



Office for Democratic Institutions and Human Rights

UNITED STATES OF AMERICA

MID-TERM CONGRESSIONAL ELECTIONS

8 November 2022

ODIHR Limited Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation to observe the 8 November 2022 mid-term congressional elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 26 September. The ODIHR LEOM assessed the compliance of the election process with OSCE commitments and other international obligations and standards for democratic elections, as well as with domestic legislation. For election day, the ODIHR LEOM joined efforts with a delegation from the OSCE Parliamentary Assembly (OSCE PA) to form an International Election Observation Mission (IEOM).

In its Statement of Preliminary Findings and Conclusions issued on 9 November, the IEOM concluded that the elections “were competitive and professionally managed, with active voter participation. However, the noted efforts to undermine voters’ trust in the electoral process by baselessly questioning its integrity can result in systemic challenges. Campaigning was free but very much polarized and marred by harsh rhetoric. In many cases, partisan redistricting resulted in uncompetitive constituencies. Disclosure mechanisms for campaign finance are generally comprehensive, but loopholes in the regulatory framework make the impact of money in politics less transparent. Many in the diverse media landscape made efforts to present accurate information, but polarization and widespread disinformation affected voters’ ability to inform themselves. Election administrators enjoyed general confidence, but the politicization of the offices of chief election officials and the intimidation of election workers are of concern. Restrictions on international observers in some states are at odds with OSCE commitments.”

The electoral legal framework is comprehensive complex and diverse, with states adopting their own laws and regulations on most election-related aspects, providing a robust foundation for holding democratic elections. The Constitution and a number of federal laws establish the broad framework for federal elections and form a sound basis for the respect of fundamental civil and political rights. The federal legal framework has not changed since the 2020 elections, as comprehensive electoral reform bills introduced in Congress were not passed and a number of previous ODIHR priority recommendations remain unaddressed, including those relating to the voting rights of citizens living in the District of Columbia and U.S. territories, the restrictions on the voting rights of convicted criminals and persons with intellectual disabilities, and the independence of redistricting processes. States enacted more than 400 separate bills or amendments since the last elections impacting electoral processes. While previous U.S. Supreme Court decisions have affirmed that federal courts ought to proceed cautiously when deciding whether to intervene in the lead-up to an election in order to maintain the stability of law, the interpretation of these principles was varied and their application uneven, with some cases litigated in the days leading up to these elections.

Following the 2020 population census, the 435 seats in the House of Representatives were reapportioned among the states, and electoral districts were redrawn within the 44 states with more than one House district. Redistricting is generally politicized, with state legislatures responsible for delimitation in 33 states, and external commissions in the remaining 11. A total of 78 legal challenges were filed against congressional district maps, often alleging partisan or racial gerrymandering, and court decisions changed district maps in 8 states. In designing the maps, competent bodies often use redistricting software which take into account politically favourable variables, including racial

demographics and past voting results at precinct level. Several ODIHR LEOM interlocutors raised concerns that these variables were often used to further partisan interests, favour incumbents, and limit the competitiveness of districts, and in some cases to reduce the representation of minority populations. As currently implemented, redistricting does not always fully ensure competitiveness, representativeness, and the fair representation of minorities, which is at odds with international standards.

States are responsible for managing elections with procedures varying within the states. The administration of elections is further decentralized to the local level, with some 6,460 entities administering elections in jurisdictions across the country. Numerous ODIHR LEOM interlocutors expressed concerns with the insufficiencies in local funds and resources for the effective organization of elections, as federal funding was mainly earmarked for equipment and security. In 41 states, elections are completely or partly managed by elected or appointed officials, some of whom were running for re-election. While ODIHR LEOM interlocutors generally expressed trust in the work of election administrators, the fact that chief election administrators are themselves politically affiliated is at odds with international standards, and possibly creates conflicts of interests.

Observed and reported cases of harassment, threats and a few instances of violence against candidates, their families, and election officials were of concern, as were cases of voter intimidation. Congress allocated funds for election security, including to counter threats against election administrators, and a joint taskforce of the Department of Justice (DoJ) and the Federal Bureau of Investigation was created to identify, mitigate and investigate federal violations involving threats of harassing conduct targeting election workers. In some states, threats against election workers were a hindrance to recruiting and maintaining staff. Nevertheless, these threats do not appear to have affected the ability to implement voting or counting processes.

The use of voting technologies is extensive and varies considerably across and within states. Ballot scanners combined with automatic tabulation are used in almost all jurisdictions. Voters in jurisdictions in six states, however, are still required to use machines which do not provide a paper record and cannot be audited, which stands against international good practice. Most states require, or have the option for, tabulation audits (TAs), which are crucial in identifying possible malfunctioning of equipment. However, not all states that conduct TAs require their completion before the certification of an election, and in some states, identified discrepancies are not taken into account in compiling the final result. Federal and state authorities introduced numerous initiatives to help secure election technologies and mitigate potential cybersecurity risks. However, the pace of the certification process of voting machines is not sufficiently responsive to keep up with the rapidly changing cybersecurity landscape. Overall, ODIHR LEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cybersecurity risks.

Voting rights are subject to numerous restrictions, some of which are contrary to OSCE commitments and international obligations and standards for universal and equal suffrage. Around 4.1 million citizens residing in the District of Columbia and U.S. territories lack full representation in Congress, due to constitutional provisions on statehood. In all but two states, as well as the District of Columbia and Puerto Rico, the voting rights of inmates are restricted. Furthermore, individuals who have been released from incarceration often face barriers that prevent them from gaining full access to the ballot. Some voters with intellectual incapacities remain disenfranchised in all but ten states.

Voter registration is active and implemented at the state level. Rules vary between states, with many states offering 'automatic', online or same-day registration. Thirty-five states require some form of voter identity document (ID) in line with international good practice. However, in some states, voter IDs were not equally accessible to all eligible citizens, often as the result of the selective application of rules, with some minorities and economically disadvantaged communities disproportionately

affected. This infringed on the right to equal suffrage, contravening OSCE commitments and other international obligations and standards.

A total of 1,277 candidates, among them 335 women, stood for Congress. Women remain under-represented in political office. Seventeen House candidates ran unopposed. Only the Democratic and the Republican parties have ‘recognized party’ status in all 50 states, allowing them to field candidates nationwide. Burdensome requirements for registration, including a high number of supporting signatures, limited the opportunities for smaller political parties and independent candidates to run in some states, which is at odds with OSCE commitments and international standards.

Alternative voting methods, including early in-person and absentee voting, provide multiple options for voters to cast their ballots. Early voting is allowed in 47 states, with timeframes varying significantly, and absentee voting is possible in all states, with variations in eligibility. While absentee voting does not guarantee the secrecy of the vote, the convenience of these methods was seen by the majority of ODIHR LEOM interlocutors as increasing participation in the electoral process, and most were confident of their integrity. In many states, the rules for postmarking and receipt of absentee ballots as well as for processing them on or after election day put additional pressure on the election administration and delayed the count and tabulation of results. Unsubstantiated claims by some politicians and media that absentee ballots and the use of ballot drop boxes resulted in fraud in the presidential 2020 election negatively impacted trust in the current election process.

The campaign was highly competitive, with discussions focusing on inflation and the economy, as well as the issue of abortion rights. Inflammatory and divisive rhetoric used by politicians and some media, with some of them invoking racist and transphobic tropes, resulted in an intensely confrontational atmosphere. Campaigns by both major parties were divisive with approximately half of Republican candidates, including ten candidates for secretary of state who would have direct responsibility for overseeing future elections in their states, challenging or refusing to accept previous election results. This had a harmful effect on public discourse and decreased confidence in a system that largely relies on public trust, but did not affect voters’ active participation in the elections. In 24 of the 30 states observed, threats of violence or aggressive behaviour were reported by interlocutors and in the media, targeting voters, election administrators, officials, campaigners, and media representatives. A few violent attacks against candidates of both major parties took place during the campaign.

Candidates made extensive use of social networks for their campaigning. Major social networks adjusted their policies for restricting the spread of misleading and harmful content, but these policies did not prevent candidates and others from disseminating inflammatory rhetoric. Rules concerning hate speech were less effectively enforced, particularly for non-English language content, according to ODIHR LEOM interlocutors. Some niche social networks, purposefully avoided the content moderation policies of the more established platforms and allowed speech that incites hatred and violence. Misleading information, though widely present, was primarily related to the unsubstantiated allegations of voter fraud in the 2020 presidential election, thereby contributing to a diminished trust in the current electoral process.

Campaign finance is regulated by federal law and enforced by the Federal Election Commission (FEC) and the DoJ. The scope of limitations to campaign financing has narrowed following several U.S. Supreme Court rulings, resulting in the amplification of the influence of bigger donors and the candidates they support, against international good practice. While the disclosure of incomes and expenditures by candidates, party, and ‘independent’ committees provides reasonable transparency of their funding, the lack of disclosure by tax-exempted organizations involved in the campaign raises concerns. Furthermore, the legally required separation between campaigns and ‘independent’ committees is easily circumvented and has limited effect. The FEC’s enforcement capability is

frequently affected by the inability to muster the votes required to decide on a complaint, while its power to dismiss administrative complaints often leaves complainants without the right to judicial review. The campaign expenditures made by congressional candidates, parties, PACs and Super PACs amounted to USD 9.2 billion, making these elections the most expensive mid-terms ever.

While pluralistic and diverse, the media landscape is highly polarized and fragmented. Digital media have become the dominant sources of information, including on election-related matters. Derogatory comments, and legal action against media by certain political actors, compounded by pervasive misleading online information, have contributed to declining trust in traditional news media. National media coverage of the elections was extensive and vibrant, with a focus on competitive Senate and governor races and dominant campaign topics such as the economy, abortion rights, crime, and the state of democracy. In local media, reporting was dominated by state-based races. ODIHR LEOM media monitoring findings showed largely neutral coverage of the public broadcasters and of national TV networks, and partisan coverage on cable networks, in particular on prime-time political shows on Fox News and MSNBC. In addition, President Biden received significant media coverage, largely neutral in tone, while most of the monitored media criticized former President Trump, mostly outside the context of the congressional campaigns.

More than 150 lawsuits were brought against new electoral legislation and implementing regulations pertaining, *inter alia*, to voter identification and registration, postal and absentee voting, use of technologies, and counting. Litigation was largely driven by the interests of the two main parties. While broad legal standing and multiple avenues provided for effective dispute resolution, late decisions on key issues, including voter identification and registration, as well as voting and counting procedures, might result in inconsistent and potentially selective implementation. Cases relating to whether state courts have the competence to review congressional district maps adopted by state legislatures, and whether the use of racial demographics should be maintained in redistricting in order to provide for fair representations of minorities, remain pending before the U.S. Supreme Court.

Election observation is regulated by state laws; the rules regulating observers' access to the different stages of the process vary between states, and in many cases are at the discretion of county authorities. Fifteen states do not allow for international election-day observation. The wide variance of rules for observer access and their different application detracts from the transparency of the election process and is at odds with OSCE commitments. The high number of partisan poll watchers and citizen observers enhanced transparency and oversight of the electoral process. Despite concerns raised both in the media and by IEOM interlocutors before election day, partisan poll watchers did not interfere in the process on election day.

IEOM observers assessed election day as calm, peaceful and orderly overall. IEOM observers reported no cases of threats of violence against election officials or voters from the visited polling stations. Poll workers in the limited number of polling stations visited were knowledgeable, and well-prepared overall, with almost all polling stations visited accessible for voters with disabilities. Prescribed procedures were mostly followed, although in some instances, the secrecy of the vote was not always maintained. IEOM observers assessed the closing of polling stations, the vote count, and the initial stages of the tabulation of results, in polling stations and tabulation places visited, as professional, orderly, and efficient.

Claims of possible electoral fraud made by some candidates during the campaign proved unfounded, and nearly all candidates accepted the results. Majority control of the House of Representatives passed to the Republican Party, while Democrats gained an additional Senate seat, and thus majority control of the Senate. The certification of election results, which takes place at local and state level and is performed in line with the respective state laws, was completed within legal deadlines except in a few counties.

This report offers a number of recommendations to support efforts to bring elections in the United States fully in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to voting rights, redistricting, campaign finance, election administration, the campaign, voter registration and identification, absentee voting, the media, election observation, and election day. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the United States (U.S.) Government to observe the 8 November 2022 mid-term congressional elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 26 September. The mission, led by Tana de Zulueta, consisted of a 17-member core team based in Washington D.C. and 40 long-term observers (LTOs) deployed throughout the country.¹ Mission members came from 25 OSCE participating States. The ODIHR LEOM remained in the country until 17 November.

For election-day observation, an International Election Observation Mission (IEOM) was formed as a common endeavour of the ODIHR LEOM and a delegation of the OSCE Parliamentary Assembly (OSCE PA). Margareta Cederfelt was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observers. The OSCE PA delegation was led by Pere Joan Pons. Each of the institutions involved in the IEOM has endorsed the 2005 Declaration of Principles for International Election Observation. On election day, 194 observers from 48 OSCE participating States were deployed, including 62 observers deployed by ODIHR, as well as a 132-member delegation from the OSCE PA; 35 per cent of members of the IEOM were women.

The ODIHR LEOM assessed the compliance of the election processes with OSCE commitments and other obligations and standards for democratic elections, as well as domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was released on 9 November 2022.²

The ODIHR LEOM wishes to thank the U.S. government for the invitation to observe the elections and for their assistance. It also expresses its appreciation to other federal and state institutions, political parties, media and civil-society organizations, international community representatives, and other interlocutors for sharing their views and for their co-operation.

¹ In its Needs Assessment Mission report, ODIHR recommended an Election Observation Mission (EOM) that would include, in addition to a core team of analysts, 100 long-term observers as well as 400 short-term observers (STOs) for observation of election day procedures. However, following its requests for the secondment of observers from participating States, ODIHR did not receive a sufficient number of STOs to be able to make a statistically valid observation of election day proceedings in all states. Against this backdrop, ODIHR took the decision to change the format of the observation activity from an EOM to an LEOM. In line with ODIHR standard methodology for LEOMs, the mission did not carry out a comprehensive or systematic observation of election-day proceedings but visited a number of polling stations on election day.

² See previous ODIHR election observation [reports](#) on the United States.

III. BACKGROUND AND POLITICAL CONTEXT

On 8 November 2022, in line with the U.S. Constitution, mid-term congressional elections were held for all 435 members of the House of Representatives, and for 35 of the 100 seats in the Senate. Elections were also held for 36 governors, other positions in state and local executives, and a total of 6,278 seats in 88 of 99 chambers of state legislatures, across 46 states. In 36 states, votes were held on a total of 129 ballot measures.

The most recent previous congressional elections, held in November 2020, resulted in the Democratic Party having a total of 50 senators and 222 representatives, and the Republican Party holding 50 seats in the Senate and 213 in the House.³ Of the states that held gubernatorial elections in these elections, 20 were governed by Republicans and 16 by Democrats.⁴ Women remain under-represented in political office: the Vice President and five of the 15 departmental heads in cabinet are women, women comprised 24 and 28 per cent of the outgoing Senate and House, respectively, and only nine of the 50 governors prior to these elections were women.⁵ Racial and ethnic minorities make up 36 per cent of citizens, but despite increases compared to previous elections, only 11 per cent of the outgoing members of the Senate, and 26 per cent of the House identify as being of these groups.⁶ Only four governors identify as belonging to a racial or ethnic minority.

Congressional and state-wide elections were preceded by primaries held in each state and district on different dates between 1 March and 13 September, which were not observed by the ODIHR LEOM. Many districts, and some states, have traditionally stable electoral support for a dominant party. Given the plurality-based electoral system used in most states, the winner of the dominant party's primary is usually guaranteed to also win the general election, making intra-party competition a significant feature of U.S. democracy. Approximately half of the funds spent by, and in support of, congressional candidates during this electoral cycle was spent before and during the primaries.⁷ Reportedly, Democrats spent approximately USD 53 million in advertising to affect the outcome of some key Republican primaries, designed to boost more extreme candidates, in the expectation that they would subsequently be defeated in the general election.⁸ This practice, while not illegal, was criticized by some representatives of both parties, and runs counter to the principles of intra-party competition in the primaries.⁹

Political, economic, and social issues discussed in the months before the elections included concerns about inflation and potential economic recession; gun control; crime; and immigration policy and the June 2022 Supreme Court decision in *Dobbs v. Jackson Women's Health Organization* regarding the right to abortion.¹⁰ These elections were also marked by claims regarding the integrity of the outcome

³ According to the Constitution, the vice president has the casting vote if there is a tie in the Senate; as such, the Democratic Party had the status of majority, allowing them to chair committees and hold other congressional advantages.

⁴ In the states holding gubernatorial elections in 2022, with the exceptions of New Hampshire and Vermont, which have two-year terms of office for their governors, the last elections for the governorships were held in 2018.

⁵ See a [press release](#) and [data](#) from the Center for American Women in Politics.

⁶ See a report by the [Pew Research Center](#).

⁷ According to [data](#) released by the Federal Election Commission, USD 4.6 billion was spent between 1 January 2021 and 30 June 2022 by congressional candidates, party committees and Political Action Committees (PACS).

⁸ See for instance adverts which implicitly boosted Trump-supported candidate [Bob Burns](#) and reporting by [The Washington Post](#).

⁹ Examples of bipartisan criticism cited were cited in reporting by [npr.org](#) and the [Washington Post](#).

¹⁰ [Dobbs v Jackson Women's Health Organization](#) overturned the 1973 decision in *Roe v Wade*, and other precedents, which had constitutionally protected the rights of women in all 50 states to terminate pregnancies, subject to limited medical parameters. The Dobbs decision allows states to determine their own abortion legislation, leading to some states protecting the right to abortion in their state constitutions, while others have taken steps to restrict, or remove the right to abortion.

of the 2020 presidential election. The IEOM assessed the 2020 elections as “competitive and well managed despite legal uncertainties and logistical changes.” Despite numerous recounts, investigations, and court cases which disproved claims of widespread fraud, former president Donald Trump, some Republican candidates, and prominent media commentators continued to question the results of the 2020 elections.¹¹ In the run-up to these elections, the former president was subpoenaed by the House of Representatives committee investigating the violent attack on the U.S. Capitol on 6 January 2021, and also faced law enforcement and judicial investigations into his actions dating from before, during and after his presidency and contributed to a polarized political discourse.

IV. LEGAL FRAMEWORK

The U.S. is party to international and regional instruments related to democratic elections.¹² The U.S. has signed but not ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD).¹³

Consideration should be given to ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) to further protect and promote the political participation of women and persons with disabilities, respectively.

The Constitution along with its first ten amendments, referred to as the Bill of Rights, establishes the country’s fundamental law. Combined, they set out a comprehensive framework for federal elections as well as fundamental civil and political rights. These are supplemented by various federal laws that protect the voting rights of racial and linguistic minorities, and that regulate voting by persons with disabilities, campaign finance, military and overseas voting, and new voting technologies (NVT).¹⁴ The federal legal framework has not changed since the 2020 elections, thus a number of previous ODIHR priority recommendations remain unaddressed, such as those relating to the absence of representation for citizens living in the District of Columbia and U.S. territories, as well as restrictions on the voting rights of convicted individuals and persons with intellectual disabilities.

Numerous bills addressing a broad range of election-related issues are pending in both the House and Senate. Most notably, two comprehensive electoral reform bills, the For the People Act and the John R. Lewis Voting Rights Advancement Act, were passed in the House in 2021 but failed to reach the

¹¹ See fact-checking coverage by Reuters of [state recounts](#) and [unsuccessful lawsuits alleging electoral fraud](#).

¹² These include the 1966 International Covenant on Civil and Political Rights (ratified in 1992 with a number of [reservations](#)), the 1965 Convention on the Elimination of all forms of Racial Discrimination, the 2003 UN Convention against Corruption, and the 2004 Council of Europe Convention on Cybercrime. The U.S is also a member of the Council of Europe’s Group of States against Corruption (GRECO) and the European Commission for Democracy through Law (Venice Commission). The U.S has signed, but not ratified, the American Convention on Human Rights.

¹³ The UN Human Rights Council has previously [recommended](#) that the U.S. ratify both treaties. [The 2021 UN Universal Periodic Review](#) on the U.S. notes that the “reasons for not ratifying all treaties varied from treaty to treaty [...] as in respect of the Convention on the Rights of Persons with Disabilities, United States domestic protections were even stronger than those of international treaties. The United States was committed to the effective implementation of its human rights obligations and welcomed continued input on how to improve it”.

