

INTERIM REPORT
4 – 20 October 2016

26 October 2016

I. EXECUTIVE SUMMARY

- General elections will take place on 8 November 2016 for the president and vice-president, 34 senators, and 435 representatives.
- The legal framework for elections is highly complex, with significant variations between states, and differences in practice within states and counties. Several OSCE/ODIHR EOM interlocutors expressed concern that a high volume of ongoing litigation is creating a lack of clarity in how some legal requirements are being applied. Litigation relates to proof of citizenship requirements to register to vote, identification requirements for voting, and changes to postal and early voting.
- There is no federal-level election management body in charge of administering and organizing election procedures. Individual states are responsible for administering elections with duties often delegated to some 8,200 different jurisdictions across the country. Some 175,000 polling stations will be established for election day. Early voting, either by post or in-person, is ongoing across the country. The bipartisan Election Assistance Commission is actively providing guidance to election bodies across the country, particularly in respect of standards for new voting technologies and best practices for poll workers. Many OSCE/ODIHR EOM interlocutors expressed concerns about the reliability of new voting technologies in a number of localities due to lack of resources for maintenance and the replacement of old equipment. OSCE/ODIHR EOM interlocutors generally expressed confidence in the impartiality of election administrators.
- US citizens 18 years of age and older are eligible to vote. Residents of the District of Columbia do not have voting representation in Congress, while residents of US overseas territories are not permitted to vote in federal elections. Convicts are widely disenfranchised, although several states have recently taken steps to restore their voting rights. This disproportionately impacts African Americans, as they are overrepresented in the penitentiary system.
- Various initiatives have been undertaken to improve voter list accuracy and inclusiveness, often with bipartisan support. Some OSCE/ODIHR EOM interlocutors expressed concern regarding lower registration rates of racial and language minorities and Native Americans. Two online voter registration systems have reportedly suffered hacking attacks and potential breaches of data.
- The presidential election is dominated by two candidates; Democratic Party nominee Hillary Clinton and Republican Party nominee Donald Trump. This is the first time a major party has nominated a woman as candidate for president. Two other candidates were registered in enough states to be able to be elected. A total of 184 candidates, including 28 women are registered for the Senate elections, and some 1,515, including 190 women, for the House of Representatives elections. Two transgender women are candidates for a major party for the first time.
- The Federal Election Commission enforces the reporting and disclosure requirements of campaign finance law. Almost USD 600 million has been spent by the two main presidential candidates so far, with outside spending estimated to be over USD 1.2 billion. In line with Supreme Court rulings

protecting the freedom of speech, there are no limits on campaign spending. Some OSCE/ODIHR EOM interlocutors have raised concerns that large donations are concentrated in the hands of a few top donors, giving them undue influence over policy and law-making.

- The campaign is highly polarized, with the leading presidential candidates employing personal attacks against one another. The media coverage of the presidential campaign is extensive, with little reporting on other events and issues, including the Congressional elections. Three televised debates between Ms. Clinton and Mr. Trump attracted record audiences. The OSCE/ODIHR EOM commenced quantitative and qualitative assessment of campaign coverage by media on 7 October.
- Election observer access is determined by the state or county. Eight states explicitly allow for international election observation while thirteen states explicitly forbid it which is not in line with the requirements of paragraph 8 of the 1990 OSCE Copenhagen Document. Observation by political parties and civil society organizations is expected to be widespread.

II. INTRODUCTION

Following an invitation from the US government and based on the recommendations of a Needs Assessment Mission conducted from 16 to 20 May, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 4 October to observe the 8 November general elections.¹ The EOM, led by Ambassador Audrey Glover, consists of a 12-member core team based in Washington, DC and 26 long-term observers (LTOs), deployed on 11 October throughout the country. Mission members are drawn from 16 OSCE participating States. Participating States have been requested to second 400 short-term observers to observe election day procedures.

III. BACKGROUND AND POLITICAL CONTEXT

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

The general election process formally began in early 2016 with the selection of party candidates in nationwide caucuses and primaries. The presidential election is dominated by two candidates; Democratic Party nominee Hillary Clinton and Republican Party nominee Donald Trump. This is the first time a major party has nominated a woman as candidate for president. Only two other candidates, Gary Johnson of the Libertarian Party and Jill Stein of the Green Party, were registered in enough states to be able to win the election. While the presidential race receives most of the national attention, several close elections are expected for seats in the Senate and the House of Representatives.

