



Office for Democratic Institutions and Human Rights

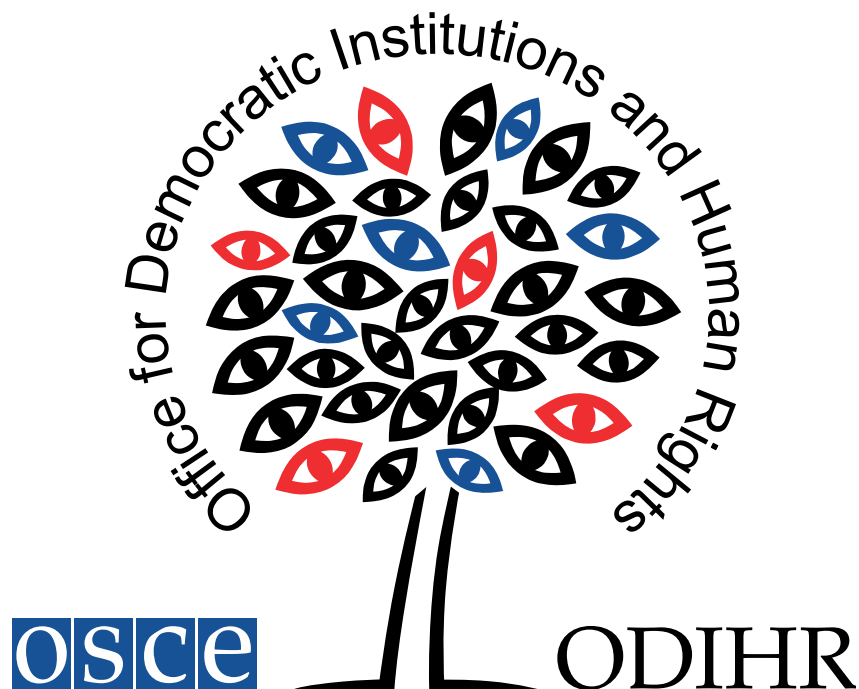
UNITED STATES OF AMERICA

GENERAL ELECTIONS

3 November 2020

ODIHR NEEDS ASSESSMENT MISSION REPORT

29 May - 5 June 2020



Warsaw
3 July 2020

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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the United States Mission to the OSCE to observe the 3 November 2020 general elections and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 29 May to 5 June. The NAM included Alexander Shlyk, Head of the ODIHR Election Department, Ana Rusu, ODIHR Senior Election Adviser, Hamadziripi Munyikwa, ODIHR Election Adviser, and Radivoje Grujić, ODIHR Election Adviser. The ODIHR NAM was joined by Stephanie Koltchanov, OSCE Parliamentary Assembly Elections Officer.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM recommends whether to deploy an ODIHR election-related activity for the forthcoming elections and, if so, what type of activity best meets the identified needs. Due to the global health emergency and consecutive introduction of restrictions on cross-border travel throughout the OSCE region, the NAM was conducted remotely, using the means of information and communication technologies. This approach was chosen due to the current extraordinary situation and in view of the need to ensure sufficient time for the preparation of the possible deployment of an election-related activity for the 3 November general elections. Meetings were held with officials from federal and state institutions, as well as representatives of political parties and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Department of State, including the United States Mission to the OSCE, for their co-operation and assistance in organizing the NAM. ODIHR would also like to thank all of its interlocutors for taking the time to discuss with the NAM team and for sharing their views.

II. EXECUTIVE SUMMARY

The US is a federal republic comprising 50 states, the District of Columbia, and a number of overseas territories. Executive power is vested in the president and legislative power is exercised by the bicameral Congress, consisting of the Senate and House of Representatives. The states exercise wide authority relative to the federal government and have their own governors, laws, legislatures, and courts. On 3 November, in line with the Constitution, US citizens will vote to elect the president and vice president, 35 of the 100 Senators, and all 435 Representatives.

The Constitution establishes the broad legal framework for federal elections, with federal laws providing minimum standards, and detailed implementation regulated by state law. No changes have been made to federal election law as such, but some legal developments aim to provide states with additional resources to protect the 2020 elections from the effects of the novel coronavirus. At state level legal amendments have been introduced, primarily concerning procedures for voter registration, prisoner voting rights, and early and postal voting as well as to address the needs to secure environment for the conduct of elections in the context of COVID-19 pandemic.

Election administration is highly decentralized, with no federal body mandated to oversee the entire electoral process, and many duties often delegated to some 8,000 electoral jurisdictions across the country. Overall, ODIHR NAM interlocutors expressed their views that due to COVID-19 pandemic,

the conduct of these elections will be challenging particularly as states will need to balance preserving in-person voting at polling stations on election day with expanding the alternative voting methods, most notably postal voting. Although the number of polling stations is expected to be lower than usual, they anticipated potential difficulties in hiring polling station officials. ODIHR NAM interlocutors opined that these and other challenges may decrease the level of trust in election administration, potentially affecting the integrity of election day proceedings, and, as a consequence, the acceptance of the election results.

