



Office for Democratic Institutions and Human Rights

UNITED STATES OF AMERICA

GENERAL ELECTIONS

4 November 2008

OSCE/ODIHR Limited Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the Government of the United States of America to observe the 4 November 2008 general elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) conducted a Needs Assessment Mission (NAM), and subsequently a Limited Election Observation Mission (LEOM) was deployed to the United States on 10 October 2008. In accordance with standard practice for LEOMs which do not envisage short-term observers, the OSCE/ODIHR did not conduct comprehensive and systematic observation of election day procedures.

The United States has a long standing tradition of conducting elections in line with the principles of a pluralistic representative democracy. The 4 November general elections demonstrated respect for fundamental freedoms, the rule of law and transparency. These elections mostly met OSCE commitments for democratic elections. However, concerns that arose during recent elections have yet to be fully addressed in some states, and the continuation of efforts to further enhance public confidence in the election process would be appropriate.

Voters were able to make informed choices between distinct options in an election that was open, competitive and vigorously fought. Free and pluralistic media extensively disseminated comprehensive information about key presidential and congressional candidates, their campaign messages and the entire electoral process. The regulatory framework for election coverage in the media guaranteed equal opportunities to candidates and facilitated an open, competitive and freely debated campaign.

The presidential campaign saw unprecedented levels of campaign spending. Based on the principle of freedom of speech, legislation *de facto* does not limit spending for presidential campaigns. The campaigns of Senator John McCain, presidential candidate of the Republican Party, and Senator Barack Obama, presidential candidate of the Democratic Party, drew on a large number of small donations, subject to thorough public disclosure. Legal provisions to limit the amount of individual donations were undermined by the possibility to contribute to a candidate's campaign through other donation mechanisms. The Federal Election Commission (FEC), responsible for overseeing campaign finances, lacked four of its six members for a considerable part of 2008, which reflected on its ability to fully enforce campaign finance regulations.

The US Constitution guarantees fundamental civil and political rights. It is of concern that US citizens who are not citizens of a state, including the residents of the District of Columbia and the US territories, are not entitled to full representation in the US Congress. In addition, state laws impose disproportionate restrictions on voting rights of felons and ex-felons, resulting in some 5.3 million US citizens effectively being disenfranchised. Ensuring enfranchisement of all citizens would enhance compliance with Paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

Federal election legislation evolved with the aim of enfranchising voters and maintaining the integrity of the electoral process, and provides only minimum election standards. Details are regulated by state laws that vary broadly and reflect the decentralized nature of the US government. The most significant piece of federal electoral legislation, the Help America Vote Act (HAVA) of 2002, was enacted as a result of a bipartisan effort to rectify problems identified during the 2000 general elections. HAVA represents a compromise and would benefit from more clarity and detail.

Two federal bodies, the FEC and the Election Assistance Commission (EAC) are each responsible for specific aspects of the electoral process. The conduct of elections is the responsibility of the individual states, and some responsibilities are devolved to the counties. Overall the election administration performed its duties professionally and enjoyed the confidence of election stakeholders. Chief election officials are often elected on party tickets. It is of concern that they may even stand in elections which they themselves administer, presenting a potential conflict of interest. Some states have recently introduced measures to reduce such a potential.

In most states, voters should register in order to vote. While voter registration has traditionally enjoyed a high campaign profile, the introduction by HAVA of state-wide voter registration databases (SWVRD) added to its prominence. This was largely due to various interpretations of HAVA provisions resulting from insufficient detail. For example, the requirement to match the SWVRD of a given state with other state or federal databases was interpreted in different ways, often along party lines, and led to litigation in some states. Efforts of civil society organizations and political parties, especially the Democratic Party, to register new voters resulted in some estimated 10 million new registrations. These efforts also became controversial, and led to accusations of possible fraudulent voter registration and disenfranchisement, which at times dominated the media and the candidates' campaigns.

Alternative voting arrangements, such as early in-person voting and absentee by-mail voting, are mandated by most states' laws with a view to enhancing enfranchisement. These arrangements were widely used by voters. In addition, US voters abroad can vote absentee for federal elections under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986. While providing for broad enfranchisement opportunities, alternative voting arrangements require detailed legislation in order to uphold the integrity of the election. Most state laws meet this requirement, although the OSCE/ODIHR LEOM identified state laws where the respect for the secrecy of the vote could be strengthened. However, the OSCE/ODHIR LEOM is not aware of attempts to abuse the secrecy of the vote.

Additionally, since the adoption of HAVA, provisional ballots must be provided to voters as another means of enfranchisement in cases where voters arrive at a polling station in the belief they were registered to vote but cannot find their names on the voter lists. The regulations for the verification and counting of provisional ballots differ among states resulting in widely varying practices. There was also concern expressed by OSCE/ODIHR LEOM interlocutors that provisional ballots, as well as ballots cast through other alternative voting mechanisms, may not always be counted.

The system for election dispute resolution is complex. State and federal courts, as well as election administration bodies, have jurisdiction over various disputes. In the pre-election period, numerous lawsuits were initiated, and timely and effective remedies were available. The HAVA administrative complaints process administered by state election bodies was not widely known

or utilized. More awareness is needed regarding the division of jurisdiction between the HAVA complaint process and the courts, as well as an understanding of the procedures for bringing HAVA-related complaints.

Most voters were able to cast a vote or have their vote counted with the help of an electronic device, although there is a trend to return to paper ballots processed by optical scan systems. None of the voting systems in use were federally certified. In some polling stations, the close proximity of voting booths, and the manner in which completed ballots were inserted into optical scan devices on election day, could compromise the secrecy of the vote.

On election day, voters were able to cast their votes in a professionally administered process that allowed for prompt delivery of the preliminary results. High voter participation resulted in long lines of voters during morning hours. Minor technical problems with voting machines were reported, with little impact on the overall efficiency of the process.

Most states' laws do not provide for access of international observers. Access for domestic observers varies by state. OSCE/ODIHR LEOM observers were generally well received in most states where the OSCE/ODIHR LEOM had deployed. This was largely due to the 2005 decision of the National Association of Secretaries of State (NASS) to welcome international election observation. A few exceptions underscore the need to introduce minimum federal standards for international election observation to fully comply with Paragraph 8 of the 1990 OSCE Copenhagen Document.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the United States Government to observe the 4 November 2008 general elections, the OSCE/ODIHR undertook a Needs Assessment Mission, and subsequently a Limited Election Observation Mission (LEOM) was deployed to the United States of America (US) on 10 October 2008. The mission was headed by Ambassador Audrey Glover and consisted of 13 core team experts based in Washington DC. In addition, 47 Long-Term Observers (LTOs) were deployed on 18 and 19 October to a total of 40 states. In total, 22 OSCE participating States were represented in the LEOM. OSCE/ODIHR has previously assessed and published reports on elections in the US and issued recommendations, several of which remain to be implemented.

In accordance with standard practice for limited election observation missions, the OSCE/ODIHR LEOM did not include Short-Term Observers (STOs) and did not conduct systematic and comprehensive observation on election day. Members of the LEOM, however, visited a limited number of polling stations in 26 states and Washington DC on election day. Due to the complexity and decentralization of the media sector in the US, the LEOM did not undertake comprehensive media monitoring.

The OSCE/ODIHR wishes to express its appreciation to the Department of State, the Department of Defense, the Department of Justice, the Federal Election Commission, the Election Assistance Commission, the National Association of Secretaries of State, representatives of state/county authorities and representatives of civil society organizations, for their co-operation and assistance.

III. BACKGROUND

The United States of America is a federal state comprising 50 states, the District of Columbia (Washington DC) and six territories: Puerto Rico, Guam, the US Virgin Islands, American Samoa, Swain Islands and Northern Mariana Islands. The legislative power is vested in Congress, a bicameral body consisting of the Senate and House of Representatives. The President is the Chief Executive and the US Supreme Court is the highest judicial authority.

The system of government in the United States is highly decentralized, with significant powers devolved to its states. The system has been designed to ensure simultaneously that (a) large states have proportional impact on US policy and (b) the voices of small states are effectively heard. These objectives are reflected in the system for representation through (a) representation of the population of the individual states in a way that would reflect its size and (b) representation of the states regardless of the size of their population.

The US election cycle for federal office comprises general elections and mid-term elections. During an election year, voting takes place on the first Tuesday after the first Monday in November, always in an even-numbered year. In addition, on the same day, elections for state and local government authorities, other local institutions, as well as voting on referendums, ballot initiatives and propositions take place in most states and counties. A general election is conducted every four years and includes the election of the President and Vice-President, while mid-term elections are conducted in the second year of the term of the sitting President. One third of the Senators and all Representatives are elected during each general and mid-term election.

In general elections, the election of the President and Vice-President attracts the most public interest. Attention, including from the national media, is generally focused on the contest between the candidates nominated by the Democratic Party and the Republican Party, the two key political parties in the US. For the 4 November 2008 presidential election, Senator John McCain was nominated by the Republican Party and Senator Barack Obama by the Democratic Party. They were selected from a total of 15 aspiring presidential candidates in over 50 primary elections and caucuses.

In addition, 22 independent and third-party presidential candidates contested the presidential election in one or more states, but only four of these had placed their names on the ballot in a sufficient number of states to be able, theoretically, to win the presidential election.¹ It is difficult for such candidates to appear on the ballot in all 50 states due to burdensome requirements for independent and third-party presidential candidates to gain ballot access² in a number of states. Their low campaign profile was reportedly also due to insufficient resources to campaign.

¹ Chuck Baldwin (nominated in different states by the Constitution Party, the Reform Party, the Independent American Party and others), Bob Barr (in most states nominated by the Libertarian party), Cynthia McKinney (in most states nominated by the Green Party), and Ralph Nader (in 33 states, of the 46 in which he was on the ballot, running as independent, in some states nominated by the Peace and Freedom Party).

² Some states grant ballot access to third-party and independent candidates after the collection of signatures of 3 per cent of votes cast in the past election, others based on the collection of a certain amount of signatures of registered voters. In other states, the nominating party or the candidate must have received a certain number of votes in past elections either state or country-wide. See for example: Ballot Access News, <http://www.ballot-access.org/>, or the Coalition for Free and Fair Elections, <http://www.cofee.org/>.

Several state laws allow for so-called ‘unopposed’ candidates to be elected as members of Congress in cases where there is only one candidate standing for election.³ In Florida, Louisiana and Oklahoma, for example, such candidates are deemed elected by default. In the November 2008 elections, over 50 candidates ran unopposed for seats in the House of Representatives and one Senator in Arkansas was elected as an unopposed candidate. While a potential candidate’s assessment of the chances to be elected may in certain instances lead to a decision not to run, an election is supposed to provide voters with distinct choices between different options, which can only be achieved through multi-candidate elections.

IV. LEGAL FRAMEWORK

A. ELECTION LEGISLATION

The Constitution guarantees fundamental civil and political rights and freedoms necessary for the conduct of democratic elections. These include the right to representation, the right to stand for office, universal and equal suffrage, freedom of association and assembly, freedom of speech and of the press, equality under the law, and access to the courts to address grievances. However, the Constitution does not guarantee secrecy of the vote, nor full representation in Congress for residents of the District of Columbia and several US territories, and it allows for restriction of voting rights of felons and ex-felons without guaranteeing that these are proportional to the offence committed.

While the US Constitution does not expressly guarantee the secrecy of the vote, the respect for the secrecy of the vote is a broadly established good electoral practice in the US. The US has ratified the UN International Covenant for Civil and Political Rights (ICCPR), which guarantees a secret ballot.⁴ To fully respect paragraph 5.20 of the 1990 OSCE Copenhagen Document and for the ICCPR to become part of the US legal framework, additional legislation would be necessary.

Consistent with the system of US government and in accordance with the Constitution, the legal framework for elections is highly decentralized and complex. Federal laws provide only minimum standards, and leave room for varying interpretations by the states. Implementation and details of the electoral process is regulated by widely varying state laws, which impact differently on a range of issues related to voting rights and election procedures.⁵ Some states have highly centralized election administrations, while others authorize decisions to be made at county level, resulting in varying election practices state-wide. Interpretations of federal and state laws by various courts form part of the legal framework, adding to the complexity.

³ See also the OSCE/ODIHR Election Assessment Mission Report for the 2006 Mid-Term Elections, p.9, available at http://www.osce.org/documents/odihr/2007/03/23567_en.pdf.