¹⁴ These include the [1965 Voting Rights Act](#) (VRA), the [1984 Voting Accessibility for the Elderly and Handicapped Act](#) (VAEHA), the [1986 Uniformed and Overseas Citizens Absentee Voting Act](#) (UOCAVA), the [1990 Americans with Disabilities Act](#) (ADA), the [1993 National Voter Registration Act](#) (NVRA), the [2009 Military and Overseas Voting Empowerment Act](#) (MOVE), and the [2002 Help America Vote Act](#) (HAVA).

floor of the Senate.¹⁵ As proposed, the bills would have addressed a number of long-standing ODIHR recommendations.¹⁶ The For the People Act, as introduced, sought to address perceived obstacles to voting in federal elections, the partisan redistricting of congressional districts, as well as overhauling federal campaign finance laws, increasing safeguards against foreign interference, and strengthening government ethics rules. The John R. Lewis Voting Rights Advancement Act proposed a new formula for determining jurisdictions required to undergo preclearance for changes to voting laws and practices based on a history of voting discrimination which had been invalidated by *Shelby v. Holder* in 2013.¹⁷

To ensure timely and effective safeguards against legal changes that may have a discriminatory intent or impact against racial and linguistic minorities, Congress should consider passing legislation reestablishing the formula for determining jurisdictions required to undergo preclearance for changes to voting laws.

State laws detail almost all aspects of the electoral process and, as such, a variety of laws and regulations exist across states, resulting in a complex and diverse electoral framework. Consistently with the previous election cycles, states enacted more than 400 new bills or amendments between 2021 and 2022.¹⁸ Some bills expand the use of alternative voting mechanisms, including for persons with disabilities, while others remove such possibilities that were largely introduced in response to the COVID-19 pandemic.¹⁹ In response to threats to election staff since the 2020 elections, some states criminalized the intimidation of voters and election officials.²⁰ Civil and criminal penalties were also imposed for various election irregularities. In some instances, these penalties were

¹⁵ Bipartisan groups of representatives in both the House and the Senate proposed bills to clarify ambiguities in the process of submission and counting of electoral college votes, which became manifest during the certification process of the 2020 presidential elections. On 21 September 2022, the House passed the [Presidential Election Reform Act](#) which, *inter alia*, clarifies state level procedures and deadlines for the tabulation, counting, and certification of votes in presidential elections as well as underlining the vice-president's role in counting and certifying electoral college votes. On 23 December 2022 the Senate passed the [Electoral Count Reform and Presidential Transition Improvement Act](#), which addresses the same issues as the bill proposed in the House with some variations, among these lower thresholds for the number of members of congress required to object to a slate of electors.

¹⁶ ODIHR previously recommended that the basic electoral procedures should be codified at the federal level in order to provide consistent standards and stability of electoral law and that federal election law could be enacted to regulate several critical issues, including time limits for voter registration, early voting deadlines and procedures, the rights of observers and deadlines for the adjudication of pre- and post-election lawsuits.

¹⁷ See *Shelby County vs Holder*. The [Voting Rights Advancement Act](#), adopted by the House of Representatives in 2019 and proposing new criteria for preclearance, is currently pending in the Senate. In 2022, New York enacted the [John Lewis Voting Rights Act](#), which requires jurisdictions in the state to seek preclearance for changes to important election policies and practices. Under the VRA preclearance requirement, jurisdictions that had a history of discrimination are required to obtain the approval of the DoJ or of a federal district court before changing any election laws or standards, practices or procedures.

¹⁸ Lawsuits on some provisions of these bills were initiated in at least 14 states and some laws were overturned ahead of the elections. Most notably, a federal court blocked enforcement of a new Arizona law that would have required election officials to cancel prior voter registration. The Montana Supreme Court blocked two restrictive voting laws that would have eliminated same-day registration on election day and made the state's voter identification law much stricter. The Delaware Supreme Court struck down legislation which established no-excuse mail voting and same-day voter registration.

¹⁹ For example, 13 states expanded access to mail ballot drop-off locations; 5 states restricted such access; 8 states expanded mail voting access for voters with disabilities; 30 states expanded or improved access to mail voting; 15 states passed legislation to restrict mail voting access, impacting voters with disabilities. See a [review](#) by the Center for Public Integrity.

²⁰ California, Colorado, Maine, New Hampshire, and Oregon made it unlawful for anyone to threaten or intimidate an election official. New York introduced civil liability for voter intimidation. Florida introduced criminal liability for collecting more than two mail ballots, other than the person's own ballot or those of immediate family members, and South Carolina for returning more than five ballots.

disproportionate to the infractions.²¹ While penalties have the stated aim of upholding the rule of law, the extensive mandate and enforcement mechanisms in some states had an intimidating effect on election workers and voters, including former felons.²² In October 2022, the Office of Election Crimes and Security in Florida arrested a number of ex-prisoners who allegedly had registered and voted illegally in 2020. Charges against one of the arrested voters were dismissed by the court, ruling that such act “did not involve a criminal conspiracy.”²³

Decisions by courts interpreting federal and state laws can change important aspects of the electoral process. The so-called ‘*Purcell principle*’ affirms the stability of law by ruling that federal courts should proceed cautiously when deciding whether to intervene in the lead-up to an election.²⁴ However, case law does not define the ‘proximity’ to an election, which has resulted in varied interpretation and an uneven application of the principle, with some cases litigated in the days leading up to these elections.²⁵ Across states, parties to litigation initiated or joined cases shortly ahead of the elections, thereby impacting the timeliness of court decisions. Late changes to the legal framework can have negative impact on electoral stakeholders’ understanding of the jurisprudence and undermine the credibility of electoral processes, contrary to international good practice.²⁶

To ensure legal certainty and stability of the law, courts could consider consistently and uniformly upholding the Purcell principle when litigating cases on legislation in the run-up to elections. An exception should be provided for lawsuits seeking to remedy suffrage rights.

V. ELECTORAL SYSTEM AND REDISTRICTING

Congress consists of the Senate and the House of Representatives. Congressional elections are held every two years to elect one third of the 100 senators and all 435 representatives. Senate electoral districts correspond to the entire state, with each state electing two senators. Representatives are elected from single-member districts. All states have at least one representative in the House, with additional seats allocated in proportion to the population, based on the most recent census. The District of Columbia and five U.S. territories lack full representation in Congress as they each have a non-voting member to the House but no representation in the Senate. In 2021, a bill seeking to admit

²¹ Georgia introduced criminal liability for distributing water and food to voters waiting in line to vote. Oklahoma created a felony offence for applying for an electronic ballot due to a visual impairment, if a voter does not meet the state’s statutory definition for ‘blindness’.

²² Paragraph 7.7 of the [1990 OSCE Copenhagen Document](#) calls on OSCE participating States to “ensure that [...] neither administrative action, violence nor intimidation prevents the voters [...] from casting their vote free of fear of retribution”.

²³ See the Florida 11th Circuit Court [decision](#) from 21 October 2022.

²⁴ See [Purcell v. Gonzalez](#) (2006), in which the U.S. Supreme Court established (i) that federal district courts ordinarily should not enjoin state election laws in the period close to an election; and (ii) that federal appellate courts should stay injunctions when lower federal courts contravene that principle. In [Reynolds v. Sims](#) (1964), the Supreme Court also ruled that “[i]n awarding or withholding immediate relief, a court [...] should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles”.

²⁵ For example, due to late challenges, litigation related to regulating [absentee ballots](#) and [mail-in ballots](#) was ongoing in New York and Pennsylvania, respectively, while voting by these means was already under way. The litigation on the [hand count of ballots](#) in one of the counties in Nevada continued late in the process.

²⁶ Section II.2.b. of the Venice Commission’s 2002 [Code of Good Practice in Electoral Matters](#) (Code of Good Practice) recommends that “the fundamental elements of electoral law [...] should not be open to amendment less than one year before an election”. Paragraph 63 of the [Explanatory Report to the Code of Good Practice](#) states that “[s]tability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy”. In Alabama, an amendment to the state constitution prohibiting changes to election laws within six months of a general election was approved by 80 per cent of votes.

Washington, D.C. as the 51st state, with full voting representation in Congress, passed the House. The Senate received the bill but did not vote on it.²⁷

The Constitution grants states the authority to determine through state legislation the rules by which they elect members of Congress. The respective electoral systems vary: 46 states determine the winners by plurality vote ('first-past-the-post' contests); Georgia and Louisiana elect their members by majority vote, with a run-off if no candidate receives an absolute majority; and Alaska and Maine use ranked-choice voting.²⁸ In these elections, Nevada voters approved a ballot measure for ranked-choice voting in general elections. In order for this measure to become effective law, it must pass again in 2024.

The Constitution requires that seats in the U.S. House of Representatives be distributed among states in proportion to their respective populations. Based on the 2020 census, seats in the House of Representatives were reapportioned between states. As a result, six states gained and seven states lost seats.²⁹ Following reapportionment, redistricting was undertaken in all 44 states with more than one congressional seat.³⁰ Deviations in the size of districts within states are within the limits permitted by the Constitution and case law.³¹

Redistricting is carried out by various bodies in the different states and is generally politicized. In 33 of the 44 states with more than one congressional district, state legislators are responsible for drawing the district maps. In 30 of these states, the governor can veto the map, but the legislature can overrule the governor's veto. The remaining 11 states use external commissions, of which three are exclusively composed of bipartisan representatives, and 8 are composed of bipartisan and non-affiliated members. In two states, the maps drawn by these external commissions require legislative approval. The number of external commissions has grown from 5 in 2000 to 11 in 2020. External commissions are seen by some ODIHR LEOM interlocutors as a way to reduce the influence of political parties and increase public trust in constituency delimitation.³² The commissions in Connecticut, Idaho, Michigan, New Jersey, New Mexico, New York, and Virginia failed to agree on district maps, which were eventually drawn by court-appointed experts. The composition and method of appointment of these commissions did not always ensure their independence and impartiality, as required by international good practice.³³

²⁷ See text of [The Washington D.C. Admission Act](#).

²⁸ Maine adopted a citizens' initiative in November 2016 to move the state toward a system of ranked-choice voting for the Congressional elections in 2018. Alaska enacted ranked-choice voting via [Alaska Ballot Measure 2](#) in 2020. The Supreme Court of Alaska upheld the use of ranked-choice voting in February 2022, with the [full opinion](#) issued on 21 October 2022. The court's decision was based on a legislative challenge from 2020, in which the plaintiffs had argued that the new voting system was unconstitutional.

²⁹ Texas gained two seats, Colorado, Florida, Montana, North Carolina, and Oregon each gained one seat, while California, Illinois, Michigan, New York, Ohio, Pennsylvania, and West Virginia each lost one seat.

³⁰ Due to the COVID-19 pandemic, state-level census results were not available in April 2021, as would have normally been the case, but only in August 2021, which put additional pressure on the redistricting process and reduced the time between district maps becoming available and election day.

³¹ The number of persons needed for one House seat varies from 542,113 in Montana to 989,948 in Delaware.

³² See research by the [Pew Research Center](#).

³³ See Section 2.2.vii. of the Venice Commission [Code of Good Practice](#), which recommends that "single-member district boundaries should be drawn impartially; without detriment to national minorities; taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities."

Federal legislation requires that redistricting is conducted in a manner which does not result in denial or abridgement of the right of any citizen to vote on account of race or colour.³⁴ In keeping with Section 2 of the VRA, racial and ethnic demographics were factored into redistricting to provide for the creation of “majority minority districts”, in order to ensure representation of ethnic minorities and communities of colour. However, several ODIHR LEOM interlocutors raised concerns that, in some cases, these variables were deliberately used either to ‘pack’ minority populations in one district or ‘crack’ it, spreading it thinly among more districts, with the effect of diluting the power such populations may be perceived to have as a voting bloc.³⁵ Pursuant to two cases pertaining to Alabama and Louisiana, the U.S. Supreme Court will decide whether the use of racial demographics should be maintained in redistricting, including in cases where the use of such variables are intended to provide for fairer representation of minorities, as currently prescribed by federal legislation and in line with international standards.³⁶

State constitutions and laws prescribe additional principles for redistricting, including compactness, contiguity, preserving administrative boundaries and ‘communities of interest’, and prohibit using partisan data and delimiting boundaries in a manner that favours one party. The competent bodies use redistricting software, which takes into account variables including racial and ethnic demographics as well as voting preferences at the precinct level.³⁷ The use of such variables enables redistricting bodies to design districts ranging in outcome from competitive, to those deliberately designed to be favourable or safe for a given party. Many stakeholders expressed concerns that these tools were often used to further partisan interests, favour incumbents, and limit the competitiveness of many districts, noting also that many districts were not compact and/or were hardly contiguous.³⁸ In some states, the number of seats obtained by a party is not commensurate to the number of votes obtained.³⁹ While such a distortion may be common in first-past-the-post systems, ODIHR LEOM interlocutors noted that it is amplified by partisan gerrymandering. Similar rules and practices were applicable to redistricting for state legislatures and other contests, thus raising similar concerns.⁴⁰ Overall, as

³⁴ In [Thornburg v. Gingles](#) (1986), the U.S. Supreme Court set the preconditions for establishing whether a redistricting plan dilutes the strength of minority voters under Section 2 of the VRA. The plaintiff must demonstrate that (a) minority voters are geographically compact and numerous enough to constitute a majority in a differently drawn district; (b) minority voters in the area are politically cohesive; and (c) the majority usually votes to defeat the minority-preferred candidate.

³⁵ For instance, in Alabama, the African American voting population amounts to 27 per cent but only one of the seven districts has an African American majority. Some ODIHR LEOM interlocutors pointed to the ‘cracking’ of predominantly African American populations and the city of Montgomery into three separate districts. In Alabama, Louisiana, North Carolina, and Florida, courts found that the district maps offered members of the African American community less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

³⁶ Section 2 of the VRA and [Thornburg v. Gingles](#) (1986). See paragraph 21 of the [1996 UNHRC General Comment No. 25](#), Articles 1(4) and 2 of [ICERD, General Recommendation No. 32 of the UN CERD Committee](#), and Section 2.2.vii of the [Code of Good Practice](#). The pending cases are [Merrill v. Milligan](#) and [Ardoin v. Robinson](#).

³⁷ For instance, the applications [Maptitude for redistricting](#), [Plan Score](#), [Dave's Redistricting](#).

³⁸ See a [study](#) on competitiveness of congressional districts by FiveThirtyEight and an [overview](#) of the U.S. House battlegrounds by Ballotpedia. Of the 354 incumbent representatives for the U.S. House who stood in the 2022 primaries, only 7 were defeated. Of the 383 incumbents who stood in the 2018 primaries, only 4 were defeated.

³⁹ For instance, in North Carolina, in 2018, Democrat candidates for the U.S. House obtained 1,632,720 votes and 3 seats, while Republicans obtained 1,706,795 votes and 10 seats. In California, Democrats obtained 8 million votes and 46 seats, while Republicans obtained 4 million votes and 7 seats.

⁴⁰ Twenty-eight of the 88 chambers of state legislatures in 19 states which were elected on 8 November were deemed [battleground chambers](#). Of the 4,939 incumbents of state legislatures who stood for re-election, 229 lost to challengers in the primaries.

currently implemented, redistricting does not fully ensure competitiveness, representativeness, and the fair representation of minorities, which is at odds with international standards.⁴¹

In line with international standards and good practices, redistricting should be conducted by independent bodies, in a non-partisan and transparent manner, ensuring competitiveness and an effective opportunity for voters, including minorities, to elect the representatives of their choice. The legal framework should provide for clear and objective criteria for redistricting and based on public consultation.

Seventy-eight challenges against congressional district maps were filed on various grounds, in both state and federal courts, in 28 states, mainly by civil-society groups and voters.⁴² Several district maps for other races were also challenged with plaintiffs alleging unequal districts in terms of population in 15 states in which no new maps could be adopted ahead of the elections,⁴³ the dilution of the votes of minorities in 9 states,⁴⁴ partisan gerrymandering in 12 states,⁴⁵ and both racial and partisan gerrymandering in 4 states.⁴⁶ First-instance courts mandated new congressional maps in 13 states,⁴⁷ while second-instance courts upheld the decisions for seats in 8 states.⁴⁸ The courts either ordered the state legislatures to redesign the maps, or to adopt the maps suggested by the plaintiffs or designed by court-hired experts. Some cases were pending review through and after the primaries.⁴⁹

The U.S. Supreme Court received three cases related to congressional district maps. The court issued a temporary order in favour of the congressional district maps drawn by the legislatures of Alabama and Louisiana, which had been deemed racially gerrymandered by federal district courts, resulting in the maps being used for these elections.⁵⁰ In its order, the U.S. Supreme Court cited the *Purcell principle* as preventing courts from changing district maps within an election year. In the absence of

⁴¹ Paragraph 21 of the [1996 UNHRC General Comment No. 25](#) states: “Although the Covenant does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors. The principle of one person, one vote must apply, and within the framework of each State's electoral system, the vote of one elector should be equal to the vote of another. The drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representatives freely”. See also the [Venice Commission Report on Constituency Delineation and Seat Allocation](#).

⁴² Racial gerrymandering falls under the purview of federal courts, while partisan gerrymandering is under the purview of state courts, provided that it is prohibited by state laws. See list of challenges compiled by [Loyola Law School](#).

⁴³ In Arkansas, Florida, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New York, Pennsylvania, South Carolina, Texas, and Wisconsin, state legislatures and commissions failed to adopt new district maps or anticipated failing due to the governor's veto.

⁴⁴ Dilution of minority votes was alleged in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, North Carolina, and Texas.

⁴⁵ Gerrymandering in favour of the Democratic Party was alleged in Maryland, Nevada, New Mexico, New York, and Oregon, and in favour of the Republicans in Arizona, Florida, Kansas, Kentucky, North Carolina, Ohio, and Utah.

⁴⁶ Both racial and partisan gerrymandering were alleged in Arkansas, Florida, Kansas, and North Carolina.

⁴⁷ In Alabama, Connecticut, Florida, Kansas, Louisiana, Maryland, Minnesota, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, and Virginia.

⁴⁸ Courts upheld challenges overturning legislatures' maps in Maryland, New York, North Carolina, and Pennsylvania, while they ordered the use of special masters' maps to resolve legislative impasses in Connecticut, Minnesota, New Hampshire, and Virginia.

⁴⁹ The primaries began in March 2022. At that time, [cases](#) were pending in Alabama, Georgia, Kentucky, Maryland, Michigan, Nevada, New Mexico, New York, Ohio, and Texas.

⁵⁰ In [Ardoin v. Robinson](#) for Louisiana and [Merrill v. Milligan](#) for Alabama, the U.S. Supreme Court will decide whether Alabama's 2021 congressional district map, which contains only one majority-African American district, diminishes the opportunity of African American voters to elect representatives of their choice and thus violates Section 2 of the [Voting Rights Act](#). The ruling will also apply to Louisiana.

legal deadlines for review, the cases are pending review on merits. The U.S. Supreme Court received a third appeal, of a state court decision which deemed the congressional district map of North Carolina a partisan gerrymander.⁵¹ The appeal claims that congressional maps should be exempt from judicial review by state courts and if upheld partisan gerrymandering and possibly other important elements of electoral process would be effectively exempt from judicial review.⁵²

In line with international standards, an effective and timely legal remedy should be available for all aspects of the electoral process, including redistricting.

VI. ELECTION ADMINISTRATION

The administration of elections is decentralized, with states responsible for their overall management, and with more than 6,460 entities charged with implementing elections across the country.⁵³ At the central level, the main actors are the Federal Election Commission (FEC), which regulates campaign finance, and the Election Assistance Commission (EAC), which provides advisory support to state and local election offices, manages the National Mail Voter Registration Form, certifies voting equipment, and administers federal grants to improve election administration.⁵⁴ Both commissions are bipartisan.

The administration of elections is decentralized to the local level (county, borough, municipality, etc.), with variations in the election procedures within the general framework established by state law. Decentralization is seen by many ODIHR LEOM interlocutors as a positive feature, because it allows election administrators to adapt procedures to conditions on the ground and is in line with the country's federal nature. Comprehensive and consolidated data related to the number of election officials, poll workers, and polling places are only released by the EAC months after the elections, through its Election Administration and Voting Survey.