There are various initiatives at federal level to work with states and localities to improve their abilities to increase cyber security of elections, coordinate mitigation efforts, and counteract malign foreign influence. In addition, the Election Assistance Commission (EAC) is responsible to distribute to states USD 425 million, approved by Congress in December 2019, to improve election administration, including through enhanced technology and security. While most ODIHR NAM interlocutors expressed confidence in the integrity of election infrastructure and praised efforts to mitigate cyber security risks, some shared concerns about potential isolated cyber-attacks and the impact these may have on public confidence, even if the attacks are not successful.

Citizens who are at least 18 years old on election day and are residents of a state are eligible to vote. Some 4.7 million citizens that are resident in US territories and the District of Columbia do not have full representation in Congress, and residents of US territories cannot vote in presidential election. Some 6.1 million citizens are disenfranchised due to a criminal conviction, with African-Americans disproportionately affected. While there have been positive trends to restore voting rights for ex-prisoners, most states continue to impose burdensome procedures for their reinstatement.

Voter registration is active and implemented at state level. A number of states have taken steps to facilitate voter registration, including through online and automatic systems. Several ODIHR NAM interlocutors noted that access to registration offices has been restricted under stay-at-home orders in response to the COVID-19 pandemic, creating additional obstacles in voter registration process for disadvantaged groups. Voter identification is a politically divisive issue and rules vary by state. A total of 35 states require identification, with 18 requiring a photo identification.

While federal legislation prohibits discrimination and ensures equal opportunity for persons with disabilities in political and electoral life, restrictions on voting rights based on intellectual or psychosocial disability or guardianship are widespread and vary among states. Strong legal guarantees ensure the right to vote for persons with physical disabilities. All polling stations provide specialized equipment to assist such voters. A number of ODIHR NAM interlocutors stated that measures for remote voter registration and alternative voting methods may negatively impact ability of persons with disabilities to register and vote.

Federal law outlines candidate registration requirements, with additional rules provided at state level. All states offer the possibility for 'recognized' parties to nominate candidates, although the definition of 'recognized' party varies. Smaller parties and independent candidates can run if they collect a state-specific number of supporting signatures, which typically need to be submitted several months ahead of the elections.

Casting the vote by post or in person before election day is an established practice, with usually more than one-third of voters using such options. In response to the COVID-19 pandemic, many states are considering or have already introduced rules aimed at expanding access to early and postal voting, in some cases to all eligible voters. Most ODIHR NAM interlocutors highlighted concerns about the capacity of some states to deal with extensive postal voting. Some interlocutors also see in this method a source of potential massive voter fraud.

The use of new voting technologies (NVT) is extensive and varies across and within states. In line with previous ODIHR recommendation, there is a tendency towards a return to paper-based voting, with most states using voter-verified paper audit trail, with estimation that some 90 per cent of all ballots in general elections will be cast through paper-based systems.

Election campaigning is largely unregulated and is expected to be polarized, with focus on presidential election, but also on competitive congressional races. Many ODIHR NAM interlocutors expressed serious concerns regarding freedom of peaceful assembly, and some regarding the use of intolerant rhetoric during the campaign, including inflammatory speech targeting minorities. The use of online and social media is expected to be prominent, with many interlocutors expressing concern about potential misinformation and disinformation, including from foreign sources.

The Federal Election Commission oversees a campaign finance system that imposes few actual limits on donations and does not limit expenditure. While all financial reports are generally published in a timely manner, spending by independent groups can be exempt from disclosure requirements. Most ODIHR NAM interlocutors shared concerns about the lack of transparency in campaign financing, especially regarding the expenditures on online platforms.

The media landscape is pluralistic and diverse, albeit increasingly polarized. The legal framework for traditional media is characterized by a robust protection for media independence and freedom of speech. Regulations in the immediate run up to elections allow for “reasonable access” for candidates and “equal opportunity” to all electoral candidates. All ODIHR NAM interlocutors expect an increase in political advertisement in media, in part because of the limitations on campaign methods due to COVID-19 pandemic, highlighting the susceptibility of online media networks and online news audiences to potential misinformation as a major concern in the upcoming elections.

Election observation is regulated by states, which often does not explicitly provide for international observers. While election observation by civil society and political parties is expected to be widespread, some ODIHR NAM interlocutors expressed concern that activities of some observer groups may be perceived as voter intimidation.

