act.⁵¹ IEOM interlocutors reported the uneven enforcement of the Hatch Act, citing precedent of lower-level federal employees having been subject to discipline, while higher-level officials having gone unpunished.

Campaign Finance

The regulation of campaign finance is shaped by federal legislation and U.S. Supreme and lower-level court decisions.⁵² Individual donations to candidates are limited and must be fully disclosed.⁵³ Some candidates mobilized a broad base of small donations, attesting to high voter engagement in the financing of campaigns.⁵⁴ Foreign and anonymous donations, and donating in other person's name are prohibited, as are direct donations from corporations and trade unions.

While campaign spending is generally transparent, it is not restricted in any way. In total, campaign expenditure for the 2020 general elections is projected to reach USD 14 billion.⁵⁵ Along with official candidates' campaign committees and political action committees (PAC), the system allows for 'independent' spenders (referred to as super PACs). Following a 2010 US Supreme Court decision, while such entities may receive unlimited donations from corporations and trade unions, they are prohibited from coordinating with candidates on how they go about spending such funds. In practice, the legal requirements prohibiting coordination are regularly circumvented and cannot be adequately enforced. Additionally, independent spenders are allowed to engage in both coordinated and 'independent' spending provided that separate bank accounts are used for each type of expenditure.⁵⁶ As of 29 October, it was reported that 'independent' spending for 2020 general election campaign had reached USD 1.7 billion.⁵⁷ The U.S. subsidiaries of foreign companies may establish PACs and also engage in independent spending.⁵⁸

⁵⁰ At a 23 September press conference, when asked whether he would commit to a peaceful transfer of power, President Trump stated that he would "see what happens", claiming that postal voting would lead to fraud. On the same day, he called the election a "scam" and said that the result would have to be decided by the US Supreme Court. At a rally on 13 September, President Trump said that his opponent could only win through a rigged election. On 20 August, at a rally, he said "the only way they're going to win is by a rigged election." On 19 July during an interview, the president refused to answer if he will accept a defeat in the elections.

⁵¹ See a [letter](#) from the Office of Special Counsel.

⁵² See U.S. Supreme Court decisions [Buckley v. Valeo](#) and [Citizens United v. FEC](#); [SpeechNow.org v. FEC](#)

⁵³ Individuals can donate up to USD 2,800 per candidate and up to USD 5,000 USD per Political Action Committee (PAC). Disclosure is required for donations above 200 USD.

⁵⁴ President Trump Campaign Committee raised 595 million USD, of which 45 per cent were "small and very small" contributions (below USD 200). Vice-president Biden – 937 million USD, of which 39 per cent came from contributions below USD 200.

⁵⁵ See the [projection](#) by the Center for Responsive Politics.

⁵⁶ As mandated by a 2011 district court order in [Carey v. FEC](#).

⁵⁷ According to data filed with FEC and [summarized](#) by the Center for Responsive Politics.

⁵⁸ This cannot be done upon the initiative of the foreign parent company, and the PAC must employ only U.S. nationals.

There has been a concerted effort to ensure that the participation of corporations in campaign finance remains minimally regulated and that no additional measures to enhance transparency are enacted. The Appropriations Act passed in January 2018 explicitly prohibited the Securities and Exchange Commission from enabling shareholders to request the disclosure of political spending by publicly traded companies, while the Financial Services and Government Appropriations Act of 2019 prohibited any requirement that may oblige government contractors to disclose their political spending.

Insofar as campaigning is not the organization's primary activity, tax-exempt social welfare organizations may engage in political campaigns. The income of such tax-exempt organizations is only subject to disclosure if donations are specifically earmarked for political communication.⁵⁹ As such, donating for general purposes and not earmarking the donations is often used to avoid disclosure.⁶⁰ These organizations can themselves donate to other independent spenders. In total, as of 29 October, these organizations spent some USD 108 million during these elections.

By law, all advertising is required to include a disclaimer indicating the entity financing the campaign message and taking the responsibility for the content and its placement. In an effort to address foreign electoral influence in online media and social networks, a bipartisan Honest Ads Act was introduced in the Senate in 2017 but has not passed. Some social media companies, which supported the passage of this law emphasizing that it would create a level playing field for all social media companies, have voluntarily applied some of the measures outlined in the bill including mandatory disclaimers, transparency and the vetting of buyers' origin.

Civil oversight of campaign finance is vested in the bipartisan six-member Federal Election Commission (FEC), with the law requiring the votes of at least four commissioners in order to make decisions and issue advisory opinions. Commissioners are appointed by the President and confirmed by the Senate. Since August 2019 (with the exception of May and June 2020), only three commissioner seats have been filled and the FEC was therefore unable to make decisions or issue advisory opinions relating to requests for clarification of the law and regulations.⁶¹ Nevertheless, the FEC has continued to perform its education and outreach activities. The failure to nominate commissioners and pass the Honest Ads Act further reflect the tendency by the Republican Senate leadership towards ensuring minimal campaign finance regulations and oversight.

The Department of Justice (DoJ) is tasked with the oversight of the criminal liability related to campaign finance and has in the past co-operated with the FEC in order to enforce campaign finance regulations.⁶² However, following the allegations that in July 2019 President Trump had requested the government of Ukraine to investigate the work of Vice President Biden's son in that country, the chairperson of the FEC and the DoJ took opposing approaches in their interpretation of the definition of campaign contributions. The FEC chair on 26 September 2019 viewed President Trump's request as a solicitation of campaign contribution, while the DoJ maintained that it did not constitute such.⁶³ IEOM interlocutors were concerned that the differences of opinion arising from the divergent interpretations damaged co-operation between the two key institutions and, as a consequence, weakened campaign finance oversight. Notwithstanding the above, the DoJ informed IEOM observers that robust measures to ensure campaign finance integrity were taken for these elections.