⁴ The Senate ratified the ICCPR in 1992, with a number of reservations, understandings, and declarations. In particular, the Senate declared that “the provisions of Article 1 through 27 of the Covenant are not self-executing.” Thus while the ICCPR is binding upon the US as a matter of international law, it does not form part of domestic law. This is valid, *inter alia*, for Article 25(b) of the ICCPR, which guarantees the right “To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.” See: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=321&chapter=4&lang=en>.

⁵ Under the Voting Rights Act, Section 5, changes to election laws and procedures in states where there is historical voting discrimination need pre-approval of the federal court in Washington DC. In October 2008, Georgia was found in contravention of this provision for failure to obtain pre-approval of a new procedure of checking citizenships of voter registrants.

Federal legislation has evolved over time with the aim of enfranchising voters and maintaining the integrity of the electoral process. The Voting Rights Act (VRA) of 1965 was enacted at the height of the civil rights movement to protect the rights of racial and linguistic minorities by outlawing discriminatory voting practices. Under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, states and territories must allow overseas military personnel and civilians to vote by absentee ballot in federal elections, under the management of the Department of Defense. The National Voter Registration Act (NVRA) of 1993 was enacted to facilitate and regulate aspects of voter registration. Campaign income and expenditure and the financial reporting process are regulated by the Federal Electoral Campaign Act (FECA) of 1971 and the Bipartisan Campaign Reform Act (BCRA) of 2002.

In response to problems that arose during the 2000 general elections, a significant electoral reform law, the Help America Vote Act (HAVA), was passed in 2002. HAVA stipulates minimum standards for voting systems and requires usage of provisional ballots for voters who believed that they were registered but could not find their names on the voter lists or who are declared by an election official to be ineligible to vote. HAVA also mandates the establishment of state-wide voter registration databases, voter identification requirements for first-time voters who register by mail, and ensuring access to disabled voters. Finally, HAVA established the US Election Assistance Commission (EAC) to provide advice and issue guidelines and recommendations. The EAC also administered payments to states for meeting HAVA requirements.

Achieved through a challenging bipartisan effort, HAVA is regarded as a compromise piece of legislation. Clarity of some HAVA provisions could be enhanced. As a result, a number of election stakeholders have started to advocate for amendments to HAVA to provide further details on issues such as validation of provisional ballots, registration database maintenance procedures, allocation of voting machines and enhanced government-initiated voter registration.

The US Department of Justice (DoJ) monitors implementation by states of federal election laws, including provisions of HAVA and the VRA. It can bring enforcement suits in cases of non-compliance. States overall have achieved compliance with HAVA, but some states and counties are still under court supervision. The State of New York is under court supervision due to non-compliance with voting system requirements, Vermont for failing to collect and report information about military and overseas citizens who received absentee ballots, Bolivar county in Mississippi for not having established a system for voters to ascertain whether their provisional ballots were counted, and the City of Philadelphia in Pennsylvania for not having provided election information in alternative languages.

The prosecution of criminal activity related to elections is mainly based on state criminal codes. For federal elections there are additional crimes outlined in federal legislation, primarily the VRA. Federal crimes include voter registration fraud, refusing someone the right to vote, intimidation, threatening or coercing any person attempting to vote or refrain from voting, tampering with ballots or official voting records, and multiple voting. Such federal election crimes generally carry a fine of USD 10,000 or five years imprisonment, or both.

Civil rights groups and other OSCE/ODIHR LEOM interlocutors noted a lack of legislation at federal and state level that would prevent so-called vote suppression and deceptive practices.⁶

⁶ In the US, “vote suppression” or “deceptive practices” refer to practices such as printing and distribution of flyers or phone calls that intentionally mislead voters regarding the time and place of voting or about

They supported a draft bill in Congress, which would criminalize knowingly communicating false election-related information, with the intent to prevent another person from exercising the right to vote. The bill includes proposed sentencing guidelines for offences and remedial actions to correct false information given to voters. Other partisan and bipartisan draft bills addressing a range of election-related issues are at various stages currently being considered by Congress. These include a bipartisan electronic voting reform act, various Democrat-proposed bills on enfranchisement of ex-felons, and the introduction of full representation in Congress for residents of Washington DC. Bipartisan bills, supported by the two key parties, have in the past generally been more likely to be passed by Congress. Other OSCE/ODIHR LEOM interlocutors and the DoJ contend that current federal laws are sufficient to protect voters' rights.⁷

B. ELECTION SYSTEM

In the 4 November 2008 general elections voters voted to elect 35 Senators⁸ and 435 Representatives, as well as the President and Vice-President through voting for so-called Electors who form the Electoral College that formally elects the respective Offices. The President and Vice-President serve four-year terms, Senators serve staggered six-year terms and Representatives serve two-year terms. Electors, Senators and Representatives are elected by popular vote in their respective states, on the basis of universal and equal suffrage.

Senators and Representatives are elected through the "First-Past-The-Post" system, with no state's two senators being elected in the same election year. While electoral districts for Senators are the entire states, Representatives are elected from electoral districts updated every ten years after a nationwide census.⁹ In the Senate, each state is represented by two Senators. In the House, each state is represented by at least one Representative; the remaining House seats are allocated to states proportional to the respective states' population.

The President and Vice-President are elected, with an absolute majority amounting to a minimum of 270 electoral votes, by an Electoral College consisting of 538 Electors.¹⁰ In each state, the number of Electors equals the number of Members of Congress from this state. The District of Columbia is allocated three Electors, as if it were a state. Each state represents one electoral district for the election of its Electors. Most Electors are elected through the "Winner-Takes-All" system.¹¹ Electors' mandates are limited to the election of the President and the Vice-President. In the case of a tie in the Electoral College, Congress elects the President and the Vice President.

possible sanctions for previous activities (e.g. outstanding parking tickets) that they might face while voting. As during past OSCE/ODIHR election observation efforts, unconfirmed reports of such practices were brought to the attention of the OSCE/ODIHR LEOM for the 2008 elections.

⁷ Statement made by the Acting Assistant Attorney General, Civil Rights Division, Department of Justice, at Senate Judiciary Committee hearing on oversight of Department of Justice preparations for the 2008 general elections, 9 September 2008.

⁸ These included 33 class II Senators; the remaining two Senators were filling vacancies. See www.senate.gov/pagelayout/reference/two_column_table/Class_II.htm.

⁹ Where there are considerable minority populations, electoral districts should comply with the VRA of 1965.

¹⁰ The Electoral College votes on the first Monday after the second Wednesday of December in the year of the general elections; for the 2008 elections it voted on 15 December 2008. Electors cast their votes in their respective state capitols, in separate votes for the President and the Vice-President.

¹¹ In Nebraska and Maine, Electors are elected from the respective congressional districts via "First-Past-The-Post", with the remaining two Electors in each state elected via "Winner-Takes-All". This system is used in Maine (with 4 Electors) since 1972 and in Nebraska (with 5 Electors) since 1996.

The combined representation of population and states underlying the system of government in the US is mirrored in the electoral system for the House, while in the Senate all states are represented by two Senators regardless of the size of the states' population. As the number of Electors equals the sum of the number of Representatives and Senators for each state, the system for the election of the President and the Vice-President reflects both aspects of representation. As a result of the combined effect of the "Winner-Takes-All" system and the requirement for state representation, it is possible that the percentages of the popular vote and the vote of the Electors in the Electoral College differ, including that the majority of the popular vote could differ from the majority of the Electors' vote.¹²

C. THE RIGHT TO BE ELECTED AND TO VOTE

A presidential candidate must be a citizen of the US by birth, be at least 35 years old, and have been a resident of the United States for at least 14 years. In addition, no person can be elected to the office of President for more than two four-year terms.¹³ A member of the House of Representatives must be at least 25 years old and have been a citizen of the US for at least seven years. Senators must be at least 30 years old and have been a citizen of the US for at least nine years. Both Representatives and Senators must, when elected, be residents of the state in which they are elected.¹⁴

US citizens, who are at least 18 years old on election day and are citizens of a state are eligible to vote in general elections.¹⁵ Citizens of US territories are not eligible to vote in general elections. Some 600,000 residents of Washington DC are entitled to vote only for Electors, i.e. for the President and the Vice-President as if the District of Columbia was a state, but are not represented in Congress by representatives with full voting rights.¹⁶

Voting rights of felons and ex-felons are restricted as determined by state law, leaving some 5.3 million felons and ex-felons effectively disenfranchised.¹⁷ Restrictions vary broadly and are often disproportionate to the crime committed. Felons from different states, who have committed the same crime, have their voting rights affected differently. Some states do not differentiate between the seriousness of the felonies; Kentucky and Virginia, for example, permanently disenfranchise all felons and ex-felons. Only Maine and Vermont allow for full felon voting rights. In the other states, regulations vary, and restoration of voting rights in some states, once prison terms have expired, can involve cumbersome procedures. It is difficult to reconcile such an approach with the generally accepted principle that any restriction of franchise should be reasonable and proportional to the crime committed. Paragraph 24 of the 1990 OSCE Copenhagen Document requires that "Any restriction on rights and freedoms must, in a democratic

¹² The most recent example was the 2000 presidential election, when the Republican nominee for President, George W. Bush, lost the popular vote by some 500,000 votes but won the Electoral College with 271 votes.

¹³ US Constitution, Article 2, Section 1, and Amendment 22.

¹⁴ US Constitution, Article 1, Sections 2 and 3.

¹⁵ US Constitution, Article 1.

¹⁶ The DC Court of Appeals rejected the "taxation without representation" argument in *Green v. DC* in 1966. In *Adams v. Clinton* in 2002 the DC Court of Appeals said that voting rights were a matter for legislative, not judicial relief. The US Supreme Court refused to reconsider this ruling. This effectively closes the judicial approach to voting rights for DC residents for the near future. A draft bill to address the issue was passed by the House in 2007 but is yet to be passed by the Senate. The OSCE Parliamentary Assembly, in point 58 of its 2005 Washington Declaration, called on the US Congress to adopt "such legislation as may be necessary to grant the residents of Washington DC equal voting rights."

¹⁷ See *Felony Disenfranchisement Laws in the United States*, The Sentencing Project, September 2008, www.sentencingproject.org/Admin/Documents/publications/fd_bs_fdlawsinus.pdf.

society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law”. Recent amendments in some states’ laws, passed on a bi-partisan basis, tend to ease legal restrictions on ex-felons.¹⁸

V. ELECTION ADMINISTRATION

A. ELECTION ADMINISTRATION

There is no election administration body overseeing the entire election process at the federal level, but two federal bodies are each responsible for specific aspects of the electoral process. The Federal Election Commission (FEC) comprises six members and oversees mostly campaign financing but also transparency measures related to media and political advertisement. The four-member Election Assistance Commission (EAC), established by HAVA as a “national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections”, has an advisory role and is mandated to develop voluntary guidelines on meeting HAVA requirements including on voting systems. Both the FEC and the EAC include equal numbers of members nominated by the Democratic and Republican Parties, and take decisions with qualified majorities. This mechanism ensures bi-partisanship but can lead to deadlock on specific issues.

In line with the US Constitution and consistent with the US system of government, individual states are responsible for the conduct of elections,¹⁹ with some responsibilities devolved to the counties.²⁰ While the election administration overall performs its duties professionally and enjoys high levels of confidence by election stakeholders, chief election administrators of states and counties are often elected as party candidates. It is of concern that they, at times, stand in elections, which they themselves administer, potentially resulting in conflicts of interest or perceived conflicts of interest.²¹ In Ohio, for example, the Republican Party alleged that the Secretary of State, a Democrat, was performing her duties in a partisan manner, arguing that new voter registrations were not sufficiently scrutinized.

Some states have recently introduced measures that reduce the potential for conflict of interest. While, for example, the Chief Election Official (Secretary of State) in Colorado continues to be elected, conflict of interest standards have been included in Colorado’s election law requiring election administrators to avoid any activity, public or private, that might indicate support or sympathy for a particular candidate or political party. Florida, Massachusetts, Ohio and Virginia, have also taken steps to uphold unbiased performance of election officials during elections, in line with previous OSCE/ODIHR recommendations.²²

¹⁸ According to the Brennan Center for Justice at the New York University School of Law, across the US there has been a momentum for reform of disenfranchisement policies; felony restoration efforts have received bi-partisan support in a number of states including Alabama, Florida, Indiana and Maryland. There is also a draft federal bill addressing this issue.

¹⁹ US Constitution, Article 1, Section 4.

²⁰ Poll worker staffing, vote counting and reporting are operational duties largely resting with county authorities, but usually following state guidelines and/or stipulations. In some states, voting systems are determined at the county level, with permissible options provided by the state.