Overall, ODIHR NAM interlocutors noted that the conduct of these elections will be the most challenging in recent decades. Many ODIHR NAM interlocutors expressed confidence in the election administration dedication to conduct elections professionally and impartially. At the same time, they expect that election officials will face serious challenges prior to and on election day, due to new measures in response to COVID-19 pandemic, and expressed concerns over their ability to overcome them. This, in the view of ODIHR NAM interlocutors, may have an impact on the level of trust in election administration, which, in turn, could harm the integrity of election day proceedings, and ultimately cast doubt in the outcome of the elections. Although only some previous ODIHR recommendations have been addressed, most interlocutors noted the added value of a potential ODIHR observation activity for these elections, recognising its possible contribution to improvements of the electoral process. Elements of the electoral process that ODIHR NAM considers to merit specific attention include voter rights, registration and identification, security of election technologies, legal framework for and implementation of alternative voting methods, campaign finance, and the conduct of the electoral campaign, particularly online and in the media. In addition, interlocutors noted that, in a highly polarized environment, there is an increased need for external and independent overview of the electoral process, including of the election day proceedings.

On this basis, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) to observe the general elections. In addition to a core team of analysts, the mission

recommends the secondment of 100 long-term observers from OSCE participating States to follow the electoral process countrywide, and 400 short-term observers to follow election day proceedings. In line with the ODIHR's standard methodology, the EOM would contain a media monitoring element.

III. FINDINGS

A. BACKGROUND

The US is a federal presidential republic comprising 50 states, the District of Columbia, and a number of overseas territories.¹ The president holds executive power, serving as head of state and head of government, while legislative power is vested in Congress, a bicameral body consisting of the Senate and the House of Representatives (House). The states exercise wide authority relative to the federal government and have their own governors, constitutions, laws, legislatures, and courts.

On 3 November, in line with the Constitution, elections will be held for the president and vice president, 35 of 100 Senators and all 435 Representatives.² At same time, elections will also be held for state and local offices, as well as various referenda. The last presidential election was held in 2016, when the Republican Party candidate Donald Trump was elected. For the 2020 presidential election President Trump has put forward his nomination to be Republican Party presidential candidate. The presumptive Democratic presidential candidate is former Vice President Joe Biden. The last congressional elections were held in 2018, resulting in a Senate comprised of 53 Republicans, 45 Democrats and 2 independents, and a House currently comprised of 233 Democrats, 198 Republicans, and 1 Libertarian, with 3 seats vacant.

Although 2018 mid-term congressional elections resulted in highest ever number of women being elected to the Congress (101 in the House and 26 in the Senate), women are generally underrepresented in public office, holding 2 of the 16 cabinet posts, some 24 per cent of seats in the outgoing Congress, and some 25 per cent of seats in the state legislatures. Ethnic and racial minorities are also reported to be underrepresented in political structures.³

On 18 December 2019, following a formal House inquiry into allegations that President Trump had solicited foreign interference in the 2020 U.S. presidential election to help his re-election bid, the House impeached the president by approving articles of impeachment on charges of abuse of power and obstruction of Congress.⁴ The president was acquitted by the Senate on these two counts of impeachment on 5 February 2020.⁵ Many ODIHR NAM interlocutors noted that the upcoming general elections are taking place during a period of what they described as the highest degree of polarization and the deepest division in political views in recent decades. In late May 2020, protests erupted across the United States after George Floyd, an African American man, died while being arrested in the city of Minneapolis.

ODIHR has observed elections in the US since 2002. Most recently, a Limited Election Observation Mission was deployed for the 2018 mid-term congressional elections. The mission concluded in its final report that the "elections were highly competitive, and contestants could campaign freely, with

¹ American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Puerto Rico, Virgin Islands, and Wake Island.

² For the Senate, 33 seats are contested in regular elections and 2 in special elections (Arizona and Georgia).

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

⁴ See [House Resolution 755](#) on Articles of impeachment of Donald John Trump.

⁵ According to US Constitution, the president, vice-president and Cabinet members as well as all federal public officials, are subject to impeachment by the House and trial in the Senate [but] "no person shall be convicted without the concurrence of two-thirds of the Senate members present."

media presenting a wide array of information and views, enabling voters to make an informed choice. However, campaign rhetoric was often intensely negative and, at times, intolerant, including on social networks. The fundamental right to suffrage was undercut in places by disenfranchisement of some groups of citizens and lack of full representation in Congress. Campaign finance rules do not guarantee full transparency. While the elections were largely administered in a professional manner and voters turned out in high numbers, decisions on important aspects of the electoral process were often politicized”.⁶ The report included recommendations for the authorities on how electoral processes may be improved and brought more closely in line with OSCE commitments.⁷

B. LEGAL FRAMEWORK

The Constitution and its amendments establishes the broad framework for federal elections, with additional federal laws focusing on protecting the voting rights of racial and linguistic minorities, military and overseas citizens, and persons with disabilities, as well as providing minimum standards for new voting technologies (NVT) and regulation of campaign finance.⁸ The Constitution and federal law determine minimum standards for the conduct of elections, with detailed implementation regulated by state law.⁹ As such, a diverse body of laws and regulations exist across the country, including variations among counties in some states. Federal and state court decisions also form an integral part of the legal framework. The US is a party to major international and regional instruments related to democratic elections.¹⁰ The US has signed but not ratified the 1979 Convention for Elimination of All Forms of Discrimination against Women (CEDAW) and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).¹¹ The US ratified the ICCPR in 1992, with a number of reservations, understandings, and declarations.¹²

At the federal level, there have been no legislative changes since the last elections.¹³ Several bills relating to electoral security, voter registration and online advertisements were submitted to Congress

⁶ See previous [ODIHR election-related reports](#) on the US.