In 41 states, elections are entirely or partly managed by elected or appointed secretaries of state or lieutenant governors, while bipartisan election boards manage elections in the remaining 9 states.⁵⁵ Twenty-three of the secretaries of state who are responsible for elections were up for election in 2022; 20 through direct elections and three depending on the election of the governor who appoints the

⁵¹ The hearing for [Moore v. Harper](#) was held on 7 December 2022. Article I, Section 4, Clause 1 of the U.S. Constitution states that: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

⁵² In [Rucho v. Common Cause](#) (2019), pertaining to the North Carolina map ruled as a partisan gerrymander by the district court, the U.S. Supreme Court concluded that "Partisan gerrymandering is nothing new. Nor is frustration with it. [...] Federal judges have no license to reallocate political power between the two major political parties, with no plausible grant of authority in the Constitution, and no legal standards to limit and direct their decisions." In [League of Women Voters of PA v. Pennsylvania](#) (2018), the Pennsylvania Supreme Court overturned the state legislature's map as a partisan gerrymander, citing the state constitutional provision for free and fair elections.

⁵³ See the [Election Assistance Commission Election Administration and Voting Survey 2020](#).

⁵⁴ The FEC is a bipartisan body composed of six commissioners appointed by the president and confirmed by the Senate, with no more than three commissioners representing one party, and four votes needed to pass decisions on the regulatory framework and complaints. The FEC lacked a quorum in 2019 and 2020; it has only operated in its full composition since December 2020. The EAC mostly serve as a clearing house for election administrators at state and local level and facilitate the exchange of best practices on a variety of issues in order to improve their performance. It also provides state and local election officials and voters with a wide array of information related to various topics of the electoral process.

⁵⁵ In 29 states, elections are administered by the secretary of state (24 of whom are elected on a party ticket, and 5 appointed by the governor), in 2 states by the elected lieutenant governor, and in 3 states by election officials selected by the legislature. In seven states, elections are under the dual responsibility of the secretary of state and a bipartisan election board, and in 9 states, they are administered by bipartisan election boards.

secretary of state.⁵⁶ Party affiliation of the chief election administrators is at odds with international standards as it may result in a conflict of interest and diminish trust in election processes.⁵⁷ ODIHR LEOM interlocutors generally expressed trust in the work of election administrators.⁵⁸

To meet international standards and safeguard the impartiality of the election administration, election officials at state and local level should not oversee elections in which they are competing.

Election offices received an unprecedented number of Freedom of Information Act (FOIA) requests regarding the electoral process, which in some cases placed an undue burden on election officials. Interlocutors told the ODIHR LEOM that many of these requests appeared to be identical and were filed in a manner orchestrated to restrict the functioning of the administrations.

Most ODIHR LEOM interlocutors highlighted concerns about the increasing number of threats and harassment against election officials and premises at state and local level.⁵⁹ Threats against election workers, in most cases through phone calls and social networks, were cited as having driven long-serving election workers to leave their positions and as discouraging the recruitment of poll workers in some states. The funds allocated by the Congress through the EAC for improving election security, including for physical protection of election workers, were assessed by many ODIHR LEOM interlocutors as insufficient. The Department of Justice (DoJ) and the Federal Bureau of Investigation (FBI) set up an Election Threats Joint Taskforce to investigate threats to election workers. The joint taskforce informed the ODIHR LEOM that it had received almost 2,000 reports of hostile or harassing contacts affecting election workers between July 2021 and October 2022; however, many of these contacts could not be followed up because they did not meet the requirements for DOJ and FBI to investigate as federal violations.⁶⁰ By December 2022, approximately twelve individuals had been charged criminally in federal courts for threatening election officials and others involved in the electoral and campaign process. Civil-society organizations also monitored such threats through their networks at state and local levels. Threats against election workers do not appear to have affected the overall electoral process on election day or the days after, though in many cases were distressing for the individuals affected.

State and county-level authorities mainly used their websites and social networks to disseminate voter information. These efforts were supported, to a considerable extent, by federal and local authorities, civil-society associations, and traditional and social media companies.⁶¹ As required by law, voter information was available in multiple languages.⁶²

Resources to implement the elections at the local level come from federal, state, and local sources.⁶³ Numerous ODIHR LEOM interlocutors mentioned that a lack of sufficient local resources negatively

⁵⁶ Out of the 20 directly elected secretaries of state, 11 ran for a new term and were all reelected.

⁵⁷ Paragraph 20 of the [1996 UNHRC General Comment No. 25](#) states that “an independent electoral authority should be established to supervise the electoral process”.

⁵⁸ Also see Pew Center [poll](#) of 31 October 2022, which showed 70 per cent trust in the work of the state election administration, and 90 per cent trust in local election administrators. These figures varied depending on the political affiliation of the respondents: with regard to the state-level election administration, 56 per cent of Republican respondents and 88 per cent of Democrat respondents expressed their trust.

⁵⁹ Such cases were reported by ODIHR LEOM observers in Arkansas, California, Kentucky, Ohio, South Carolina, Texas, Utah and Wisconsin. See also [Brennan Center Local Election Officials Survey, March 2022](#).

⁶⁰ See 1 August 2022 Joint Taskforce [statement](#). The ODIHR LEOM was informed that the number of reports of threats against election workers increased considerably in the run-up to the elections.

⁶¹ See, for example, [usa.gov](#), [Rock the Vote](#), and [State Board of Elections Maryland](#).

⁶² The EAC produced a [voter information guide](#) in 11 languages, and a [fact sheet](#) in 7 languages.

⁶³ Federal sources include [HAVA](#) for election security, the [Edward Byrne Memorial Justice Assistance Grant \(JAG\) Program](#) for local law enforcement, and a [Homeland Security grants](#) to prepare for emergencies.

affects the capacity for administrations to run elections in some jurisdictions. For these elections, the funds available from the federal level were tied to emergencies, equipment, and security, while the funds provided by the states also had to cover the cost of equipment and salaries. These funds were severely limited, according to local election officials who cited that different approaches and levels of funding provided by the local authorities directly impacted on their ability to conduct their work.

State and local governments should provide sufficient and timely funding to meet the administrative needs of the election management bodies at local level, based on a clear needs assessment.

VII. VOTING RIGHTS, VOTER REGISTRATION AND IDENTIFICATION

The Constitution ensures each citizen's equal protection before the law. The Fifteenth Amendment and the VRA grant voting rights to citizens equally, without regard to race and colour.⁶⁴ U.S. citizens with a registered residence in a state who have reached the age of 18 years have the right to vote. This does not include some 700,000 citizens residing in the District of Columbia and some 3.5 million citizens in U.S. territories (*See Electoral System*). In addition, the VRA explicitly permits each state to enact laws to deny the right to vote to individuals "by reason of criminal conviction or mental incapacity." These restrictions contravene principles of universal and equal suffrage, as provided for in the 1990 OSCE Copenhagen Document, UN treaties, and other international obligations.⁶⁵ The UN Human Rights Committee previously called on the U.S. to "ensure that all states reinstate voting rights to felons who have fully served their sentences; [...] review automatic denial of the vote to any imprisoned felon, regardless of the nature of the offence [and] [...] provide for the full voting rights of residents of [the District of Columbia]."⁶⁶

As previously recommended, to ensure equal suffrage, citizens residing in the District of Columbia, as well as U.S. territories, should be provided with full representation rights in Congress.

In all but two states (Maine and Vermont), the District of Columbia, and Puerto Rico, citizens with current or previous criminal convictions forfeit the right to vote.⁶⁷ As a result, an estimated 4.6 million citizens remain disenfranchised, regardless of the severity of the crime committed.⁶⁸ In addition, individuals who have been released from incarceration often face legal barriers that prevent them from gaining full access to the ballot due to hurdles of registration, coupled with restitution fees. Positively, a number of states eased restrictions by restoring the voting rights of prisoners or

⁶⁴ The Nineteenth Amendment provides equal voting rights to women. Although it does not explicitly address voting rights, the Fourteenth Amendment guarantees 'equal protection' and 'due process' of law to all within its jurisdiction. The DoJ monitors compliance of laws with federal voting rights statutes.

⁶⁵ Paragraphs 7.3 and 24 of the [1990 OSCE Copenhagen Document](#) state that participating States will "guarantee universal and equal suffrage to adult citizens," and that "...any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law". Paragraph 14 of the [1996 UNHRC General Comment No. 25](#) states that grounds for deprivation of voting rights should be "objective and reasonable." While the U.S. has not ratified the CRPD and is therefore not legally bound by it, depriving citizens of the right to vote on the basis of intellectual incapacity is inconsistent with Articles 12 and 29 of the [CRPD](#).

⁶⁶ See the U.N. Human Rights Committee in its [Concluding observations on the fourth periodic report](#) of the United States of America, 23 April 2014. In 2018, the UN Special Rapporteur on extreme poverty and human rights also [noted](#) concern that Puerto Ricans had no representatives with full voting rights in Congress.

⁶⁷ In 21 states, felons lose their voting rights while incarcerated and receive automatic restoration upon release. In 16 states, felons lose their voting rights during incarceration and for a period of time after release. In 11 states, felons lose their voting rights indefinitely for certain crimes.

⁶⁸ See a [report](#) from the Sentencing Project published on 25 October 2022.

individuals under community supervision and parole.⁶⁹ Other states have mandated the respective authorities to notify affected citizens of their voting rights or to facilitate their registration.⁷⁰

Despite these positive incremental trends in improving the voting rights of former convicts, additional conditions such as payment of fines, fees and restitution still apply in 10 states, and 15 other states may in certain circumstances delay re-enfranchisement because of unpaid court debt.⁷¹ Such requirements may affect as much as 8 per cent of the population in some states, with a disproportionate impact on African American populations.⁷²

All except ten states have laws that may restrict individuals from registering to vote or voting based on guardianship status or capacity requirements.⁷³ The ADA prohibits a state from categorically disqualifying all individuals who have intellectual or mental health disabilities from registering to vote or from voting because of their disability.⁷⁴ There have been no changes in state laws related to restoring the voting rights of persons with intellectual disabilities since 2016.⁷⁵

Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate. Voting rights should be automatically restored upon the completion of terms of incarceration, and those affected should be informed about their rights and the ways to exercise them.

⁶⁹ Connecticut, Hawaii, New York, and Washington restored voting rights to citizens on parole. The North Carolina Court of Appeals determined that denying voting rights to persons serving their felony sentences outside of incarceration violates the state constitution and that these persons could register to vote effective 27 July 2022. The case, [Community Success Initiative, et al. v Moore, et al.](#), is currently pending with the State Supreme Court.

⁷⁰ California, New York, and Maryland require the authorities to notify persons who have been released from imprisonment that their voting rights are restored. Illinois requires the Department of Corrections to provide voter registration information to prisoners upon release. Hawaii requires the respective authorities to inform individuals on parole or probation of their right to vote and provide those individuals with voting information.

⁷¹ See a 2022 survey by the [Collateral Consequences Resource Center](#).

⁷² For example, based on a [Sentencing Project study](#), over 934,500 people who have completed their sentence remain disenfranchised in Florida (6 per cent of the voting-age population) due to outstanding legal financial obligations. In Arizona, over 3 per cent, and in Mississippi over 8 per cent of the voting-age population who have served their sentence are deprived of the right to vote. These policies disproportionately affect African Americans, with estimates that more than one in ten African American adults is disenfranchised in eight states (Alabama, Arizona, Florida, Kentucky, Mississippi, South Dakota, Tennessee, and Virginia). Four states (Iowa, Kentucky, Mississippi, and Virginia) restore voting rights exclusively by constitutional power, meaning that former convicts are permanently disenfranchised unless pardoned by the governor. In Virginia, the governor pardoned 69,000 people in 2021, following a policy change. The governors of Iowa and Kentucky have exercised their right to pardon on an automatic or quasi-automatic basis, while Mississippi has not used the right to pardon frequently. Also see a [study](#) by the American Bar Association.

⁷³ These are Colorado, Idaho, Illinois, Indiana, Kansas, Michigan, New Hampshire, North Carolina, Pennsylvania, and Vermont. [General Comment No. 1 to Article 12 of the CPRD](#) on equal recognition before the law states that legal capacity is the key to accessing full and effective participation in society and in decision-making processes and should be guaranteed to all persons with disabilities, including persons with intellectual disabilities, persons with autism and persons with actual or perceived psychosocial impairment, and children with disabilities, through their organizations.

⁷⁴ See the DoJ, Civil Rights Division, Disability Rights Section, [The Americans with Disabilities Act and Other Federal Laws Protecting the Rights of Voters with Disabilities](#). In *Doe v. Rowe* (2001), 156 F. Supp.2d 35 (D. Me. 2001), a federal district court ruled that Maine's prohibition on voting by people under guardianship by reason of mental illness violated the Americans with Disabilities Act and the U.S. Constitution by categorically disenfranchising these individuals regardless of whether they met the essential eligibility requirements for voting.

⁷⁵ While not explicitly referring to persons with intellectual disabilities, in the March 2021 [Executive Order on Promoting Access to Voting](#), President Biden recognized that “[p]eople with disabilities continue to face barriers to voting and are denied legally required accommodations in exercising their fundamental rights and the ability to vote privately and independently”.

Restrictions on electoral rights based on intellectual or psychosocial disability should be removed.

Voter registration is active in all states except North Dakota.⁷⁶ This means that the voter is responsible for taking specific steps in order to be included on the voter list. Voters can register in person in the jurisdiction of their residence at the Department for Motor Vehicles (DMV), county election offices, state agencies, online, using the national mail voter registration form, or through third parties.⁷⁷ The NVRA and HAVA set minimum conditions for registration and provide a registration form template.⁷⁸

Ahead of these elections, 40 states and the District of Columbia offered online voter registration. While online voter registration facilitates the process, in some cases, the state systems differ, with some requiring voters to print out and scan the forms. The District of Columbia and 22 states offer same-day registration, and 23 states implement ‘automatic’ registration.⁷⁹ In the case of automatic registration, voters are automatically registered at the time of applying for or renewing a driver’s license, with limited opportunity for an immediate cross-match comparison between states, and, in some cases, counties. Where same-day registration is allowed, states do have safeguards in place against duplicate voting such as voting by provisional ballot, providing proof of residency, and conducting poll book reconciliation before counting provisional ballots, but these may result in difficulties during the compilation and certification of results, delays, and potential inaccuracies. While late and election-day registration allows for more inclusive participation, these procedures preclude the collection of accurate voter register data prior to election day, potentially resulting in duplicate entries, and are not in line with international good practice and previous ODIHR recommendations.⁸⁰

State authorities should take further steps to facilitate access to voter registration and enhance existing measures to reduce the number of unregistered voters.

HAVA requires first-time voters registering by post to provide proof of identity. With the introduction of the so-called ‘real ID’, states are mandated to incorporate a set of standards and requirements into

⁷⁶ North Dakota [does not require voter registration](#). The requirements of the NVRA apply to 44 States and the District of Columbia. Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming are exempt because on and after 1 August 1994, they either had no voter registration requirements or had election-day voter registration at polling places with respect to elections for federal office.

⁷⁷ Voters can use the national mail voter registration form to register or update their data and mail it to a specific address in each state. States determine which information is required to register. New Hampshire allows its use only as part of their absentee voter mail-in registration form, while Wyoming does not permit mail registration.

⁷⁸ Based on the latest EAC [Election Administration and Voting Survey](#) (EAVS), DMV offices accounted for the largest share of applications in 2020 (39.3 per cent), followed by online registration (28.2 per cent); States that allowed same-day voter registration reported handling more than 1.6 million such applications in 2020.

⁷⁹ Montana changed the registration deadline from election day to the day before election day, which was challenged by civil-rights groups on behalf of the Native American community. Legislation also removed student IDs as relevant form of identification. The Montana Supreme Court [declared](#) on 21 September 2022 that two applicable laws passed in 2021 violate the state’s Constitution. In its opinion, the Montana Supreme Court received substantial evidence on the impact on the right to vote, particularly to Native American voters, citing that election-day registration was used in general elections by over 8,000 voters in 2018 and 2020. In addition, young voters account for more than 31 per cent of election-day registrations. On 30 September, the [trial court permanently blocked HB 176, SB 169 and HB 530](#), including provisions aimed at prohibiting paid third-party ballot assistance. The Delaware Supreme Court [declared](#) a bill allowing election-day registration to be in conflict with [Article V, Section 4 of the state’s Constitution](#), i.e. deadlines for registration and circumstances for voting.

⁸⁰ See Section 1.2.iv of the [Code of Good Practice](#), which states that “There should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day.”

the DMV when issuing or renewing driver's licenses.⁸¹ In some states, citizens need to provide proof of citizenship, residency, date of birth, and a digital photo in order to renew their driver's license. At least four states have laws requiring documentary proof of citizenship, although these requirements have been previously judged unconstitutional or unduly restrictive.⁸²

Approximately 239,470,150 citizens were eligible to vote in the mid-term elections.⁸³ The NVRA and HAVA provide the framework for voter list maintenance, including the removal of deceased persons from the voter rolls, individuals with criminal convictions and those who have been deemed incapacitated by a court decision. The NVRA also prohibits states from removing voters from voter lists within the 90 days before an election. HAVA requires states to establish state-wide voter registration databases and determines basic requirements for their maintenance.

According to the EAC, 38 states and territories maintain top-down systems in which a central system connects all local jurisdictions; 11 have a bottom-up systems that aggregate data from localities, and 6 organize their voter register in a hybrid system.⁸⁴ State election authorities at times liaise with the national statistics system and other authorities, felony records from state departments of corrections, agencies that handle death records, and the U.S. postal service, to remove duplicates from voter lists. These procedures vary across the states, with 33 states and the District of Columbia taking part in inter-state data sharing on identified inaccuracies via the Electronic Registration Information Center (ERIC).⁸⁵ The lack of a nationwide voter register or cross-comparison of data, as well as the non-uniform approach to updating voter registers during early and absentee voting, may result in inaccuracies and the potential for voters being registered in more than one state. E-poll books are used across 40 of the states, or some 43 per cent of the precincts, to check in voters and conduct voter verification, with 17 states using e-poll books throughout the whole state, allowing for statewide matching of records. There is no uniform approach on the certification of the e-poll books. During this election cycle the EAC implemented an E-Poll Book Testing Pilot Program for the first time in order to exchange experiences and enhance security.⁸⁶

State authorities should enhance inter-state co-ordination efforts and exchange experience to improve the cross-matching of voter registration data and to avoid possible inaccuracies in the voter lists.

Voter lists containing public records can be accessed by political parties, candidates, or by any citizen. Voter register data containing political party preference is easily available in most states.⁸⁷ Depending on the state, voter registration eligibility can be challenged by other voters, party observers, or

⁸¹ The [Real ID Act](#) of 2005 was introduced by the DHS to establish minimum security standards for the issuing and renewing of IDs, including driver's licenses. To receive a real ID, one must provide originals or government-issued copies of the proofs of identity, of social security number, of address, and of all legal name changes.

⁸² Alabama, Arizona, Georgia, and Kansas have laws requiring documentary proof of citizenship. Kansas' law was judged unconstitutional. See [Fish v. Kobach \(2016\)](#) and [League of Women Voters v. Harrington \(2021\)](#). The DoJ [filed a lawsuit](#) against Arizona over the state's restrictive requirement on proof of citizenship, contending that it violates provisions of the NVRA.

⁸³ See [U.S. Elections Project](#) website.

⁸⁴ See the [EAC Election Administration and Voting Survey 2020](#).

⁸⁵ Before cleaning up the list of inactive voters, state authorities are required to send notices to the citizens concerned. Upon failure to respond and if citizens do not vote in a certain number of federal elections, their entries will be removed. Louisiana suspended its membership in ERIC in January 2022.

⁸⁶ Based on [NCSL data](#), 13 states conduct certification of e-poll books, 12 states have in place statewide procedures for the use of e-poll book but do not have a formal certification programme, and 15 states have statutes authorizing the use of e-poll books but have neither a certification programme nor statewide procedures.

⁸⁷ Voter registers contain personal voter data that can be easily accessible to different stakeholders depending on the state. These often contain names, addresses and voting history of voters, including party preference. For more information see [EAC factsheet](#).

election officials. Ahead of these elections, there were reports of mass challenges in Georgia, Iowa, Michigan, and Wisconsin, inquiring into the accuracy of the voter lists.⁸⁸ While international good practice recommends a procedure for remedy and correction of inaccuracies in the voter list, such mass challenges raised concerns about a potential dissuasive effect on voters and about voter suppression.⁸⁹ ODIHR LEOM observers also noted that these challenges placed a significant administrative burden on the local election administration close to election day.