⁵⁹ See [Citizens for Responsibility and Ethics in Washington \(CREW\) v. FEC and Crossroads Grassroots Policy Strategy](#).

⁶⁰ See [reports](#) by the Center for Responsive Politics, from previous election cycles.

⁶¹ Commissioner Trainor was appointed on 19 May 2020 after which FEC had four members. Commissioner Hunter subsequently resigned on 25 June returning the number to three.

⁶² By law, if the Commission "determines that there is probable cause to believe that a knowing and willful violation has occurred, the Commission may refer such apparent violation to the Attorney General of the United States."

⁶³ See [here](#) and [here](#).

Media

The media landscape, while extremely polarized, is pluralistic and diverse with more than 17,000 commercial and public broadcast stations. Despite the large volume of media outlets, ownership of these outlets is concentrated in the hands of a few entities and individuals. The environment is traditionally dominated by the major television networks ABC, CBS and NBC, while cable news channels, such as Fox News, CNN and MSNBC, are particularly popular within the audiences predisposed to a particular ideological lens. Additionally, local TV channels serve as an important source of local political information.⁶⁴ There are some 1,300 print publications, with several well-respected national newspapers. Overall, however, there is a steady shift in media consumption towards content available online and on social networks, in particular Facebook, YouTube and Twitter. Two public networks, Public Broadcasting Service (PBS), and National Public Radio (NPR) operate across the country.

The First Amendment to the Constitution that guarantees freedom of the press and speech together with self-regulation provide for a robust system of protection of media independence. In addition, the Supreme Court on several occasions, including the 2010 Citizens United v FEC ruling, affirmed that no limitations would constrain freedom of speech. However, recent years have been characterized by hostility against the news media and individual journalists, with the systematic leveling of derogatory verbal attacks by the incumbent President aimed at eroding the credibility of the media.⁶⁵ This tendency has undermined the role of the media in a democratic society, raising significant concerns by numerous IEOM interlocutors, the media, as well as domestic and international organizations dealing with matters of freedom of expression.⁶⁶

The Federal Communications Commission (FCC) oversees the implementation of the basic legal requirements pertaining to the broadcast media. The FCC does not conduct media monitoring, and instead, through its Media Bureau, responds to media inquiries and election-related complaints. Other types of media are not bound by statutory requirements. During the 60 days prior to federal elections, commercial broadcasters must provide “reasonable access” to all legally qualified federal candidates who request to purchase airtime.⁶⁷ Public broadcasters are not allowed to air paid advertisements. Numerous publications, including major nationwide newspapers, declared their political stance by officially endorsing or opposing individual presidential candidates.⁶⁸

The non-partisan Commission on Presidential Debates (CPD) scheduled three debates for the two presidential candidates who met the CPD criteria and one for their vice-presidential running mates.⁶⁹ The conduct of the first presidential debate was controversial, with numerous stakeholders registering dismay at the aggressive tenor of the event.⁷⁰ The CPD announced the intention to hold the second debate virtually, in order to protect health and safety after President Trump and members of his campaign staff tested

⁶⁴ See the July 2020 Pew Research Center [analysis](#). There are also several highly popular radio shows.

⁶⁵ See the April 2020 [report](#) by the Committee to Protect Journalists. President Trump has repeatedly called the press “fake news”, “the enemy of the people”, “dishonest”, “corrupt”, “low life reporters”, “bad people”, “human scum” and “some of the worst human beings you’ll ever meet”. As he told Leslie Stahl of CBS shortly after he was elected in 2016, he has been trying to demean the journalists and destroy the credibility of the news media.

⁶⁶ See also Reporters Without Borders, [World Press Freedom Index 2020](#); See also an August 2017 [statement](#) of the OSCE Representative on Freedom of Media.

⁶⁷ The FCC maintains a database of [Public Inspection Files](#) with such requests.

⁶⁸ Some 211 newspapers, including scientific and university publications, endorsed Vice President Biden, and 15 President Trump.

⁶⁹ To be eligible, candidates must appear on a sufficient number of state ballots, have a mathematical chance of winning a majority vote in the Electoral College, and have a support of at least 15 per cent of voters as determined by the average of five national public opinion polls.

⁷⁰ The first debate, conducted on 29 September, was watched by 73 million people, making it the third most watched debate in the U.S. history (the vice-presidential debate was the second most watched vice-presidential debate with almost 58 million viewers).

positive for the COVID-19. The debate was ultimately cancelled following the refusal by President Trump to participate in the online format while his campaign also accused the CPD of bias.⁷¹ Instead, two separate town halls featuring each of the candidates were aired simultaneously, with the audience posing questions.⁷² The third debate was conducted as initially planned. In response to the controversy arising from the first debate, the microphone of the opponent was muted during opening positions on the discussed topics.

Overall, freedom of expression was respected with a wide range of election-related information available, thus enabling voters to make an informed choice. National media coverage of the election was extensive and vibrant, focusing primarily on the presidential campaign and the COVID-19 pandemic, whereas reporting on congressional races was more visible in local media.⁷³ The findings of the ODIHR LEOM media monitoring revealed the clear dominance of the two main parties and their candidates.⁷⁴ Third-party candidates were largely ignored by the major broadcast media and also reported problems with access to local media. All monitored media dedicated systematic and comprehensive coverage related to voter information on various aspects of the electoral process, at times contrary to statements by contestants.