²¹ This has been noted as an issue of concern by election stakeholders, especially following the 2000 Bush v. Gore case when the then Secretary of State of Florida, Kathryn Harris, played a key role in determining the outcome of those elections. While the Florida Secretary of State is not elected, the position is a political appointment, not bi-partisan.

²² According to the 9 March 2007 “Review of the ODIHR Report on the 2006 Midterm Congressional Elections” presented to the OSCE Human Dimension Committee Meeting held on 18 September 2008 by

The practice of how the chief election officials are selected across the states varies. Some are selected through election and some are appointed. In five states, the laws provide for bipartisan or nonpartisan election administration. In the remaining 45 states and the District of Columbia, the election administration is partisan, either by an individual or through a partisan majority on the election board.

Poll workers who serve in polling stations on election day are often volunteers or recruited to work for a few days, in accordance with states' regulations. In the pre-election period, OSCE/ODIHR LEOM interlocutors indicated that there might be an insufficient numbers of poll workers on election day. However, these concerns did not materialize on a large scale on election day; the need for poll workers had been publicized widely and additional poll workers had been recruited in some jurisdictions.

A higher voter turnout was expected for the 2008 elections as a result of intensive voter registration efforts and the increased interest of the population in the election process. It was widely expected that a higher turnout would be a test for the overall preparedness of the election administrators who appeared to have planned their resources on the basis of past federal elections with lower voter turnouts. Concerns were raised by election stakeholders, including election administrators and civil society organizations, as to whether resources, including personnel and voting equipment, would be sufficient and be allocated evenly "per voter" to prevent possible disenfranchisement of voters. There was a concern that this might particularly affect communities with minority populations.²³

Shortly before election day, the National Association for the Advancement of Colored People (NAACP) filed a complaint against Virginia election officials, alleging that Virginia was unprepared for the expected high voter turnout and that polling station resources were unequally distributed in a manner that could disfranchise voters, particularly African-American voters in Norfolk, Richmond and Virginia Beach. The court denied the request, but ordered the state to publicize the fact that all voters waiting in line at the closing of the polls would be allowed to vote. On election day, these concerns generally did not materialize.

B. VOTER REGISTRATION

1. Overview

Federal rules for voter registration are provided by the National Voter Registration Act of 1993 (NVRA). HAVA states that none of its provisions can be interpreted as conflicting with the NVRA. In most states, eligible citizens are required to register as voters by filing a registration form with the election authorities. The deadlines for submission of registration forms are determined by state laws.²⁴ Some states' voter registration forms include a requirement that voters state their political affiliation. This has raised questions with regard to possibly compromising the secrecy of the vote.

the US Delegation to the OSCE. The review provides information on follow-up activities related to other recommendations as well.

²³ See for example: "The End of Line? Preparing for a Surge in Voter Turnout in the November 2008 General Election". Advancement Project, Washington DC, October 2008.

²⁴ Eight states, Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming, allow for election day voter registration. North Dakota does not require voter registration.

Voters can be removed from the voter register in case of lost eligibility, death or a request to be removed submitted in person.²⁵ The NVRA also permits the removal of voters' names from the voter register when a voter has been sent a formal notification by the election administration and the voter has not responded nor voted in two consecutive elections for federal office, after the notification was sent. If voters change residence, they must register to vote in the new jurisdiction.

There are two federal deadlines for voter registration.²⁶ States are allowed to conduct “*systematic programs*” to identify voters that may need to be deleted from the voter registers up to 90 days before election day, although corrections of *individual* records including deletions, are exempt from this deadline.²⁷ During the last 90 days before election day, a state may make corrections to registration records, and remove voters at the request of the voter, for a criminal conviction or a finding of mental incapacity. Closure of voter registration is permitted at the earliest 30 days before election day.

Consequently, there are at least 60 days during which systematic programs for removal of voter records are prohibited. Applications for voter registration, however, often in high numbers in counties with large population or statewide, is permitted with a view to uphold enfranchisement. Time may not permit election administrators to conduct a conclusive enquiry on each individual existing record or application for registration. Such rules therefore involve the risks to either disenfranchise eligible voters or allow for inclusion of wrong records in the voter registers.

Closure of voter lists varied from 30 days prior to election day in Mississippi and South Carolina, on 4 October, to 5 days prior to election day in Vermont, on 29 October. Federal and state deadlines for voter registration were generally met. Voter registration, in particular of new voters, attracted much attention during the election campaign including in the media. This politicized voter registration and potentially added further stress on election administrators.

There were a number of court cases related to disputes about voter registration. A federal judge in Michigan ruled that Michigan state practice to automatically remove registered voters whose voter registration cards were returned as undeliverable or who had drivers' licenses registered in other states violated the NVRA. A preliminary injunction to stop these practices and reinstate the removed voters was issued. In Colorado, a case in which voters were removed from the voter list systematically after the 90-day deadline ended in a mutually agreed court order that the provisional ballots of wrongfully removed voters would be presumed valid.

A case brought before the federal court in Michigan regarding a plan of a county Republican committee to use mortgage foreclosure lists to challenge voters' eligibility ended in a court supervised settlement that ensured the Republicans would not use foreclosure lists to challenge voters. In Montana, a case in which the state Republican committee had filed challenges against approximately 6,000 voters based on information gathered from the US Postal Service National Change of Address Database was dismissed after assurances by the Republicans that they had withdrawn their challenges.

²⁵ NVRA §8(c)(2)(A&B).

²⁶ NVRA, Sections §8(c)(2)(A) and §8(a)(1)(A), respectively.

²⁷ There appears to be a broad understanding that “systematic program” refers to an established procedure applied to a significant number of records of registered voters with the purpose to remove records from the voter register. Since applications for voter registration are yet to become records of registered voters, rejection of such applications is not restricted by this deadline.

2. State-wide Voter Registration Databases

HAVA mandated the establishment of state-wide voter registration databases (SWVRDs). The design of SWVRDs is left to the discretion of the states. States have taken different approaches to building systems to meet the centralized voter registration requirement.²⁸ Many states have taken a so-called top-down approach where state election officials maintain a single, unified database and local election officials provide the state with the information needed to update the database. Some states opted for a bottom-up approach where local jurisdictions maintain their own registration lists but provide regular updates to a separate statewide system. Other states have adopted a system that combines both approaches.

SWVRDs are a useful tool to ensure that each eligible voter is registered only once state-wide. The OSCE/ODIHR LEOM was informed that some states had attempted to co-ordinate their respective SWVRDs to address possible multiple registrations across states' administrative borders. In states where county election administrators are responsible for the maintenance of voter lists in their respective counties, processing specific mismatches such as possible groups of multiple records across counties' and states' administrative borders could be a challenge.

HAVA requires states to verify their voter registration through co-ordination and matching of their SWVRD with other state and federal records.²⁹ However, HAVA does not require matching SWVRDs between states, nor does it provide for a definition of what constitutes a "match" between the records of one and the same person included in the SWVRD and another database. It also does not establish procedures for addressing possible mismatches and for the sequence and scope of matching the SWVRD with other state or federal records.³⁰ Definition of these is left to the discretion of the states and, in some states, resulted in confusion, inconsistent matching practices, and a lack of transparency.

In general, mismatches should be analyzed to establish the identity, eligibility and last residence of the applicant, and amend inaccuracies or eliminate possible multiple records. Rules should be established in advance that would indicate which database contains the correct information in the case of a mismatch and provide complete transparency regarding the criteria for removing voters from the list or not registering new applicants based on matching procedures.³¹ Removal of mismatches without an enquiry conducted in accordance with clear criteria falls short of good practice as it potentially leads to disenfranchisement.

In mid-October, the estimated number of registered voters was in excess of 180 million, with the voting age population estimated at about 231 million (including non-citizens).³² A record of

²⁸ Study by the National Academy of Sciences to conduct a study of the development of SWVRDs across the US, commissioned by the EAC. *State Voter Registration Databases: Immediate Actions and Future Improvements*, p.27. Interim Report, available at http://www.eac.gov/program-areas/research-resources-and-reports/copy_of_docs/state-wide-vrd-interim-report.pdf.

²⁹ Such databases include the state records of deceased and felons, as well as the state database of the Motor Vehicle Authority and the federal database of the Social Security Agency.

³⁰ Similar conclusions are found in the interim report *State Voter Registration Databases*, prepared by the National Research Council of the National Academies, 2008. The research was funded by the EAC and is available at www.nap.edu and www.eac.gov.

³¹ Maryland and Washington have established such procedures. In Washington state, matching rules were established following a court case, *Washington Association of Churches, et.al. v Reed*, N CV06-0726RSM, decided on 16 March 2007.

³² National Association of Secretaries of States, *Survey: State Voter Registration Figures for the 2008 general election*, 31 October 2008; also OSCE/ODIHR LEOM analysis based on information of Secretaries of States' web pages.

some 10 million newly registered voters was reported, although these estimates may have included possible multiple records for voters across jurisdictions.

In Wisconsin, the Attorney General filed a request in State Court to force the state election board to conduct the HAVA mandated crosschecks with other state databases. The court dismissed the case ruling that the board was acting within the discretion granted under HAVA. It noted that HAVA does not make matching a prerequisite to voting and the VRA specifically prohibits preventing a citizen from voting based on typographical and minor clerical errors.³³

3. Voter Registration Drives

Civil society groups and political parties, especially the Democratic Party, conducted intensive drives to register new voters focusing mostly on states broadly expected to have closely fought contests, including Colorado, Florida, Georgia, Indiana, Michigan, Nevada, North Carolina and Ohio. They often focused on low income and minority populations. Such drives are regulated in some states, while in others and at federal level they remain unregulated.

Cases were brought in Florida, Georgia, Maryland, New Mexico, and Ohio challenging laws that regulate the activities of civil society organizations involved in voter registration. Plaintiffs argue that such regulations restrict the activities of the organizations and that procedures imposed for processing registrations are onerous, infringe core rights for freedom of political speech and association, and have forced organizations to curtail or in some instances halt registration activities.³⁴ Some of these cases have been settled out of court.

The voter registration efforts of the Association of Community Organizations for Reform Now (ACORN) in particular led to controversy. The group admitted that, instead of the 1.3 million new registrations it had initially announced, the real number of newly registered voters was some 450,000. About 400,000 applications had been rejected by election administrators for a variety of reasons, including duplicate registrations, incomplete forms, and fraudulent submissions. The remainder were registered voters who had changed their addresses.³⁵ After information about ongoing federal investigations into efforts by ACORN was improperly leaked to the media, the issue gained further prominence in the campaign. While fraudulent registration is illegal, it does not necessarily result in voter fraud on election day due to safeguards inherent to the system.

C. VOTER IDENTIFICATION

HAVA only requires first-time voters to present identification if they registered as voters by mail. Twenty-five states now require all voters to present either a photo or non-photo ID in a polling station. Florida, Georgia, and Indiana require that all voters show an identification

³³ The court also noted that the case should have been submitted in the first instance to state election board's HAVA complaint process.

³⁴ Some of the state laws require organizations to register or obtain a permit for each of their agents before registering voters. Others significantly limit the number of voter registration applications that may be distributed to an organization, require special handling of applications or prohibit copying of applications which makes it difficult for organizations to process the application and to check for mistakes and possible fraud.

³⁵ See www.nytimes.com/2008/10/24/us/politics/24acorn.html?scp=3&sq=Michael%20%20Slater&st=cse for an interview of Mr. Michael Slater, Executive Director of "Project Vote" which funded the voter registration efforts of ACORN.

document with a picture in order to receive a ballot in the polling station.³⁶ Arizona requires proof of citizenship. Voter identification is a contentious issue, discussed along party lines. Republicans generally regard ID requirements necessary to uphold the integrity of the vote and to safeguard against voter fraud while Democrats believe it could disenfranchise and intimidate voters.

In a decision earlier this year, the US Supreme Court upheld a new Indiana voter identification law requiring photo identification, in which the complainants had argued that the law unduly burdens Indiana citizens. The court found that the burden on voters is minimal and that the state interest to prevent fraud is a valid justification for what the court called a non-discriminatory law.³⁷ It did, however, leave open the possibility that the implementation of the law may be challenged if applied in a discriminatory manner. Some OSCE/ODIHR LEOM interlocutors noted that the decision of the Court might stimulate introducing voter identification requirements in other states.

D. ALTERNATIVE VOTING ARRANGEMENTS

1. Overview

US elections for federal office take place during a working day. In order to maximize enfranchisement opportunities, most state laws provide possibilities for voters to cast their ballots through alternative arrangements rather than in person on election day in the polling station where the voter is registered. This requires additional measures to protect the secrecy of the vote cast as well as the integrity of the votes cast days or weeks before election day.