IV. ELECTORAL SYSTEM

The president and vice president are elected jointly for a four-year term. They are elected indirectly by an absolute majority of a special body, the Electoral College, consisting of 538 electors. All fifty states

¹ See previous [OSCE/ODIHR election-related reports on the United States](#).

² The current House of Representatives includes 246 Republicans, 186 Democrats and 3 vacancies.

have the same number of votes as their total representation in Congress, while the District of Columbia has 3 votes. Electors are nominated by parties and elected within the states and the District of Columbia through a popular vote, largely through a “winner-takes-all” system.³ The system allows for a candidate to win the popular vote nationwide while falling short of the majority of Electoral College votes.⁴ Although there is no federal law requiring electors to vote in line with their party, and while some state laws impose sanctions for so-called “faithless electors”, cases of electors not voting for their party have been extremely rare.

Senators and Representatives are directly elected, principally in “first-past-the-post” contests. Each state constitutes a single electoral district for the Senate, and elects two Senators who serve staggered six-year terms. At most, one Senator from each state may be elected at any election. Seats in the House of Representatives are proportionally allocated to the states according to their population, with a minimum of one per state. Elections are conducted in districts, which are revised every ten years, following a nationwide census.⁵ Their term of office is two years.

V. LEGAL FRAMEWORK

In line with the federal system established by the Constitution, federal legislation provides minimum standards for elections, with implementation primarily regulated at state level. Electoral law, as a result, is complex, with significant variations between and within states. Federal and state court decisions also form an integral part of the legal framework.

Federal legislation includes the 1965 Voting Rights Act (VRA), which outlaws discriminatory laws and practice on the grounds of ethnicity and language; the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and 2009 Military and Overseas Voting Empowerment Act (MOVE), which allow citizens living abroad to register and participate in absentee voting; the 1984 Voting Accessibility for the Elderly and Handicapped Act and 1990 Americans with Disabilities Act, which promote access to the polls for people with disabilities; the 1993 National Voter Registration Act (NVRA), which facilitates voter registration; the 1971 Federal Election Campaign Act (FECA) and 2002 Bipartisan Campaign Reform Act, which regulate campaign finance; and the 2002 Help America Vote Act (HAVA), which establishes minimum standards for administering elections, including new voting technologies. Several of these laws have been the subject of extensive litigation.

In 2013 the Supreme Court struck down sections of the VRA that required states with a history of discrimination to obtain federal pre-clearance of changes to electoral law from the Department of Justice (DoJ) or the federal district court in the District of Columbia.⁶ Several OSCE/ODIHR EOM interlocutors expressed concern that this would diminish the timely and effective protection of voter rights from legal changes that have a discriminatory intent or impact.⁷ It has also contributed to a high volume of litigation, creating a lack of clarity in as to how specific requirements of federal law are applied to state law.

³ Exceptions are Maine and Nebraska, where some electors are selected from the respective congressional district by a “first-past-the-post” contest, while other electors are selected by the “winner-takes-all” system.

⁴ The 12th amendment to the Constitution stipulates that if no candidate wins a majority, the president is elected by the House of Representatives from among the top three candidates in the Electoral College. The Senate elects the vice president in this instance.

⁵ Seats were last reapportioned following a census in 2010. In the 2016 case of *Evenwel v Abbott*, the Supreme Court held that the principle of one-person one-vote is complied with if states use the total population as a baseline, rather than the number of voters.

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

⁷ See, *NAACP v McCrory* and *Yeasey v Abbott*

VI. ELECTION ADMINISTRATION

There is no federal body overseeing the entire electoral process. Individual states are responsible for administering elections with duties often delegated to some 8,200 different jurisdictions across the country. An expected 175,000 polling stations will be established for election day.

The composition of election administration bodies at state level varies widely. In 24 states the secretary of state is the chief election official, in 7 states there is a combination of a chief election official and a commission, 9 states have a board or commission, and in the remaining 10 the governor's office or state legislature appoints a dedicated election official. At the county level, 22 states have a single individual who supervises the elections, 10 states use a board of elections and 18 states divide duties between two or more offices. Chief election administrators of states and counties are often elected as party candidates and, at times, could stand in elections which they themselves administer. However, OSCE/ODIHR EOM interlocutors generally expressed confidence in the impartiality of election administrators, despite their party affiliation.