⁷ In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

⁸ Federal legislation includes: the 1965 Voting Rights Act ([VRA](#)), which protects the rights of racial and linguistic minorities; [the 1986 Uniformed and Overseas Citizens Absentee Voting Act](#) and the 2009 Military and Overseas Voting Empowerment Act ([MOVE](#)), which facilitate out-of-country voting; [the 1984 Voting Accessibility for the Elderly and Handicapped Act](#) and the 1990 Americans with Disabilities Act ([ADA](#)), which promote access to the polls for people with disabilities; the 1993 National Voter Registration Act ([NVRA](#)), which facilitates voter registration; [the 1971 Federal Electoral Campaign Act](#) and [the 2002 Bipartisan Campaign Reform Act](#), which regulate campaign finance; and the 2002 Help America Vote Act ([HAVA](#)), which provides standards for new voting technologies (NVT), state-wide voter registration, provisional ballots, and access for voters with disabilities.

⁹ This was reaffirmed by the Supreme Court in 2013 in [Arizona v. Inter Tribal Council of Arizona](#).

¹⁰ Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 2003 Convention against Corruption, and 2004 Council of Europe (CoE) Convention on Cybercrime. The US is a member of the CoE Group of States against Corruption (GRECO) and the European Commission for Democracy through Law (Venice Commission).

¹¹ Paragraph 13.2 of the 1989 OSCE Vienna Document commits participating States to consider acceding to international human rights treaties, with paragraph 15 referencing CEDAW. See also, paragraph 40.2 of the 1991 OSCE Moscow Document and paragraphs 5.20 and 5.21 of the 1990 OSCE Copenhagen Document. Additionally, the US is also not a party to the American Convention on Human Rights and the Indigenous and Tribal People’s Convention.

¹² In particular, the Senate declared that “the provisions of Article 1 through 27 of the Covenant are not self-executing”. Under international law, the responsibility to ensure compliance with obligations under ratified international instruments lies with the federal government, see Paragraph 4 of the 2004 [UN Human Rights Committee \(CCPR\) General Comment No 31](#) on the ICCPR.

¹³ On March 27, 2020, President Donald J. Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law which, among others, will provide states with additional resources to protect the 2020 elections from the effects of the novel coronavirus.

though none have been adopted.¹⁴ At the state level, a variety of amendments have been introduced, primarily concerning procedures for voter registration, prisoner voting rights, early voting and vote by mail. Many of the amendments have been made recently, in response to COVID-19 pandemic, including the need to secure the environment for the conduct of elections.¹⁵

The Department of Justice (DoJ) monitors the implementation of federal election law and can initiate or join enforcement suits in cases of non-compliance. Section 5 of the Voting Rights Act (VRA) requires jurisdictions in which there is a history of discrimination to obtain federal pre-clearance of changes to electoral law from the DoJ or the federal district court in the District of Columbia.¹⁶ In 2013, the Supreme Court ruled that the formula for determining jurisdictions subject to pre-clearance was outdated and that Congress should establish a new formula.¹⁷ At odds with a previous ODIHR recommendation, and despite several legislative initiatives, Congress is yet to determine a new formula.¹⁸ As a result, no jurisdiction is presently required to pre-clear election-related changes, with three exceptions that are covered by separate court orders.¹⁹

C. ELECTORAL SYSTEM

The president and vice president are elected jointly for a four-year term. The election is indirect, conducted through an Electoral College comprised of 538 electors. All 50 states have a number of electors equivalent to their total representation in Congress, while the District of Columbia has three. The electors are nominated by parties and elected through a popular vote, largely through ‘winner takes all’ contests.²⁰ There is no federal law requiring electors to vote in line with their nominating party, but some state laws invalidate or sanction so-called “faithless electors”.²¹ In May 2020, the cases from states of Washington and Colorado relating to “faithless electors” were brought before the Supreme Court, to decide whether electors must vote as their state did or if they can decide on their own for whom to cast their votes.²²

The system allows for a candidate to win the popular vote nationwide while falling short of the majority of Electoral College votes.²³ While any formal change to the Electoral College would require a constitutional amendment, several states have passed a National Popular Vote (NPV) act whereby states would pool their electoral votes in favour of the candidate that wins the national popular vote.²⁴ Some ODIHR NAM interlocutors were of the opinion that the current Electoral College system does not provide for equality of vote.

¹⁴ The comprehensive draft law on federal level, aiming to expand voting rights, limit partisan gerrymandering, strengthen ethics rules, and limit the influence of private donor money in politics, [For the People Act](#), was adopted in House in December 2019 and is currently pending in the Senate.

