INTERIM REPORT No. 2
18 – 24 October 2012

26 October 2012

I. EXECUTIVE SUMMARY

- Candidates have been campaigning vigorously during this reporting period. The campaign environment is highly polarized and exchanges between candidates, particularly in tightly fought races, have been sharp and often personalized. The presidential campaign continues to receive most of the national focus, with the two main candidates – incumbent President Barack Obama and former Governor Mitt Romney – focusing heavily on swing states in order to sway undecided voters.

- Election preparations appear to be on schedule and the majority of interlocutors informed the OSCE/ODIHR LEOM that election officials are performing their duties in a transparent and professional manner. State and county level election officials are currently engaged in the training of poll workers as well as the testing of voting and counting equipment.

- Early and absentee voting has commenced in a number of states. Many local election officials informed the OSCE/ODIHR LEOM that they expect a high turnout of voters for early voting. In some locations, the flow of voters may be slowed down by ballot papers that are several pages long, including multiple electoral contests and a number of referenda and initiatives.

- Views by OSCE/ODIHR LEOM interlocutors on regulations governing voter registration and identification remain highly polarized, divided on the issue of integrity of the process versus enfranchisement. While a number of regulations have been introduced for voter identification at the polling station, similar provisions do not exist for postal voting.

- In several states, courts have ruled over electoral disputes about new legislation regarding voter registration, early voting, voter identification, and redistricting. Electoral dispute mechanisms vary considerably across states, including provisions for recounts and the right to challenge the eligibility of voters at the polling station.

- National and online media have been covering the general elections in a continuous, extensive, and comprehensive manner with the two main presidential candidates dominating the coverage. Media coverage has given much attention to the various daily opinion poll results, often at the expense of detailed discussion of policy issues.

- Political advertising continues to be a major avenue for campaigning with large sums of money being spent on television advertising by parties, candidates and independent groups, especially in so-called swing states.

II. CAMPAIGN ENVIRONMENT

The campaign environment is highly polarized and the majority of OSCE/ODIHR LEOM interlocutors report that most voters have already decided on their choice. As such, campaign efforts have focussed on undecided voters in so-called "swing" or "battleground" states[1] and those districts considered decisive to the overall result.

During the reporting period, the electoral campaigns for federal office have intensified, with presidential, Senate and House of Representatives candidates engaged in various campaign activities. Conventional means of campaigning are heavily used, including television advertising, rallies, and billboards, while candidates are also making wide use of the internet, including social media. Several OSCE/ODIHR LEOM interlocutors underlined that traditional campaign activities on the ground such as door-to-door canvassing and telephone banks are still the most effective means to reach out to voters. Three presidential, and one vice-presidential, debates between the candidates of the Democratic and Republican parties have been widely watched and play a key role in framing the campaign.

The campaigns are notable for the high quantity of information being provided that aggressively emphasizes differing viewpoints and criticizes opponents' campaign positions. Major issues in the general elections are the economy, job creation, tax cuts, the budget deficit, health care, education and, of late, foreign policy and matters of special concern to women. The campaign exchanges between candidates, particularly in tightly fought races, have been sharp and often personalized. Although the campaign environment is highly competitive, only a few isolated election-related incidents have taken place.[2]

The presidential campaign continues to receive most of the national focus. The Democratic Party nominee, President Barack Obama and the Republican Party nominee Mitt Romney, as well as their running mates for Vice President, campaigned vigorously and travelled extensively throughout the country. The presidential campaign has overwhelmingly centred on the race between the Democratic and Republican parties' candidates with third party presidential candidates receiving little exposure. Third party candidates have raised concerns about this.[3]

III. ELECTION ADMINISTRATION

The Election Assistance Commission (EAC), an advisory body on election administration, continues to function at a limited capacity. In addition to a reduced staff and budget, all four commissioner posts are vacant thereby leaving the EAC without decision-making capacity. There are two longstanding nominations for EAC commissioners, both by the Democratic Party, which remain unconfirmed. Last year, the House of Representative passed a bill, initiated by a Republican member, to disband the EAC.[4] The bill is currently referred to the Senate.