Election staff observed by the OSCE/ODIHR EOM at both the state and county level appear competent and committed, with many having several years of experience. In most places, training of poll workers by state or county boards has been carried out and is still ongoing. Some officials indicated that it is difficult to recruit poll workers. The election administration at all levels is carrying out their work in a transparent and open manner, with few complaints about preparations.

The bipartisan Election Assistance Commission (EAC) is a federal body that provides guidance on meeting HAVA requirements and serves as a clearinghouse for information about the election administration. After functioning without commissioners since 2011, in January 2015, three commissioners were appointed, making the EAC fully operational. The EAC is supporting states and counties in addressing recommendations made by the Presidential Commission on Election Administration in respect to strengthening the quality of NVT and ensuring the effective management of polling stations.⁸ According to state election officials, contact with the EAC is almost daily.

Information about polling station locations and voting procedures is sent to voters by the counties. State and county websites are also used as platforms to provide voters with information on a variety of electoral topics. Political parties and civil society are also active in providing voter information.

VII. VOTER RIGHTS, REGISTRATION AND IDENTIFICATION

US citizens who are eighteen years of age on election day are eligible to vote. Some 600,000 citizens residing in the District of Columbia do not have the right to vote in the Congressional elections and some 4 million residents of US overseas territories do not have the right to vote in any federal elections.⁹ An estimated 5.8 million citizens are disenfranchised due to a criminal conviction, including some 2.6 million who have served their sentences.¹⁰ This disproportionately impacts African Americans, as they are overrepresented in the penitentiary system.¹¹ Several states have recently restored some voting rights to convicted criminals.¹² Access to voting rights for persons with

⁸ See “[2014 Report and Recommendations of the Presidential Commission on Election Administration](#)”.

⁹ American Samoa, Guam, US Virgin Islands, Commonwealth of the Northern Mariana Islands and Puerto Rico.

¹⁰ See “[6 Million Lost Voters by The Sentencing Project](#)” by The Sentencing Project, from 6 October 2016.

¹¹ See [Report of the Working Group of Experts on People of African Descent on its mission to the USA A/HRC/33/61/Add.2](#)

¹² Including measures taken in 2016 in Maryland, Virginia and Alabama.

intellectual disabilities varies, with some states not providing for any disqualification on grounds of incapacity, while others disqualify based on court adjudication of incapacity or guardianship status.¹³

Voter registration is active. While the rules and deadlines for voter registration vary, states had to allow registration until at least 9 October. In many states, registration is still ongoing, with 12 states and the District of Columbia allowing voters to register on election day.¹⁴ Voters may also register by post, using a federal form maintained by the EAC. Applications must be accompanied by a signed statement, under penalty of perjury, that those registering are US citizens.¹⁵

HAVA requires states to maintain state-wide voter registration databases accessible to voters to check their own status. The states co-ordinate voter registers with various federal and state databases. As recommended by the EAC, an increased number of states are participating in inter-state projects, in order to identify potential duplicate records and inaccuracies.¹⁶

Various state and civil initiatives have been undertaken in order to improve voter list accuracy and inclusiveness, often enjoying bipartisan support. A significant increase in online registration has reportedly improved access and led to more efficiency and lower costs.¹⁷ However, some OSCE/ODIHR EOM interlocutors noted that racial and linguistic minorities, Native Americans and citizens with disabilities continue to have lower than average registration rates. Recently, the online registration systems in Illinois and Arizona suffered hacking attacks and potential breaches of data.¹⁸ The Department of Homeland Security (DHS) offered cyber security assistance, accepted by 33 states and some local jurisdictions in other states.¹⁹

The identification of voters at the polls is a highly-charged issue, divided largely along partisan lines. Several Republican controlled state legislatures recently implemented laws requiring voters to show identification to vote, aiming to prevent potential impersonation. Democrats largely believe this could disenfranchise voters, particularly low-income and minority voters who may experience difficulties in acquiring the prescribed identification. The DoJ and a number of civil rights organizations have been engaged in litigation ahead of the upcoming elections, attempting to restrain the implementation of some new state laws on these matters.²⁰ Several OSCE/ODIHR interlocutors stated that there has been limited time to inform voters of changes to voter identification rules in many states, which may lead to voter confusion and irregular application of rules by some polling station officials.