¹⁵ On federal level, the House adopted on 12 May the [Heroes Act](#), aiming to detail mail-in voting procedures, absentee vote requirements, enhance online voter registration, and appropriate USD 3.6 billion for election officials to address all COVID-19 related measures. The bill is currently pending in the Senate.

¹⁶ Section 5 has an expiration date, which, in 2006, was reauthorized by Congress until 2031.

¹⁷ See [Shelby County v. Holder](#). The Supreme Court did not rule on the constitutionality of Section 5 itself.

¹⁸ In December 2019 the House adopted [Voting Rights Advancement Act](#), envisioning new formula. The bill is currently pending in the Senate.

¹⁹ Charles Mix County (South Dakota), Port Chester Village (New York), and Evergreen City (Alabama).

²⁰ Maine and Nebraska are exceptions where [Electoral College votes](#) are split, with two votes allocated to the winner of the state-wide popular vote, and one vote allocated to the winner of each congressional district.

²¹ These laws, present in various forms in 32 states and District of Columbia, require electors to vote as pledged.

²² The Supreme Court heard oral arguments on 13 May in the cases of [Chiafalo v. Washington](#) and [Colorado Department of State v. Baca](#).

²³ In 2016, the Electoral College vote was won by Mr. Trump, who secured 304 Electoral College votes. Ms. Clinton won the popular vote, receiving 48.3 per cent of votes cast as compared to 46.2 per cent for Mr. Trump.

²⁴ [The National Popular Vote Act](#) (NPV) has been enacted in 16 states and the District of Columbia, totaling in 196 electoral votes. For the NPV to take effect, states with a combined total of at least 270 electoral votes must join the initiative.

Senators and Representatives are elected directly, primarily in first-past-the-post contests.²⁵ Each state is represented in the Senate by two Senators who serve staggered six-year terms, with no state's two Senators scheduled to be elected in the same year. Each state is represented in the House by at least one Representative and the remaining seats are allocated to states proportional to their population. All Representatives serve two-year terms.

While Senate electoral districts correspond to the entire state, Representatives are elected from single-member districts. The last time district boundaries were drawn by states was after the 2010 census. A longstanding issue of drawing districts on partisan or racial grounds was raised by several ODIHR NAM interlocutors. Several legal challenges remain in the courts, and there have been several cases in front of the Supreme Court.²⁶ ODIHR has previously recommended the establishment of independent commissions to draw boundaries free from political interference.²⁷

D. ELECTION ADMINISTRATION

Election administration is highly decentralized, with no federal body mandated to oversee the entire electoral process. States are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. Prior to the outbreak of the COVID-19 pandemic, it was expected that 185,000 polling stations would be established. However, these numbers may be lowered and alternative voting methods and measures to enforce social distancing put in place. The composition of election bodies varies across the states. Most are partisan and composed of appointees by the governing party in the state. However 20 states and the District of Columbia have election management bodies which are either bipartisan or independent.

The bipartisan Election Assistance Commission (EAC) is a national advisory body that provides guidance on meeting Help America Vote Act (HAVA) requirements and serves as a clearinghouse for information about election administration. It is also tasked with developing guidelines for testing and certifying NVT.²⁸ Many ODIHR NAM interlocutors noted the important role of the EAC in supporting efficient elections, particularly at the local level. For this electoral cycle, the EAC is also tasked with distributing the USD 400 million emergency funds to states under the CARES Act in order to prevent, prepare for, and respond to COVID-19.²⁹ Many ODIHR NAM interlocutors estimated that the amount appropriated may not be sufficient to cover the actual needs of states to secure electoral processes in November. Several ODIHR NAM interlocutors also noted that the 20 per cent match requirement from states to be eligible for federal funds could be a burden, as most states are already spending their budgets on unplanned preventive measures related to COVID-19.

²⁵ Except in Georgia, where a second round is held if no candidate receives an absolute majority, both for House and Senate elections. In the House, vacancies arising between elections are filled through by-elections. In the Senate, vacancies may be filled temporarily by Governors, except Oregon where a special election is required.

²⁶ On 27 June, 2019, in *Rucho v Common Cause*, the Supreme Court declared partisan gerrymandering claims to be no justiciable under the federal constitution, meaning that federal courts cannot hear those claims. The opinion will bring federal court litigation in several states to a close.

²⁷ Independent commissions are in Arizona, California, Colorado, Hawaii, Idaho, Michigan, Montana, New Jersey, and Washington.

²⁸ See the 2015 [Voluntary Voting System Guidelines 1.1](#). On 24 March the EAC initiated a 90-day public comment period for the Voluntary Voting Systems Guidelines (VVSG 2.0) Requirements, which will run through 22 June. To date, three public hearings were held, virtually, with live stream on the EAC Youtube channel.

²⁹ The EAC developed [the guidance and the FAQs](#) addressing the eligibility for using HAVA funds to cover costs that state and local officials are incurring as a result of the pandemic, including those necessary to protect the health and safety of poll workers, voters, and staff.