Public PBS and NPR provided extensive coverage to presidential candidates in their newscasts with President Trump receiving 48 per cent of all politics-related news coverage on both channels, largely critical.⁷⁵ Former Vice President Biden and his campaign received 18 per cent of such coverage on PBS and 20 per cent on NPR, most of which was neutral. On the three national TV networks (ABC, CBS, and NBC) President Trump received 63, 56 and 60 per cent of prime time politics-related news coverage, respectively, most of which was critical, while former Vice President Biden received 20, 25 and 22 per cent, respectively, mainly in a neutral tone.⁷⁶ The cable networks were mostly relying on reporting opinions at the expense of balanced coverage. MSNBC, and, albeit to a lesser degree, CNN, portrayed the incumbent President very negatively, and Fox News showed open bias with demeaning vocabulary against former Vice President Biden in some of its evening shows. Newspapers offered in-depth political analysis, but often displayed political leanings. While the monitored online media took a decisively partisan approach, Breitbart, in particular, regularly presented exaggerated or ungrounded messages, often amplified in social networks, primarily on Facebook.⁷⁷

Amidst growing public and legal scrutiny, major social media companies have adjusted policies and practices aimed at tackling disinformation, particularly as it relates to elections.⁷⁸ There were numerous civic activities aimed at fostering civil online discourse.⁷⁹ Section 230 of the Communications Decency Act (CDA), as interpreted by court decisions, exempts social media from legal liability for content posted

⁷¹ On 8 October, Ms. Erin Perrine, Director of Press Operation for the Trump Campaign referred to the CPD as ‘[...] clearly biased. It’s full of never-Trumpers and it’s full of swamp creatures [...]’. On 12 October, Ms. Ronna Mc Daniel, Chair of the RNC, referred to the CPD as “corrupt” and “in the pocket of Joe Biden”.

⁷² Two separate town hall debates were aired at the same time on different channels, attracting together some 28,5 million viewers. A viewership of the last debate reached some 63 million.

⁷³ The coverage of Congressional races was very present in local media in most of the observed states.

⁷⁴ As of 5 October, the IEOM conducted its quantitative and qualitative assessment of political and election-related coverage by several major media outlets, as follows as: Public television PBS and radio NPR networks; three television networks ABC, CBS and NBC; three cable television channels CNN, Fox News and MSNBC; three newspapers New York Times, USA Today and Wall Street Journal and three online news websites Breitbart.com, BuzzFeed.com and HuffPost.com. The IEOM also followed election-related content on social networks.

⁷⁵ In all monitored media, the coverage of Mr. Trump as candidate, includes his coverage as the President.

⁷⁶ The remaining portion of the politics related coverage was given to political parties and congressional candidates, as well as federal and state officials.

⁷⁷ Notably, Breitbart featured ‘cheat-by-mail battle’ as one of its main sections.

⁷⁸ See also the 30 September 2020 report [Protecting the Vote](#), by the Open Technology Institute.

⁷⁹ See more at [Common Cause](#), [First Draft](#) and [Election Integrity Partnership websites](#).

on their platforms.⁸⁰ However, there is an ongoing discussion on the responsibility of social networks, including concerns on content moderation and the level of disinformation spread on these platforms.⁸¹ Disinformation became worrisome in the months leading up to the elections, particularly in connection with narratives that questioned voting procedures or election integrity, and especially where the enforcement of the social networks' policies is often belated, inconsistent or non-transparent.⁸²

Complaints and Appeals

Following the declaration of the COVID-19 pandemic, state legislatures and governors began amending provisions of election legislation or issuing executive orders in order to safely hold the elections and reduce the health risks for voters and election officials. A significant number of these measures were challenged in state and federal courts. The challenges were largely brought by the Republican Party while in a few states, where emergency measures were not adopted, civil society groups along with the Democratic National Committee asked the courts to amend the laws in order to adapt to the new circumstances stemming from the pandemic. An unprecedented volume of litigation, with more than 400 lawsuits filed in 44 states, over voting processes was still ongoing in the courts in the months and even days leading up to the election day⁸³. The majority of lawsuits focus on issues arising from the health crisis, such as the expansion of early in-person, absentee and curbside voting, the extension of deadlines for the receipt of postal ballots, placement of drop boxes for absentee ballots, signature requirements for postal ballots, witness and notary requirements and limitations on those qualifying for absentee ballots. Approximately 40 cases were related to issues unrelated to the health crisis, such as voter registration and identification, felony disenfranchisement and the order of candidates on the ballot.

Some state legislatures, governors and candidates, mostly Republican, have succeeded in preventing such pandemic-related accommodations and have limited the number of days for tallying of ballots postmarked on time and arriving after election day in several battleground states.⁸⁴ In some states, extending voting possibilities or easing restrictions by state election officials (or both), was challenged by the State Attorney General or Governor.⁸⁵ At the circuit court level, several important state or district court decisions were reversed, suspended or rendered void, with the possible outcome of limiting the ability to cast ballots or

⁸⁰ On 15 October, the FCC chairperson, in a [statement](#), questioned such special immunity and declared the FCC intention to move forward with rulemaking to clarify the interpretation of the section 230. On 28 October, the Senate Committee on Commerce, Science, and Transportation held a hearing with CEOs of Alphabet/Google, Facebook and Twitter, concerning the CDA, content moderation exercised by the social media companies and its impact on freedom of speech. Incumbent president on several occasions, most recently [during the hearing](#), called for repealing the section 230.

⁸¹ Policies and community standards adopted by these tech companies, as well as their application, are of a self-regulatory nature. On 14 October, in one such instance, Facebook and Twitter limited the spread of the New York Post story about Joe Biden's son Hunter: Facebook questioned the story's validity and Twitter referred to its policies on hacked materials and private information. As such, Twitter temporarily locked the accounts of the Trump campaign as well as the newspaper. Twitter subsequently reversed its policies on hacked materials and on the way how this policy is applied, and unlocked the newspaper's account on 30 October.

⁸² On election day, Facebook and Twitter suspended several accounts that posted information about election-related unrest and highlighted issues with voting safety and reliability. Both of these platforms marked as potentially misleading posts by the incumbent president questioning the integrity of the elections.