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1 These are considered to be Colorado, Florida, Iowa, Nevada, New Hampshire, North Carolina, Ohio, Virginia, and Wisconsin.

2 On 12 October shots were fired through the window of the President Obama campaign headquarters in Denver. On 16 October the Green Party presidential candidate Jill Stein and her running mate Cheri Honkala were arrested while protesting their lack of inclusion to the presidential debate in Hempstead, New York.

3 On 19 October, Gary Johnson, the Libertarian Party nominee, filed a complaint with the United States District Court for the District of Columbia asking the court to compel the Commission on Presidential Debates to include him in the third debate. Jill Stein, the Green Party nominee, insists that the debates must include every candidate who is on enough ballots to win the election by a majority of the Electoral College.

4 See: http://www.gpo.gov/fdsys/pkg/BILLS-112hr3463rfs/pdf/BILLS-112hr3463rfs.pdf.

Many interlocutors informed the OSCE/ODIHR LEOM that election officials at state, county and lower-level jurisdictions are performing their duties in a transparent and professional manner, and are knowledgeable of procedures. Many election officials are experienced and women are well represented in the election administration. Some officials informed the OSCE/ODIHR LEOM that in smaller jurisdictions, the election officials also have other administrative duties but that this does not impact on their electoral duties. In minority areas, it appears that the election boards are well prepared with the provision of minority language materials, as required by the Voting Rights Act (VRA). Minority languages are also frequently included on voting machines.

The state and county level election officials are currently engaged in the training of poll workers, as well as the testing of voting and counting equipment. Preparations appear to be on schedule and in line with legal requirements. Some counties, however, have reported that they are struggling to identify a sufficient number of poll workers to work on election day. A few counties have informed the OSCE/ODIHR LEOM that they are forced to reduce the number of polling stations due to the lack of available poll workers and budget cuts.[5]

Early and absentee voting has commenced in a number of states. Many local election officials informed the OSCE/ODIHR LEOM that they expect a significant turnout of voters for early voting. In some locations, the flow of voters may be slowed down by ballot papers that are several pages long, including multiple electoral contests and a number of referenda and initiatives.[6]

Some OSCE/ODIHR LEOM interlocutors stated that certain issues in administering elections stem from the fact that states cannot obligate the counties to follow some federal regulations. For example, some jurisdictions failed to send ballots to out-of-country voters 45 days before election day, as required by the Military and Overseas Voting Empowerment (MOVE) Act.[7] The Federal Voting Assistance Program (FVAP), administered by the Department of Defense, reported to the OSCE/ODIHR LEOM that they are working with state election officials to introduce new state regulations that will require counties to adhere to all provisions of MOVE.

IV. VOTER REGISTRATION AND IDENTIFICATION

The deadlines for voter registration in the states vary widely. While the majority of states have closed the voter registration process, some are still registering voters or will provide for registration on election day.[8]

Voter identification is a highly polarized issue and divided along partisan lines. In general, Republicans push for stricter legislation to prevent potential fraud and protect the integrity of the process, while Democrats generally claim that the risk of fraud is minimal and does not warrant additional restrictions that could disenfranchise voters.

Some election stakeholders have made allegations to the OSCE/ODIHR LEOM about attempts to restrict access to voter registration and the ballot, claiming minority voters, students, low-income

5 For example, Jackson County in Kansas, Leon County in Florida, and Duval County in Florida.
6 For example, in California and Florida, as well as some counties in Texas.
7 For example, some jurisdictions in Alabama, Mississippi, and Vermont.
8 Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming.

and elderly voters will be disproportionately affected.[9] These restrictions have been characterized by some civil rights organizations as pre-meditated voter suppression strategies. In 2012, some of the legislation passed by the states to regulate voter registration and identification has been temporarily or permanently struck down by courts or vetoed by governors and will not take effect for these elections.[10] In New Hampshire, Rhode Island, Tennessee, and Virginia, new voter identification laws will be implemented.