Federal legislation prohibits discrimination and ensures equal opportunity for persons with disabilities in political and electoral life.³⁰ It is estimated that one sixth of the voting age population has some type of disability.³¹ Several ODIHR NAM interlocutors noted that the COVID 19 pandemic and some measures taken in relation to it, may disproportionately affect the ability for persons with disabilities to register to vote.³²

Overall, ODIHR NAM interlocutors expressed views that due to COVID-19 pandemic, the conduct of these elections will be challenging particularly as states will need to balance preserving in-person voting at polling stations on election day with expanding the alternative voting methods, most notably postal voting. Many ODIHR NAM interlocutors expect difficulties in hiring polling station officials, and anticipate long voter lines at consolidated polling centers. Also, many ODIHR NAM interlocutors expressed concern over the level of trust in election administration among voters which may affect perceptions of the integrity of election day proceedings, and ultimately in the outcome of the elections.³³

E. CYBER SECURITY

During the 2016 general election cycle, a number of vulnerabilities related to the security of electoral infrastructure were revealed. As a result, various federal and state investigations into cyber security threats and foreign interference in US elections were initiated.³⁴

Following the Department of Homeland Security (DHS) designation of election infrastructure as critical infrastructure, in October 2017, a Sector Specific Agency (SSA) was created to oversee election infrastructure.³⁵ Within the DHS, the Cybersecurity and Infrastructure Security Agency (CISA) works with states and localities to improve their ability to detect and identify malicious cyber activity while also developing processes for coordinating mitigation efforts. CISA offers free, voluntary assistance to state and local election officials and authorities to support their infrastructure's security.³⁶ In March 2020, CISA initiated #PROTECT2020, a national call to action to enhance the integrity and resilience of the election infrastructure. The initiative is designed to be a starting point for resources on election security for the public as well as election officials.³⁷

Also, in 2017, the Federal Bureau of Investigation (FBI) established the Foreign Influence Task Force (FITF) to identify and counteract malign foreign influence operations targeting the United States. The role of FITF is to bridge across different divisions within the FBI, to address all external threats and

³⁰ See [guidance](#) provided by the DoJ.

³¹ See [data](#) from United States Census Bureau from November 2018.

³² One of the major anticipated challenge relates to potential changes of polling station locations in order to accommodate social distancing rules which might not be accessible, especially in rural areas. Furthermore, current trends aimed at widening postal voting, may pose additional burden in terms of voter registration requirements to persons with certain types of disabilities.

³³ To counter misinformation and disinformation in these elections, the National Association of Secretaries of State launched the “#TrustedInfo2020” - an education effort to promote election officials as the trusted sources of election information to ensure voters receive accurate election information.

³⁴ See the 8 May 2018 Senate Select Committee on Intelligence Summary of Initial Findings and Recommendations on “[Russian Targeting of Election Infrastructure During the 2016 Election](#)”, and the 22 March 2018 House Select Committee on Intelligence Report on “[Russian Active Measures](#)” (redacted).

³⁵ [Election infrastructure](#) is defined as: “storage facilities, polling places, and centralized vote tabulations locations used to support the election process, and information and communications technology to include voter registration databases, voting machines, and other systems to manage the election process and report and display results on behalf of state and local governments”. It is a subsector of one of 17 national critical infrastructures sectors.

³⁶ See the DHS CISA “[Elections Infrastructure Security Resource Guide](#)”, published in May 2020.

³⁷ See [#Protect2020 Strategic Plan](#).

criminal activities related to elections. This includes campaign finance violations and financing elections from abroad, voter suppression, foreign intelligence, and specific cyber intrusions.³⁸

Following January 2018 allocation of USD 380 million to states to improve election administration, including through enhanced technology and security, a second appropriation of USD 425 million from federal level for this purpose was made in December 2019. The EAC is responsible for authorizing the grants, on the basis of applications that include a short justification of how funds will be spent and a commitment to match 20 per cent of the costs, and exhaust funds by 2024.³⁹ While all ODIHR NAM interlocutors welcomed the new funds, many considered that the matching requirement will be significant burden to most states, particularly given the imperatives of the COVID-19 pandemic. They also noted that late allocation of funds and the likelihood of their use to mitigate the impact of COVID-19, would result in prioritizing safe voting in person and mail voting, over modernization of election equipment.

Most ODIHR NAM interlocutors expressed their confidence in the integrity of election infrastructure and appraised efforts from all levels of administration to mitigate cyber security risks. At the same time, some shared concerns about potential isolated cyber-attacks and the impact that these may have on public confidence even if the attacks are unsuccessful.

F. VOTER RIGHTS, REGISTRATION, AND IDENTIFICATION

1. Voter Rights

US Citizens who are at least 18 years old on election day and are residents of a state have the right to vote. While some 600,000 citizens residing in the District of Columbia have the right to vote in presidential elections, they and some 4 million citizens residents of US territories, over 90 % of whom are ethnic and racial minorities, lack full representation in Congress.⁴⁰ In addition, residents of US overseas territories do not have the right to vote in presidential elections.