In 32 states voters will be required to show identification before voting, of which 16 require photo identification. The remaining 18 states and the District of Columbia establish the identity of voters, for example, through asking for personal information or comparing signatures to those on record.

¹³ Indiana, Illinois and Kansas, for example, have no disqualification provisions.

¹⁴ In Florida, Georgia, North Carolina and South Carolina, voter registration deadlines were extended by the courts due to hurricane Matthew.

¹⁵ Alabama, Arizona, Georgia and Kansas passed legislation requiring documentary proof of citizenship with the registration application. Federal courts have temporarily ruled against these measures, prohibiting states from requiring such evidence for those registering for federal elections.

¹⁶ There are two such projects: Electronic Registration Information Center (ERIC) includes 20 states and the District of Columbia, and the Interstate Voter Cross-Check Program (IVCP) includes some 25 states. Additionally, ERIC requires member states to send letters to those removed from the voter register informing them of their rights.

¹⁷ The District of Columbia and 32 states offer online registration for these elections. In Virginia, a court decision extended registration by two days due to a high number of citizens registering causing a system crash.

¹⁸ See point two of the [EAC chairperson's testimony before Congress from 28 September](#).

¹⁹ See [statement](#) by the DHS Press Office.

²⁰ Including, for example, cases in Alabama, North Carolina, North Dakota, Texas, Virginia, and Wisconsin.

VIII. CANDIDATE REGISTRATION

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

More detailed registration requirements are established by state law, with considerable variation between states. All states offer the possibility for recognized political parties to nominate candidates. The definition of a “recognized” party varies, depending either on the number of registered voters declaring their association with the party or the number of votes that the party received in previous elections. Smaller political parties and independent candidates can run if they collect a certain number of supporting signatures, typically several months before the elections. The number of signatures required and the signature submission deadlines vary by state. The majority of states also allow for voters to “write-in” candidates. Some states require advance notice from an individual planning to run a “write-in” candidature, while other states allow voters to write-in names without any prior notice.

There are a total of 184 candidates, including 28 women competing for the 34 Senate seats and 1,515, including 190 women, competing for the 435 House seats. Two transgender women are candidates for a major party for the first time. A total of 24 congressional candidates are running unopposed. While only 4 presidential candidates are registered in a sufficient number of states to be elected, a total of 296 will appear on various state ballots.

IX. ALTERNATIVE VOTING METHODS

Early voting is ongoing across the country, either by post or in-person. All states provide some voters with the possibility of postal voting, with 27 states and the District of Columbia not requiring voters to provide reasons for their request. Colorado, Oregon and Washington conduct elections entirely by postal ballot.²¹ Early voting in polling stations is available in 34 states and the District of Columbia, with voting periods ranging from 3 to 45 days depending on the state. Some OSCE/ODIHR EOM interlocutors reported that, in some states, limited time or lack of polling locations may lead to long queues.

Federal legislation provides that citizens abroad, including uniformed personnel, should have the possibility to vote in general elections. The Federal Voting Assistance Program (FVAP) under the Department of Defence provides extensive information and assistance to such voters, as well as election officials.²² The UOCAVA requires states to distribute ballots to voters abroad at least 45 days before election day, which all states completed. Voters who do not receive ballots in time may vote via a Federal Write-In Absentee Ballot.²³

HAVA requires that provisional ballots are provided to voters who believe they are registered at a polling station but could not be found on the voter list. Regulations and deadlines for verification and counting of provisional ballots, as provided by states, vary widely.

²¹ Colorado and Washington provide a limited number of polling stations for in-person voting, including for voters with disabilities, while Oregon election officials conduct home visits for assisted voting.

²² The FVAP estimate that there are some 2.6 million citizens of voting age residing abroad.

²³ In 32 states, voters may waive the secrecy of their vote by returning ballots electronically.