⁸³ Two of the very last rulings by the Texas Supreme Court and the Houston Division of the Texas District Court respectively were rendered within two days before election day and denied emergency requests filed by a voter and three Republican congressional candidates to exclude ballots cast at ten drive-through voting locations in Harris County from the vote count, while the second ruling denied the request to have all curbside voting applications for early and election day voting rejected. The plaintiffs immediately filed an emergency injunction against the district court's ruling to the Court of Appeals for the 5th Circuit, asking to have the drive-through voting on election day stopped. Although the court denied the emergency request, the ensuing legal uncertainty resulted in the Texas Harris County officials deciding to close 9 out of the 10 drive-through locations.

⁸⁴ In Wisconsin, Pennsylvania, New Hampshire, Georgia, Maine, South Carolina and Florida.

⁸⁵ For example, in Texas, South Carolina and Alabama.

have ballots counted.⁸⁶ One of the most litigated issues has been the witness and notary requirement on absentee ballots,⁸⁷ usually challenged together with restrictions related to the receipt deadlines of absentee ballots,⁸⁸ universal distribution, number or location of drop boxes.⁸⁹

Several preliminary rulings were adopted on an emergency basis, which had a significant impact on the process, as well as the courts' formal rulings on the merits. Some courts refused to uphold or stayed last-minute injunctions, reasoning that voters had many months since the beginning of the COVID-19 pandemic to adjust to the election rules⁹⁰ and that difficulties attributable to the health crisis do not justify changes in electoral rules.⁹¹ In their rulings, these courts frequently applied the *Purcell* principle⁹² that seeks to prevent judicially-created confusion by counselling federal courts to exercise caution before changing election rules on the eve of an election,⁹³ as well as the *Anderson-Burdick* doctrine.⁹⁴ However, these have not been consistently applied, and courts have offered divergent interpretations of what constitutes the *status quo* to which the *Purcell* principle is applied. Arguing that some courts treated *Purcell* as a prohibition against enjoining a potentially illegal voting rule based on the time of filing and examination of the application,⁹⁵ several legal scholars filed an *amicus curiae* brief to the U.S. Supreme Court⁹⁶ asking for clarifications on this doctrine.⁹⁷

The U.S. Supreme Court emphasised the principle of judicial restraint adding that individual judges may not amend the election rules, in the place of state legislatures. U.S. Supreme Court Justice Kagan wrote in her dissenting opinion, that *Purcell* is “not a rule but a caution” as not every last-minute change to election processes may confuse voters and a court must also take other matters into account, such as “the

⁸⁶ For instance in Court of Appeals for the 11th Circuit: [People First of Alabama v. Merrill](#), in which the court enjoined on appeal voting procedures that had been extended; also, [Jones v. DeSantis](#), the Pay-to-Vote case that was initially decided to favour ex-felons voting but reversed on appeal. Likewise, the [New Georgia Project v. Raffensperger](#) that was initially extended but limited on appeal. In the Court of Appeals for the 4th Circuit: [Wise v. North Carolina State Board of Elections](#), North Carolina Alliance for Retired Americans v. State of North Carolina; Moore v. Circosta, consolidated case regarding witness signatures on ballots that was extended by the state court and limited on appeal; also Andino v. Middleton, in which the state court enjoined witness requirement but the 4th Circuit denied and the U.S. Supreme Court reversed following a stay application. In the Court of Appeals for the 5th Circuit, [Texas Democratic Party v. Abbott](#), in which the district court required Texas officials to allow any qualified voter to do so by absentee ballot, without limiting it to a voters above a certain age but was vacated on appeal. In Minnesota, on 29 October, the Court of Appeals for the 8th Circuit [reversed](#) a district court consent decree which had extended the deadline for receipt of absentee ballots. The circuit court ruled that all absentee ballots arriving after 8pm on election day should be set aside pending any further challenges.

⁸⁷ In Alaska, Alabama, Louisiana, Minnesota, North Carolina, Oklahoma, Rhode Island, South Carolina, Virginia and Wisconsin. Prepaid postage has universally not been accepted.

⁸⁸ Lawsuits have been filed in Alabama, Arizona, Florida, Georgia, Michigan, Missouri, Mississippi, Montana, North Carolina, Nevada, Ohio, Pennsylvania, South Carolina, Texas and Wisconsin. These cases fall into two groups: those that must be received by election day and those where state legislation sets a requirement to be postmarked by election day and received within specific deadlines.

⁸⁹ In Iowa, New Hampshire, North Carolina, New Jersey, Ohio, Pennsylvania and Texas.

⁹⁰ See Common Cause Indiana v. Lawson.

⁹¹ See [Republican National Committee v. Democratic National Committee](#), [Andino v. Middleton](#) and [Barbara Tully, Indiana Vote By Mail, Inc. v. Paul Okeson, S. Anthony Long et al.](#)

⁹² See [Purcell v. Gonzalez](#).

⁹³ 4th Circuit: [Barbara Tully, Indiana Vote By Mail, Inc. v. Paul Okeson, S. Anthony Long et al.](#); [Democratic National Committee v. Marge Bostelmann, Wisconsin Legislature, RNC et al.](#); 7th Circuit: [Common Cause Indiana v. Lawson](#).

⁹⁴ The Anderson-Burdick doctrine requires courts to balance burdens that a state imposes on election participation against the state's asserted benefits.

⁹⁵ [Barbara Tully, Indiana Vote By Mail, Inc. v. Paul Okeson, S. Anthony Long et al.](#); [Andino v. Middleton](#); Common Cause Indiana v. Lawson, id.

⁹⁶ See Swenson et al. v. The Wisconsin State Legislature, et al.