Additionally, as many as 6.1 million citizens are estimated to be disenfranchised due to a criminal conviction, including some 3.1 million who have already served their sentences.⁴¹ Felony disenfranchisement disproportionately affects racial minorities and it is estimated that 2.2 million African Americans are disenfranchised as a result of these policies. Prisoner and ex-prisoner voting rights are determined by state law and vary considerably, with only Maine and Vermont where those convicted do not lose voting rights at any stage.⁴² In the remaining 48 states convicted felons, those awaiting trial or those on parole, are deprived of their right to vote.⁴³ In line with prior ODIHR recommendations, there have been positive trends towards the restoration of voting rights for

³⁸ In addition, [the FITF](#) coordinates its work with other federal agencies, such as DHS, and communicates with other governments and with private entities (social media, banks, media) to provide outreach materials on online security during the electoral operations.

³⁹ States can opt for these [funds](#) until December 2024.

⁴⁰ The District of Columbia has no representation in the Senate and only a non-voting delegate in the House.

⁴¹ See "[6 Million Lost Voters](#)", The Sentencing Project 6 October 2016. See also UN CCPR "[Concluding observations on the fourth periodic report of the United States of America](#)" (2014), CCPR/C/USA/CO/4, para. 24.

⁴² Primarily, this concern 'ex-felons'. In the US, a felony is typically defined as a serious crime punishable by a term of imprisonment of at least one year.

⁴³ In 11 states, prisoners and ex-prisoners permanently lose their right to vote unless pardoned by the state governor.

ex-prisoners.⁴⁴ Most states, however, impose burdensome procedures for the reinstatement of voting rights.⁴⁵

Restrictions on voting rights based on intellectual and psychosocial disability or guardianship vary among states.⁴⁶ Thirty-nine states have laws that restrict voting rights for persons with such disabilities. An estimated 1.5 million US adult citizens are under guardianship, though it is unclear how many of them will be impacted in these elections. Some ODIHR NAM interlocutors noted that this issue merits further review and standardization.

2. Voter Registration

Voter registration is active and implemented at the state level, with minimum conditions set by HAVA and National Voter Registration Act (NVRA). Voters may register in person, by post or through an authorized third party. The NVRA requires from states to make their driver license application form also serve as a voter registration application, while the EAC is mandated to provide a federal postal registration form that states must accept.⁴⁷ HAVA requires first-time voters that register by post to provide proof of identity. Four states require documentary proof of citizenship.⁴⁸

The NVRA requires registration to remain open at least up to 30 days before election day, however some states extend the deadline beyond the 30 days with fifteen states and the District of Columbia allowing registration on election day.⁴⁹ In line with prior ODIHR recommendations, a majority of states have taken steps to facilitate voter registration, often with bipartisan support. Currently, 39 states and the District of Columbia offer online registration.⁵⁰ In addition, 19 states and the District of Columbia have automatic voter registration.⁵¹

The NVRA and HAVA provide the framework for voter list maintenance including the removal of deceased persons from the voter rolls as well as individuals with criminal convictions and those who have been deemed incapacitated. The NVRA also prohibits states from removing registrants from the voter list within 90 days of an election. HAVA requires states to establish state-wide voter registration databases and determines basic requirements for their maintenance. States are tasked with coordinating with state agency records on felon status and deaths, and the removal of duplicates from the voter list. The procedures for these vary across the states.

⁴⁴ Since the 2018 mid-term elections the states of Colorado, Florida, Illinois, Nevada, New York and Washington enacted measures restoring voting rights to individuals who have served their sentences.

⁴⁵ In Florida, after restoration of voting rights to felons by popular vote, state legislators enacted measures requiring people with criminal histories to pay back all fines in full as condition to register to vote. However, the law was struck down in May 2020 after a federal court ruled that the measures did not comply with the NVRA. See [Jones vs Desantis](#).

⁴⁶ See the National Council on Disability's report from 22 March 2018, "[Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination](#)", p.105., and Pew Trusts "[Thousands Lose Right to Vote Under 'Incompetence' Laws](#)".

⁴⁷ In June 2017, the DoJ signed a [Memorandum of Understanding](#) with New York, to provide voter registration opportunities for federal elections when eligible citizens apply for or seek to renew their driver's license.

⁴⁸ Alabama, Arizona, Georgia and Kansas. There is an ongoing legal dispute about whether the EAC can allow states to add citizenship documentation requirements to the federal postal registration forms. See, [Fish v. Kobach](#).

⁴⁹ North Dakota does not register voters, but voters are required to provide valid proof of ID and residency to the polls in order to vote.

⁵⁰ Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia. States which have adopted online registration measures since the last general elections, New York, New Jersey, Michigan, and Oklahoma.

⁵¹ Maryland, Massachusetts, Michigan, Virginia, Washington and West Virginia introduced automatic registration since 2018 while Maine's system is expected to become operational in 2022.