X. NEW VOTING TECHNOLOGIES

New Voting Technologies (NVT) are used extensively across the country. HAVA mandates that states provide technology to assist voters with disabilities in each polling station. Direct Recording Electronic (DRE) machines are used in some 30 states. In some counties within 13 states, DRE machines do not include a voter-verified paper audit trail (VVPAT) for voters to verify if their votes were recorded correctly, making recounts impossible.²⁴ Optical or digital scanners are used in 44 states to count paper ballots. Many OSCE/ODIHR EOM interlocutors noted that NVT equipment is old and not replaced due to a lack of resources at the federal, state or local level. This has caused concerns with reliability, security and possible malfunctions, which could lead to lost votes or long queues at the polls.²⁵

In 2015, the EAC updated the Voluntary Voting System Guidelines (VVSG), providing a set of standards for state and local election officials, including those related to security, counting and improved access for voters with disabilities. VVSG is used in 47 states in some form, while 37 states and the District of Columbia undertake federally prescribed testing and certification of equipment.²⁶

XI. ELECTION CAMPAIGN

The election campaign is dominated by the presidential race, which, in turn, influences the congressional races. The main presidential candidates have focused on a small number of so-called “battleground” states, which are also witnessing competitive congressional races.²⁷ Both candidates have organized a comparable number of rallies and have extensively used advertising and social media. The campaign is highly polarized between the two major presidential candidates. Both candidates use a tone that is confrontational, frequently employing personal attacks during campaign events and criticizing each other for being unfit for the office of president. Mr. Trump has alleged media bias against his campaign and has repeatedly stated that the electoral process is rigged. On several occasions he has appealed for his supporters to watch the polls and prevent fraud, raising fears of intimidation on election day. Mr. Trump’s allegations of electoral fraud and his refusal to say that he would accept the election results was widely denounced.²⁸ The OSCE/ODIHR EOM has noted isolated cases of disruptions at rallies. On 16 October, the Republican Party office in Hillsborough County, North Carolina, was firebombed.

The release of a 2005 audio tape on 7 October, where Mr. Trump is heard boasting about having non-consensual sexual contact with women, led a large number of senior Republican members, including the Speaker of the House, to distance themselves from their candidate. Those governing the national party remain in support of his candidacy. In spite of calls to step aside, Mr. Trump reiterated that he would remain in the race. These events have influenced the campaign for Congress, with calls from various party leaders to redirect resources to these races.

On 7 October, WikiLeaks began releasing thousands of emails, in batches, from Ms. Clinton’s campaign chairperson, prompting renewed public discussion of Ms. Clinton’s ties to financial institutions and wealthy donors. The same day, US intelligence agencies accused the Russian government of being behind the hacking of the e-mails.²⁹ Criticism of Ms. Clinton’s use of a private e-mail server while Secretary of State remained a topic in the campaign,

²⁴ Five states use DRE machines without VVPAT in all of their counties.

²⁵ See, [2014 Report and Recommendations of the Presidential Commission on Election Administration](#).

²⁶ See the updated [VVSG 1.1](#) from 31 March 2015.

²⁷ Candidates and parties define their battleground states on polling and other internal research. These include Arizona, Florida, Georgia, Iowa, Nevada, North Carolina and Ohio.

²⁸ See, for example, [Statement by the National Association of Secretaries of State](#) from 18 October.

²⁹ See, [joint statement by the Department of Homeland Security and the Office of the Director of National Intelligence](#).

XII. CAMPAIGN FINANCE

Federal legislation sets limitations on contributions, as well as imposing disclosure and reporting requirements on candidates, political parties and political action committees (PACs).³⁰ There are, however, no limits in place on campaign spending, with previous limits found to be in violation of the constitutional protection of free speech.³¹ This protection extended to the speech rights of corporations and unions, allowing them also to spend without limitations.³² The position has been liberalized further since the last presidential election, as a Supreme Court ruling struck down the limits imposed on individual donors for aggregated donations over a two-year period, allowing citizens to make campaign contributions to as many different candidates and political parties as they wish.³³

The Federal Election Commission (FEC) enforces the law, requiring candidate committees, party committees and PACs to file periodic reports disclosing the funds they raise and spend. Candidates must identify individuals who donate in excess of USD 200 per electoral cycle and disclose all expenditure in excess of USD 200. All reports filed by registered political committees, such as candidates' campaign committees, party committees, and PACs, are made public by the FEC within 48 hours of receipt. So-called super PACs, political committees acting independently of a candidate's campaign, must register with the FEC and are subject to disclosure requirements. However, non-profit organizations, such as social welfare organizations and chambers of commerce, can make unlimited independent campaign expenditures, if campaigning is not their primary activity.³⁴ Some OSCE/ODIHR EOM interlocutors have criticized the fact that such groups fall outside the jurisdiction of the FEC and are not subject to any disclosure requirements. Public funding is also available to presidential candidates but is subject to several limitations.³⁵ For this election, Jill Stein is the only candidate who has applied for public funding.