⁹⁷ The *amicus curiae* [brief](#), asking the U.S. Supreme Court to clarify the *Purcell* principle, was filed on 16 October 2020 by six U.S. university professors.

presence of extraordinary circumstances (like a pandemic) and the extent of voter disenfranchisement threatened.”⁹⁸

While jurisprudential differences and judicial philosophies are inevitable when examining complex issues of federal and constitutional law, it appears that in some split decisions and emergency orders, issued by the U.S. Supreme Court and courts of appeals, the judges often voted on election-related matters along traditional partisan principles.⁹⁹

Election Observation

In line with its OSCE commitments, the US Government invited ODIHR and the OSCE PA to observe these general elections. Most states do not comprehensively regulate observation, with access for partisan and non-partisan citizen observers as well as international observers varying widely across the country, and often left to the discretion of state or county election officials or their interpretation of the state law. Due to the COVID-19 pandemic physical distancing measures, several election officials reported their intention to limit the number of observers allowed in polling stations.

Five states and the District of Columbia explicitly permit observation by international observers by law.¹⁰⁰ Restrictions on observation are in place in eighteen states.¹⁰¹ Such restrictions on election observers are not in line with OSCE commitments.¹⁰² While the presence of IEOM observers was welcomed in the majority of states, some state election officials refused to meet with them or share their views.

Election day was observed by numerous partisan and non-partisan citizen observers across the country, with rights and responsibilities ranging from observing signature and ballot verification to challenging the eligibility of a voter or of individual ballots. While partisan poll watchers are generally permitted, some states and counties do not allow citizen non-partisan observers inside polling premises.¹⁰³ This reduces the overall transparency and accountability of the election process.

A national, nonpartisan Election Protection coalition comprised of more than 300 local, state and national partners maintains a permanent hotline operated by some 43,000 volunteers in multiple languages to answer voters’ concerns and questions.¹⁰⁴ It also provided immediate legal support nationwide in case of disputes during the polls and conducted election observation. According to its representatives, it deployed 45,000 observers for these elections.

⁹⁸ See [U.S. Supreme Court, Democratic National Committee, et al. v. Wisconsin State Legislature, et al.](#)

⁹⁹ See [Republican National Committee v. Democratic National Committee](#) and [Andino v. Middleton](#). See also, [Merrill, Alabama Secretary of State, et al. v. People First of Alabama, et al.](#) and [Democratic National Committee, et al. v. Wisconsin State Legislature, et al.](#)

¹⁰⁰ California, Hawaii, Missouri, New Mexico and Utah.

¹⁰¹ Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Georgia, Indiana, Kentucky, Mississippi, Minnesota, New Jersey, Texas, North Carolina, Louisiana, Oklahoma, Ohio and Pennsylvania do not allow for presence of international observers in polling stations by law. In Georgia, the election officials permitted the ODIHR LEOM observers to observe the process as general public. The remaining 26 states have statutory language that may provide for international observers.

¹⁰² 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”. The last resolution of the National Association of Secretaries of State welcoming OSCE international election observers expired in summer 2020 and has not yet been renewed.

¹⁰³ According to [NCSL](#), non-partisan observers may not be present in polling stations in 8 states.

¹⁰⁴ See the Election protection [web page](#).

New Voting Technologies and Cybersecurity

New Voting Technology (NVT) solutions are used extensively, with types of technology varying considerably across the country. At least some counties and jurisdictions in 48 states and the District of Columbia used optical or digital scanners in conjunction with paper ballots as their main voting method. Ballot Marking Devices (BMDs) used to mark the choice that the voter makes electronically on the ballot paper were increasingly used in many jurisdictions during early voting and on election day.¹⁰⁵ BMDs are user-friendly and in many cases were thoroughly tested. However, the complexity of the design of ballots generated by BMDs and the fact that only machine-readable (rather than human readable) codes are scanned during vote counting, may have led to confusion among some voters when marking the choices on the ballot. This also limits the possibility of review by voters of whether the ballot was marked as intended.

Some jurisdictions in 8 states continue to use voting machines which do not provide for a voter-verified paper trail (VVPAT).¹⁰⁶ 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. As the post-election audits are crucial for ensuring integrity and trust in the election process, using equipment that does not allow the results to be audited runs contrary to good electoral practice.¹⁰⁷

The Election Assistance Commission (EAC) maintains Voluntary Voting System Guidelines (VVSG) that provide guidance on NVT functionality and security. However, the VVSG have not been updated since 2015 despite the fact that the use of NVT has diversified considerably and there is an evolved awareness on cybersecurity.¹⁰⁸ Electronic poll books were broadly used for identifying and marking voters who voted, but they were not subject to the VVSG.¹⁰⁹ Several cases of malfunction of these devices led to interruptions, delays, and significant increase of waiting time to vote.¹¹⁰ This indicated a need for improved contingency planning, advanced polling staff training and extended unified guidelines for auxiliary electronic equipment.¹¹¹

Federal and state authorities introduced numerous initiatives to help secure election technologies. The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA), the EAC and other institutions offered cyber-risk mitigation services such as risk assessment, vulnerability scanning and cyber resilience reviews to election administrations and provided further information and training.¹¹² In December 2019, Congress allocated USD 425 million to enhance technology and security of elections across the country and the funds were distributed by the EAC.¹¹³ Further efforts included providing access

¹⁰⁵ BMDs print the complete ballot with the final voter's choices as well as a machine-readable bar code or a QR code that has the voter's choices encoded on a blank sheet. Only the code is scanned during counting of votes. During post-election audits, the voter's written choices can also be considered by a human operator. BMDs were initially developed for use by persons with disabilities. Arkansas, Georgia, Delaware and South Carolina used exclusively BMDs for marking the ballot.

¹⁰⁶ Direct Recording Electronic devices (DREs) without VVPAT were used in some jurisdiction in Indiana, Kansas, Kentucky, Mississippi, New Jersey, Tennessee, and Texas. Louisiana used exclusively DREs without a voter-verified paper-trail statewide.

¹⁰⁷ Section 3.2 iv of the 2002 Venice Commission's [Code of Good Practice in Electoral Matters](#), recommends that "voters should be able to obtain a confirmation of their votes."