A total of 32 states require voters to present some form of identification at the polling station. Voters will be required to provide photo identification documents in four states,[11] while in five other states they will be requested to show photo identification but are permitted by law to cast a ballot after signing an affidavit to confirm their identity, under penalty of perjury.[12] Some OSCE/ODIHR LEOM interlocutors stated that the cost associated with travelling to identification-issuing offices and obtaining accompanying documentation[13] may be prohibitive to a considerable number of minority and low-income voters.[14] In contrast, postal voting, despite its increasing usage, does not require similar voter identification checks.

In Pennsylvania, where a new voter identification law will not take effect in these elections,[15] a utility company posted voter information leaflets to some 1.3 million voters that erroneously informed voters that photo identification is required to vote. The election officials reported to the OSCE/ODIHR LEOM that they will not send correction notices or conduct any other outreach, citing it as too costly.

V. ELECTORAL DISPUTES

Election dispute resolution mechanisms are diverse and complex. The Department of Justice (DoJ) monitors compliance by states with provisions of the 1965 VRA, the 2002 Help America Vote Act (HAVA) and the 2009 MOVE Act and may bring civil lawsuits in federal courts against non-compliant state governments. The DoJ Voting Rights Section, which is part of the Civil Rights Division, may bring lawsuits against states and other jurisdictions to remedy denial or abridgement of voting rights. The DoJ Public Integrity Section supervises investigation and prosecution of election-related crimes. Cases can be brought before federal and state courts by individuals, parties, organizations, and interest groups in cases of violation of federal or state law respectively. Complaints regarding federal campaign finance are resolved by the Federal Election Commission (FEC), while complaints on media-related campaign issues are resolved by the Federal Communications Commission (FCC). HAVA requires that states establish a state-based administrative complaints procedure.

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9 Including stricter legal requirements passed in some states in relation to voter identification requirements, proof of citizenship requirements, stricter regulations on activities of organizations engaged in voter registration drives, and reduced early voting periods.

10 For example, governors in Michigan, North Carolina, Missouri, and Montana have vetoed new voter identification laws passed in their state legislatures, while in Minnesota the governor vetoed a ballot initiative regarding voter identification.

11 Georgia, Indiana, Kansas, and Tennessee. If voters do not have a photo identification with them, they will be asked to complete a provisional ballot that will be counted only if they return with the appropriate documentation.

12 Idaho, Louisiana, Michigan, New Hampshire, and South Dakota. In Hawaii, voters need to verbally provide their name, address and date of birth. In Florida, voters failing to present photo identification will be issued a provisional ballot, and the county election officials will then determine the eligibility of the voter.

13 Such as birth certificate or marriage certificate.

14 For example, see: www.brennancenter.org/page/-/Democracy/VRE/Challenge_of_Obtaining_Voter_ID.pdf.

15 The law was temporarily suspended on 2 October 2012 by a federal judge.

A significant part of electoral disputes in this election cycle pertain to new state legislation regarding voter identification, early voting, voter registration, and redistricting. Under Section 5 of the VRA, election laws and regulations in certain jurisdictions[16] must be submitted for pre-clearance to the DoJ or a federal court and can only take effect if it is determined that they have neither discriminatory purpose nor effect. In such cases, the burden of proof lies with the state that introduces legislation. The constitutionality of Section 5 is being challenged in some court cases, but decisions are not expected to be reached before these elections.[17]

In Texas and South Carolina, voter identification laws were denied both administrative and judicial pre-clearance. While the Texas law was found by federal court to impose undue burdens on racial minorities, the South Carolina law was upheld but its enforcement has been delayed until 2013. Outside the VRA coverage, lawsuits were filed against voter identification laws in Pennsylvania where it was decided that the law cannot be implemented in such a short time before the elections, as well as Wisconsin, where decisions are expected next year and the law will not be implemented in these elections. In Ohio and Florida, federal courts have reinstated early voting periods that were earlier curtailed by state laws.