Voter identification requirements differ across states, with 35 states requiring identification in order to cast a ballot, while the remaining 15 states and the District of Columbia use ‘non-documentary’ proof of identity. Such ‘non-documentary’ methods, including signing an affidavit or the poll book, or providing personal information, are generally unreliable and subjective means of identification. Eight states implement strict photo ID requirements, and 10 non-strict photo ID requirements. Three ballot measures concerning the use of IDs were initiated for these mid-term elections.⁹⁰

ID requirements for registration and voting are in line with good practice and safeguard election integrity. However, in some states, such requirements have resulted in voters from some groups that often have difficulties accessing the required documents, including Native Americans, African Americans and economically disadvantaged communities, effectively being disenfranchised.⁹¹ Voter ID remains a politically contentious issue with opinions divided along party lines.⁹² Some ODIHR LEOM interlocutors noted cases where certain types of IDs were introduced without states adequately guaranteeing availability to all eligible citizens, often as the result of the selective application of rules, thereby infringing on the right to equal suffrage and contravening OSCE commitments.⁹³

⁸⁸ In Georgia, some 65,000 challenges were filed, of which 37,500 in Gwinnett County alone. In Michigan, some 22,000 voters’ records were challenged, and in Wisconsin, a local group claimed ineligibility of some 15,000 voters. In Gwinnett County, those challenges [were largely dismissed](#) following a [public meeting](#) and internal review of the matter, based on the relevant NVRA provision. Since 2020, Georgia legislation allows any voter to challenge as many registrations as they wish. Following these mass challenges, the State Election Director clarified that challenges must be filed in writing to the registrars and not with poll workers at polling stations. Some voters in Georgia found themselves on a challenged status, but more information has not been provided by local authorities.

⁸⁹ See the American Civil Liberties Union [report](#) on challenges to voters’ eligibility in Georgia. See also Section 1.2.iv and v of the [Code of Good Practice](#), which states that “iv. there should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered; v. a similar procedure should allow voters to have incorrect inscriptions amended”.

⁹⁰ In Arizona, proposition 309 to introduce stricter photo ID requirements on election day and identification when voting by mail was defeated by a close margin of 18,487 votes. In Nebraska, voters approved amending the state constitution to require valid photo identification, while in Michigan, voters approved the proposal to present photo identification or sign an affidavit when voting in person or applying for an absentee ballot.

⁹¹ The [American Civil Liberties Union](#) estimates that approximately 21 million citizens (around 11 per cent of registered voters) lack government-issued IDs. See the protracted litigation on the voter ID law S.B.824 in North Carolina from 2018, which was still ongoing during the 2022 mid-term elections. In the state suit [Holmes v. Moore](#), a county Superior Court found in September 2021 that “the evidence at trial [is] sufficient to show that the enactment of S.B. 824 was motivated at least in part by an unconstitutional intent to target African American voters.” An Oklahoma [law](#), which entered into force on 1 November 2022, allows for opening an investigation should more than ten voters register at the same address, raising concerns of voter intimidation. The practice of purging inactive voters in Louisiana has been [criticized](#) by civil rights groups as resulting in inaccuracies which disproportionately affects minority voters. Civil-society groups successfully [challenged](#) Florida S.B. 90 in court, on the basis that the law creates barriers to the access to the voting process for the elderly, the disadvantaged, and minorities.

⁹² [Pew Research Center](#) on voting access.

⁹³ For instance in Florida, Montana, North Carolina, and Texas. Paragraph 5.9 of the [1990 OSCE Copenhagen Document](#) states that “...all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground”. Paragraph 7.3 commits participating States to guarantee “universal and equal suffrage to adult citizens.”

State authorities should make further efforts to ensure that voter identification documents are equally available to all voters.

VIII. CANDIDATE REGISTRATION

In order to run for the Senate, candidates must be at least 30 years old and a citizen of the country for at least 9 years. Candidates for the House of Representatives must be at least 25 years of age, and a citizen for at least 7 years. Congressional candidates must be residents of the state in which they are standing.

States allow ‘recognized parties’ to nominate candidates. To qualify for ‘recognized party’ status, parties must meet a number of requirements, deadlines and regulations, including supporting signatures and filing fees, set by ballot access laws. These regulations also govern candidates running as independents and are enforced at state level, with thresholds for supporting signatures and deadlines for submission varying across states. In some states, requirements for smaller parties to qualify include surpassing a threshold of the share of votes cast in previous elections or a certain number of registered voters. Only the Democratic and the Republican parties have a recognized status in all 50 states. The Libertarian party has qualified status in 33 states, the Green party in 17 states, and the Constitution party in 12 states. Some other minor parties have gained recognized status in a smaller number of states. As of November 2022, 11 states recognize only the two major parties.⁹⁴

Sixteen states require that smaller parties and/or independent candidates submit supporting signatures in excess of 1 per cent of voters registered in the respective constituency.⁹⁵ Even though the threshold in some ballot access state laws is below the 1 per cent threshold recommended by international standards, smaller parties and independent candidates continue to struggle with access to the ballot.⁹⁶

⁹⁴ Alabama, Illinois, Kentucky, Massachusetts, New Hampshire, New Jersey, North Dakota, Ohio, Rhode Island, Tennessee, and Washington.

⁹⁵ These include Alabama, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Missouri, Montana, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Wyoming.

⁹⁶ In North Carolina, one must obtain 13,865 signatures (with at least 200 from each congressional district) to be recognized as a party. New York changed ballot access rules in 2020, and new parties must now receive 130,000 votes (up from 50,000) or 2 per cent of the votes cast for president or governor to qualify. The Green Party, Libertarian Party, and Independence Party were among those that lost their ballot status under the new threshold in 2020 in New York; the Libertarians [unsuccessfully challenged](#) the number of signatures required for state-wide candidates and elimination of a requirement to have supporting signatures from half of the House districts. From 1931 to 2017, Illinois law required a newly qualifying party to run a full slate of candidates, making it very challenging for small parties to run. This requirement was struck down by the Seventh Circuit Court in 2017 in [Libertarian Party of Illinois v Scholz](#). Candidates of independent and smaller parties wishing to run in Illinois need about five times as many signatures as Republican and Democratic candidates. In order to keep qualified status in Illinois, a party candidate needs to win at least 5 per cent of the vote. Legislation in the Illinois House introduced in 2021, H.B. 2398, would amend the Illinois Election Code to change the signature requirements for new political parties and independent candidates to be equal to those required for recognized political parties, irrespective of party affiliation. Virginia grants recognized status to parties that set up and maintain a party headquarters, adopt by-laws and furnish candidates.

More stringent ballot access requirements and deadlines may disproportionately hinder access to the ballot for smaller parties or independent candidates.⁹⁷ For instance, in Georgia there were no minor party or independent candidates running for the House, while in Illinois only one independent and one minor party candidate ran for the House, and in New York, only three minor party House candidates ran in these elections. All but seven states allow ‘write-in’ candidates.⁹⁸ No independent or minor party candidate won a seat in Congress or an election for governor or secretary of state in these elections.

Regulations that impose a high threshold of supporting signatures, together with additional requirements, may limit opportunities for smaller parties and independent candidates to participate, which is at odds with OSCE commitments and international standards.⁹⁹

The number of supporting signatures for candidate nomination should be revised so as not to exceed one per cent of registered voters to keep with international good practice, and state laws should ensure that ‘recognized party’ status requirements are inclusive and fair.

A total of 169 candidates contested for the 35 Senate seats, and 1,108 candidates ran for the House.¹⁰⁰ Of these, approximately 24 per cent were from smaller parties or independent candidates. Seventeen House candidates ran unopposed. Thirty-four candidates for Senate and 301 candidates for the House were women (20 and 27 per cent, respectively). In these elections, the combined percentages of candidates from the two major parties who came from racial and ethnic minorities were 30 per cent for senators, 29 per cent for representatives, and 11 per cent for governors.¹⁰¹

IX. CAMPAIGN ENVIRONMENT

The legal and regulatory framework has strong protections for fundamental freedoms of expression, assembly, and association. Rhetoric from politicians and media commentators resulted in an strongly

⁹⁷ ODIHR LEOM observers noted that the Libertarian party faced a number of challenges to their registration and nomination of candidates. In Alabama, the Libertarian party managed to collect signatures and furnish candidates for the House, which was assessed by local party representatives as burdensome and draining resources from the campaign. Also see a [decision](#) by the Texas Supreme Court. In [Cowen v. Raffensperger](#), the Libertarian party challenged the constitutionality of Georgia’s ballot access requirements for the signatures of 5 per cent of registered voters for third-party and independent candidates seeking election to the House of Representatives. The petition was [denied hearing](#) by the U.S. Supreme Court on 3 October. The Green Party successfully sought judicial relief on ballot access cases in [Montana](#) and [North Carolina](#).

⁹⁸ Write-in candidates are candidates whose name does not appear on the ballot but can be added to the ballot by voters. In some states, write-in candidates have to notify the election authorities in order to be eligible to be written on the ballot. Write-in candidates offer voters additional choice but have historically had limited success in winning office at the federal level.

⁹⁹ Paragraph 7.5 of the [1990 OSCE Copenhagen Document](#) commits the participating states to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”. Furthermore, paragraph 7.6 states that states will “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”. See also Section 1.3.ii of the [Code of Good Practice](#), which states that “The law should not require collection of the signatures of more than 1 per cent of voters in the constituency concerned”, as well as paragraph 17 of [1996 UNHCR General Comment No. 25](#), which states that the minimum number of supporters for a nomination “should be reasonable and not act as a barrier for candidacy.”

¹⁰⁰ In addition, eight candidates stood in the District of Columbia and the territories for non-voting delegate seats. The Libertarian candidate for U.S. Senate in Arizona withdrew on 1 November in favour of the Republican candidate.

¹⁰¹ Overall, 18 per cent of Republican candidates and 39 per cent of Democrat candidates were from minorities.

polarized atmosphere during the campaign.¹⁰² Widespread ongoing denial of the 2020 presidential election results, and of the integrity of the 2022 voting process by former President Trump, some Republican candidates and other commentators in campaign rallies, the media, and social networks negatively affected the campaign. Candidates and commentators from across the political spectrum, sought to question the legitimacy of political opponents.¹⁰³ A significant portion of the Democratic Party's electoral campaign was a counter-narrative stating that "democracy is on the ballot."¹⁰⁴

Party structures are highly decentralized, and neither of the major parties had a full federal policy platform for these elections, resulting in distinct campaigns at state and lower levels. Identifiable national themes included concerns about the economy and the perception of rising crime. Republican campaigns drew attention to the fact that inflation was at a 40-year high, blaming the Biden administration and the policies of Democrats in Congress. Their other key campaign points criticized the President, the Speaker of the House, tax policy, illegal immigration, and promoted the right to gun ownership. Democrats, following the June 2022 U.S. Supreme Court decision in *Dobbs v Jackson Women's Health Organization*, focused a large part of their campaign on abortion rights, and to a lesser extent on healthcare, gun control, and employment.¹⁰⁵ Both parties used aggressive and emotionally charged language on these issues. ODIHR LEOM observers noted that in swing states, democracy and the electoral processes themselves featured more prominently in the campaign. In southern border states, more attention was given to immigration. Campaign rhetoric for many seats in the House was generally more radical and divisive than competition for the Senate.

Parties and candidates should refrain from inflammatory and divisive rhetoric, including attempting to undermine trust in the electoral process.

Smaller parties, independent and write-in candidates ran in a variety of contests, but with a few notable exceptions, they had limited impact.¹⁰⁶ The campaign included large rallies headlined by national political figures, including, for Democrats, President Biden, former President Barack Obama, and Senator Bernie Sanders. Former President Trump organized rallies through his Save America PAC, which endorsed some Republican candidates, while others were criticized by him.¹⁰⁷ Some governors campaigned beyond their states.¹⁰⁸ Some candidates for high office debated on television; in several instances, the debates included minor-party or independent candidates.¹⁰⁹

¹⁰² For example, see Republican Congresswoman Marjorie Taylor Greene's [tweet](#), and [tweet](#) by Democrat gubernatorial candidate in Georgia Stacey Abrams.

¹⁰³ Polling conducted by [NBC](#) found that approximately 80 per cent both parties' supporters "believe the political opposition poses a threat that, if not stopped, will destroy America as we know it."

¹⁰⁴ See, for example, coverage of a [campaign speech by President Biden](#).

¹⁰⁵ According to data provided by [AdImpact](#), Democrats spent USD 465 million on ads which raised the issue of abortion rights, USD 149 million on ads mentioning healthcare, USD 106 million on ads campaigning about jobs, and USD 93 million on ads about the issue of guns, while Republicans spent USD 355 million on ads mentioning taxes, USD 247 million on ads about crime, and USD 247 million on ads about inflation.

¹⁰⁶ For instance, in Georgia, which has a two-round majoritarian electoral system, support for the Libertarian Party Senate candidate resulted in a run-off election, which was eventually won by the Democrat candidate on 6 December. In Utah, an independent (former Republican) ran for the Senate. The Democratic Party endorsed him and did not run their own candidate. He won 42.8 per cent, resulting in the lowest Republican vote in Senate elections in the state since 1974. In Oregon, an independent (former Democrat) gubernatorial candidate impacted the race, taking 8 per cent of the vote.

¹⁰⁷ The ODIHR LEOM observed rallies organized by former President Trump in Arizona, Iowa, Nevada, Ohio, Pennsylvania, and Texas.

¹⁰⁸ For example, California Governor Gavin Newsom placed billboards in other states and Florida Governor Ron DeSantis participated in rallies in Pennsylvania and Ohio.

¹⁰⁹ Among candidates who did not agree to debate were the Democrat governor candidate for Arizona and the Republican candidates for governor of Nebraska and Ohio. See a report by [The Brookings Institution](#).

The campaign to large degree focused on issues of electoral integrity. Republicans emphasized the need to prevent the registration of ineligible voters and the casting of illegal votes, while Democrats focused on preventing what they saw as the rejection of legitimate votes, and voter suppression, particularly of minorities. ODIHR LEOM interlocutors noted that through these statements, the parties contributed to a diminishing confidence in a system which relies on trust in election administration. In 11 of the 32 Republican rallies observed by the ODIHR LEOM, candidates denied or questioned the 2020 results.¹¹⁰

The ODIHR LEOM observed repeated examples in which some Republican candidates invoked racist and transphobic tropes.¹¹¹ In 24 of the 30 states in which ODIHR LEOM observers were deployed, threats of violence or aggressive behaviour were reported by interlocutors, or in the media, targeting voters, election administrators, officials, candidates, campaigners, and media representatives.¹¹² There were a few violent attacks and threats against candidates from both major parties.¹¹³ The Capitol Police called for additional resources to protect politicians from threats.¹¹⁴

Candidates made extensive use of social networks for their campaigning.¹¹⁵ Mainstream social networks had a variety of policies designed to reduce the spread of false information about elections.¹¹⁶ However, not all platforms prevented repeated spreaders of misinformation from posting. Rules concerning hate speech were not consistently enforced, particularly in non-English language content, according to ODIHR LEOM interlocutors.¹¹⁷ Most major social networks had policies exempting candidates and politicians from content moderation standards in instances where

¹¹⁰ ODIHR LEOM observers attended a total of 72 rallies and campaign events; of these, 33 were Democrat events, and 32 Republican.

¹¹¹ See the Human Rights Campaign's [analysis](#) of narratives which falsely conflated acceptance of trans people with child abuse. Some of these [attack ads](#) were spread on social media. Some inflammatory rhetoric appeared to be designed to elicit campaign donations, for instance [this](#) email appeal by Republican Senate candidate J.D. Vance, as well as other examples listed [here](#).

¹¹² A man was charged with attempted murder following an attack on Speaker of the House Nancy Pelosi's husband. See reports concerning the [attack](#) on Paul Pelosi. According to data provided by [AdImpact](#), since the start of 2022, Republicans spent USD 77 million in adverts in which the Speaker was a key target.

¹¹³ See for instance, the reported [six swatting attack attempts](#) on Congresswoman Marjorie Taylor Greene and the on-stage [attack](#) on Republican candidate for governor of New York Lee Zeldin at a campaign event.

¹¹⁴ See [press release](#) from the Capitol Police. The [Carnegie Endowment for International Peace](#) and media sources claimed a tenfold increase in threats against members of Congress between 2016 and 2021.

¹¹⁵ According to the [Pew Research Center](#), approximately 3.4 million tweets were sent by 8,000 national, state and local-level candidates between 1 January 2022 and the elections. The top three topics were race, abortion, and education.

¹¹⁶ See the Open Technology Institute's [assessment](#) of ten online platforms' policies, the Integrity Institute's [Elections Integrity Program](#), and the Free Press' [assessment](#) of four social media companies' policies implementation.

¹¹⁷ Hate speech policies from [Facebook](#) and [Twitter](#) ban the use of harmful stereotypes or inciting fear about non-citizens from racial minority groups. Research by [Institute for Strategic Dialogue](#) found that platforms such as TikTok and Instagram recommended abusive hashtags when users searched for the names of some female political figures. ODIHR LEOM monitoring detected 101 tweets between 1 August and election day by congressional or state-wide candidates that use the term 'invasion' in relation to immigration, often conflating it with criminality.

internal boards deemed their speech to be newsworthy.¹¹⁸ Some smaller right-wing focused social networks purposefully had minimal content moderation, and as a proportion of total content, had far higher levels of racism (particularly antisemitism), misogyny, and transphobia, some of which was directly connected to the elections.¹¹⁹

Section 230 of the Communications Decency Act (CDA), as interpreted by court decisions, exempts social media companies from legal liability for third-party content posted on their platforms.¹²⁰ Given the interpretation of the First Amendment, private platforms' internal policies, rather than legislation, circumscribe speech permitted on social networks.¹²¹ Moreover, the majority of the social networks do not provide transparency on how their algorithms might increase or decrease the spread of partisan political content, leading to questions about equal access to social networks as a platform for political speech and campaigning.¹²²

The legal framework should be adapted to reflect changes in the social network environment in order to protect and foster a vibrant and transparent digital public domain. Social media companies should strengthen and consistently enforce their internal policies and make reporting and content moderation policies and decisions in response to violations of these policies more timely and transparent.

¹¹⁸ [TikTok](#) does not include exceptions to content moderation standards in its rules for government and political accounts. [Meta](#) gives 'newsworthiness allowances' to politicians, candidates, and others who make statements that otherwise violate its policies, while [Twitter](#) only made 'public interest exceptions' to its policies for politicians. On 27 October, businessman Elon Musk finalized the acquisition of Twitter. While "no major content decisions or account reinstatements" were announced until the convening of a new 'moderation council', four top managers, were dismissed immediately after the takeover and the head of trust and safety, who directly oversaw areas of misinformation and harmful speech, resigned on 10 November. While no public information was available concerning the composition or convocation of the new moderation council, the accounts of several controversial, previously banned or suspended high-profile users, including former President Trump, [were reinstated](#) during November.

¹¹⁹ See for instance a [Truth Social](#) press release which explains why they oppose content moderation. Parler's [content policy](#) does not ban hate speech and makes clear they will only remove content in a few narrow, legally required categories. Neither [Gab](#) nor [BitChute](#) content policies prohibit users in the U.S. from posting speech that incites hatred and election misinformation.

¹²⁰ The Supreme Court scheduled two cases for 21 and 22 February 2023, [Gonzales v. Google](#) and [Twitter v. Taamneh](#), marking the first time that the Court would review Section 230 of the CDA, a test of the current legal non-liability *status quo*. Both cases are still pending as are two related cases, *Moody v. NetChoice*, and *NetChoice v. Paxton*. In the former, the U.S. Court of Appeals for the Eleventh Circuit (with jurisdiction over Alabama, Florida, and Georgia) on 23 May 2022 [invalidated](#) Florida law SB 7072 which sought to prohibit certain social-media companies from moderating or curating political content on their platforms which would result in removing or deprioritizing messages or 'deplatforming' political candidates. Following an [appeal](#) by the Florida Attorney General in August 2022, the U.S Supreme Court stated that "it is substantially likely that S.B. 7072's content-moderation restrictions and its requirement that platforms provide a thorough rationale for every content-moderation action violate the First Amendment", but in reply briefs on [23 November](#) and [7 December](#) granted *writ of certiorari* to review of the Eleventh Circuit's decision. In the latter, in stark contrast, the Fifth Circuit Court on 16 September 2022 [upheld](#) Texas bill HB 20 which stipulates that large online platforms (with more than 50 million users) do not have the right to engage in content moderation, which the court considered 'censorship.'