In October, the FEC reported that campaign committees for Ms. Clinton, Mr. Trump, Mr. Johnson and Ms. Stein had raised some USD 678 million by the end of September.³⁶ Out of this, 67 per cent was raised by Ms. Clinton's campaign, while Mr. Trump's campaign raised 32 per cent. In terms of spending, as of 30 September, Ms. Clinton had spent some USD 400 million and Mr. Trump some USD 189 million. At the congressional level, the Republicans raised over USD 726 million for House and Senate candidates combined, while the Democrats raised over USD 650 million. So far, the Republicans spent over USD 574 million on both races and the Democrats over USD 492 million. Outside spending is overwhelmingly made by super PACs and has reached more than USD 1.2 billion thus far.³⁷ Some OSCE/ODIHR EOM interlocutors have raised concerns that large donations are concentrated in the hands of a few top donors, giving them undue influence over policy and law-making.

XIII. MEDIA

The media landscape is pluralistic and diverse, albeit increasingly regionalized and polarized. According to the Federal Communications Commission (FCC), there are 1,780 commercial and public

³⁰ The maximum amount a donor may donate to a candidate is USD 2,700 per election, or USD 5,400 for the primary and general election; USD 33,400 to a national party committee, and USD 5,000 to a PAC.

³¹ See, [*Buckley v Valeo*](#).

³² See, [*Citizens United v FEC*](#).

³³ See, [*McCutcheon v FEC*](#).

³⁴ Section 501(c) of the Internal Revenue Code lists 29 types of organisations which fit into this category.

³⁵ See, [*FEC information on public funding of presidential election*](#).

³⁶ See data from the [*Federal Election Commission*](#). All figures are for the 2015-16 election cycle.

³⁷ See the [*Center for Responsive Politics*](#), which uses FEC data for its analysis.

television stations and 15,489 radio stations, with local and cable channels growing in popularity.³⁸ While there are some 1,300 print publications, media consumption has shifted towards online media and social networks.

The first amendment of the Constitution guarantees freedom of the press and expression, providing for a robust system of protection for media independence. However, recent developments have posed various challenges for journalists, primarily arising from national security and counterterrorism measures by the government. International organizations dealing with matters of freedom of expression report that they include government attempts to compel reporters to reveal the sources of leaked information and to limit access to official information.³⁹

The 1934 Communications Act, elements of the Code of Federal Regulations and FCC regulations outline several key principles for broadcasters to adhere to during elections. Commercial broadcasters must provide “reasonable access” to all federal candidates who request to purchase airtime. In addition, an “equal opportunity” rule stipulates that if a candidate for public office is granted airtime, other candidates in that contest must be afforded equal conditions. There are a number of exemptions to this rule, such as newscast appearances and scheduled or on-the-spot interviews. Since the balancing principles do not concern newscasts, it grants commercial media wide discretion with editorial policy.

The media coverage of the presidential campaign is extensive, with little reporting on other events. This includes traditional media, such as major networks, cable broadcasters and nationwide newspapers, as well as online sources and social networks. The non-partisan, independent Commission on Presidential Debates (CPD) organized debates between the leading presidential candidates.⁴⁰ The four debates (three presidential and one vice presidential) were conducted in different states. Candidates from the two main parties qualified to participate.⁴¹ They were aired by all the major networks and attracted a large audience.⁴²

The OSCE/ODIHR EOM commenced quantitative and qualitative assessment of election-related coverage by several major media outlets on 7 October.⁴³

XIV. COMPLAINTS AND APPEALS

There are several means of legal recourse available to address electoral disputes. The DoJ has the power to enforce federal law, including the VRA, HAVA, and MOVE, and may initiate court actions in

³⁸ See data to 30 June 2016 from the [Federal Communications Commission](#).