¹⁰⁸ Plans for adopting VVSG 2.0 are still in deliberation phase. The VVSG continues to be developed by the EAC in cooperation with the National Institute of Standards and Technology, as well as computer security and election experts.

¹⁰⁹ Electronic poll books were used in many jurisdictions across 39 states, for early voting and on election day.

¹¹⁰ For example, in Georgia and Texas during early voting and in Georgia and Ohio on election day.

¹¹¹ Election management solutions including voter registration solutions, electronic poll books and ballot-on-demand solutions are not covered in the EAC certification mandate.

¹¹² E.g. the Information Sharing and Analysis Center's (ISACs) assist states and jurisdictions to mitigate cyber-risks. The Multi-State (MS) ISAC and the Election-Infrastructure (EI) ISAC provide central resources for gathering information on threats to critical infrastructure and enable communication between the public and private sector. EI-ISAC membership numbers have doubled from 1,300 members in 2018 to estimated 3,000 members.

¹¹³ These resources are in addition to USD 380 million that the Congress allocated in 2018.

for election administrators to information on potential cyber-risks, cybersecurity training, and installation of intrusion detection systems. Reports in the run-up to elections, of foreign actors perpetrating possible acts of disruption, including on voter registration systems and through disinformation before election day, impacted on public confidence in the electoral process.¹¹⁴ Nevertheless, a broad range of IEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cyber-security risks.

Early Voting

While the rights and opportunity to access early voting vary significantly between states and counties, early voting was significantly expanded due to the pandemic with the majority of voters choosing to cast an early ballot either out of convenience or for health security reasons. The early voting period was marked by an unprecedented level of participation from voters nationwide, with more than 100 million voters casting their ballot by post or in-person before election day. Most states provided a variety of options for voters to receive and cast their ballot, including electronic ballot applications, automatic sending of ballots, prepaid postage on return envelopes and curbside drive through voting and secure ballot drop boxes available at all times.¹¹⁵ These measures were promoted to facilitate voters' access; however, the lack of access to transportation, the internet, a printer or postal services created a barrier for some low income citizens and Native Americans to vote early. In addition, absentee ballots and applications were not always fully accessible to visually impaired voters and those with other disabilities.

In-person early voting was conducted in 39 states and the District of Columbia, with voting periods ranging in duration from 45 to 3 days. Long queues were reported, often during the first and last days of early voting, and in locations which had short early voting periods.¹¹⁶ All states provided voters with the option to cast a postal ballot, most of them upon request, with 38 states and the District of Columbia not requiring a reason for the request.¹¹⁷ In 6 of the 12 states that require an excuse to vote absentee, voters could use the COVID-19 pandemic as justification for requesting absentee ballots. State laws required the use of various security and integrity measures, including secure ballot and equipment storage, live streaming of ballot processing, secrecy envelopes, ballot tracking and multilayered ballot eligibility verification. Notary requirements constitute an unnecessary measure, given the low occurrence of voter fraud associated with absentee ballots and creates a disproportionate barrier for voters wishing to cast a ballot safely in the context of the pandemic.¹¹⁸

Many election officials conveyed increased concerns and questions from voters over the timely delivery of their postal ballots due to controversies over delays in postal services.¹¹⁹ They reported that ballot

¹¹⁴ On October 21st 2020, the [Director of National Intelligence](#) and [the Director of the Federal Bureau of Investigation](#) made a statement that perpetrators from Iran and Russia took actions to influence U.S. elections.

¹¹⁵ The EAC, in cooperation with election officials and federal partners including CISA and the CDC, compiled and offered numerous resources to support election officials to adapt and develop contingency plans for in-person, absentee and mail voting in the context of the pandemic, including suggested adjustments to voting modalities. While all stakeholders recognise that third party ballot collection, often referred to as ballot harvesting, was necessary for some voters, there was much debate over its potential for misuse and incidents of fraud.

¹¹⁶ For example, voters waited in queues of up to 11 hours in Georgia (12 October), up to 5-6 hours in Texas (13 October), New York (24 October) and up to 7 hours in Virginia (31 October). Many election officials provided voters with estimated waiting times.

¹¹⁷ Colorado, Oregon and Washington conducted elections entirely by postal ballot. Ballots were sent automatically to voters in ten additional states and the District of Columbia.

¹¹⁸ Notary requirements were in place in Alabama, Mississippi, Missouri, Oklahoma and South Dakota. Notary requirements were waived for all out-of-county voters in 2009.

¹¹⁹ A House Oversight Committee hearing (Aug. 24, 2020) was held with Postmaster General Louis DeJoy, a major [donor](#) to the "Trump Victory PAC", to address allegations that recent operational changes were made intentionally to sabotage the USPS ahead of the general elections. Lawsuits against USPS were filed by 23 states over recent operational changes and their impact on postal delays. On 17 September, a US district court ordered the USPS to reverse recent operational changes, including to replace, reassemble or reconnect any removed mail-sorting machines

tracking options and in-person delivery of ballots, including through the use of secure official ballot drop boxes, alleviated some of these concerns.¹²⁰ According to election officials, the use of ballot drop boxes also mitigated long queues for voters depositing their ballot in person and the risks of ballot rejection due to last-minute submissions.¹²¹

In 23 states, postmarked ballots can be counted if received after election day, thereby mitigating the major cause for ballot rejection.¹²² However, in some states some inconsistencies between election procedures and USPS practices can result in voters' ballots not being received or cast through no fault of the voters.¹²³ There was increased scrutiny over postal delays in the last days of early voting, especially in the states that do not accept ballots after election day. On election day, concerns were raised that ballots could be trapped in the mail system after USPS disclosed that 300,523 ballots nationwide received incoming scans at postal processing plants, but not the exit scans.¹²⁴ At the local level, the vast majority of election officials informed ODIHR LEOM observers that cooperation with local postal services had been very productive.¹²⁵ Negatively, repetitive and last-minute changes to newly introduced voting procedures were particularly confusing to voters. They also hindered the ability to clearly convey voter information across the country.