Available options include: (a) early in-person voting when voters cast their ballots before election day in a limited number of specially designated polling places, located usually in the office of the county election officials; (b) absentee by-mail voting, in-country, whereby voters receive a ballot to be mailed to the election administrators and (c) out-of-country voting under the UOCAVA of 1986.

In addition, for voters who do not find their names on the polling station voter lists, HAVA provides for provisional ballots. HAVA also introduced requirements for states to ensure that voters with disabilities are able to vote in-person unaided, thereby enabling the right of such voters to cast their ballots in secrecy.

2. Provisional Ballots

HAVA mandates conditional enfranchisement of voters by making provisional ballots available to voters at the polling station with the exception of states that allow election-day registration. Detailed regulations and deadlines for the verification and counting of provisional ballots are the prerogative of the states and vary widely from up to two days in Florida to up to 35 days in California. While provisional ballots are meant to prevent the disenfranchisement of voters, concerns were raised by OSCE/ODIHR LEOM interlocutors related to checking the eligibility and guaranteed counting of these ballots, which could raise particular issues in cases of narrow

³⁶ Florida allows several different photo identification documents. In Georgia and Indiana, voters who do not have an identification document with a picture are issued such document by the authorities free of charge, upon request.

³⁷ 553 U.S., Crawford v. Marion County Election Board (2008).

margins between leading candidates. The verification and counting of provisional ballots may cause delay in the announcement of final results.³⁸

Section 302(a) of HAVA requires that provisional ballots are provided to voters who, upon arrival at polling places, believed that they were registered but their names were not on the voter register. In addition, provisional ballots are offered when an election official states that the person concerned is not eligible to vote.³⁹ All votes cast through provisional ballots under this section may only be counted once a voter's eligibility to vote has been verified, after closure of the polls.

If the appropriate state or local official determines that the individual who cast a provisional ballot is eligible under state law to vote, the individual's provisional ballot should be counted as a vote in accordance with State law.⁴⁰ This verification requires election officials to establish whether the provisional ballot was cast in the correct "jurisdiction". Since the adoption of HAVA, the interpretation of the word "jurisdiction" both by election officials and courts has differed between states, causing controversy. Thirty states and the District of Columbia require provisional ballots to be cast in the correct polling place in order for the ballot to be counted, whereas 15 states require provisional ballots to be cast in the correct county or state in order to be counted.⁴¹ However, no new disputes were brought to the attention of the OSCE/ODIHR LEOM with regard to the 2008 general election.

Section 302(c) of HAVA provides that voters, who vote during extended voting hours as a result of a federal or state order, are to vote by provisional ballot. These provisional ballots "shall be separated and held apart from other provisional ballots cast by those not affected by the order". The requirement that such provisional ballots are held separate from those cast in regular voting hours appears to stem from the possibility that such orders could be appealed and cancelled by the courts. Also, such provisional ballots may not necessarily require verification unless they were cast under the circumstances described in Section 302(a).

3. Early In-Person Voting and Absentee By-Mail Voting

Early in-person and absentee by-mail voting are regulated in detail in most state laws which provide sufficient safeguards to ensure the integrity of the process. However, OSCE/ODIHR LEOM identified some state laws that do not guarantee the secrecy of early in-person and absentee by-mail votes. No other specific concerns related to the integrity of the early in-person or absentee by-mail voting were noted by OSCE/ODIHR LEOM observers. In the US, early voting takes place in a limited number of specifically designated polling stations thereby contributing to the integrity and transparency of the early voting process.

Counting of early in-person and absentee by-mail votes generally takes place on election day after polls close, although for purposes of accountability the counting of the numbers of cast

³⁸ After the completion of the count of the regular votes for Electors, in Missouri and North Carolina, on 5 November, media reported that the margins between the Republican and Democrat votes was less than the provisional votes cast in the respective states. In Missouri, the margin was some 5,860 votes and the provisional ballots were in excess of 7,000, with a deadline for verification on 18 November. In North Carolina, the margin was some 14,000 votes, with provisional ballots in excess of 53,000 and deadline for verification on 14 November.

³⁹ In Wyoming and Wisconsin, provisional ballots are also used when a voter is not able to provide required identification at a polling place for election-day registration.

⁴⁰ HAVA, 302(a)(4).

⁴¹ See <http://www.pewcenteronthestates.org/uploadedFiles/ballot%20verification.pdf>.

ballots usually starts earlier, in accordance with state law. Some states, such as Arizona, California, Florida and New York, allow for votes to be counted prior to election day.

In the run-up to election day, early in-person and absentee by-mail voting was recommended by both election officials and candidates' campaigns as a response to the increased number of registered voters and anticipated high turnout.⁴² Reports suggest that up to 30 percent of votes were cast before election day by voters who voted early-in person or absentee by-mail.⁴³

Early voting took place in 31 states. The length of the early voting process varied from 3 days in Oklahoma to 41 days in South Dakota. Long lines of voters were observed in the states that permitted early in-person voting. Early voting hours were extended in several counties in some states. The Governor of Florida announced a state of emergency to extend early voting hours statewide due to long lines, in accordance with HAVA, Section 302(c).

Early in-person voting can represent a significant enfranchisement mechanism and was broadly used by voters in the 2008 general elections thereby relieving part of the load on election officials on election day. However, there are aspects that require attention. Early voting leads to long lines of voters if turnout exceeds expectations. Also possible glitches with voting equipment could attract disproportional public attention. It also requires detailed arrangements to ensure safeguarding the ballots cast. Voters who decide to vote early may be less informed since they vote before the completion of the campaign. Moreover, voting early carries a risk that the candidate of choice may be removed from the ballot due to a court decision, possible withdrawal or death of a candidate.

Absentee by-mail voting presents obvious advantages in terms of convenience that can lead to enhanced participation. It does, however, carry risks for interference in the privacy of choice typified by voting in an uncontrolled environment. In addition, in order for a by-mail vote to be counted it needs to reach the respective election administrator within legal deadlines determined by state law. This may be jeopardized by the dependency on domestic and foreign mail services in returning the ballot. The use of paper ballots ensures possibilities for recount, although processing of by-mail votes requires extended time for scrutiny.

4. Absentee Overseas Voting

Under UOCAVA, the Department of Defense is mandated to manage out-of-country voting through its Federal Voting Assistance Program for military and civilians residing out-of-country. UOCAVA requires each state to have a single office for assisting overseas voters.

Most voters, who vote on the basis of UOCAVA, vote by-mail and could depend on the mailing services of other States for the delivery of their ballots within deadlines for absentee by-mail voting of their home states. However, if such deadlines are missed due to failure of a foreign postal service to deliver the ballots on time, affected voters have no means to seek legal redress.

⁴² Thirty three states allow for absentee by-mail and early in-person voting without excuse. Another 16 states and the District of Columbia require excuse. Oregon votes only by-mail. In Washington, 37 out of 39 counties vote only by mail, although there is a requirement for at least one conventional polling station per county to serve voters with special needs. In California, with registered voters in excess of 17 million, by-mail voting also gathered momentum. See also www.electionline.org.

⁴³ See *Election 2008 in Review*, electionline.org Briefing, December 2008. According to figures of 4 November by the United States Elections Project of George Mason University, some 30 million (amounting to 17 per cent) of the registered voters may have voted early-in person or absentee by-mail. See http://elections.gmu.edu/early_vote_2008.htm.

There was an estimated 6 million out-of country voters which included uniformed military personnel, US Department of State officials, their families and other US citizens residing abroad.⁴⁴

An Internet-based absentee voting system, called Scytl Secure Electronic Voting, had been provisionally certified for use by the State of Florida. It was used between 24 October and 2 November in Okaloosa County (Florida) for about 600 civilian and military voters in US military bases in England, Germany and Japan.⁴⁵ Adoption of this system provides more secrecy as compared to absentee ballots that are faxed or emailed, but the system can still be vulnerable to possible mishandling by the election administration.⁴⁶ This issue has been mitigated by introducing a full manual recount of the votes cast.

Some states allow voters in a limited number of circumstances to return their voted ballots by fax or email. If voters choose to fax or email their voted ballot, they are asked to sign a waiver of their right to secrecy of the vote. This practice raises concerns with regard to compliance with Paragraph 7.4 of the 1990 OSCE Copenhagen Document.⁴⁷

5. Secrecy of the Ballot Prior to Election Day

The OSCE/ODIHR LEOM noted that in some states, including Maryland, Nevada, North Carolina, Oregon and Wyoming, laws do not guarantee the secrecy of early in-person and absentee by mail votes. Previously, the OSCE/ODIHR recommended reconsidering the possibility of faxing marked ballots by out-of-country voters because of secrecy considerations.

The OSCE/ODIHR LEOM is not aware of attempts to breach the secrecy of the vote during the 2008 elections, but it identified a number of situations where it is possible to enhance it. These include: (a) mailing of absentee ballots to voters without secrecy envelopes to place the voted ballots in, for example in Maryland, North Carolina, South Dakota and Wyoming, (b) the possibility for the count of early votes to begin prior to election day, for example in Arizona, California, Florida and New Mexico, (c) faxing of voted ballots in-country, for example in Nevada, (d) faxing of voted ballots from abroad, for example in Kansas, Louisiana, and New Jersey, and (e) scanning of voted by-mail ballots prior to election day, for example in Oregon.

VI. VOTING SYSTEMS

Voting systems are used in the US to handle the complexity of the voting process resulting from federal, state and local elections taking place simultaneously. These are meant to help voters avoid casting erroneous votes and to simplify counting. Two types of voting systems are mostly in use: Direct Recording Electronic (DRE) voting systems and paper ballots that are marked by voters and then read by optical scanners.

One of the goals of HAVA was to address the lack of accuracy of the voting systems revealed in

⁴⁴ 2008-9 Voting Assistance Guide, Federal Voting Assistance Program, Department of Defense, page 1.

⁴⁵ Okaloosa Distance Balloting Pilot Project Plan, Operation Bravo Foundation, 19 June 2008.

⁴⁶ Software Review and Security Analysis of Scytl Remote Voting Software. Michael Clarkson, Brian Hay, Meador Inge, Abhi Shelat, David Wagner, Alec Yasinsac. Report commissioned by the Florida Division of Elections. 19 September 2008, section 4.2.2. See <http://www.cs.berkeley.edu/~daw/papers/scytl-odbp.pdf>.

⁴⁷ Paragraph 7.4 of the 1990 OSCE Copenhagen Document commits States to ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public.

the 2000 general elections. HAVA mandated Congress to allocate funding for the replacement of mechanical lever and punch card-based voting systems by 1 January 2006. States have used federal funds to purchase electronic voting machines to meet HAVA requirements.

A. VOTING SYSTEM REQUIREMENTS

HAVA specifies a set of minimum standards that a voting system should meet,⁴⁸ with specific requirements to be set by the respective state and local regulations. States adjusted local legislation, certification procedures and implementation of voting systems to meet the 1 January 2006 deadline set by HAVA, Section 301.

HAVA requires every voting system for federal office to provide voters with the possibility of casting their vote in a “private and independent manner”, preserving the “privacy of the voter and the confidentiality of the ballot”.⁴⁹ People with disabilities should be able to access the system as should those speaking different languages.⁵⁰ Voting machines should be designed to warn voters of an overvote where a voter votes for more candidates than allowed in a particular election contest or an undervote where a voter has not voted in all the elections on a ballot. The voting system should also simplify the counting process. The voter should be provided with the opportunity to correct or change the ballot in a private and independent manner in case of error, including issuing a replacement ballot if necessary.

B. VOTING SYSTEM IMPLEMENTATION

In the 4 November 2008 general elections, most voters were able to cast their vote or have their vote counted with the help of some electronic device. Paper ballots were counted manually in only 56 jurisdictions, in a total of 10 states, accounting for a marginal percentage of registered voters.

DRE voting systems that do not produce a paper trail were used in 26 states and were the only method of voting in 9 states.⁵¹ Optical scan systems were used in a total of 41 states, state-wide in 17 of these states. Only in 8 counties in Idaho were punch-card machines used.⁵²

Some jurisdictions in the state of New York were still using lever machines. Litigation by the DoJ against the State of New York is ongoing regarding non-compliance of the state with HAVA regulations concerning voting machines and voter registration database.⁵³ The state is working under the supervision of the US District Court for the Northern District of New York to achieve full HAVA compliance by autumn 2009.