¹²¹ Several bills were introduced in Congress recently, including the Online Consumer Protection Act (OCPA) and the Platform Accountability and Transparency Act (PATA) in 2021, and the Algorithmic Justice and Online Platform Transparency Act, and the Digital Services Oversight and Safety Act (DSOSA) in 2022. The bills propose that social media companies provide researchers and the public with access to certain platform data, and that platforms fully disclose their content moderation policies. None of these bills had been adopted by the time of the elections.

¹²² Some Republican candidates alleged that social networks were biased against the right. A 2021 poll by the [Cato Institute](#) found that "75 per cent [of Americans] don't trust social media to make fair content moderation decisions."

X. CAMPAIGN FINANCE

Financing of campaigns for congressional elections is regulated by federal legislation. The key legal acts pertaining to campaign finance, the Federal Election Campaign Act (FECA) and the Bipartisan Campaign Reform Act (BCRA), stipulate the sources and limits of donations as well as disclosure requirements. The scope of limitations to campaign financing has narrowed following U.S. Supreme Court rulings, including *Buckley v. Valeo* (1976), which removed limits on campaign expenditures, and *Citizens United v. Federal Election Commission* (2010), which gave corporations the right to independent campaigning by ruling that spending constitutes freedom of speech.¹²³ These rulings resulted in a disproportionate amplification of the voices of bigger donors and the candidates they support, which stands against international good practice.¹²⁴

Most recently, in May 2022 the Supreme Court ruled that restricting the amount that candidates may be repaid from post-election contributions for loans made to their own campaign ahead of the election abridged candidates' First Amendment rights by deterring them from making such loans. The FEC argued that these limits had served to prevent unrestricted post-election donations being used to repay such loans once a candidate is elected, which potentially provides an avenue for *quid pro quo* transactions.¹²⁵ The highest value loans made, by successful candidates to their own campaigns in these elections, were USD 12.5 million for the House of Representatives and USD 1.4 million for the Senate.¹²⁶

Election campaigns can receive limited contributions from individuals, political parties, and PACs.¹²⁷ While there is no public funding for congressional candidates, incumbents enjoy an overwhelming fundraising advantage over their competitors. In 28 states in which incumbents were running for Senate, their incomes were on average over 3 times bigger than those of their highest-raising competitors; no incumbent Senator lost her or his race in these elections.¹²⁸ Although foreign donations are prohibited in campaigns for candidates, they are allowed in campaigns for ballot measures, following a 2021 decision by the FEC.¹²⁹

Congress should consider a comprehensive reform of the legal framework for campaign finance to ensure a more level playing field for smaller parties and independent candidates. Consideration could be given to limiting campaign expenditures.

The law allows for 'independent' campaigning entities, so-called Super PACs, which do not have to

¹²³ According to paragraph 19 of the [1996 UN Human Rights Committee General Comment No. 25](#) "reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party."

¹²⁴ See paragraphs 78 and 79 of the [2017 Report of the UN Human Rights Council Special Rapporteur](#) on the Rights to Freedom of Peaceful Assembly and of Association on his mission to the United States of America.

¹²⁵ See the [2021 FEC Jurisdictional Statement](#) in the *FEC v. Ted Cruz for Senate* case, presented to the Supreme Court.

¹²⁶ See the financial reports of Representative [David Trone](#) and Senator-elect [J.D. Vance](#), respectively.

¹²⁷ Individuals can donate up to USD 2,900 per candidate and up to USD 5,000 per PAC. Donations above USD 200 must be disclosed.

¹²⁸ According to financial reports filed with the FEC on 15 October, in the Senate races in which incumbents were seeking reelection, individual incumbents raised USD 24.6 million on average, while their respective main challengers on average raised USD 7.3 million.

¹²⁹ In October 2021, the FEC [ruled](#) that ballot measures are not elections, thus their campaign committees are not bound by the FECA prohibition. The Committee of Ministers of the Council of Europe [recommends](#) that states "specifically limit, prohibit or otherwise regulate donations from foreign donors." The U.S. is not a member of the Council of Europe but enjoys the [status of an observer state](#).

observe donation limits but are subject to disclosure requirements and are prohibited from co-ordinating their campaigns with candidates or their committees. Civil society campaign-finance watchdogs and the media underline that the provisions prohibiting co-ordination are easily circumvented, which effectively renders funding from such sources to candidates' campaigns unlimited.¹³⁰ According to post-election reports submitted to the FEC, Super PACs spent USD 2.4 billion in the 2022 election cycle, which is a significant increase in comparison with the 2018 mid-term elections, when they spent USD 1.3 billion. Super PACs spent the most substantial shares of funds on political advertisement in competitive races.¹³¹ A number of candidates renounced funding from Super PACs and financed their campaigns predominantly from donations below USD 200.¹³²

Some tax-exempted organizations, which are neither bound by donation limits nor by public disclosure requirements, can also engage in campaigning, provided that this is not their primary activity.¹³³ Tax-exempted organizations often donate money they fundraise to Super PACs, thereby concealing the identity of the initial donors. Such undisclosed contributions raise concerns over the undue influence of interest groups over candidates, and obscure voters' awareness of the influence such interest groups may have on candidates and elected officials.¹³⁴ The Democracy Is Strengthened by Casting Light on Spending in Elections Act of 2021 (Disclosure Act), which would require any entity to disclose donors that contributed more than USD 10,000 in an election cycle, failed to summon the required majority to advance the bill to the Senate floor in September 2022. Proposals for more stringent disclosure requirements for contributions to electoral campaigns enjoy strong public support across party lines.¹³⁵

Congress should harmonize the regulatory framework on co-ordination of campaigns, contribution limits, and disclosure, for all types of campaign committees. Independent groups and non-profit organizations that engage in campaign activities or donate to campaign committees should be legally required to disclose their sources of funding within a timeframe that allows for transparency of campaign financing.

¹³⁰ See for instance the [Campaign Legal Center](#) and the [New York Times](#) analysis of so-called 'red-boxing – 'a practice of candidates providing aligned Super PACs with campaign messages for specific target groups and negative information about opponents.

¹³¹ See FEC [campaign finance data](#) and Open Secrets [assessment](#).

¹³² Of the congressional candidates that renounced Super PAC money, [Alexandria Ocasio-Cortez](#) and [Matt Gaetz](#) were the most successful in raising small dollar donations, which constituted 66 and 59 per cent of their campaign incomes, respectively.

¹³³ According to paragraph 256 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Legislation](#), "third parties that are involved in the campaign [...] should be subjected to similar rules on donations and spending as political parties to avoid situations where third parties can be used to circumvent campaign finance regulations." The Committee of Ministers of the Council of Europe [recommends](#) that "[r]ules concerning donations to political parties (...) should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party."

¹³⁴ According to Article 7.3 of the [UN Convention Against Corruption](#), "[e]ach State Party shall consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties."

¹³⁵ According to a 2019 [Campaign Legal Center](#) bipartisan poll, 83 per cent of voters support public disclosure of contributions to organizations involved in elections. The poll's findings coincide with the [2018 study of the Program for Public Consultation](#) at the University of Maryland. In these elections, 72.3 per cent of Arizona voters endorsed a ballot measure required a donor disclosure obligation for any entity or person that spends over USD 50,000 on a state-wide campaign, and USD 25,000 on other campaigns.

Legal requirements for campaign advertising to contain a disclaimer stating who commissioned and takes responsibility for the presented message did not extend to digital platforms.¹³⁶ Of the key social networks, Twitter and TikTok ban political advertising, with the latter recently also blocking politicians and political parties from fundraising on its platform.¹³⁷ Alphabet (Google) and Meta introduced different measures, such as ad libraries, with the stated aim of increasing transparency. After the elections, on 1 December 2022, the FEC endorsed the Final Rule and Explanation and Justification for Internet Communication Disclaimers, which extends the disclaimer requirements to paid communications placed on digital devices, applications, and advertising platforms.¹³⁸ The regulation is a welcome step towards improving the transparency of the increasingly important digital political advertising market, and fulfils a previous ODIHR recommendation.¹³⁹

Oversight of campaign finance is vested with the FEC and due to a lack of quorum in 2019 and 2020 it has faced a backlog of complaints. The adjudicated penalties are not sufficient to deter non-compliance by campaign committees.¹⁴⁰ The difficulty of reaching bipartisan agreements affects the FEC's enforcement capability, further weakening the dissuasive effect of sanctions provided by the law.¹⁴¹ The FEC can use prosecutorial discretion to dismiss a plaintiff's administrative complaint; a complaint thus dismissed cannot be subject to judicial review, contrary to OSCE commitments.¹⁴²

Consideration could be given to reviewing legal provisions on the formula for the composition of the Federal Election Commission (FEC) in order to promote effective and independent oversight and enforcement of campaign finance law. The right to appeal the dismissal of complaints on the basis of prosecutorial discretion should be ensured.

¹³⁶ According to the FEC [regulatory framework applicable for the 2022 electoral cycle](#), “general public political advertising [did] not include internet ads, except for communications placed for a fee on another person's or entity's website.” In some cases, states applied stricter provisions. In May 2022, the Louisiana State Legislature [extended](#) the disclosure requirements to political advertising placed on digital platforms. In October 2022, the King County Superior Court [issued](#) a USD 24.7 million fine to Meta for violating Washington state disclosure [provisions](#), which require that all written political advertising shall include the sponsor's name and address. Meta contravened these provisions [822 occasions between 2019 and 2021](#).

¹³⁷ TikTok updated its [policies](#) for political accounts on 21 September 2022.

¹³⁸ See [the FEC Final Rule and Explanation and Justification for Internet Communication Disclaimers](#).

¹³⁹ According to data provided to the ODIHR LEOM by [AdImpact](#), a media monitoring company, the amount spent in 2022 on digital political advertising increased over eight per cent since 2018. In the 2018 election year, USD 77.7 million was spent on digital advertising, compared to USD 666 million spent in 2022. USD 7.4 billion were spent on media political ads in 2022, of which USD 1.7 billion was spent on digital advertising and on ads in streaming televisions (23 per cent).

¹⁴⁰ The civil penalties foreseen in the FECA cannot exceed USD 50,000, or 1,000 per cent of the amount involved in a violation. In cases considered by the FEC over the [2022 fiscal year](#), an average civil penalty with conciliation agreement amounted to USD 51,700. According to paragraph 273 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Legislation](#) “sanctions must bear a relationship to the violation and respect the principle of proportionality.”

¹⁴¹ Out of 398 Matters Under Review (MUR) closed between 1 January 2020 and 31 July 2022, in 177 cases the FEC failed at some point to reach the four votes required for making a decision. In 36 of the 177 cases, the MUR file was closed solely with split votes, and therefore without a decision. In 2011, GRECO [recommended](#) to study the effects of evenly-divided votes (“deadlocks”) of the FEC and to consider introducing measures to prevent such situations to the extent possible.”

¹⁴² Out of 398 MURs closed between 1 January 2020 and 31 July 2022, the [FEC dismissed](#) 106 cases (26.6 per cent) as matters of prosecutorial discretion. On 9 April 2021, the U.S. Court of Appeals for the District of Columbia Circuit [ruled](#) that the FEC's exercise of prosecutorial discretion is not subject to judicial review, unless based solely on legal interpretation. Pursuant to paragraph 5.10 of the [1990 OSCE Copenhagen Document](#), “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.”

The DoJ is tasked with the oversight of criminal liability related to campaign finance.¹⁴³ One such illegal method of obscuring the original sources and intended recipients of donations is the practice making contributions through a third party, so-called ‘straw donors’, or using shell companies to channel contributions from prohibited sources.¹⁴⁴ Following the elections, one of the biggest individual donors admitted to having used such methods to donate to political campaigns.¹⁴⁵ The donor’s admission, in the context of other criminal investigations, resulted in a federal indictment for violation of campaign finance laws, and lawsuits for using funds to illegally support political campaigns, as well as a civil complaint to the FEC.¹⁴⁶

In an election year, campaign committees are required by law to report to the FEC on a quarterly basis and must also submit pre-election reports 12 days before, and post-election reports 30 days after election day. Reportedly, at times the campaign committees delay booking their incomes or expenditures with the aim of postponing the disclosure of donors or campaigning strategies, for after the primaries or election day. According to the post-election reports submitted to the FEC, the most expensive campaign for a seat in the House of Representatives cost USD 28.3 million, while the most expensive senatorial campaign cost USD 168.7 million.¹⁴⁷ On average, individual campaigns for successful candidates to the House and to the Senate spent USD 2.7 million and USD 24.6 million, respectively. Campaign expenditures by congressional candidates, parties, PACs and Super PACs amounted to USD 9.2 billion, making these elections the most expensive mid-terms in history.¹⁴⁸

XI. MEDIA

A. MEDIA ENVIRONMENT

The media landscape is pluralistic, diverse, and highly polarized.¹⁴⁹ Despite the presence of over 18,000 media outlets,¹⁵⁰ the most prominent media outlets and networks are owned by a relatively

¹⁴³ Over the 2022 election cycle, in addition to other cases, the DoJ acted in cases of registering Super PACs and fundraising under the false pretense of supporting a candidate or a cause, so called ‘scam PACs’. See for instance cases from [California](#), [Maryland](#), and [Nevada](#).

¹⁴⁴ Such ‘dark money’ was subject of the DoJ’s attention in previous election cycles. In 2021 and 2022, a number of individuals were [sentenced](#) to 12 to 20 months of prison and financial sanctions for conspiring to make political contributions by a foreign national, for solicitation and aiding thereof, and for conspiring to make ‘straw donations’ in the 2018 election cycle.

¹⁴⁵ On 29 November, Sam Bankman-Fried, the founder of the cryptocurrency exchange and crypto hedge fund FTX, which filed for bankruptcy on 11 November, [stated](#) that apart from donations amounting to approximately USD 40 million which he had reported to the FEC and which had been made mostly to the Democratic Party and liberal groups, he had donated a similar amount to the Republican Party through schemes that allowed for his name to remain undisclosed.

¹⁴⁶ See DoJ [Grand Jury Indictment](#) and lawsuits filed by the [Securities and Exchange Commission](#) and by the [Commodity Futures Trading Commission](#) with the U.S. District Court for the Southern District of New York. Citizens for Responsibility and Ethics in Washington (CREW), a campaign-finance watchdog, submitted [a complaint](#) with the FEC against Sam Bankman-Fried and ‘unknown respondents’, i.e. corporate and private persons who collaborated in the scheme to hide the reportable contributions.

¹⁴⁷ See the financial reports of Representative [Katherine Porter](#) and Senator [Raphael Warnock](#), respectively.

¹⁴⁸ According to FEC data, based on the reports submitted from 1 January 2021 to 28 November 2022, congressional candidates spent USD 3.56 billion, party committees – USD 2.3 billion, PACs sponsored by trade unions and corporations – USD 954.4 million, and Super PACs – USD 2.4 billion.

¹⁴⁹ See Ad Fontes Media for [Interactive Media Bias Chart](#).

¹⁵⁰ According to the Federal Communications Commission (FCC) in its [Broadcast Station Totals](#), there are 1,758 commercial, educational, and public television channels and 15,389 radio stations, as of 31 December 2021. In 2020, there were [reportedly](#) 1,260 daily newspapers, almost 500 less than 50 years ago.

small number of entities.¹⁵¹ Digital media, including online media, social networks, and podcasts, have become the dominant sources of information.¹⁵² Numerous social networks, in particular Facebook, YouTube, Twitter, and TikTok have over the past several years contributed widely to political information, including on election-related matters.

The major television networks ABC, CBS, and NBC remain traditional sources of information that enjoy high viewership rates, including their traditional Sunday morning political talk-shows. Cable news channels such as Fox News, CNN, and MSNBC mostly provide highly politicized coverage often personalized by the leading show anchors. There are several well-respected national newspapers, and local media serve as an important source on local politics; however, the impact of both is declining, and some territorial areas do not have any local media.¹⁵³

State legislatures could consider strengthening legal mechanisms to support local journalism, including financial, technological, and educational incentives, with an aim to encourage a more diverse local media environment.

There are two public networks, Public Broadcasting Service (PBS) and National Public Radio (NPR), which comprise 356 television and 1,190 radio stations, respectively. NPR in particular enjoys high audience ratings.¹⁵⁴ However, despite their public mandate, and widely respected quality journalism, public media are generally underfunded.¹⁵⁵ The Corporation for Public Broadcasting (CPB) receives federal funding from Congress two years in advance and distributes the majority of this funding to some 1,500 locally managed public broadcasters, based on a statutory formula.¹⁵⁶

¹⁵¹ Six major companies control approximately 90 per cent of media content: AT&T (CNN, Time), CBS, Comcast (NBC, MSNBC, BuzzFeed), Disney (ABC), News Corp (Fox News, Wall Street Journal, New York Post), and Viacom. At the same time, there are [reportedly](#) some 670 major daily newspapers, more than half of which (380) are owned by seven major parent companies, with Gannett Co. owning 250 dailies, including one of the largest, USA Today.

¹⁵² See the Pew Research Center's [News Platform Fact Sheet](#) and [Social Media and News Fact Sheet](#) from September 2022.

¹⁵³ The Local Journalism Sustainability Act, which contained various financial incentives to support local media, was incorporated into the 2021 Build Back Better Act (BBBA) which eventually did not pass through Congress. While the BBBA was reworked and passed in August 2022 as the Inflation Reduction Act, provisions related to local media were omitted.

¹⁵⁴ As [provided](#) by the National Public Media, a sponsorship organization co-owned by the PBS, NPR and GBH (a multiplatform creator for public media), NPR has a weekly audience of some 48 million across platforms. At the same time, the PBS News Hour has [a weekly audience](#) of some 18 million viewers across platforms.

¹⁵⁵ Between 2012 and 2021, the Corporation for Public Broadcasting (CPB) received up to USD 445 million as an annual [federal appropriation](#) (as general funds, a principal form of appropriation). As of 2022, the amount is gradually increased (USD 465, 475 and 525 million for 2022–2024, respectively). The Consolidated Appropriations Act 2023 approved by the Congress on 23 December 2022 increased it to USD 535 million for 2025. The Act also allocated USD 60 million for 2023 for interconnection (another form of appropriation aimed for media technical support), an increase from the annual USD 20 million allocated during more years of the past decade.

¹⁵⁶ CPB's mission is to provide free, over-the-air access to local public media, regardless of the location (urban, suburban, rural, or remote area). Many rural communities rely on public media as one of their only sources of local media. As stipulated in the 1967 Public Broadcasting Act, the CPB (which does not produce programming or own, operate, or manage any public media broadcasting stations) sends the majority of funding (71 per cent) directly to public radio and television stations. The remainder of the budgetary funds is invested in the creation of programming (18 per cent) or spent on system support including research, copyright fees and national initiatives (6 per cent), while some 5 per cent covers the CPB's operating expenses. At the same time, stations [raise](#) an average of USD 6 (EUR 6.3) for every federal dollar they receive from CPB.

Derogatory comments against media, including in campaign materials of some Republican candidates,¹⁵⁷ as well as at Republican campaign events observed by the ODIHR LEOM, and a legal action against traditional news media,¹⁵⁸ compounded by pervasive online disinformation, have contributed to declining trust in traditional media.¹⁵⁹ The OSCE Representative on Freedom of the Media has also raised concerns over journalists' safety in recent years.¹⁶⁰

B. LEGAL FRAMEWORK

The First Amendment guarantees freedom of the press and expression. U.S. Supreme Court decisions, in conjunction with media self-regulation, provide for robust protection of media independence. The 1934 Communications Act, the 1996 Telecommunications Act, and FCC regulations outline the basic regulatory framework for broadcasters, including during election periods. During 45 days before a primary and 60 days before general elections, all legally qualified candidates are entitled to the 'lowest unit charge'.¹⁶¹ During the 60 days prior to election day, commercial broadcasters must provide 'reasonable access' to all qualified federal candidates who request to purchase airtime.¹⁶² In addition, an 'equal opportunity' rule grants a candidate the right to use airtime on equal conditions with other candidates, with exceptions aimed at protecting editorial freedom.¹⁶³ Print and online media are not bound by statutory requirements. The FCC oversees broadcasters' compliance with existing requirements.¹⁶⁴ It does not conduct media monitoring, but regularly responds to media inquiries and election-related complaints through its Media Bureau, in an informal manner.