³⁹ See Reporters Without Borders [report](#) and Freedom House report, [Freedom of the Press 2015 – United States](#). OSCE Representative on Freedom of Media (RFoM) [expressed concern](#) over a warrant issued for the arrest of a broadcast journalist in North Dakota.

⁴⁰ To be eligible, candidates must appear on a sufficient number of state ballots to have a mathematical chance of winning a majority vote in the Electoral College, and have a level of support of at least 15 per cent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recently publicly-reported results at the time of the determination.

⁴¹ Two other national candidates did not achieve the 15 per cent requirement to participate in the debates. On 5 August, a DC District Court dismissed a 2015 complaint filed jointly by candidates Gary Johnson and Jill Stein requesting an invitation to the presidential debates. Mr. Johnson, organized an online petition and a public rally on 13 October aimed at his inclusion into the last debate.

⁴² The first debate, conducted on 26 September, was watched by 84 million people, making it the [most watched](#) presidential debate in US history, while the debate on 19 October became the [third most watched debate](#).

⁴³ The OSCE/ODIHR EOM media monitoring includes the following: public television broadcaster – *PBS*, three television networks – *ABC*, *CBS* and *NBC*, two cable television channels – *CNN* and *Fox News*; three newspapers - *The New York Times*, *The Wall Street Journal* and *USA Today*; and *National Public Radio*. The OSCE/ODIHR EOM is also following five online media - *Breitbart.com*, *Huffingtonpost.com*, *Politico.com*, *Thehill.com* and *Washingtonpost.com*.

instances where allegations of non-compliance are made. A variety of orders may be made finding violations of the laws, and fines may be imposed.

HAVA requires that states institute procedures to facilitate and resolve complaints or violations of the Act. Individuals, parties, civil society organizations and interest groups may bring civil suits in state and federal courts if they consider their rights to have been affected. A wide range of electoral litigation is ongoing at present, with the DoJ and civil society actors challenging many new legislative measures which have been introduced. This includes cases regarding the introduction of proof of citizenship to register to vote, requirements of photo identification for voting, and changes to both postal and early voting. Temporary restraining orders are in place in many cases, with final determinations not anticipated in advance of the elections. Litigation has also been initiated by some candidates who failed to secure ballot access in particular states.⁴⁴

XV. ELECTION OBSERVATION

In line with its OSCE commitments, the US Government invited the OSCE/ODIHR to observe these general elections.⁴⁵ In 2015, the National Association of Secretaries of State renewed its resolution, welcoming “OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law.” However, most states do not comprehensively regulate observation, with access for international observers, as well as for partisan and non-partisan citizen observers, often left to the discretion of state or county election officials. Eight states and the District of Columbia explicitly permit international election observation in polling stations on election day by law and thirteen states explicitly forbid it.⁴⁶ Observation will be widespread throughout the country, both from political party representatives and civil society groups. The DoJ will monitor election day practice by deploying staff to targeted polling stations with historic patterns of discrimination, some subject to court mandate.

XVI. MISSION ACTIVITIES

The OSCE/ODIHR EOM commenced its work in Washington, DC on 4 October. The Head of Mission has met with the State Department, Department of Justice, Election Assistance Commission, Federal Communications Commission, National Association of State Secretaries and the National Conference of State Legislatures among others. The OSCE/ODIHR EOM has also established regular contacts with the election administration at various levels, government institutions involved in the electoral process, as well as representatives of political parties, citizen observers, media and civil society. The OSCE Parliamentary Assembly has announced that it will deploy an observer delegation for election day observation. The OSCE Chairperson-in-Office has appointed Christine Muttonen as Special Co-ordinator and leader of the short-term OSCE observer mission for these elections.

⁴⁴ In Oklahoma, for example, Jill Stein challenged the ballot access requirements.

⁴⁵ 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”.

⁴⁶ California, Colorado, Missouri, New Mexico, North Dakota, South Carolina, South Dakota and Washington explicitly permit international election observation in polling stations on election day, while Alabama, Alaska, Arizona, Connecticut, Hawaii, Louisiana, Mississippi, North Carolina, Ohio, Oklahoma, Tennessee, Texas and West Virginia explicitly forbid it.