C. SECURITY OF VOTING SYSTEMS, TESTING AND CERTIFICATION

Following the introduction of electronic voting machines nationwide, academics, civil society groups and media voiced concerns about the security and integrity of the electronic voting

⁴⁸ HAVA, Section 301.

⁴⁹ HAVA, Section 301(a)(1).

⁵⁰ HAVA, Section 301(a).

⁵¹ Delaware, Georgia, Louisiana, Maryland, Mississippi, Nevada, New Jersey, South Carolina, Utah.

⁵² Voting Systems by County, Idaho Secretary of State website, 5 August 2008, see <http://www.idahovotes.gov/VoterGuide/vote.htm>.

⁵³ *United States of America v. New York Board of Elections*, US District Court for the Northern District of New York (Case 1:06-cv-00263-GLS).

systems.⁵⁴ They focused on measures to prevent errors in the voting system, and looked into ways of detecting voting system malfunction and providing recovery schemes in the case of failure.

Testing and certification of voting systems are key measures to prevent equipment malfunction during elections. HAVA mandated that the EAC establish a voluntary program to accredit voting system test laboratories to certify voting equipment. In 2005, the EAC published its Voluntary Voting System Guidelines⁵⁵ and in 2007 launched a federal certification process. However, for the 2008 elections no voting system had been certified by the federal authorities.

In several states, the voting equipment initially introduced has been replaced or additional security safeguards have been installed. In July and August 2007, the Secretary of State of California conducted a review of all electronic voting systems used in the state. As a result, the reviewed voting systems were de-certified due to more rigorous certification criteria. These voting systems were conditionally approved for use during the 4 November 2008 elections.⁵⁶ In winter 2007 the Secretary of State of Ohio initiated a review of the state's electronic voting technology, which led to withdrawal of some voting equipment from use in the elections in Ohio.⁵⁷

With the aim to address possible voting system errors, HAVA requires that voting systems produce a permanent paper record for a manual audit. This should be available as the official record for the recount, in case of a voting system failure. HAVA does not require that voters are provided with a voter-verifiable paper audit trail (VVPAT), a paper record of their vote. Out of 26 states that use DREs, 18 have equipped their voting machines with the ability to produce VVPAT,⁵⁸ in line with past OSCE/ODIHR recommendations.⁵⁹

Use of optical scan devices, instead of DREs, has been advocated in recent years with a view to further strengthen confidence in the voting process.⁶⁰ It appears that there is already a trend to return to paper ballots that can be optically scanned. Since 2006, eighty-five jurisdictions in California, Florida and Kentucky have decided to switch from DRE voting systems to optical scan systems. The states of Maryland and Virginia are planning to move away from DREs in time for the 2010 mid-term congressional elections.

⁵⁴ For example, What's wrong with electronic voting machines?, Schneider, Bruce, openDemocracy, 9 November 2004; Analysis of an Electronic Voting Systems, Aviel D. Rubin et al, IEEE Computer Society Press, May 2004; Immediate Steps to Avoid Lost Votes in the 2004 Presidential Election: Recommendations for the Election Assistance Commission, CALTECH/MIT, Voting Technology Project, July 2004; Trusted Agent Report Diebold AccuVote-TS Voting System, RABA, Innovative Solution Cell (RiSC), Dr. Michael A. Wertheimer, Director, 20 January 2004. (Also known as the "RABA report"); "Direct-Recording Electronic (DRE) Technical Security Assessment Report", prepared by Compuware Corporation for the Ohio Secretary of State, 21 November 2003.

⁵⁵ 2005 Voluntary Voting System Guidelines, Election Assistance Commission, 2005.

⁵⁶ For example, only for voters with disabilities. See Top-to-Bottom Review, Secretary of State, State of California, July-August 2007, see www.pcworld.com/article/135539/evoting_ok_with_new_security.html and www.sos.ca.gov/elections/elections_vsr.htm.

⁵⁷ Evaluation & Validation of Election-Related Equipment, Standards and Testing, December 2007, see <http://www.sos.state.oh.us/SOS/Text.aspx?page=4512&AspxAutoDetectCookieSupport=1>

⁵⁸ 2008 National Voting Equipment Report, Election Data Services, Inc., Washington DC, 17 October 2008, http://www.edssurvey.com/images/File/NR_VoteEquip_Nov-2008wAppendix2.pdf.

⁵⁹ OSCE/ODIHR Election Observation Mission Final Report on the 2 November 2004 general elections, http://www.osce.org/documents/odihr/2005/03/13658_en.pdf.

⁶⁰ See, for example, Testimony, US House Appropriations Subcommittee on Financial Services and General Government, Rayburn House Office Building, Washington DC, Dr. Aviel D. Rubin, Professor of Computer Science, 7 March 2007.

VII. ELECTION CAMPAIGN

Voters were able to make informed choices due to a wealth of public information about the candidates and the election, disseminated in a genuinely competitive environment. Numerous, well-attended rallies and town hall meetings drew high interest from the public and the media. There is no prohibition for campaigning on election day and candidates also used this opportunity to appeal to voters. The election campaign saw high levels of enthusiasm and participation by the public, with numerous individuals volunteering for door-to-door campaigning, get-out-the-vote drives and fundraising events. Increased public interest in the presidential race resulted in voter interest in congressional, state and county races, especially in states where narrow margins between the presidential candidate results were expected.

The main focus of the campaign was the presidential race with the issues of tax policies, health care, education, and military engagement in Iraq and Afghanistan high on the agenda. With the global and domestic economic slowdown as a backdrop, the focus of the campaign shifted from the anticipated foreign policy and security issues to economic issues, stimulating broader debate about the candidates' views of the government's role in economic management. Campaign messages and events, especially of the two leading presidential candidates, were analyzed and widely discussed.

Due to anticipated shifts in the traditional voting patterns of some states, voters were exposed to unprecedented amounts of campaigning. Presidential candidate rallies drew tens of thousands of supporters. Similarly high profile campaigning took place in states with a considerable number of Electors, such as Florida, Ohio, and Pennsylvania. OSCE/ODIHR LEOM observers noted a low campaign profile with little visibility and activity in states, where large margins of results between the presidential candidates were expected, such as California, New Jersey, New York, North and South Dakota, Oregon and Washington. Nonetheless, OSCE/ODIHR LEOM observers characterized the electorate as active and engaged also in these states.

Personal records of the candidates were scrutinized by their opponents and the media. OSCE/ODIHR LEOM observers assessed that a large proportion of campaign messages were of a negative nature, critical of opponents rather than explaining their own policies, especially in the races for federal and state office.

Issues of broader electoral significance featured prominently in the campaign, including in rallies of presidential candidates. These included issues of voter registration including efforts by civil society groups, felon disenfranchisement and possible systematic removal of voter records after the expiry of the 90-day deadline. In addition, possible matching of voter registration databases contrary to HAVA procedures, possible disenfranchisement of university students due to questions of their residency and other citizens due to foreclosures⁶¹ featured in the campaign. "Get out the vote" messages played an important role in campaign speeches, especially those by Senator Obama.

⁶¹ Foreclosure means that citizens have lost their house and therefore their place of residence because of their inability to service their bank loan payments.

VIII. CAMPAIGN FINANCING

The 2008 presidential campaign saw unprecedented levels of campaign spending which was of concern to some OSCE/ODIHR LEOM interlocutors. For the first time since the introduction of public campaign financing in 1974, a presidential candidate, Senator Obama, decided to opt out of the public financing system for the general election. Senator McCain accepted public funding for the general elections, a total of some 84 million USD. As a result, Senator McCain's official campaign committee was limited to expenditure equal to the amount of public money received.

Based on the principle of freedom of speech, there are no spending limits for presidential campaigns when a candidate does not accept public funding. Even if presidential candidates receive public funding and become subject to the limit on campaign expenditures, the nominating parties can engage in additional fundraising from private sources and spend unlimited amounts to promote their candidate. The candidate is not precluded from participation in such fundraising events. In addition, civil society groups, unions, companies, media outlets and other stakeholders freely promote candidates and their ideas.

The federal campaign finance system is designed to build on small individual donations. An individual can donate to a candidate's campaign no more than 2,300 USD per electoral cycle; donations from corporations and labour unions are not allowed. In 2008, one third of all presidential campaign donations came from a broad base of donation instalments of less than 200 USD. However, this money was not necessarily raised from individuals each donating less than 200 USD, as many individuals donated several times during the campaign period, resulting in greater aggregated amounts.

Senator Obama received a record amount of approximately 640 million USD in donations, including 60 per cent of all small donations of less than 200 USD received by all presidential candidates.⁶² Further research into Senator Obama's campaign finances has suggested that in fact his campaign often received several small donations from the same contributors, totalling in excess of 200 USD. In total, only about 25 per cent of donations received by the Obama campaign came from contributors whose donations added up to USD 200 or less.⁶³

A defining element of the US campaign finance system is transparency, ensured by frequent and detailed campaign finance disclosure. Donations under 200 USD do not have to be disclosed to the FEC. However, a candidate's campaign has to keep a record of these in case numerous small donations from one individual exceed the minimum limit and become subject to disclosure rules.

The official committees of candidates for federal office, federal, state and local party committees and political action committees (PACs)⁶⁴ are required to file regular reports (monthly or quarterly) to the FEC disclosing the funds they raise and spend on the campaign. Federal candidate committees must identify, for example, all PACs and party committees that give them contributions, and they must provide names, occupations, employers and addresses of all

⁶² Federal Election Commission, <http://www.fec.gov/DisclosureSearch/mapApp.do>.

⁶³ Campaign Finance Institute, 24 November 2008, <http://www.cfinst.org/pr/prRelease.aspx?ReleaseID=216>.

⁶⁴ PACs are private groups of citizens, organized to elect political candidates. Under the FECA, an organization becomes a "political action committee" by receiving contributions or making expenditures in excess of USD 1,000 for the purpose of influencing a federal election. It then has to register with the FEC. PACs can engage in campaign activity, promote candidates in the media and donate to candidates' and parties' committees.

individuals who in aggregate give them more than USD 200. So-called electioneering communication, i.e. advertisements that expressly call for the election of a candidate and are sponsored by PACs or individuals, also have to be disclosed to the FEC. Additionally, all these groups must disclose expenditures to any vendor who sells advertising or any individual who requests this.

The FEC publishes information about all individual donations and expenditures on its website. Political committees on all levels are required to file campaign finance statements electronically.⁶⁵ This allows the immediate publication of the disclosure forms on the FEC website and adds a substantive element of transparency and information to the election campaign.

The thorough public disclosure of campaign donations and expenditures not only contributed to transparency but also allowed political opponents, media and civil society to question the legality of some of the donations received by Senator Obama, as safeguards seemed to be missing for the initial identification of obviously false donations. Senator Obama's campaign had 30 days to vet these donations and refunded some 5 million USD in individual donations. Information about complaints that had been lodged with the FEC, including those about possibly fictitious donations to Senator Obama, was released by plaintiffs and discussed in public.

So-called '527s', organizations, which engage in "issue advertising", do not have to disclose their finances to the FEC.⁶⁶ These organizations do not specifically campaign for or against the election of a candidate but can use candidates' images and quotes in their advertising. According to assessments by civil society groups, these organizations received some 450 million USD in 2008 from various sources and most of them engaged in the promotion of a particular candidate's ideas or previous work.⁶⁷

The intention of the campaign finance regulation to seriously limit the amount of individual donations to campaigns was undermined by the so-called joint fundraising committees. In the 2008 elections, these were for the first time widely used by the two leading presidential candidates with the apparent intention of attracting larger donations. These committees at times received up to 70,000 USD from an individual donor.⁶⁸ Additionally, the individual donation limit can be circumvented by allowing families, including children, to "bundle" their contributions and donate funds from one household, sometimes with one wage earner, well in excess of the individual donation limits.

The enforcement of the campaign finance system was weakened by the fact that the FEC, for the first part of 2008, lacked four of its members. It could therefore not make decisions or issue binding advisory opinions during a substantial part of the 2008 election campaign. OSCE/ODIHR LEOM interlocutors indicated that even after the appointment of the new commissioners in June 2008, time was required for the new commissioners to gain full command of the complexities of the US campaign finance system.

⁶⁵ Senatorial candidates have exempted themselves from this requirement and file only paper-based records.

⁶⁶ These groups are named after the tax code that these groups are subject to.

⁶⁷ Center for Responsive Politics, <http://www.opensecrets.org/527s/index.php>.

⁶⁸ See, for example, donations to the McCain Victory 2008 Committee, available at: www.fec.gov/finance/disclosure/norcomsea.shtml.