¹⁵⁷ Kari Lake, a former journalist and the Republican candidate for Arizona governor, ran a campaign spot with the message "it's time to take the sledgehammer to the mainstream media's lies and propaganda," accompanied by footage of her physically demolishing TV sets with a sledgehammer. On 10 November, former President Trump accused the New York Times' election coverage as [fake news](#) and called the newspaper "the enemy of the people."

¹⁵⁸ On 3 October, former President Trump sued CNN, seeking USD 475 million in damages, saying the network had defamed him and used its considerable influence to defeat him politically.

¹⁵⁹ There is a stark contrast between journalists and the public in their assessments of many core functions of media, including on reporting the news accurately (65 per cent of journalists believe the news media are good at it, while 35 per cent of the public think so) or on covering the most important stories of the day (67 per cent of journalists think that the news media are good at it, while 41 per cent of the public think so). See a Pew Research Center [analysis](#) from June 2022.

¹⁶⁰ See OSCE Representative on Freedom of the Media, Regular [report](#) to the OSCE Permanent Council, November 2021, as well as a [statement](#) from 27 October 2021 addressing several aspects of journalists' safety referring to "more than a hundred journalists assaulted by protestors during public demonstrations, several having their equipment damaged" and "law enforcement officials arresting or detaining more than fifty journalists."

¹⁶¹ The lowest unit charge guarantees the lowest advertising rate for the same class, amount of time, and time of day that a broadcast station, cable system, or DBS (Direct Broadcast Satellite) provider offers to its commercial advertisers.

¹⁶² Commercial broadcast stations and DBS providers must allow federal candidates to purchase reasonable access. However, if a cable system provides paid advertisement to one candidate, then it must provide, upon request, equal conditions to other candidates for the same office. The only exception to this principle is for news programming, during which broadcasters may choose not to sell airtime.

¹⁶³ Equal opportunity mandates that once a broadcaster or a cable channel allows a legally qualified candidate (federal, state, or local) to use its facilities, it must afford equal opportunities to purchase the same amount of airtime and comparable use of facilities to all other legally qualified candidates for that office or nomination. The equal opportunity rule is subject to several exemptions, such as appearances in *bona fide* newscasts, regularly scheduled news interview programs, news documentaries, if the appearance of the candidate is incidental to a documentary's subject matter, or on-the-spot coverage of *bona fide* news events (including candidate debates and political conventions).

¹⁶⁴ The FCC maintains a record of such requests in its [Political File](#) through its [Public Inspection File](#). As non-commercial broadcasters, PBS and NPR are prohibited from airing paid advertisements.

C. ODIHR LEOM MEDIA MONITORING

Freedom of expression was respected, with a wide range of election-related information available. National media coverage of the elections was extensive and vibrant, focusing primarily on competitive Senate and governor races, as well as on overarching topics such as the economy, abortion rights, crime, and the state of democracy, including the investigation of the 6 January 2021 attack on the U.S. Capitol.¹⁶⁵ In local media, reporting was dominated by state-based races, including coverage of debates. Some of the monitored media outlets, in particular PBS and USA Today and some major newspapers, provided voter information, covering various aspects of the electoral process.

PBS and NPR provided moderate amounts of campaign coverage in their newscasts, with the Democratic Party receiving 31 per cent and 35 per cent of the main news coverage related to politics on the respective stations, and the Republican Party receiving 35 and 33 per cent, respectively; most coverage for both parties on public stations was neutral in tone. The three national TV networks (ABC, CBS, and NBC) presented similar, mostly neutral coverage of the major parties, with the tone more critical of the Republican Party. President Biden and his administration received approximately 14 per cent of the coverage across these networks, mainly in a neutral tone, while former President Trump received approximately 10 per cent of coverage which was largely negative.

The evening prime-time programming on cable networks is composed of political shows presented by well-known anchors, often combining the coverage of current events with politically charged commentaries and opinions. Such partisan coverage was observed on MSNBC, which presented its viewers with highly negative coverage of the Republican Party and former President Trump – with the latter receiving the highest proportion of coverage among all monitored broadcast media (27 per cent). Fox News was particularly partisan, presenting largely negative information, about President Biden and the Democrats, often using demeaning and mocking language. In addition, Fox News, and to some extent Daily Wire, regularly repeated unfounded narratives of voter fraud surrounding the 2020 election, which were often amplified in affiliated websites and other platforms.¹⁶⁶

The New York Times and The Wall Street Journal had diverging perspectives of political events and election campaign. Each of the outlets devoted a combined total of some 85 per cent to the Republican Party and the Democratic Party, President Biden, and former President Trump. While most coverage was neutral in tone, the New York Times criticized the Republican Party and former President Trump, as The Wall Street Journal was critical of the Democratic Party and President Biden. While The New York Times regularly followed the campaign of the two major parties and specific competitive races, with in-depth political analysis, The Wall Street Journal offered factual and measured political coverage, with political leanings expressed mostly in its opinion section.

Similarly, the Washington Post and USA Today, two of the leading online news sources, dedicated between 55 and 60 per cent of their political coverage to the two major parties, and 25 per cent in total to President Biden and former President Trump. While most coverage was neutral in tone,

¹⁶⁵ From 11 October, the ODIHR LEOM conducted its quantitative and qualitative assessment of political and election-related coverage by several major media outlets. The monitored media included: Public television PBS (evening news program) and public radio NPR (morning news program); three television networks ABC, CBS, and NBC (evening news programs); three cable television channels CNN, Fox News, and MSNBC (two hours of evening political programs); two newspapers The New York Times and The Wall Street Journal (main political and opinion sections); and five websites [DailyWire.com](https://www.dailywire.com), [HuffPost.com](https://www.huffpost.com), [TheEpochTimes.com](https://www.theepochtimes.com), [USAToday.com](https://www.usatoday.com), and [WashingtonPost.com](https://www.washingtonpost.com) (main election and political sections).

¹⁶⁶ As reported by [The Righting](https://www.therighting.com), which has been mapping conservative media sources for several years, the practice of content sharing within these affiliated outlets is regular and widespread. In addition, The Ben Shapiro Show (produced by the Daily Wire) is the second-most popular political podcast (after the Daily, produced by the New York Times).

former President Trump was also presented in a critical manner, often in relation to the 6 January events. The Republican Party was also presented in a critical manner in the Washington Post. HuffPost portrayed former President Trump in an overwhelmingly negative tone. Conversely, The Epoch Times and Daily Wire provided very negative coverage of the Democratic Party and President Biden. Daily Wire in particular covered events in a biased and non-factual manner, and regularly used transphobic language and repeated the narratives that cast doubts on the outcome of the 2020 presidential election.

XII. ELECTION DISPUTE RESOLUTION

The available complaints mechanisms, including broad legal standing and multiple avenues, provide for effective but not always timely dispute resolution. Political parties, candidates, electoral campaigns, civil-society groups, and voters may file lawsuits, including against state election laws and guidance adopted by secretaries of state and state and county election boards. In addition to state and federal courts, complaints may be filed with county election boards, election supervisors, secretaries of state, law enforcement agencies, and state attorney generals' offices. Federal courts are competent for breaches of federal laws, while breaches of state laws fall under the purview of state courts. Subsequently, in some cases, litigants cited breaches of both federal and state legislation on the same issue, in order to litigate in federal courts when dissatisfied with state court decisions, which may have resulted in protracted litigation and legal uncertainty.¹⁶⁷ Litigants could also choose whether to cite breaches of either federal or state laws in order to litigate in the corresponding court that they considered likely to be more favourable to their cause.

In line with the *Purcell principle*, federal courts may not enjoin state election laws close to an election, but no guidance or deadlines are provided for the implementation of the principle, which does not safeguard against inconsistent and arbitrary implementation.¹⁶⁸ Although not binding for them, state courts occasionally also follow this principle. However, state laws and guidance by secretaries of state and election boards were in some cases adopted or amended close to the elections, triggering litigation and resulting in late court decisions pertaining to key issues including voter registration, voting, and counting procedures, thus detracting from an effective dispute resolution and legal certainty. Concerns were raised that stakeholders, including county election boards, might not be fully informed of such court orders.¹⁶⁹

To ensure legal certainty and effective and timely legal remedy, legislation should prescribe clear and objective criteria and timeframes for challenging and enjoining state election laws in a timely and consistent manner.

¹⁶⁷ For instance, the Supreme Court of Pennsylvania ruled in favour of the legal requirement for postal ballots to be dated. Subsequently, stakeholders brought a [lawsuit](#) with the federal District Court alleging that this legal requirement breaches Section 2.b of the Civil Rights Act, as it constitutes denial of voting for errors which are not 'material' (necessary) for determining voter eligibility. U.S. Circuit Court rulings are binding only on the states within their jurisdiction, while U.S. Supreme Court ruling are binding across the U.S. Also, challenges against a district map were often brought both to state and federal courts, citing partisan and racial gerrymandering, respectively.

¹⁶⁸ In *Merrill v. Milligan* (2022), the U.S Supreme Court stated: "how close to an election is too close may depend in part on the nature of the election law at issue and how easily the state may make the change without undue collateral effect."

¹⁶⁹ For instance, the first instance court in Michigan allowed the use of mobile phones in the absentee vote counting board rooms, while the second instance court reinstated a ban issued by the Secretary of State. The initial complaint had been filed by pro-Republican groups.

State laws, including those on administrative procedure, govern litigation and often grant discretionary powers to county election boards, including with respect to dispute resolution, which does not safeguard against inconsistent decisions and may potentially result in unequal voting opportunities.¹⁷⁰

Following the 2020 elections, some states established additional mechanisms for investigation and prosecution or strengthened existing ones, often coupled with criminalization of certain irregularities.¹⁷¹ Referrals of criminal cases may be made mainly to state law enforcement agencies and offices of attorney generals, while federal institutions have limited competences.¹⁷² Some state boards of elections may also receive complaints and conduct investigations, though they lack sanctioning power and are eventually required to refer cases to law enforcement agencies. Pursuant to complaints alleging voter intimidation, the District Court in Arizona ordered poll watchers to monitor drop boxes from a 75ft (approximately 23 meters) distance, and a District Court in Texas ordered election officials at a polling station to refrain from engaging in intimidating behaviour, while a similar complaint in Colorado was rejected.¹⁷³

Some 160 lawsuits were brought in 2021 and 2022 against new state election laws and guidance issued by secretaries of states.¹⁷⁴ The challenges pertained, *inter alia*, to voter identification, voter registration, postal and absentee voting, use of technologies, and counting. The lawsuits were filed in approximately equal shares by groups affiliated to the two major parties as well as by independent groups. Litigants affiliated with the Republican Party mostly challenged rules aimed at facilitating voting, alleging that these are contrary to state laws and create potential for election fraud.¹⁷⁵ Litigants affiliated with the Democratic Party mostly challenged more rigorous procedural rules, citing potential discrimination and possible disenfranchisement of eligible voters.¹⁷⁶ In some states, complaints challenged the accuracy of voter rolls and the registration of thousands of individual voters.¹⁷⁷ The DoJ filed a lawsuit against an Arizona law requiring documentary proof of citizenship

¹⁷⁰ For instance, the registration of some 64,000 voters was challenged in Gwinnet, Cobbs and Fulton counties in Georgia. Each county election board applied its own procedures for verifying the eligibility of the challenged voters and maintaining or removing them from the voter lists or putting them on challenged status. While the complaints were discussed in open sessions with due process and videos were published on the county websites, no written decisions were published, causing uncertainty about the outcome of these challenges.

¹⁷¹ Following the 2020 elections, 38 criminal convictions were imposed for ineligible, multiple and proxy voting, including in-person and by mail, and fraudulent use of absentee ballots, in Arizona, California, Connecticut, Florida, Louisiana, Michigan, Minnesota, New Hampshire, New Jersey, New York, Pennsylvania, Wisconsin, Tennessee and Texas.

¹⁷² By law, federal law enforcement agencies may not access voting places and federal courts may not hear cases, unless an offence is prescribed by federal laws.

¹⁷³ See the [temporary restraining order of the District Court in Arizona](#), the [emergency order of the District Court in Texas](#), and the [motion to the District Court of Colorado](#).

¹⁷⁴ While information on complaints filed is not systematically published, it is available on various online databases, including those run by courts and organizations such as [Democracy Docket](#), the [American Civil Liberties Union](#), and the [Lawyers' Committee for Civil Rights Under Law](#).

¹⁷⁵ Republican-affiliated groups challenged legislation, *inter alia*, on 'ballot harvesting' (third parties gathering completed absentee or postal ballots from voters and casting them in drop boxes), receipt of postal ballots after election day, 'curing' and counting for absentee, provisional and postal ballots, the use of ballot drop boxes, voting and counting machines, restrictions on observers' rights, lack of Republican poll workers in polling stations, and 'signature verification board' for postal ballots.

¹⁷⁶ Democratic-affiliated groups challenged legislation, *inter alia*, on the requirement to date postal ballots, ballot 'curing', short deadlines for receipt of postal ballots, canvassing (tabulation), postal ballots after election day, ID or proof of residence requirements for voter registration, full hand counts, and abolishment of election-day voter registration.

¹⁷⁷ For instance, [Look Ahead America](#) challenged voter registration in Arizona, Florida, Georgia, Nevada, North Carolina, Ohio, Pennsylvania, Virginia, and Wisconsin, [Public Interest Legal Foundation](#) in Alabama, Arkansas, Colorado, District of Columbia, Georgia, Michigan, and Texas, and [Campaign Legal Center](#) in Texas.

for voter registration for presidential elections and for voting by mail in federal elections, as opposed to the attestation of the citizenship on the federal registration form, as prescribed by the EAC.¹⁷⁸

XIII. ELECTION OBSERVATION

Election observation is governed by state legislation and in many cases depends on county authorities' discretion. This results in a significant variance of rules and practices regulating observers' access to the different stages of the electoral process.

Only 11 states and the District of Columbia explicitly provide for international observation, while 15 states prohibit election-day observation for international observers. In 15 states, some limitations are in place, or access is left to the discretion of the state or county, one state has no explicit provisions, and in eight states procedures are open to the public, including election observers.¹⁷⁹ At least 34 states and the District of Columbia provide for domestic non-partisan observers.¹⁸⁰ Some states only allow voters registered in the respective state or county to act as observers.¹⁸¹ The restriction of access to international election observers in law in 15 states, limitations to non-partisan observers, and the differing interpretation by jurisdictions on election day and during other stages of the electoral process detracts from the transparency of the election process and is at odds with OSCE commitments.¹⁸²

In line with OSCE commitments, state authorities should ensure access to international and citizen non-partisan observers to all stages of the electoral process.

The DoJ deployed federal monitors to 64 jurisdictions in 24 states to assess compliance with federal voting rights law.¹⁸³ State authorities in Florida and Missouri announced that they would not permit DoJ observers to enter polling places in their states.¹⁸⁴ The VRA grants the possibility of the DoJ to monitor compliance with the federal legislation. Prior to the Supreme Court decision in *Shelby County v. Holder* invalidating the coverage formula under Section 4(b) of the VRA, the DoJ could authorize deployment of federal observers under the Act. After the *Shelby County* decision, the DoJ modified its monitoring program to utilize DoJ staff to monitor elections where court orders did not authorize federal observers under the Act.¹⁸⁵

Non-partisan groups across the country assist voters with legal advice, registration, and guidance on accessing polling stations, and also provide advocacy. The presence of members of the Election Protection Network, a coalition of local, state and national civil society groups that provides information and support to voters, was noted by IEOM observers on election day. The Carter Center,

¹⁷⁸ The DoJ claims that the Arizona Bill 2492 (2022, to take effect in January 2023) is at odds with Section 6 of the NVRA and Section 101 of the 1964 Civil Rights Act. The EAC only requires that an applicant aver, under penalty of perjury, that she or he is a citizen. In *Arizona v. Inter Tribal Council of Arizona Inc.* (2013), the U.S. Supreme Court rejected a similar legal requirement adopted by Arizona.

¹⁷⁹ Based on ODIHR LEOM long-term observers' findings, and research on election observation by the [Carter Center](#) and [NCSL](#).

¹⁸⁰ See NCSL [Policies for Election Observers](#).

¹⁸¹ For instance, Alabama, Alaska, Illinois, Indiana, Louisiana, North Carolina, Pennsylvania, Texas, and Utah.

¹⁸² Paragraph 8 of the [1990 OSCE Copenhagen Document](#) provides that "the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law".

¹⁸³ See [DoJ](#) press release.

¹⁸⁴ See the [letter by the Florida General Counsel](#); the Missouri Secretary of State and the Cole County clerk [did not let federal monitors into polling stations](#). DoJ observers were only present outside polling stations.

¹⁸⁵ See the DoJ [fact sheet](#) on enforcement efforts following *Shelby County v. Holder*.

a non-governmental, not-for-profit organization, observed the elections in Georgia, Michigan, and North Carolina.¹⁸⁶ A high number of partisan poll watchers and citizen observers participated in the electoral process, and IEOM observers noted their presence in polling stations on election day, enhancing transparency and oversight of the electoral process.

XIV. NEW VOTING TECHNOLOGIES AND CYBERSECURITY

The use of NVT is extensive and varies considerably across and within states. Around 30 per cent of voters across the country do not have the option to mark their ballot by hand in a polling station.¹⁸⁷ Voting machines, initially deployed for use by persons with disabilities and required both by the Help America Vote Act (HAVA), are extensively used for all voters. Such machines must be accessible to voters with disabilities

Ballot scanning combined with automatic tabulation is used in almost all jurisdictions. There has been a significant transition from the use of Direct Recording Electronic machines (DREs) to Ballot Marking Devices (BMDs) over the last decade, with BMDs making up 91 per cent of the voting machines used in 2022. BMDs allow voters to mark their choices for individual contests, and correct errors and produce a printed ballot suitable for further processing by scanners.¹⁸⁸ Usually, voter choices are encoded in a barcode or QR code read by a scanner, while the ballots to be cast also provide a human-readable summary. However, voters cannot verify that the code generated on the ballot matches their intent and corresponds to the human-readable summary on the printed ballot.¹⁸⁹ Most jurisdictions have passed statutes or authorizations to replace DREs which do not provide a Voter-Verified Paper Audit Trail (VVPAT), for future election cycles; however, these machines were still in use in jurisdictions in six states, against international good practice.¹⁹⁰

To enhance transparency and voter confidence, printouts from Ballot Marking Devices (BMDs) should only reflect voter's choices in a human-readable format. Jurisdictions should conduct voter education campaigns encouraging voters using BMDs to verify the contents of their printed ballot. Additionally, election officials should incorporate the periodic testing of BMDs before and during election day, as part of voting operations.

Tabulation Audits (TAs) can be conducted on voting systems that produce paper records (BMDs and DREs with VVPAT), to verify the integrity of the results. TAs are a crucial practice to identify any possible malfunctioning of tabulating equipment. The nature and type of tabulation and other post-election audits varies significantly, though most involve a sample of the paper records and cross checking these to the electronic results produced by an electronic voting machine.¹⁹¹ In line with procedures, a negative outcome from a TA may trigger a full manual recount. Not all states that conduct TAs require their completion before the certification of an election.¹⁹² Furthermore, in some

¹⁸⁶ See Carter Center, [U.S. Elections](#).

¹⁸⁷ Voters do not have this option in Arkansas, Delaware, Georgia, Louisiana, and South Carolina.

¹⁸⁸ While BMDs are certified and partially tested before elections, technical faults may still occur due to programming or configuration errors and would require testing even during polling.

¹⁸⁹ Post-election audits can, in theory, reveal misprinted ballots, but the likelihood of detection is low.

¹⁹⁰ In Indiana, Mississippi, New Jersey, Tennessee, and Texas, DREs without a VVPAT are used only in some jurisdictions. Louisiana uses these machines state-wide as the only option for voters. See Section 3.2.iv of the [Code of Good Practice](#), which states that “voters should be able to obtain a confirmation of their votes”.

¹⁹¹ Information on post-election audits is available from [VerifiedVoting](#).