In most states, party representatives and individuals have the right to challenge the eligibility of voters at the polling station. Provisions vary considerably among states. Several OSCE/ODIHR LEOM interlocutors criticized such laws for delaying the voting process and for being used to intimidate certain categories of voters, such as minorities and the elderly.

Provisions on recounts also vary widely. They can be requested from the state election boards or the courts. In some states the plaintiff is required to pay the costs of the recount which can amount to several thousands of dollars, with the possibility of reimbursement only if the election results are reversed by the recount. Some states provide for an automatic recount in case of a narrow margin in results – these margins vary between the states – with costs covered by the state.

VI. MEDIA

National and online media have covered the elections in an extensive and comprehensive manner, especially the presidential race, with the two main candidates – Barack Obama and Mitt Romney – dominating the coverage. During this reporting period, media coverage has focused on the preparation and the outcome of the second and third presidential debates. In their debate-related coverage, the major media outlets, especially cable TV channels, have increasingly run stories that emphasize candidates' performance in opinion polls and media focus groups rather than discussing their positions on substantial issues. Two main issues dominated news coverage leading up to the second presidential debate: the attack earlier this year on the United States Consulate in Benghazi, Libya, and the key role of women voters in the election. The third presidential debate concentrated on the role of the United States in the world and other international issues. It was generally framed as the last decisive moment in the campaign for each candidate to outline his leadership credentials and highlight his opponent's weaknesses.

Public television and radio have reported on the elections and candidates in a comprehensive manner, with substantive news coverage and analysis of the candidates' platforms and issues. The main television networks have devoted less attention to the elections than the cable news networks

[16] The states of Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia are covered in their entirety. Some jurisdictions such as counties and townships in the states of California, Florida, New York, North Carolina, South Dakota, Michigan and New Hampshire are also covered.

[17] For instance, *Shelby County, Alabama vs. Eric Holder*, and *State of Texas vs. United States of America.*

where the presidential race has been the central topic of prime-time news programmes. In this regard, coverage by cable channels is predominantly characterized by a clear focus on political news and discussion, largely presented along opinionated editorial lines. In particular, attention to opinion poll data and a focus on candidate gaffes shapes much of Fox News and MSNBC's airtime with very limited attention paid to policy issues.

Political advertising continued being a major source for campaigning with large sums of money spent on TV advertisements. Independent organizations have been particularly active in political advertising and, in this respect, the impact of Super PACs and so-called Section 501(c) [18] organizations on the outcome of primary and general elections is being questioned by OSCE/ODIHR LEOM interlocutors across the political spectrum. According to the data reported so far to the FEC, by mid-October, Super PACs have spent over USD 350 million in political advertising in the 2012 primary and general election cycle, while political parties have spent only USD 150 million. This excludes spending by 501(c) organizations, which are not reported to the FEC. The majority of election advertising in this election cycle placed on TV by candidates, parties, and independent groups has been negative.[19]

VII. OSCE/ODIHR LEOM ACTIVITIES

During the reporting period, the OSCE/ODIHR LEOM continued its regular activities, meeting with federal, state, and local election officials, the media, civil society groups and international organizations. The OSCE/ODIHR LEOM Head of Mission visited the states of Georgia and Florida to meet with election officials and local organizations. The 44 long-term observers, deployed throughout the country, continue to observe electoral preparations and the campaign.

[18] Political Actions Committees (PACs), "Super PACs", and Section 501(c) organizations are discussed in detail in the OSCE/ODIHR Interim Report 1 on the 2012 General Elections. See: http://www.osce.org/odihr/96574.

[19] According to FEC data on independent expenditures in the presidential race, USD 10 million has been spent by Super PACs on advertisements supporting Barack Obama and USD 16 million on advertisements supporting Mitt Romney. Conversely, USD 83 million has been spent on negative advertisements about Barack Obama and USD 56 million has been spent on negative advertising against Mitt Romney.