IX. RACIAL AND LINGUISTIC MINORITIES

The largest minority groups in the US, African Americans and Hispanics, constitute some 12 and 15 per cent, respectively, of the US population.⁶⁹ African American and Hispanic participation in general elections is usually some 3 and 10 per cent, respectively, lower than the national voter turnout.⁷⁰ There was an expectation that the turnout of both groups would increase in the 2008 general elections due to the fact that, for the first time in the history of elections in the US, an African American had been nominated as a presidential candidate by one of the two leading parties.

OSCE/ODIHR LEOM interlocutors argued that state laws disenfranchising felons and ex-felons disproportionately affect minority populations, particularly African American and Hispanic communities. Court cases challenging felon and ex-felon disenfranchisement laws as racially discriminatory or having a disproportionate effect on these minorities have been brought in Florida, New York and Washington. Plaintiffs argue that such laws violate Section 2 of the VRA and the 14th and 15th Amendments of the US Constitution. A New York State District Court held that the state's felon disenfranchisement scheme is immune from challenges under the VRA.⁷¹ On remand from the Court of Appeals, a Washington District Court has been ordered to consider the effect of the criminal justice system on the state's felon disenfranchisement law.⁷² Plaintiffs in Florida are seeking review from the US Supreme Court to consider the issue.

Often minority issues are mentioned in the context of redrawing the boundaries of the electoral districts so as to reflect the population changes. The next census is expected in 2010, and no redistricting took place before the 2008 elections. However, the Supreme Court heard a case from North Carolina on the question whether a minority group that constitutes a controlling majority in a constituency, but not an actual majority, can challenge redistricting plans.⁷³ Section 2 of the VRA declares that a state may not act in a way that impairs or dilutes, on account of race or colour, a citizen's opportunity to participate in the political process and to elect representatives of his or her choice. As a result, special districting requirements must be followed when a minority group constitutes a majority in an area. On 9 March 2009, the court rejected the claim, holding that the VRA does not authorize vote dilution lawsuits in voting districts in which a particular racial or ethnic group comprises less than 50 percent of the voting age population.

Aiming for enfranchisement and language inclusiveness, the federal legislation requires that voting materials, including ballots and the voting systems, are made available to communities of voters with limited knowledge of English.⁷⁴ Most jurisdictions provide information in Spanish and in many areas information is available in Chinese, Japanese, Korean, Tagalog and Vietnamese.

⁶⁹ United States Census Bureau, 2007 American Community Survey, see www.census.gov/population/www/socdemo/voting.html.

⁷⁰ In the 2000 general elections, the national turnout was 59.5 per cent, turnout of African Americans was 56.8 per cent and of Hispanics 45.1 per cent. In the 2004 general elections, the national turnout was 63.8 per cent, turnout of African Americans was 60 per cent and of Hispanics 47.2 per cent. See: <http://www.census.gov/population/www/socdemo/voting.htm>.

⁷¹ *Muntaqim v. Coombe*, No. 94-CV-1237 (N.D.N.Y. January 24, 2001).

⁷² *Farrakhan v. State of Washington*, U.S. Court of Appeals for the 9th District, No. 01-35032.

⁷³ *Bartlett v. Strickland* (07-689), 9 March 2009.

⁷⁴ Section 302, Voting Rights Act of 1965, 42 U.S.C. 1973aa-1a; HAVA, Section 301(a)(4), 42 U.S.C. 15481.

X. PARTICIPATION OF WOMEN

Women play an active role in civil society and the election administration, especially as poll workers. They are increasingly taking on prominent roles in US politics. After the 2006 mid-term elections, the Speaker of the House of Representatives, Nancy Pelosi, became the highest-ranking woman in the history of the House of Representatives. Six out of twenty-one members of the outgoing President's Cabinet were women. Senator Hillary Clinton was narrowly defeated by Senator Obama in the vigorously fought Democratic Party primaries. Senator McCain selected Alaska Governor Sarah Palin as his vice presidential nominee.

However, the representation of women in the Senate and the outgoing House of Representatives amounts to only 16 per cent. In the 2008 elections, only seven women have won nominations for Senate seats by the two leading parties in six states (approximately 10 per cent of all candidates). On the other hand, 133 women have won nominations for a seat in the House of Representatives (some 15 per cent of all candidates). The November 2008 elections slightly increased representation of women in Congress to some 17 per cent. Four out of 15 members of the new President's Cabinet are women; the US Ambassador to the United Nations is also a woman.

XI. MEDIA

A key element of the US regulatory framework for the media is the judicial interpretation of the First Amendment of the Constitution and the protection granted to the principle of freedom of speech over any restrictive measures that a regulatory agency for media would seek to impose. Any limits on freedom of speech, even broadly defined ones, such as a limit on campaign spending, are considered to be placing substantial and direct restrictions on the ability of candidates and groups to politically express themselves, including the opportunities for candidates to have access to the media. Such limits would therefore probably be the subject of a constitutional court case.⁷⁵

The media landscape in the US is diverse and characterized by a long-standing tradition of freedom of speech and media independence. Commercial broadcasters dominate the media sector. Public television has limited audience and outreach, while national public radio is popular by serving some 26 million listeners each week. According to data of the Federal Communications Commission (FCC), 1,758 commercial television channels and 13,748 commercial radio stations operate in the regionalized and segmented US media field.⁷⁶ Major commercial television companies include ABC, CBS, CNN, Fox Broadcasting Company and NBC. Most commercial radio stations are controlled by media conglomerates that own numerous media outlets.⁷⁷ The daily press is generally privately owned. Although often having a broader outreach, newspapers generally originate in particular localities. All the major metropolitan areas traditionally have their own local publications. The main printed press outlets include the Los Angeles Times, the New York Times, USA Today, the Wall Street Journal and the Washington Post. The internet has developed into a major source for news about politics and issues of public interest.

While the print media are not bound by any statutory requirements and are self-regulated, the regulatory framework for broadcasting media coverage of elections is based on a mix of

⁷⁵ As for example in the case of *Buckley v. Valeo* (1976),

⁷⁶ Data for 2008 available at the FCC website: www.fcc.gov/mb/audio/totals/bt080630.html.

⁷⁷ These include Clear Channel, the largest commercial radio operator; CBS Radio and ABC Radio Networks.

statutory rules and self-regulation. The amended Communications Act of 1934⁷⁸ and the related regulations issued by the FCC lay out the rules for access of candidates, parties and groups to paid media airtime. In addition, the FEC oversees implementation of political communication transparency measures in cooperation with the FCC. Their mandate is based on the Federal Election Campaign Act (FECA) of 1971⁷⁹ and amendments introduced by the Bipartisan Campaign Reform Act (BCRA) of 2002.

Broadcasters must comply with a number of obligations related to access of candidates to airtime, while regulations regarding editorial programs are limited.⁸⁰ Sixty days prior to the general elections, commercial broadcasters must provide ‘reasonable access’ to all candidates for federal office that are willing to purchase paid airtime.⁸¹ Candidates complying with certain requirements to stand in an election as set out by the FCC, so-called ‘legally qualified candidates’, are then entitled to purchase airtime from broadcasters.⁸²

Airtime has to be provided on the key principle of ‘equal opportunity’. When a broadcaster gives paid airtime to one candidate, it must provide conditions of equal access to their opponents.⁸³ There are several qualifications and exceptions to this rule, aimed at not interfering with broadcasters’ editorial freedom. The main exemption are candidates’ appearances on *bona fide* newscasts and incidental appearances in news documentaries, regularly scheduled news interview programmes, and on-the-spot coverage of *bona fide* news events, including candidate debates and political conventions. The scope of these exemptions has been constantly expanded over the years to include a greater variety of entertainment and current affairs programmes that have *bona fide* news components. Interpretation and application of media related laws and regulations in this regard remain an issue as past FCC decisions have eroded boundaries and do not any longer provide clear regulatory benchmarks for the exemption to the equality principle.

Federal candidates that fulfil certain complex criteria enjoy a ceiling on advertising rates, based on the lowest sum charged for a similar advertisement of the most favoured advertisers on each

⁷⁸ Both the Communications Act and the FECA incorporated amendments introduced by the BCRA.

⁷⁹ Federal Election Campaign Act, Sections 437c, 437d, 437f. See also: Federal Election Commission, Federal Election Campaign Laws, April 2008. See <http://www.fec.gov/law/feca/feca.shtml>.

⁸⁰ The relevant provisions for political broadcasting can be found at: Section 315 of the Communications Act (47 USC §315), Sections 312(a)(7), 317, and 399. The applicable FCC Rules are Sections 73.1212 (47 CFR §73.1212) and 73.1940-1944 (47 CFR §§73.1940-1944) for broadcast stations and Sections 76.205, 76.206, 76.1611, 76.1615, and 76.1701 (47 CFR §§76.205, 76.206, 76.1611, 76.1615, and 76.1701) for cable systems. Rules for political programming on Direct Broadcast Satellite (DBS) can be found in Section 25.701 (47 CFR §25.701).

⁸¹ Commercial broadcast stations are not required to provide reasonable access to state and local candidates. In addition, both cable systems and non-commercial educational broadcast stations are exempted from providing reasonable access to any candidates

⁸² The term ‘legally qualified candidates’ describes candidates complying with the requirements to run as set forth by Section 73.1940 [47 CFR §73.1940] of the FCC Rules (Title 47 Code of Federal Regulations). These requirements include: public announcement of the intention to run for office; the person must be qualified to hold the office by satisfying the appropriate age and residency requirements; the person must fulfill appropriate state regulations for running, such as filing the necessary signatures or filing fee with the local election commission and usually also be certified by the local election authorities as a candidate for the ballot. Write-in candidates can also qualify as ‘legally qualified candidates’. In such cases, the third requirement is replaced by demonstrating a *bona fide* candidacy by engaging in various campaign activities in the respective jurisdiction where the candidate is running for election.

⁸³ The main vehicle for candidates and other interested parties to gain access to the audiovisual media are paid political advertisements. The principle of equal opportunity applies mainly in this area.

particular station.⁸⁴ Broadcasters are also required to keep a publicly accessible ‘political file’, recording all requests to purchase airtime. Broadcasters are not allowed to censor the content of candidates’ spots. The amount of media campaign expenditures is not limited, but detailed rules ensure financial accountability and transparency on sponsorship of election-related advertising.

In addition to candidates, civil society and other groups also actively use paid advertising as a campaign method. Some groups engage in so-called electioneering communications, expressly advocating for election of a candidate, and are thus subject to finance disclosure regulations. Others engage in so-called ‘issue advertising’ which has historically been viewed as political advertising intended to influence a political issue, legislative proposal or public policy but not to advocate the election or defeat of particular candidates. Therefore issue advertising has fallen outside the definition of campaign advertisements and beyond the realm of most state and federal campaign regulations. Some OSCE/ODIHR LEOM interlocutors questioned the nature of issue advertisements and maintained that these are electioneering advertisements disguised as issue advocacy to evade campaign finance and disclosure laws. Following a Supreme Court decision in 2007, the FEC has formulated an exemption by which an advertisement can be considered an issue advertisement if it does not expressly call for the election of a candidate.⁸⁵ The exact scope of this exemption is uncertain and it appears that the FEC has adopted a case-by-case approach for its application.

According to FEC regulations, debates among electoral contestants can be organized by non-profit organizations which do not endorse, support, or oppose candidates or parties.⁸⁶ The media may also stage candidate debates provided that they are not owned or controlled by a political party, political committee or candidate. In addition, the media may cover or broadcast candidate debates. The debate structure is left to the discretion of the staging organization, under certain conditions, including the participation of at least two candidates and that the staging organization(s) does not structure the debates to promote or advance any given candidate. In addition, pre-established objective criteria must be adopted to determine which candidates may participate.

For the November 2008 elections, the Commission on Presidential Debates organized three debates between the two leading presidential candidates as well as a debate between the Democratic and Republican vice-presidential candidates.⁸⁷ These debates were widely covered by the media. Each debate focused on programme issues and involved a thorough questioning of candidates’ records, policy proposals and views.

⁸⁴ These criteria include that a candidate’s voice or image must appear in the advertisement; that the advertisement must be purchased either by the candidates themselves, their campaign committee, or their authorized representative. In addition, a federal candidate must provide written certification at the time of purchase that the candidate (or the authorized committee) will not make any direct reference (whether positive, negative or neutral) to another candidate for the same office, without complying with certain sponsorship identification requirements. Candidates failing to meet these requirements forfeit the lowest rates for the broadcast in question and all subsequent broadcasts at that station for a specific time period.