¹⁹² Post-election audits in Arkansas, Delaware, Florida, Maryland, and Michigan are conducted after the certification of an election.

instances, states conduct TAs for which, by law, discrepancies found do not affect the final result of an election.¹⁹³

All jurisdictions using electronic ballot scanning and tabulation should mandate that tabulation audits must be conducted before an election is certified and that the findings of the audit are binding for the results of an election.

The certification of voting equipment is carried out by testing laboratories accredited by the EAC or by the states themselves. Requirements for certification are set by the Voluntary Voting System Guidelines (VVSG) and cover only non-networked equipment such as voting machines and scanners. No federal standards exist for certifying electronic poll books, which are used in many states.¹⁹⁴ The pace of the certification process, from the initial setting of requirements, through the accreditation of testing labs, and to the final certification of election equipment, is not sufficiently responsive to keep pace with the rapidly changing cybersecurity landscape.¹⁹⁵

The process for certifying voting equipment should be more responsive, to allow for component-level certification and the ability to react in a timely manner to emerging needs and cybersecurity threats. The Election Assistance Commission's (AMC) certification scope should be widened to embrace all critical parts of the voting system, including electronic poll books.

Federal and state authorities introduced numerous initiatives to help secure election technologies.¹⁹⁶ Congress allocated USD 75 million through the EAC for activities to enhance election technology and improve election security, which could also be used for the physical protection of election workers. The Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency (CISA), the EAC and other institutions offer cyber-risk mitigation services such as risk assessment, vulnerability scanning, and cyber-resilience reviews, as well as trainings for election administrations. In partnership with the FBI, CISA issued two public service announcements in early October.¹⁹⁷ After election day, CISA issued a statement assessing election integrity positively.¹⁹⁸ Overall, a broad range of ODIHR LEOM interlocutors expressed confidence in the integrity of election infrastructure and positively assessed efforts to mitigate cybersecurity risks.

XV. ALTERNATIVE VOTING METHODS

Alternative voting methods include early in-person and absentee voting. Although absentee voting takes place in uncontrolled environments, which among other factors do not guarantee the secrecy of the vote, it is seen by the majority of ODIHR LEOM interlocutors as increasing the possibilities of

¹⁹³ At least 12 states conduct such audits, including Arkansas, Delaware, Florida, Iowa, Maryland, Michigan, Montana, Nebraska, Tennessee, Vermont, Wisconsin, and Utah.

¹⁹⁴ According to the [NCSL](#), 13 states have established their individual certification scheme for e-poll books in 2019.

¹⁹⁵ The [VVSG 2.0](#) were adopted by the EAC in February 2021, following deliberations that had started in 2017, and 16 years after the adoption of initial version in 2005. The EAC has [accredited](#) two testing laboratories to certify VVSG 2.0-compliant products; however, to date no VVSG 2.0-certified products have been brought to market.

¹⁹⁶ For these elections the Congress allocated USD 75 million through the EAC for activities to enhance election technology and improve election security. Previously, for the elections in 2018 and 2020 the funds allocated for this purpose amounted to USD 380 million and USD 425 million, respectively.

¹⁹⁷ The [first](#) warned of foreign misinformation in relation to malicious cyber-attacks and the [second](#) assessed the risks of cyber actors to compromise election infrastructure or to result in largescale disruptions or prevent voting as unlikely.

¹⁹⁸ CISA issued a [statement](#) on 9 November, stating that “[we] have seen no evidence that any voting system deleted or lost votes, changed votes, or was any way compromised in any race in the country”.

participation in the electoral process, and most are confident in its integrity.¹⁹⁹ Both methods were expanded in 2020 due to the COVID-19 pandemic, resulting in higher levels of their use.²⁰⁰ Preliminary results indicate that for the 2022 elections, the number of early and absentee votes declined by approximately one third compared to 2020.

Early voting of some type is allowed in 47 states.²⁰¹ The duration and timeframe of early voting varies between states.²⁰² Early voting is a popular method for casting ballots due to its convenience, and election officials generally referenced the benefits of early voting in reducing their workload on election day.

Absentee voting is possible in all states; however, the conditions for voting by absentee ballot, including reasons required, identification requirements, timeframes and deadlines for requesting and sending absentee ballots, and the processing and counting periods, vary significantly from state to state. Eight states are so-called ‘all-mail states’, as is the District of Columbia, where all voters automatically receive absentee ballots by mail.²⁰³ In 27 states, voters can request an absentee ballot without having to provide a justification, while in 15 states, a justification is required. Some states have a permanent absentee voting list, whereby voters automatically receive absentee ballots for each election once they are on the list.²⁰⁴ The delay between requesting absentee ballots, receiving them, and sending them back can be time-consuming, especially in jurisdictions that do not use electronic means to facilitate the process.²⁰⁵

In some states, the deadline for requesting absentee votes is extremely close to the deadline for reception, increasing the risk that some ballots will be rejected due to late arrival.²⁰⁶ The United States Postal Service (USPS) recommended that voters request absentee ballots at least seven days prior to election day to allow for sufficient time for ballots to arrive at the election office in case the postmark is not recognized in the state. Ballot tracking options greatly facilitate the verification of the status of absentee votes by the election administration and voters.²⁰⁷ Some states have deadlines for accepting and counting absentee votes by mail which fall after election day, which places additional administrative burden on the election administration, especially in cases where the results are very close.²⁰⁸ In 12 states, processing of absentee votes cannot begin prior to election day, which further delays the count and tabulation of results.

¹⁹⁹ This also affects voters living with disabilities for whom voting by mail is assessed by the EAC and Rutgers University as the preferred method of voting. ODIHR LEOM interlocutors noted that any restrictive amendments to absentee voting regulations negatively affected voters with disabilities.

²⁰⁰ According to the [Census Bureau](#), in 2004, 79.3 per cent voted on election day, 12.9 per cent by mail, and 7.8 per cent used early voting. In 2020, only 30.6 per cent voted on election day, while 43.2 per cent voted by mail, and 26.2 per cent used early voting.

²⁰¹ Alabama, Connecticut, and New Hampshire do not provide for early or in-person absentee voting. A ballot measure approved in Connecticut in these elections requested amending the state Constitution to authorize the state legislature to provide by law for in-person early voting for future elections. Michigan will have early voting for 9 days, in parallel with in-person absentee voting, in future elections.

²⁰² According to the [NCSL](#), Minnesota and South Dakota allow for 46 days, while Kentucky allows for 3 days.

²⁰³ California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington send ballots to all registered voters. Voters can send them back by mail, deposit them in ballot drop boxes, deliver them in person to early voting centers or elections offices, or on election day to a polling site.

²⁰⁴ This is the case in five states for all voters, and in another 11 states for persons with disabilities.

²⁰⁵ An online portal is available in 19 states where voter can request absentee ballots or download the ballot request form and send it back by mail.

²⁰⁶ For example, in Connecticut, Minnesota, Montana, New Hampshire, and North Dakota, voters can request absentee ballots until one day before election day.

²⁰⁷ Mississippi, Missouri, and Wyoming do not offer ballot tracking.

²⁰⁸ Absentee ballots must be postmarked before or on elections day; the time period for the processing of postmarked envelopes varies from one day in Texas to 14 days in Illinois.

In order to facilitate counting, tabulation and announcement of results, the application of standard deadlines for receiving absentee votes should be agreed between the states.

Ballot drop boxes are used in 29 states, and counties in another 5 states have the option to use them as they see fit.²⁰⁹ Drop boxes remained topic of political controversy during these elections, due to persistent and unproven claims that these had been used to commit electoral fraud in the 2020 elections. In Arizona, groups of armed people monitored drop boxes, photographed voters, and took records of their vehicle registration. In response to a request alleging intimidation, a district court issued a restraining order prohibiting such groups from monitoring within 75 feet of drop boxes.²¹⁰

States require different types of identification to be included with returned absentee ballots.²¹¹ These requirements have significantly increased the rates of rejected ballots. Twenty-four states allow for ‘curing’ or processing of absentee and provisional ballots with missing details, enabling voters to appear with the necessary documentation or information within a short period after election day. Since the results of ‘curing’ are only known after election day, it can become a highly politicized issue in cases where an election is so close that the ballots to be cured could change the result. Most ODIHR LEOM interlocutors see curing as a method to ensure that a voter’s choice is respected and opined that all states should accept this measure.

In order to ensure that voters’ choice is respected, the practice of ballot ‘curing’ could be considered in all states, with a view to decreasing the number of invalid absentee and provisional votes, while maintaining measures to ensure the secrecy of the vote.

Some Native Americans living on remote reservations have difficulties accessing absentee and early voting methods due to lack of standard mailing addresses, the limited number of early voting sites, and short early voting periods.²¹² The USPS liaised with tribal leaders to agree on timing and places for mail delivery and collection.

The Department of Defense (DoD), under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voting Empowerment Act (MOVE), manages the Federal Voting Assistance Program (FVAP), which facilitates voter registration and ballot requests for military and overseas voters, and provides information to voters and election officials. States are required to distribute ballots to voters abroad at least 45 days prior to election day. Out-of-country voters who have not received a ballot in time to return it before election day can use a ‘back-up’ Federal Write-In Absentee Ballot (FWAB), which is accepted by all states and is available through the FVAP.

Electronic Absentee Voting (EAV) methods are used to handle ballot requests and delivery and to transmit information between voters and election offices, by systems that include online portals, email, or fax.²¹³ EAV methods have significant shortcomings including lack of secrecy, and

²⁰⁹ In Georgia, for example, there is one drop box per county or every 100,000 registered voters, while in New Jersey there are ten per county and municipality/college with more than 5,000 residents.

²¹⁰ See decision by the [U.S District Court for Arizona](#) granting a restraining order barring Clean Elections USA from ballot drop boxes.

²¹¹ Voter’s signature is verifying in 27 states, 9 confirm there is a signature on the return envelope, 9 require the signature of a witness, 3 require that the voter’s signature be notarized, 1 requires a copy of the voter’s ID, and 1 required an ID number (for example of a driver’s license).

²¹² See: [Report of the Interagency Steering Group on Native American Voting Rights](#) and [Voting Access for Native Americans: Case Studies and Best Practices](#).

²¹³ [Overseas voters registered](#) in 31 states and voters with disabilities in 13 states can also return ballots electronically.

susceptibility to interception and manipulation.²¹⁴ Nevertheless, the use of EAV methods continues to expand. While HAVA mandates the EAC to conduct certification of voting systems, as well as the accreditation of voting system testing laboratories, the EAC has no such mandate with regards to EAV in order to align the system with international good practices.²¹⁵ The EAC informed the ODIHR LEOM that they plan to launch a pilot programme to assess the situation and depending on funds available may be able to provide some guidance in the future.

States, together with relevant federal institutions, should set policies and requirements to ensure the integrity and confidentiality of Electronic Absentee Voting solutions.

XVI. ELECTION DAY

For election day, the ODIHR LEOM joined efforts with a delegation from the OSCE Parliamentary Assembly to form an International Election Observation Mission (IEOM). In line with ODIHR's standard methodology for LEOMs, the ODIHR LEOM did not carry out a comprehensive or systematic observation of election-day proceedings. However, IEOM observers visited a limited number of polling stations in 20 states and the District of Columbia.

The atmosphere in and around the polling stations visited by IEOM observers on election day was assessed as calm, peaceful and orderly overall. IEOM observers reported no cases of threats of violence against election officials or voters from polling stations visited. Voters turned out in high numbers; with the U.S. Elections Project estimating that voter turnout was 46.5 per cent, with variance across states.²¹⁶ IEOM observers noted queues in some instances.

While almost all polling stations visited by IEOM observers on election day were accessible, including for persons with disabilities, comprehensive measures for independent access to the ballot for voters with disabilities are still necessary. Organizations for persons with disabilities informed the ODIHR LEOM that while there have been improvements in the overall accessibility of the voting process and the polling location infrastructure, challenges which limit independent voting still remain.

Continued efforts should be made to improve accessibility of the voting process for persons with disabilities and to ensure that the necessary preconditions are in place for independent voting.

IEOM observers reported that most polling stations visited were adequately staffed, although shortages in numbers of poll workers were noted in some places. Poll workers were knowledgeable and well-prepared, performed their duties professionally, and where access was granted, were responsive to IEOM observers' questions. Voter information was widely available to facilitate voters' understanding of the process. IEOM observers were denied access to polling stations in some counties in Arizona, Georgia, and Iowa where observation is only permitted at discretion of election officials. Prescribed voting procedures were mostly followed, but IEOM observers noted, in some instances, problems with the secrecy of the vote, mostly when voters were feeding ballots into scanners.

²¹⁴ The [2020 EAC-DoD-NIST-CISA](#) report states that "Electronic ballot return faces significant security risks to the confidentiality, integrity, and availability of voted ballots. These risks can ultimately affect the tabulation and results and, can occur at scale". See also a 2018 [report](#) of the National Academies of Sciences, Engineering, and Medicine.

²¹⁵ See Section 3.2.2.3 of the [Code of Good Practice](#): "Electronic voting methods must be secure and reliable. They are secure if the system can withstand deliberate attack; they are reliable if they can function on their own, irrespective of any shortcomings in the hardware or software".

²¹⁶ For instance, Maine and Oregon voter turnout are estimated at 61.5 per cent, Minnesota at 61 per cent, and Wisconsin at 60.1 per cent. See data from the [U.S. Elections Project](#) website.

Some IEOM observers reported instances of voters' names not being found on the voter list. In most such cases, affected voters were either redirected to another polling station or issued provisional ballots. Where election-day registration was possible, voters made use of this opportunity. IEOM observers noted or were informed about a few cases in which voters' eligibility was challenged, and they observed only a few instances of voters being turned away due to problems related to their identity documents. The partisan poll watchers whom IEOM observers encountered throughout election day acted in an orderly and professional manner.

Electronic poll books were used to check voters on the voter list in most polling stations visited. Some problems with the functioning of e-poll books were reported in a few counties in Virginia on the morning of election day where e-poll books were not in operation due to missing instructions for polling staff to set them up. A technical malfunction affecting the functioning of e-poll books was also reported from a few precincts in Detroit, Michigan, wrongly indicating that a voter had cast an absentee ballot. According to a statement by the Michigan Secretary of State and county officials, the error occurred because identical ballot numbers had been assigned. IEOM observers noted technical issues with voting machines and ballot scanners in Arizona, Arkansas, Georgia, Iowa, Missouri, New Jersey, Pennsylvania, South Carolina, and Wisconsin.²¹⁷ These issues were mostly limited in impact and were resolved quickly to give voters the opportunity to exercise their right.

IEOM observers assessed the closing of polling stations, the vote count, and the initial stages of the tabulation of results, in polling stations and tabulation places visited, as professional, orderly, and efficient, with occasional minor technical issues that were swiftly resolved. Poll closing times were extended in some locations, due technical problems and paper shortages.

The media began announcing preliminary results shortly after the closing of the polls in states on the East-coast at 19:00 hrs. IEOM observers noted that preliminary results were published online and mostly aggregated by county. While in some cases, results by precincts were made available after election day, disaggregated and detailed election-day data and results protocols, indicating numbers of votes obtained by candidates, ballots cast, and numbers of voters who voted, were not readily available.²¹⁸

To enhance the transparency of the electoral process, all jurisdictions should consider timely publication of full precinct-level results protocols.

On election day, stakeholders requested that courts extend voting hours in 782 polling stations in Harris and Bell counties in Texas, as well as in polling stations in Maricopa and Apache counties in Arizona, Cobbs and Gwinnet counties in Georgia, Clark County in Nevada, Luzerne County in

²¹⁷ In Louisiana, the GeauxVote online election portal run by the secretary of state's office experienced technical issues which for a short time prevented voters from verifying their polling locations. The authorities managed to promptly resolve the situation. In 60 of the 223 precincts in Maricopa county, Arizona, the ballot printers had ink issues which were resolved later during the day, and an alternative voting method was offered. In Arkansas, in two instances ballot scanners had minor issues and needed rebooting or re-casting of a ballot. In Georgia, a BMD stopped functioning. In Iowa, a ballot scanning machine was not operational for some 45 minutes and ballots had to be scanned at a later stage; in the county visited by IEOM observers, due to power failure, e-poll books displayed technical glitches. In Missouri, a case of a ballot scanner jamming was reported. In Mercer County, New Jersey, voting machines were down, but voters cast their ballots in the emergency slots. In Luzerne County, Pennsylvania, voting machines ran out of paper and election officials struggled to address the situation. The county manager resigned following this incident. In South Carolina, technical issues were reported that were resolved with rebooting of the equipment and replacing a scanner. In Wisconsin, a scanner broke and had to be replaced.

²¹⁸ See [Global Open Data Index on Election Results](#) and [Open Elections Data Initiative](#).

Pennsylvania, and Suffolk and Nottoway Counties in Virginia.²¹⁹ Extensions were requested due to ballot printing issues or late opening of the polls. These requests were accepted,²²⁰ with the exception of Maricopa county, Arizona, where the judge ruled that there was no time to implement such an extension and that limited evidence had been provided that voters had been denied an opportunity to vote, and in Clark County, Nevada.²²¹ Pursuant to a request, the North Carolina state board of elections ordered the extension of voting hours in three polling places.²²² While the District Court in Texas ordered the extension of voting hours in Harris County, the Texas Supreme Court reversed the order, resulting in some 2,000-4,000 ballots cast during the extension not being counted, pursuant to a request for reversal filed by an attorney general who was a candidate for renewal of mandate in the county.²²³ The Governor of Texas requested an investigation into the elections in Harris County.

To ensure timely and effective legal remedy and equal voting opportunities, state legislation should prescribe clear and objective criteria for the extension of voting hours.

XVII. POST-ELECTION DAY DEVELOPMENTS

Despite frequent unfounded claims by some candidates during the campaign of possible fraud, nearly all candidates accepted the results with little political controversy. Control of the House of Representatives passed to the Republicans, who gained a majority of nine (222 Republicans to 213 Democrats), increasing their seats by nine. Democrats maintained control of the Senate, with 51 seats, an increase by one seat, but on 9 December, Kyrsten Sinema, the Democrat Senator for Arizona elected in 2018, announced that she would in future sit as an independent.²²⁴ As a result of the elections, Democrats now have 24 governorships, and Republicans 26, a net Democrat gain of two.²²⁵ Democrats won 14 of the 27 elections for secretary of state, and Republicans 13, a net gain of one for the Democrats.

The 118th Congress will include 149 women (34 per cent), an all-time high. In the new House, there will be 124 women members (91 Democrats and 33 Republicans), including the first woman member of Congress from Vermont. There will be 25 women Senators (25 percent), including 6 (4 Democrats and 2 Republicans) who were elected in these elections.²²⁶ A record number of 12 women were elected as governors (8 Democrats and 4 Republicans), with women governors being elected for the first time in Arkansas and Massachusetts.²²⁷ Seven women were elected as Secretaries of State (6 Democrats and 1 Republican). Despite these positive developments, women still remain underrepresented in elected office.²²⁸

²¹⁹ See [news reports](#) on malfunctioning machines and other technical issues in polling stations on election day.

²²⁰ See the granted extensions of voting hours in [Apache county, Arizona](#), in [Gwinnett County, Georgia](#), in [Cobbs county, Georgia](#), in [Luzerne County, Pennsylvania](#), in [Nottoway County, Virginia](#), and in [Suffolk County, Virginia](#).

²²¹ See the decision to decline by the court in [Maricopa county Arizona](#) [Maricopa county, Arizona](#), and the request in [Clark County, Nevada](#).

²²² See the granted extension of voting hours by the [North Carolina State Board of Elections](#).

²²³ See the decisions of the [District Court of Harris County, Texas](#), and the [Supreme Court of Texas](#).

²²⁴ Including a run-off election held in Georgia on 6 December, which was not observed by the ODIHR LEOM. The Senate seat which changed from Republican to Democrat was Pennsylvania.

²²⁵ Democrats gained governorships in Arizona, Maryland, and Massachusetts, while the Republican gained the governorship in Nevada.

²²⁶ See [Center for American Women and Politics](#).

²²⁷ All eight incumbent women governors seeking re-elections won their contests.

²²⁸ Under Article 7 of [CEDAW](#), “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government”.

Six out of 35 senators elected (17 per cent) were from racial or ethnic minorities, as were four of the 36 governors (11 per cent). In the House, 127 out of 435 elected members were from racial or ethnic minorities (29 per cent), three percentage points more than in the previous legislature. In Massachusetts and Oregon, the first two openly lesbian governors were elected, and the first openly gay governor was reelected in Colorado. For the first time, an openly gay Republican non-incumbent candidate was elected to Congress.