The Federal Voting Assistance Program (FVAP), under the Department of Defense, supports states and counties in administering out-of-country voter registration and voting, including ballot requests, as well as providing information to voters and training to election officials.¹²⁶ Thirty two states permitted some form of electronic submission of marked ballots. In some instances, voters had to waive the secrecy of the vote, which is contrary to OSCE commitments.¹²⁷

In 42 states and the District of Columbia, voters were afforded the opportunity to fix problems with their absentee or postal ballot to ensure that their vote is counted (so called "ballot curing"), including issues

needed to ensure timely processing and delivery of election mail. On 10 October the District of Columbia district court granted the request of another lawsuit and motion filed by the National Association for the Advancement of Colored People, enjoining the USPS from implementing the Transportation Policy Changes. Due to USPS inadequate compliance with the order, an emergency motion was filed which was granted on 27 October, ordering USPS to instruct its personnel to perform "late and extra trips to the maximum extent necessary to increase on-time mail deliveries, in particular for Election Mail" by 29 October.

¹²⁰ Online ballot tracking is provided to all voters in 44 states and the District of Columbia. Two states only provide it to overseas and military voters (New York and Texas). In three states, counties are "authorised" to provide online ballot tracking (Illinois, Missouri and New York). In all jurisdictions where online ballot tracking is not provided, including Mississippi and Wyoming, voters can call their local election officials to receive information on the status of their ballot. Wyoming publishes a list tracking the ballot status of military and overseas voters is published.

¹²¹ In Ohio and Texas, ballot drop boxes were limited to one per county regardless of the number of registered voters. In Texas, election officials from populated and urban areas reported to the IEOM that the number of ballot drop boxes was insufficient to accommodate voters.

¹²² In these states, ballots can be processed and counted if received 1 to 21 days after election day. While the Postal Services implemented several measures to contribute to the delivery of election mail, these do not prevent ballots from being rejected due to delays in some locations or late requests and submissions.

¹²³ The audit [report](#) of USPS processing readiness for the 2020 general elections identified that some postmark requirements, deadlines for requesting and submitting ballot applications or ballots, and untimely updates of voter addresses could result in ballots being rejected or not received on time to be counted.

¹²⁴ On 2 November, the District of Columbia District Court ordered the USPS to verify and ensure that any ballots found in 12 postal districts across 15 states would be delivered between 12:30 pm and 3:00 pm on election day.

¹²⁵ The USPS assigned dedicated staff including election mail coordinators to liaise with local election officials as well as mailpiece analysts to help election officials to adapt the format of election mail to USPS processing. The USPS also prioritized election mail, delivered election mail even when unpaid or short paid and, with the permission of election officials, allowed supervisors to personally deliver election mail directly to election officials.

¹²⁶ Ten states only allow voters to return their ballot by post. Three states provide alternative submission methods only to limited categories of voters including those located in "hostile fire area". Use of diplomatic pouch was often promoted.

¹²⁷ Paragraph 7.4 of the 1990 OSCE Copenhagen Document commits participating States to "ensure that votes are cast by secret ballot or by equivalent free voting procedure".

with missing or mismatched signatures. Many interlocutors expressed concerns that mistakes and inconsistencies due to new procedures may serve to foment narratives of widespread fraud.

Despite numerous public statements made by the incumbent President casting doubt on the integrity of postal voting, only two cases of alleged fraud with minor impact were publicly reported.¹²⁸ The processing of ballots cast early is ongoing nationwide. Given the volume of absentee and mail ballots, most states and the District of Columbia have decided to start processing these ballots before election day to avoid unnecessary delays in the announcement of election results and the resulting nomination of electors.¹²⁹

Election Day

The election day atmosphere was calm and peaceful, without any substantial incidents of unrest recorded. In the limited number of polling stations visited, voting proceeded in an orderly manner and was assessed positively by the IEOM observers. Polling officials were knowledgeable about the procedures and election equipment and materials were generally available, with the exception of a few jurisdictions where equipment failures were noted but were ultimately addressed. Despite the earlier concerns about recruitment of polling staff, the IEOM did not observe any shortages of polling officials that would negatively impact the election process. Queuing was observed at a quarter of polling stations, but voters generally waited less than 30 minutes to cast their ballots.

The IEOM received reports of a number of voters who requested to vote by provisional ballots fearing that the postal ballots they had already sent would not be received on time for them to be counted. In addition, IEOM observers witnessed a number of cases when voters could not be found on the voter list and were therefore issued a provisional ballot.

Electronic poll-books were widely used to mark voters on the voter list, especially in the morning, leading to interruptions and extended waiting times for voters.¹³⁰ IEOM observers noted cases in which polling officials did not have printed voter lists as a contingency for malfunctions. Problems with the functioning of the electronic poll-books were reported from a few jurisdictions. While in general the election NVT infrastructure performed well, critical issues with voting equipment were also reported in some jurisdictions, causing delays.¹³¹

¹²⁸ A USPS mail carrier from Hudson County in New Jersey was arrested on 7 October for discarding 1,875 pieces of mail that included 99 ballots being delivered to voters. The mail was recovered and delivered. A Texas mayoral candidate was arrested on 7 October and charged with 84 counts of postal ballot application fraud and 25 counts of unlawful possession of an official postal ballot.