⁸⁵ The so-called WRTL exemption stipulates that “an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate”, see Paul Ryan, A “Reasonable Interpretation” of Wisconsin Right to Life in a New World of Uncertainty, June 2007, article available at http://www.clcblog.org/blog_item-141.html. The FEC has clarified that such ads can include name and image of a particular candidate. See FEC v. Wisconsin Right to Life Inc. U. S. 321, 337.

⁸⁶ FEC Regulations, Sec. 110.13 and Sec. 114.4.

⁸⁷ The Commission on Presidential Debates is a nonprofit, nonpartisan corporation, that has sponsored debates between the leading presidential candidates, generally the Democratic and Republican candidates, in all presidential elections since 1988.

Media coverage of the elections was extensive, and provided voters with diverse information, views and opinions. Candidates, general election issues as well as issues related to the administration of the elections were covered in a variety of formats. At the height of the campaign the media sometimes added undue prominence to certain electoral and political issues thereby potentially having a confusing effect on voters. On other occasions, media coverage was sensationalist or not entirely accurate and overstated the actual impact or relevance of the reported stories, potentially misleading voters. As is traditional in the US, many newspapers endorsed one of the two leading presidential candidates.

The presidential election dominated media reporting while the congressional races attracted comparatively less attention. Print and broadcast media focused on the two leading presidential candidates and devoted equitable attention to both candidates in their editorial coverage. However, according to reports issued by two different domestic media monitoring organizations, Senator McCain overall received less favourable coverage than his opponent, Senator Obama.⁸⁸ Reporting on third party and independent presidential candidates was marginal. Parties and candidates used paid advertising on broadcast media and the internet to campaign; the volume of Senator Obama's advertising was considerably larger than that of his main opponent. The volume of advertising for third-party and independent candidates was limited.

XII. COMPLAINTS AND APPEALS

A. COMPLAINT MECHANISMS

There are various avenues in the US legal system by which election disputes and issues can be formally addressed. Individuals, parties, and interest groups may bring civil suits in state and federal courts if harmed by a violation of state or federal election law. Complaints regarding particular HAVA violations can be filed with state election boards, through an administrative process mandated under HAVA. Depending on the state, recounts can be requested from the state election board or the courts.⁸⁹ Complaints about violations of federal campaign laws are considered by the FEC and complaints on violations of campaign-related media law are dealt with by the FCC. Prosecution by state and federal prosecutors may also be sought for election-related criminal activities.

State and federal courts were widely used and provided an effective means for seeking remedies for violations of election-related laws. The system is complex as civil suits are filed in state or federal courts, which have overlapping jurisdiction in some election-related cases and can pass conflicting decisions. Civil rights groups have noted that "forum shopping" is typical, especially in election cases where the political affiliation of judges is considered to play a role in their decision-making. Many state judges and attorney generals are elected, which could lead to a conflict of interest in carrying out their duties during elections in which they stand for re-election. While federal court judges are appointed, 87 per cent of state court judges (trial and

⁸⁸ The Pew Center for Excellence in Journalism: 2008 Presidential Campaign Coverage, <http://www.journalism.org/node/14038> and the Center for Media and Public Affairs: Election Watch 2008, http://www.cmpa.com/studies_election_08.htm.

⁸⁹ Some states, including California, New Hampshire, and Illinois, require the complainant to pay costs of the recount, which can amount to thousands of dollars. Other states provide for an automatic recount when there is a very narrow margin in results, with costs covered by the state.

appeal divisions) will at some point stand for some form of election.⁹⁰ In some states the party affiliation of judges is stated on the ballot. The vast majority of states also elect their Attorney Generals by popular vote. US legal experts on elections contend that a special election court would be better suited for dealing with election related cases to eliminate the risk of partisan decisions and to provide for more effective and efficient decisions.⁹¹

Although the courts lack expedited timelines for election cases, the availability of emergency temporary restraining orders or preliminary injunctions until the substance of the case is heard, can be an effective tool. The complexity and high cost of filing complaints in state and federal courts means that individual plaintiffs must often rely on civil society organizations to take their cases forward.

Most HAVA-related complaints cannot be taken to court in the first instance, as HAVA does not create rights for private action.⁹² In addition, HAVA complaint processes of state election boards are not widely known or utilized and some states do not provide recourse to court from the decision of the board. There is still a lack of awareness among complainants about the demarcation of jurisdiction between the HAVA administrative complaint process and the courts, as well as bringing a HAVA-related complaint. Moreover, the lack of an expedited timeline in the HAVA complaint process, where decisions can take up to 90 days, means that some complaints are resolved long after an election. However the complainant can seek an emergency temporary restraining order or preliminary injunction from the court while the case is being considered at the state election board.

A case was brought in Ohio asking a lower court to oblige the Ohio Secretary of State to provide local election offices with information about voters who, as a result of HAVA mandated crosschecks with other agency databases, had mismatched records. The information, once in the hands of the local election officials, could have been used to challenge voter eligibility. The case went to the US Supreme Court, which set aside the lower court order compelling the release of the records, on grounds that individuals and private entities, such as the Republican Party in this case, could not bring lawsuits under the HAVA provision in question.⁹³ The court further held that if there were an issue of state compliance with HAVA, a case would have to be brought by the Department of Justice (DoJ) which is responsible for overseeing the implementation of federal election laws by state and local governments and bringing enforcement suits.

In 2007, the FEC strengthened its complaint process by incorporating principles of due process of law by requiring hearings and imposing deadlines to various stages of the complaint adjudication process.⁹⁴ If the FEC does not or cannot reach a decision on a complaint, the complainant has recourse to the court, which can order the FEC to take a decision. The FEC also provides advisory legal opinions to candidates and parties on campaign finance issues. In 2008 the FEC received a total of 194 complaints. Out of the 71 cases that have been closed, 26 cases have been dismissed and in 45 cases a substantive enforcement action has been taken.⁹⁵

⁹⁰ *Judicial selection in the United States*: a special report by Larry C. Berkson, updated by Rachel Caufield, published by The American Judicature Society, 2004.

⁹¹ See for example “The Need for a Structurally Nonpartisan Tribunal”, October 15, 2008, by Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law; Director, Election Law @ Moritz, Moritz College of Law.

⁹² For example, a Michigan state court judge held that the Michigan Attorney General should have submitted his HAVA-related complaint to the state election board in the first instance, not to the court.

⁹³ 555 U.S., *Brunner v. Ohio Republican Party* (2008).

⁹⁴ The deadline for final decision is 90 days from receipt of complaint by the FEC.

⁹⁵ Data as of 23 January 2009, see Federal Election Commission,

Public awareness about filing media complaints on election issues with the FCC appears to be limited. Media complaints should be sent to the Consumer Inquiries and Complaints Division of the FCC, except for election complaints which are dealt with by the Media Bureau of the FCC. Citizens are often unaware of the jurisdictional demarcation between the two divisions, directing their election complaints to the wrong division. Adding to the complication is a lack of adequate co-operation between the departments on receiving complaints.

B. ELECTION-RELATED COURT CASES

In the pre-election period, numerous lawsuits were initiated in state and federal courts by political parties, interest groups, and individuals, mostly against state and local election bodies. Many court cases concerned voter identification laws, voter registration procedures, and maintenance of voter lists. Other cases related to felon and ex-felon disenfranchisement laws, third party ballot access, voter registration drive laws, absentee ballots, voter challenge procedures, voting technology, redistricting, campaign finance, media, early voting, polling hours, and allocation of polling resources. Cases were concentrated in states with tight races.

A number of criminal investigations, mostly into alleged voter registration fraud, were pursued. It was reported in the media that voter registration fraud cases were being federally investigated in Indiana, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Ohio, Pennsylvania, Texas and Wisconsin. Cases revealed a pattern of Democrats and civil rights groups striving to ensure the enfranchisement of eligible voters, with Republicans placing high priority on protecting the integrity of the vote by ensuring that ineligible voters do not cast ballots.⁹⁶

The DoJ initiated some civil suits, including voting rights cases. However, Democratic members of the Senate Judiciary Committee, responsible for overseeing the DoJ, and the Committee on Rules and Administration, responsible for oversight of federal elections, as well as civil rights groups, maintained that the DoJ has not been sufficiently pursuing the protection of voting rights. They claimed that it has in recent years shifted its focus to prevention of what they see as virtually non-existent voter fraud. They view this shift as Republican-influenced, and note the DoJ report of September 2008, which concluded that several attorneys had been fired in 2006 for political reasons, including for not having pursued voter fraud cases raised by the Republicans.⁹⁷ Civil rights groups further report that the DoJ has generally not been receptive to their concerns.

In 2007, the DoJ Public Integrity Section re-issued internal regulations on the Federal Prosecution of Election Offenses, instructing DoJ attorneys on how to approach the investigation and prosecution of election related offences in the run up to elections. Primarily, attorneys are instructed to conduct investigations in a manner that ensures the investigation itself does not become a political issue in the election, including refraining from releasing information about actual or potential investigations.⁹⁸ During the recent federal investigation into alleged

www.fec.gov/em/enfpro/enforcestatsfy03-08.pdf.

⁹⁶ The issue of voter turnout became particularly politicized as it was generally believed that Democrats increase their chances of winning if there is a high turnout and vice versa with respect to Republicans. In the context of elections, civil rights groups have voter enfranchisement as their primary concern, and the cases they bring forward reflect this priority. Although often their election priorities align with the Democrats there are issues on which civil rights groups disagree with the Democrats and align with Republicans.

⁹⁷ “An Investigation into the Removal of Nine US Attorneys in 2006”, US Department of Justice Office of the Inspector General and Office of Professional Responsibility. September 2008.

⁹⁸ “[Any] criminal investigation [in the area of election fraud] by the Department must be conducted in a way that minimizes the likelihood that the investigation itself may become a factor in the election...[It] runs the

registration fraud by the civil society group ACORN, this policy was apparently breached when two senior federal law enforcement officials leaked the investigation to the press. Subsequently, the Attorney General of Michigan publicly announced that three civil society workers had been charged for voter registration fraud. Such public disclosures can undermine the integrity of, and public confidence in, the election process.

XIII. ELECTION OBSERVERS

In keeping with its OSCE commitments, the US has regularly invited the OSCE/ODIHR to observe elections for federal office. Falling short of OSCE commitments, however, most states' legislation does not provide expressly for access of international observers to polling stations. The National Association of Secretaries of State (NASS) supported and facilitated access for OSCE/ODIHR observers at the state level. The 24 July 2005 NASS resolution welcoming OSCE international election observers to the United States remained valid and OSCE/ODIHR LEOM observers were generally received by the respective Chief Election Officials and other representatives of the election administration in the respective states they were deployed too. However, members of the OSCE/ODIHR LEOM were not received by the Secretary of State or their designated representatives in Georgia, Massachusetts and Nevada throughout their stay in the respective states.

State laws vary broadly with regard to election observation by partisan and non-partisan domestic observers. Most states do not regulate observation and access for observers is left to the discretion of election officials. Some states' laws limit or restrict access. Enhancement of access for domestic observers would further compliance with the 1990 OSCE Copenhagen Document.

The DoJ Civil Rights Division deployed more than 800 federal observers and Department personnel to 59 jurisdictions in 23 states. Federal observers monitored jurisdictions authorized by the US Attorney General or certified by court order under the VRA as a result of complaints about discriminating practices, while DoJ personnel monitored other jurisdictions for compliance with federal laws.

Political parties and civil society organizations mobilized thousands of attorneys and volunteers as election monitors and party poll watchers to provide legal assistance to voters, to challenge voter eligibility and to initiate lawsuits. The aim was to ensure that all eligible voters were able to cast their ballots and to prevent voter fraud. The widespread presence of party observers and civil society organizations during the elections contributed to the transparency of the process.

XIV. ELECTION DAY

In accordance with standard practice for limited election observation missions, the OSCE/ODIHR LEOM did not conduct systematic and comprehensive observation of election day procedures, although members of the LEOM visited a limited number of polling stations in 26 states and Washington DC.

On election day, in most polling stations visited, poll workers were experienced and well trained.

obvious risk of chilling legitimate voting and campaign activities...[and]...of interjecting the investigation itself as an issue, both in the campaign and in the adjudication of any ensuing election contest." Federal Prosecution of Election Offenses", US Department of Justice Regulations, May 2007.

Voters were able to cast their votes in a professionally and efficiently administered process that allowed for prompt delivery of results.