Some states require a post-election audit in order to detect possible errors during counting and the tabulation of results. The methods can be divided into traditional and risk-limiting audits (RLAs). Under the traditional system, which is used in 34 states, a certain number of precincts or voting machines are selected, and in most cases the ballots are manually counted and the results checked against the ones produced by the voting system on election day.²²⁹ In RLAs, an initial statistical sample is selected in order to limit the number of ballots that need to be audited. RLAs are used in 3 states, while another 4 states provide counties with the possibility to use this system instead of traditional audits. Eight states are piloting RLAs with a view to using the system in the future.²³⁰

The certification of election results takes place at local and state level and is performed in line with the respective state laws. Certification is the process by which election officials confirm that the tabulation is complete and accurate and that the election results are a true and accurate accounting of all votes cast in a particular election. The time set in the various state constitutions for the certification of results at state level varies from two to 38 days.²³¹ County supervisors in Cochise County, Arizona, failed to certify the election results within the state's deadline of 28 November.²³² Similarly, the county board of elections in Luzerne County, Pennsylvania, was deadlocked by the 28 November deadline but certified the results on 30 November.²³³ Delays were also reported from a few other counties in Pennsylvania where a high number of requests for hand recounts had been submitted.

In 39 states, after election day, stakeholders may request recounts, audits, or hand counts of ballots counted by ballot scanners.²³⁴ Requests for recounts may be filed with the secretaries of state and state courts.²³⁵ As a rule, applicants are required to pay for the costs of the recount. Timeframes for such requests vary across states, as do the timeframes for counting and tabulation, and requests may be filed either before or up to 30 days after the certification of results, depending on the state. In total, 22 states have deadlines for the canvass and/or certification, 11 states set a definitive date for the canvass, while 5 states do not have clear deadlines, and one state has a deadline only for the canvass for presidential electors.²³⁶ Candidates, voters, or election officials may also request a 'redo election'

²²⁹ The sample of precincts or voting machines selected for post-election audits depends on the state. See NCSL [overview](#) of post-election audits.

²³⁰ Colorado, Rhode Island, and Virginia use RLAs. California, Ohio, Oregon, and Washington allow counties to choose whether to use RLAs. Georgia, Indiana, Kentucky, Michigan, Nevada, New Jersey, Pennsylvania, and Texas have pilot programmes.

²³¹ Delaware and California respectively.

²³² See Carter Center [preliminary report](#) on the Arizona canvass. The Arizona Secretary of State filed a lawsuit against the county for failure to certify the results.

²³³ See ABC News [report](#).

²³⁴ In Massachusetts and Pennsylvania recounts must be requested via a petition by a prescribed number of voters. State laws in Arizona, Connecticut, Florida, Hawaii, Illinois, Mississippi, New York, and South Carolina do not provide for requests for recounts but prescribe automatic recounts in case of close results. Tennessee does not provide for requests nor for automatic recounts. See [Automatic Recount Thresholds by State](#). Hand recounts may be requested pursuant to machine counts in several states, including Alabama, Arizona, Georgia, New Hampshire, Oregon, Pennsylvania, and Virginia.

²³⁵ See [NASS summary](#) of canvassing timeframes and recount thresholds.

²³⁶ See [NCSL overview](#) of post-election deadlines and state statutes.

or ‘revote’ in a polling station or at county, district or state level, for one or more election contests.²³⁷ Grounds for ‘redo election’ include unlawful counting or failure to count ballots, or other issue that affected the outcome of the election, including failures of voting machines.²³⁸

XVIII. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in the United States and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with prior ODIHR recommendations which remain to be addressed.²³⁹ ODIHR stands ready to assist the authorities of the United States to further improve the electoral process and to address the recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. As previously recommended, to ensure equal suffrage, citizens residing in the District of Columbia, as well as U.S. territories, should be provided with full representation rights in Congress.
2. In line with international standards and good practices, redistricting should be conducted by independent bodies, in a non-partisan and transparent manner, ensuring competitiveness and an effective opportunity for voters, including minorities, to elect the representatives of their choice. The legal framework should provide for clear and objective criteria for redistricting and based on public consultation and appropriate public input in redistricting.
3. Congress should consider a comprehensive reform of the legal framework for campaign finance to ensure a more level playing field for smaller parties and independent candidates. Consideration could be given to limiting campaign expenditures.
4. Congress should harmonize the regulatory framework on co-ordination of campaigns, contribution limits, and disclosure, for all types of campaign committees. Independent groups and non-profit organizations that engage in campaign activities or donate to campaign committees should be legally required to disclose their sources of funding within a timeframe that allows for transparency of campaign financing.
5. To meet international standards and safeguard the impartiality of the election administration, election officials at state and local level should not oversee elections in which they are competing.

²³⁷ The most recent ‘redo election’ for a federal office took place in 2018, and the last federal redo election prior to that was in 1974. Most ‘redo elections’ take place at the municipal or county level.

²³⁸ On 30 November, the Secretary of State of Colorado [announced a mandatory recount for the 3rd District for the House of Representatives](#) which [confirmed that the Republican candidate had won in that district](#). On 9 December, the Republican candidate for governor of Arizona, requested the annulment and repeat voting for the gubernatorial race in Maricopa county. See the [lawsuit to the Superior Court of Arizona](#).

²³⁹ According to paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by ODIHR LEOM as follows: The recommendations 15, 18, 26, 31 and 35 from the final report on the 2020 general elections are fully implemented. The recommendations 19, 24 and 32 from the final report on the 2020 general elections are mostly implemented. The recommendations 4, 7, 8, 12, 13, 14, 22, 23, 28, 29, 30, 34, 37 and 38 from the final report on the 2020 general elections are partially implemented. See also the [ODIHR Electoral Recommendations Database](#).

6. Parties and candidates should refrain from inflammatory and divisive rhetoric, including attempting to undermine trust in the electoral process.
7. State authorities should make further efforts to ensure that voter identification documents are equally available to all voters.
8. To ensure timely and effective safeguards against legal changes that may have a discriminatory intent or impact against racial and linguistic minorities, Congress should consider passing legislation reestablishing the formula for determining jurisdictions required to undergo preclearance for changes to voting laws.
9. State authorities should enhance inter-state co-ordination efforts and exchange experience to improve the cross-matching of voter registration data and to avoid possible inaccuracies in the voter lists.
10. States, together with relevant federal institutions, should set policies and requirements to ensure the integrity and confidentiality of Electronic Absentee Voting solutions.
11. State legislatures could consider strengthening legal mechanisms to support local journalism, including financial, technological, and educational incentives, with an aim to encourage a more diverse local media environment.
12. In line with OSCE commitments, state authorities should ensure access to international and citizen non-partisan observers to all stages of the electoral process.
13. To enhance the transparency of the electoral process, all jurisdictions should consider timely publication of full precinct-level results protocols.

B. OTHER RECOMMENDATIONS

Legal Framework

14. To ensure legal certainty and stability of the law, courts could consider consistently and uniformly upholding the Purcell principle when litigating cases on legislation in the run-up to elections. An exception should be provided for lawsuits seeking to remedy suffrage rights.
15. Consideration should be given to ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities (CRPD) to further protect and promote the political participation of women and persons with disabilities, respectively.

Electoral System and Redistricting

16. In line with international standards, an effective and timely legal remedy should be available for all aspects of the electoral process, including redistricting.

Election Administration

17. State and local governments should provide sufficient and timely funding to meet the administrative needs of the election management bodies at local level, based on a clear needs assessment.

New Voting Technologies and Cybersecurity

18. All jurisdictions using electronic ballot scanning and tabulation should mandate that tabulation audits must be conducted before an election is certified and that the findings of the audit are binding for the results of an election.
19. To enhance transparency and voter confidence, printouts from BMDs should only reflect voter's choices in a human-readable format. Jurisdictions should conduct voter education campaigns encouraging voters using BMDs to verify the contents of their printed ballot. Additionally, election officials should incorporate the periodic testing of BMDs before and during election day, as part of voting operations.
20. The process for certifying voting equipment should be more responsive, to allow for component-level certification and the ability to react in a timely manner to emerging cybersecurity threats. The Elections Assistance Commission's certification scope should be widened to embrace all critical parts of the voting system, including electronic poll books.

Voting Rights, Voter Registration and Identification

21. Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate. Voting rights should be automatically restored upon the completion of terms of incarceration, and those affected should be informed about their rights and the ways to exercise them.
22. Restrictions on electoral rights based on intellectual or psychosocial disability should be removed.
23. State authorities should take further steps to facilitate access to voter registration and enhance existing measures to reduce the number of unregistered voters.

Candidate Registration

24. The number of supporting signatures for candidate nomination should be revised so as not to exceed one per cent of registered voters to keep with international good practice, and state laws should ensure that 'recognized party' status requirements are inclusive and fair.

Alternative Voting Methods

25. In order to facilitate counting, tabulation and the announcement of results, the application of standard deadlines for receiving absentee votes should be agreed between the states.
26. The practice of ballot 'curing' could be considered in all states, with a view to decreasing the number of invalid absentee and provisional votes and in order to ensure that voters' choice is respected.

Campaign Environment

27. The legal framework should be adapted to reflect changes in the social network environment in order to protect and foster a vibrant and transparent digital public domain. Social media companies should strengthen and consistently enforce their internal policies and make reporting

and content moderation policies and decisions in response to violations of these policies more timely and transparent.

Campaign Finance

28. Consideration could be given to reviewing legal provisions on the formula for the composition of the Federal Election Commission (FEC) in order to promote effective and independent oversight and enforcement of campaign finance law. The right to appeal the dismissal of complaints on the basis of prosecutorial discretion should be ensured.

Election Dispute Resolution

29. To ensure legal certainty and effective and timely legal remedy, legislation should prescribe clear and objective criteria and timeframes for challenging and enjoining state election laws in a timely and consistent manner.

Election Day

30. Continued efforts should be made to improve accessibility of the voting process for persons with disabilities and to ensure that the necessary preconditions are in place for independent voting.
31. To ensure timely and effective legal remedy and equal voting opportunities, state legislation should prescribe clear and objective criteria for the extension of voting hours.

ANNEX I: ELECTION RESULTS

Elections for Senate – Class III Senators and Special Elections²⁴⁰

Political party	Up for election	Seats won	Gain/Loss	Elected to 118 th Congress
Democratic	14	15	+1	49
Republican	21	20	-1	49
Independent	–	–		2
	35	35		100

Elections for the House of Representatives²⁴¹

Political party	Elected in 2020	Gain/Loss	Elected to 118 th Congress
Democratic	222	-9	213
Republican	213	+9	222
Other	–	–	–
	435		435

²⁴⁰ A special election was held for the remaining four-year term of a retired senator from Oklahoma. Additionally, there was a special election for the remaining two months of the 117th Congress for a senator appointed by the Governor of California following the inauguration of Vice President Kamala Harris in 2021. The same candidates ran in the special election as in the general election in that race.

²⁴¹ Not including non-voting delegates from U.S. territories and the District of Columbia. The member elected for Virginia’s fourth district died on 28 November but is included in the electoral results above. A special election had not been scheduled at the time of writing.

ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION

OSCE PARLIAMENTARY ASSEMBLY

Margareta	Cederfelt	Special Co-ordinator, MP	Sweden
Pere Joan	Pons	Head of Delegation, MP	Spain
Damian	Gjiknuri	Member of Parliament (MP)	Albania
Fatmir	Mediu	MP	Albania
Ermonela	Valikaj	MP	Albania
Ferran	Costa Marimon	MP	Andorra
Dimitrije	Todoric	OSCE PA Secretariat	Serbia
Hannes	Amesbauer	MP	Austria
Doris	Bures	MP	Austria
Andreas	Minnich	MP	Austria
Lukas	Mussi	Staff of Delegation	Austria
Nikolaus	Scherak	MP	Austria
Adalbert	Wagner	Staff of Delegation	Austria
Malik	Ben Achour	MP	Belgium
Kristof	Calvo	MP	Belgium
Peter	De Roover	MP	Belgium
Mark	Demesmaeker	MP	Belgium
Orry	Van De Wauwer	MP	Belgium
Iskren	Mitev	MP	Bulgaria
Andreas	Baker	OSCE PA Secretariat	Canada
Davor	Bernardic	MP	Croatia
Hrvoje	Simic	MP	Croatia
Olgica	Tolic	Staff of Delegation	Croatia
Irene	Charalambides	MP	Cyprus
Kyriakos	Hadjiyianni	MP	Cyprus
Christos	Senekis	MP	Cyprus

Silvia	Andrisova	Staff of Delegation	Czech Republic
Jan	Bauer	MP	Czech Republic
Jan	Richter	MP	Czech Republic
Kalina	Filipovska	OSCE PA Secretariat	Denmark
Sven	Sester	MP	Estonia
Inka	Hopsu	MP	Finland
Vilhelm	Junnila	MP	Finland
Pia	Kauma	MP	Finland
Ville	Kaunisto	MP	Finland
Valerie	Boyer	MP	France
Stephane	Demilly	MP	France
Olga	Givernet	MP	France
Meyer	Habib	MP	France
Stephanie	Koltchanov	OSCE PA Secretariat	France
Didier	Paris	MP	France
Maka	Botchorishvili	MP	Georgia
Nikoloz	Samkharadze	MP	Georgia
Dagmar	Andres	MP	Germany
Canan	Bayram	MP	Germany
Daniela	De Ridder	MP	Germany
Torsten	Herbst	MP	Germany
Malte	Kaufmann	MP	Germany
Stefan	Keuter	MP	Germany
Freyja	Koci	OSCE PA Secretariat	Germany
Ulrich	Lechte	MP	Germany
Thomas	Roewekamp	MP	Germany
Christian	Schreider	MP	Germany
Tobias	Winkler	MP	Germany
Georgios	Arvanitidis	MP	Greece
Georgios	Champouris	Staff of Delegation	Greece

Margarita	Floda	Staff of Delegation	Greece
Anastasia	Gkara	MP	Greece
Theodoros	Karaoglou	MP	Greece
Dimitrios	Markopoulos	MP	Greece
Georgios	Varemenos	MP	Greece
Shane	Cassells	MP	Ireland
Michael	Creed	MP	Ireland
Martin	Kenny	MP	Ireland
Pauline	O'reilly	MP	Ireland
Mauro	Del Barba	MP	Italy
Anna	Di Domenico	OSCE PA Secretariat	Italy
Roberto	Montella	OSCE PA Secretariat	Italy
Akmaral	Alnazarova	MP	Kazakhstan
Giedrius	Surplys	MP	Lithuania
Alexander	Muscat	MP	Malta
Slaven	Radunovic	MP	Montenegro
Sihame	Abchir	Staff of Delegation	Morocco
Mohamed	El Bakkouri	MP	Morocco
Abdelkrim	El Hamss	MP	Morocco
Toine	Beukering	MP	Netherlands
Monique	Christiaanse	Staff of Delegation	Netherlands
Arda	Gerken	MP	Netherlands
Farah	Karimi	MP	Netherlands
Jeroen	Van Wijngaarden	MP	Netherlands
Geert	Wilders	MP	Netherlands
Bard	Hoksrud	MP	Norway
Siv	Mossleth	MP	Norway
Alexander	Stokkebo	MP	Norway
Rafal	Adamczyk	MP	Poland
Barbara	Bartus	MP	Poland

Radoslaw	Fogiel	MP	Poland
Kazimierz	Kleina	MP	Poland
Joanna	Lichocka	MP	Poland
Marcin	Mykietynski	Staff of Delegation	Poland
Agnieszka	Pomaska	MP	Poland
Dariusz	Rosati	MP	Poland
Andre	Coelho Lima	MP	Portugal
Marta	De Freitas	MP	Portugal
Costel Neculai	Dunava	MP	Romania
Catalin-Daniel	Fenechiu	MP	Romania
Radu-Mihai	Mihail	MP	Romania
Christine	Thellmann	MP	Romania
Daria	Boyarskaya	OSCE PA Secretariat	Russian Federation
Paolo	Rondelli	MP	San Marino
Sherif	Abdili	OSCE PA Secretariat	Serbia
Tine	Novak	MP	Slovenia
Rastislav	Vrecko	MP	Slovenia
Sebastian	Gonzalez	MP	Spain
Gustavo	Pallares	OSCE PA Secretariat	Spain
Marta Luisa	Rosique I Saltor	MP	Spain
Johan	Buser	MP	Sweden
Jonathan	Demner	Staff of Delegation	Sweden
Carina	Odebrink	MP	Sweden
Bjorn	Soder	MP	Sweden
Fredrik	Svensson	Staff of Delegation	Sweden
Manuchekhr	Salokhudinov	OSCE PA Secretariat	Tajikistan
Selami	Altinok	MP	Türkiye
Yusuf	Baser	MP	Türkiye
Tekin	Bingol	MP	Türkiye
Ecem	Danik Gokce	Staff of Delegation	Türkiye

Rezak	Tavli	Staff of Delegation	Türkiye
Nataliia	Bukhalova	Staff of Delegation	Ukraine
Pavlo	Frolov	MP	Ukraine
Artur	Gerasymov	MP	Ukraine
Yevheniia	Kravchuk	MP	Ukraine
Ivan	Krulko	MP	Ukraine
Hanna	Lichman	MP	Ukraine
Mykyta	Poturaiev	MP	Ukraine
Iryna	Sabashuk	OSCE PA Secretariat	Ukraine
Volodymyr	Voronov	MP	Ukraine
Andrew	Gwynne	MP	United Kingdom
Rupa	Huq	MP	United Kingdom
Nigel	Mills	MP	United Kingdom
Brendan	O'hara	MP	United Kingdom
Mark	Pritchard	MP	United Kingdom
Royston	Smith	MP	United Kingdom

ODIHR LEOM Long-Term Observers

Lilit	Antonyan	Armenia
Günther	Guggenberger	Austria
Vafa	Fati-zada	Azerbaijan
Pavel	Herot	Czech Republic
Jan	Němec	Czech Republic
Jiří	Škvor	Czech Republic
Roman	Stanek	Czech Republic
Patrik	Taufar	Czech Republic
Pekka	Vihervas	Finland
Mariam	Chubabria	Georgia
Christiane	Buck	Germany
Ingo	Buettner	Germany

Jana Catharina	Bürgers	Germany
Susanne Rosemarie	Greiter	Germany
Henning	Horstmeyer	Germany
Natalie	Krieger	Germany
Thomas	Leszke	Germany
Anja	Mihr	Germany
Jochen Michael	Rinck	Germany
Hildegard Christine	Rogler-Mochel	Germany
Eckart	Rohde	Germany
Claudia Verena	Schäfer	Germany
Jürgen	Speidel	Germany
Rebecca	Wagner	Germany
Christoph	Wiedemann	Germany
Giovanni	Caligiuri	Italy
Nurul	Rakhimbekov	Kazakhstan
Veaceslav	Balan	Moldova
Gandolgor	Sainkhuu	Mongolia
Alexandra	Pajević	Montenegro
Marija	Raspopović	Montenegro
Anica	Kuzmanovska	North Macedonia
Anne Sofie	Molandsveen	Norway
Soeren Sindre	Munch	Norway
Per Norvald	Svartefoss	Norway
Claudia-Monica	Alexandru	Romania
Saša	Pokrajac	Serbia
Astrid	Nunez	Sweden
Ulf Anders	Ottosson	Sweden
Johanna	Estermann	Switzerland
Diana Franca	Ferrari	Switzerland

ODIHR LEOM Core Team Members

Tana	de Zulueta	Head of Mission	Italy
Davor	Ćorluka		Bosnia and Herzegovina
Desislava	Hristova		Bulgaria
Tarvi	Martens		Estonia
Tamara	Otiashvili		Georgia
Stefan	Krause		Germany
Silke	Tittel		Germany
Elissavet	Karagiannidou		Greece
Ahmad	Rasuli		Kyrgyzstan
Roman	Railean		Moldova
Nikolina	Staleska		North Macedonia
Tomasz	Jańczy		Poland
Daria	Paprocka		Poland
Ranko	Vukčević		Serbia
Ivan	Godársky		Slovakia
Francisco	Cobos Flores		Spain
Dominic	Howell		United Kingdom

ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is 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.

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 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates 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 obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, 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. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

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 people, 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**, 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. 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.

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).