¹²⁹ Alabama, Mississippi, Wisconsin and Pennsylvania required absentee ballot processing to start only on election day. Eight states permit processing within the week before election day. In Michigan and Louisiana, ballot processing is permitted as of 2 November, should the number of absentee ballots received be over a certain volume, 25,000 ballots and 1,000 ballots respectively. Thirty-one states and the District of Columbia permitted processing of absentee ballots upon receipt, at the discretion of election officials, or a week or more before election day, depending on the state. In New Mexico, ballot processing is permitted as of 20 October or 30 October, if less than 10,000 absentee ballots are received. In Texas, ballot processing is permitted as of 22 or 30 October, in the case that less than 100,000 absentee ballots.

¹³⁰ For example, in Morgan County and Spalding county (Georgia), Franklin County (Ohio) and Christian County (Montana).

¹³¹ In Spalding County (Georgia), all BMDs were inoperative and voters voted with provisional ballots. In Albany and Syracuse Counties (New York), issues with voting machines led to switching to paper-based voting. In Upshur County (Texas), polling was interrupted for two hours due to issues with the DREs. In Lee County (Florida), ballot scanners were not reading the voters choices for the races on reverse side of the ballot paper. In Green County (Ohio), BMDs were not functional from 7am to 11am. In Scranton (Pennsylvania) ballot scanners were inoperative for some time and voters were offered to complete a ballot that would be scanned later.

On election day morning, various media reported that millions of voters across the country received automated calls (so-called robocalls) and text messages advising them to “stay home and stay safe”.¹³² In at least one county in Michigan, these calls advised voters to come to vote the next day, in order to avoid lines on election day.¹³³ DHS officials stated that the FBI launched an investigation.¹³⁴

IEOM observers noted that the measures to mitigate against the COVID-19 pandemic were put in place. Polling was generally organized in spacious premises, without any observed cases of overcrowding, and face masks and physical distancing mandated. In many cases, see-through panels were also installed to serve as barriers between polling officials and voters. These measures did not appear to have negative impact on the flow of voters and waiting times. In general, persons present at polling premises had a clear view of the election process. In more than a third of polling stations visited by the IEOM, legally prescribed procedures permitting voters to cast their ballots outdoors were observed.

Partisan poll-watchers were generally present both inside and outside of the polling stations, thereby increasing the transparency and serving to safeguard the election process. Poll-watchers from civil society organization were also present in many locations. Despite concerns raised before the elections, the IEOM observers did not observe or receive any reports of the presence of armed individuals at the polling locations.¹³⁵ IEOM observers were able to conduct their work without hindrance where allowed to observe by law.

Poll closing times were extended in some locations to allow voters still queuing to vote. The counting process was almost entirely automatic through the use of technology. In the limited number of polling stations where the vote count was observed, polling officials conducted this process professionally, efficiently and openly. Media began announcing official preliminary results after the closing of the polls in east-coast states at 7pm, while voting was still ongoing in many states across the country. In keeping with longstanding tradition, various media organizations called the results of presidential elections using statistical methods, in the majority of states, and in many cases before all unofficial results had been provided by election officials. However, due to the lengthy process of counting postal ballots, at least five states could not be called on the election night and the result of the presidential election remained undetermined by the following morning.¹³⁶ The counting and tabulation of the results is ongoing and expected to last for several days.

During election night the two main presidential candidates gave opposing messages about the outcome of the presidential election. Despite the fact that the results of the election were still inconclusive, the incumbent president again questioned the integrity of the process and declared victory.¹³⁷ Counting and tabulation are ongoing and should continue in accordance with the law and OSCE commitments.¹³⁸ Baseless allegations of systematic deficiencies, notably by the incumbent president, including on election night, harm public trust in democratic institutions.

¹³² Listen here to [an example](#) of such robocalls. An [article](#) estimated that some 10 million people were affected. Various reports indicated that the calls were especially numerous in Florida, Iowa, Kansas, Michigan, New Jersey, Nebraska, New York and North Carolina.

¹³³ See a [tweet](#) from the Michigan governor.

¹³⁴ See [this article](#).

¹³⁵ According to the NCSL [overview](#), ten states (Arizona, California, Florida, Georgia, Louisiana, Mississippi, Missouri, Ohio, South Carolina and Texas), District of Columbia and Puerto Rico explicitly prohibit guns and other weapons in polling stations.

¹³⁶ Including in the battleground states of Georgia, Michigan, Nevada, Pennsylvania and Wisconsin.

¹³⁷ After midnight, Vice President Biden said that he is “optimistic about the outcome” and that “we have to be patient, and it’s not over until every vote is counted.” President Trump held a press conference after 2 am and said “We did win this election” and “We want the law to be used in a proper manner, so we’ll be going to the U.S. Supreme Court. We want all voting to stop.”

¹³⁸ Paragraph 7.4 of the 1990 OSCE Copenhagen Document stipulates that the participating States will “ensure that votes [...] are counted and reported honestly with the official results made public”. Paragraph 7.9 provides that the participating States will “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office [...]”.

MISSION INFORMATION & ACKNOWLEDGEMENTS

Washington DC, 4 November 2020 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly (OSCE PA). The assessment was made to determine whether the election complied with OSCE commitments and other international obligations and standards for democratic elections and with national legislation.

Mr. Michael Georg Link was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the short-term OSCE observer mission. OSCE PA delegation was led by Ms. Kari Henriksen. Ambassador Urszula Gacek is the Head of the ODIHR LEOM, deployed from 29 September.

Each of the institutions involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation. The United States does not provide full country-wide accreditation for international election observers. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its next Standing Committee meeting.

The ODIHR LEOM includes 15 experts in the capital and 30 long-term observers deployed throughout the country.

On election day, 102 observers were deployed, including 50 observers deployed by the ODIHR, as well as a 52-member delegation from the OSCE PA. Observers were drawn from 39 OSCE participating States.

The observers wish to thank the authorities of the United States for the invitation to observe the election, and the Department of State, the National Association of Secretaries of States, and the National Association of State Election Directors for their assistance. They also express their appreciation to other federal and state institutions, political parties, media and civil society organizations, and international community representatives for their co-operation.

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