At the opening of polling stations and during morning hours on election day, observers reported long lines of voters in most polling stations visited. This could have been caused by an insufficient number of polling booths or voting equipment in some polling stations visited, as well as by the complexity of the ballot papers in some states. Nevertheless, overall the voting process proceeded smoothly and without major problems, with considerably less people lining up to vote later in the day.

In some of the polling stations visited the secrecy of the vote was compromised by an insufficient number of polling booths, which led voters to mark their ballots at tables outside the polling booth. OSCE/ODIHR observers noted that, in some polling stations, polling booths or DREs were placed very close to each other thus allowing voters to see each other vote. The secrecy of the vote was also at stake, in some polling stations, due to the manner in which ballots were inserted into the optical scan devices (e.g. in the District of Columbia and New Mexico), although on occasion a secrecy sleeve was used to protect secrecy (e.g. in Michigan). Notwithstanding secrecy concerns, there were no reports about attempts to intentionally abuse the lack of secrecy of the vote, and voters seemed confident in the secrecy of their vote.

The operation of the voting equipment during election day seemed to be without major problems.⁹⁹ Only minor technical difficulties were reported from several locations.¹⁰⁰ These amounted to difficulties with the selection of a straight-party ticket on DREs in Kentucky and in Northumberland County, Pennsylvania, resulting in a court action. As regards the optical scan machines, some reports described improper operation of the equipment, small paper particles causing problems for scanning the paper ballots and machine malfunction.¹⁰¹ Some mechanical problems occurred in New York where lever machines were used. Tabulation was reportedly delayed at some locations due to a failure of the central scanning equipment or data transmission problems. Machine malfunctions resulting in lost votes were discovered during recounts in Montgomery County, Ohio and Humboldt County, California.¹⁰² However, these issues had little impact on the overall efficiency of the process.

OSCE/ODIHR LEOM observers could not follow election day proceedings in Alabama, Arizona, Florida, Georgia, Ohio and Texas because laws in these states do not allow access for non-party observers to polling stations. Furthermore, OSCE/ODIHR LEOM observers faced difficulties in gaining access to polling stations in some counties or specific polling stations in Colorado, Louisiana, Pennsylvania and Virginia.

OSCE/ODIHR observers reported positively on the counting procedures from those polling stations visited, with only minor procedural problems being noted. The counting appeared well organized with only isolated and minor delays in forwarding the results to higher levels. The

⁹⁹ Voters Find Long Lines, but No Catastrophes, New York Times, November 4, 2008, <http://www.nytimes.com/2008/11/05/us/politics/05vote.html>.

¹⁰⁰ See for example <http://www.votersunite.org/news.asp?offset=100>.

¹⁰¹ See for example <http://blog.wired.com/27bstroke6/2008/11/election-prob-1.html> and Kindelspire, Tony, Gonzales, Jason, [SNAG: Paper dust slows tally at Boulder County election HQ](http://www.timescall.com/news_story.asp?ID=11904), Longmont Times-Call, 4 November 2008, http://www.timescall.com/news_story.asp?ID=11904.

¹⁰² www.votersunite.org/article.asp?id=8255 and www.daytondailynews.com/n/content/oh/story/news/local/2008/12/12/ddn121208votingweb.html.

counting and aggregation of results are computerized with results generally transmitted from local to central level by electronic means.

The media extensively reported on the voting process, campaign activities of the candidates and exit poll results during election day. Some media outlets and civil society groups set up help lines for voters reporting problems at polling stations. A few lawsuits were filed on election day, including those regarding concerns over access for party poll watchers and the timing and procedures for counting provisional, overseas, and emergency paper ballots which are made available to voters in case DRE machines break down. Court cases on counting these ballots were filed prior to the end of election day in states (Ohio, Virginia and Pennsylvania) where tight margins in results were expected.

XV. RECOMMENDATIONS

The OSCE/ODIHR would like to offer the following recommendations for consideration by the authorities of the United States of America. These recommendations do not repeat all recommendations made in previous OSCE/ODIHR Reports or Assessments. A number of previous recommendations are yet to be fully implemented and remain relevant.

A. ELECTION FRAMEWORK

Legal framework

1. Legislative steps to fully protect the secrecy of the vote, as established by the UN International Covenant on Civil and Political Rights (ICCPR), in particular Article 25, and as committed to in paragraph 5.20 of the 1990 OSCE Copenhagen Document, merit urgent consideration. Individual states should consider making further efforts to strengthen the principle of secrecy of the vote in state laws.
2. States should consider decreasing the number of required signatures for nomination of independent or third-party candidates down to a maximum of one per cent of the number of registered voters in a given electoral district, in line with good electoral practice.
3. Restriction of voting rights for felons and ex-felons should be reviewed to ensure that any restriction is proportionate to the crime committed, in line with paragraph 24 of the 1990 OSCE Copenhagen Document. Depending on the nature of the crime, restriction could be for a prescribed period. Voting rights should be restored automatically after a prison term has been served.
4. Consideration should be given for providing full representation rights in Congress for all US citizens, including those of Washington DC and US territories.
5. Election-related legislation at federal and state level should establish minimum standards for access of international observers invited by the US authorities, in line with Paragraph 8 of the 1990 OSCE Copenhagen Document.
6. Congress could consider amending HAVA with a view to provide further details such as registration database maintenance procedures and to clarify issues, for example the term

“jurisdiction” with regard to provisional ballots, as this would enhance consistency in determining voter eligibility.

7. A private right of action to bring suits in court to enforce HAVA provisions could also be considered.
8. States should have transparent voter registration database maintenance procedures that ensure voter enfranchisement while maintaining an accurate voter list.
9. Consideration should be given to prevent the possibility that an election official administers his or her own (re)election, and legal safeguards against possible partisan conduct of election officials strengthened.

Voter registration

10. States could make further efforts to raise awareness and promote voter registration, including through civil education programs. States could consider possibilities for ‘automatic’ voter registration based on other interactions of citizens with the state.
11. Federal guidance should be developed to clarify what constitutes a ‘match’ between individual entries in the voter registration database and other databases. In addition, the sequence of matching of different state databases should be clarified. Finally, clear criteria for the analysis of possible mismatches would provide for efficient and conclusive enquiries that would uphold both enfranchisement and voter list accuracy. Such federal guidance would underscore equal opportunities for voters from different jurisdictions.
12. Rules should be established in advance that would indicate which database contains the correct information in the case of a mismatch and provide complete transparency regarding the criteria for removing voters from the list or not registering new applicants based on matching procedures.
13. Election administrators should be provided with sufficient resources to be able to process potentially significant numbers of voter registration applications submitted to them in the period between the expiry of the 90-day deadline and closure of voter lists.
14. Amendments to the NVRA could be considered to provide more clarity on what constitutes a systematic program for removal of voters and what can and cannot be done with voter records after the 90-day deadline.
15. Consideration could be given to define responsibilities of state and county officials in the maintenance of SWVRD, with a view to maximizing enfranchisement and accuracy. Officials at state level could be tasked to identify possible questionable (groups of) records, while officials at county level could be the only ones allowed to change the component of the database that refers to their respective counties after careful analysis of primary source data.
16. Election administrators and representatives of civil society groups should work together in training participants, both volunteers and employees, in voter registration drives emphasizing the importance of filling the registration forms accurately.

Other

17. For the public to be accurately informed about the election results, a requirement could be introduced to publish the number of provisional ballots cast simultaneously with the preliminary announcement of the results based on the counting of regular ballots.
18. Tracking requirements could be instituted with regard to absentee by-mail voting, so that voters can verify that their mailed ballots had been received and processed in a timely manner.
19. In order to further enhance transparency of the results, the numbers of early in-person, absentee by-mail and provisional votes cast could be posted on the web sites of the state election officials. Such information could reflect the numbers and status (e.g. final or provisional) of these ballots on a daily basis until all results are summarized and officially certified.

B. VOTING SYSTEMS

20. A transparent process of testing and certifying voting systems should be required to ensure integrity of voting systems.
21. Voluntary Voting System Guidelines as adopted by the EAC could be integrated into state regulations to ensure a more transparent and uniform implementation of voting systems.
22. Consideration should be given to the design of electronic voting equipment so that a change or error in its software would not cause an undetectable change or error in the voting results. This, for instance, can be ensured by using a voter-verifiable paper audit trail or cryptography measures.
23. States could consider an audit of the results obtained from the electronic voting machine as part of the standard counting process.
24. DREs and optical scan machines should be arranged in polling stations in a way to ensure the secrecy of the vote.
25. The transparency and the integrity of electronic voting equipment should be continuously enhanced and public trust in the voting systems further promoted.

C. ELECTION CAMPAIGN AND FINANCING

26. The public financing system for presidential elections should be reviewed to align it with the realities of the campaigns of presidential candidates. Consideration could be given to measures that would impose a genuine limit on campaign expenditure in case a presidential candidate accepts public funding. This would preserve the integrity of the public financing system and make the expenditure limit more meaningful.

27. The FEC could consider elaborating a set of minimum criteria that presidential candidates' campaigns would need to comply with when receiving donations via the Internet to avoid confusion and acceptance of obviously false donations.
28. The role of joint fundraising committees in the 2008 presidential campaign should be reviewed and regulations introduced to ensure they do not operate as a means for attracting donations well in excess of the individual donation limit.
29. The FEC could consider the elaboration of guidelines for the age from which an individual can donate to political parties and candidate campaigns.

D. MEDIA

30. Establishment of clearer criteria and definitions as to which kinds of programmes qualify for exemption from the principle of equal opportunity should be considered as the programming that falls under the exemption to the equality doctrine is broad and has, as a result of FCC decisions in the past, been eroded as a clear regulatory benchmark.
31. Editorial independence in the US is paramount and regulation normally refrains from imposing rules on how to cover elections. However, TV and radio broadcasters, could, as part of their mission to serve the public interest, consider airing programmes during the election period that analyze different candidates while broadcasters retain complete editorial control. Candidates with fewer resources and limited visibility would then be provided with a possibility to reach large audiences and be better known by voters.

E. COMPLAINT MECHANISMS

32. State judges and Attorney Generals could be required to step down while running for re-election, to avoid any actual or perceived conflict of interest in dealing with election-related cases.
33. The DoJ should carry out its work in a non-partisan manner and thoroughly pursue all election-related matters under its mandate.
34. Reports of all election offences should be fully investigated by state or federal authorities and any relevant charges brought.
35. State election boards should ensure that election stakeholders are well-informed about the HAVA complaint process. The jurisdiction of courts and election boards on hearing HAVA complaints could be further clarified. Election boards should consider providing an expedited timeline for consideration of complaints during an election period and a right to appeal the decision to court.
36. States and federal lawmakers could consider minimizing the cost of filing election-related lawsuits to allow for greater access to justice. Further consideration could be given to enacting laws that provide for a cost-free automatic recount in case of tight margins in those states where no such provisions exist.
37. It would be advisable to establish a stronger coordination mechanism between the Consumer Inquiries and Complaints Division and the Media Bureau of the FCC. Citizens

should be made fully aware of the different mandates of the two departments, for example by signalling it on the FCC website, particularly during an election period.

38. The FEC and FCC could review their complaint procedures and determine whether they are sufficiently transparent and publicized, as well as timely in light of the need for expedited consideration during an election period. Efforts should be taken to ensure that FEC can function with a full capacity during the whole election process, including during the primaries.

LIST OF ABBREVIATIONS

ACORN	Association of Community Organizations for Reform Now
BCRA	Bipartisan Campaign Reform Act (2002)
DoJ	US Department of Justice
DRE	Direct Recording Electronic voting systems
EAC	Election Assistance Commission
FCC	Federal Communications Commission
FEC	Federal Election Commission
FECA	Federal Electoral Campaign Act (1971)
HAVA	Help America Vote Act (2002)
ICCPR	UN International Covenant for Civil and Political Rights
LEOM	Limited Election Observation Mission
LTOs	Long-Term Observers
NAACP	National Association for the Advancement of Colored People
NAM	Needs Assessment Mission
NASS	National Association of Secretaries of State
NVRA	National Voter Registration Act (1993)
OSCE	Organization for Security and Co-operation in Europe
OSCE/ODIHR	OSCE Office for Democratic Institutions and Human Rights
PAC	political action committee
STOs	Short-Term Observers
SWVRD	state-wide voter registration database
UOCAVA	Uniformed and Overseas Citizens Absentee Voting Act (1986)
US	United States of America
VRA	Voting Rights Act (1965)
VVPAT	voter-verifiable paper audit trail

ABOUT THE OSCE/ODIHR

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

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

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

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

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

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

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

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

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