HAVA also mandates states to co-ordinate and match their voter registration databases with state and federal databases so as to ensure the accuracy of state voter registers.⁵² Several ODIHR NAM interlocutors informed that states have upgraded their voter registration systems as part of broader efforts to enhance protection against possible cyber-attacks from foreign actors in the wake of the 2016 elections. In addition, there has been increased participation in the inter-state Electronic Registration Information Center (ERIC).⁵³ If a potential duplicate record is identified, states must attempt to contact the individuals concerned before they are removed from voter lists. Some ODIHR NAM interlocutors questioned the efficacy of the processes at detecting duplicates.

Several ODIHR NAM interlocutors noted that low-income voters, racial and linguistic minorities, Native Americans, and persons with disabilities face greater obstacles in voter registration processes and continue to have lower than average registration rates. They also noted that this situation has been worsened by the COVID-19 pandemic as access to registration offices has been restricted under stay at home orders, while persons with disabilities might have difficulties to go through the remote registration process.

3. Voter Identification

Voter identification requirements vary across the states, with 35 states requiring voters to show identification before voting, of which 18 require photo identification. The remaining 14 states use other identifying information provided at the polling place, such as a signature which is then checked against information on file, and the law in one other state currently under temporary injunction.⁵⁴ HAVA requires that provisional ballots be provided to voters who believe they are registered at a locality but could not be found on the voter list. State regulations and deadlines for verification and counting of provisional ballots vary widely.

Voter identification remains a highly charged issue divided largely along partisan lines on the balance between electoral integrity and inclusion, with a disagreement on the degree of risk of multiple voting. A number of ODIHR NAM interlocutors noted that the lack of a central federal voter register makes it difficult to ascertain whether individuals are registered and potentially cast votes in multiple states.

G. CANDIDATE REGISTRATION

In line with the Constitution, a presidential candidate must be a natural-born US citizen, at least 35 years old, and a resident of the US for at least 14 years. No person can be elected to the office of President for more than two terms. Candidates for the Senate must be at least 30 years old and a citizen for at least 9 years. Candidates for the House of Representatives must be at least 25 years old and a citizen for at least 7 years. Both Senators and Representatives, when elected, must be residents of the state in which they are elected.

All states offer the possibility for ‘recognized’ parties to nominate candidates, although the definition of ‘recognized’ party varies depending on the number of registered voters declaring their association with the party or the number of votes that the party received in previous elections, although this

⁵² Databases include the state database of the Motor Vehicle Authority and the federal database of the Social Security Agency, as well as state records of deceased people and prisoners.

⁵³ Currently 30 states and the District of Columbia participate in [ERIC](#). Another program the Interstate Voter Cross-Check Program (IVCP) was indefinitely suspended in 2019 following [class action lawsuit](#) brought against the program over questions of informational privacy.

⁵⁴ North Carolina's voter identification law has been placed under a temporary injunction, as of 31 December 2019, after a federal judge ruled that the measures foreseen in the law were intentionally discriminatory.

threshold varies considerably.⁵⁵ Smaller parties and independent candidates can run if they collect a state-specific number of supporting signatures, which typically need to be submitted several months ahead of the elections. Most states allow for voters to “write-in” candidates who are not included on the ballot. Presidential and congressional candidates representing the Democratic and Republican parties are selected in primary elections which take place on different dates in different states and are confirmed at national conventions.⁵⁶

H. ALTERNATIVE VOTING METHODS

Casting the vote by post or in person before election day is an established practice, with usually more than one-third of voters using some of these alternative voting methods. Before COVID-19 outbreak, early in-person voting was possible in 39 states, with an early voting period ranging from 4 to 45 days. The DoJ guidance on protecting the rights of voters with disabilities does not explicitly specify the extent to which federal accessibility requirements are applicable to early in-person voting.⁵⁷

Postal voting is largely used in administering out-of-country voting. The Federal Voting Assistance Program, under the Department of Defense (DoD), supports states by facilitating voter registration and ballot requests, as well as providing 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. At odds with a prior ODIHR recommendation, 32 states allow for electronic submission of marked ballots from out-of-country voters, which requires voters to waive the secrecy of their vote.

In response to the COVID-19 pandemic, in addition to in-person voting, many states are considering or have already introduced legal changes aimed at expanding access to early and postal voting, in some cases to all eligible voters. All states provide at least some voters with the possibility of postal voting, though the degree of implementation and modalities for access to postal voting vary widely.⁵⁸ Most ODIHR NAM interlocutors highlighted concerns about the capacity of states with low rates of use of postal ballots to scale up their operations to more extensive postal voting in 2020. Prior to the COVID-19 pandemic, 29 states and the District of Columbia, permitted absentee ballots without voters having to provide a reason. Sixteen states require voters to provide a valid excuse in order to vote by mail. Some states have sought to enact specific measures extending postal voting in light of the COVID-19 pandemic.⁵⁹ Several ODIHR NAM interlocutors have raised concerns relating to so-called “vote harvesting” – the practice of collecting mail ballots on behalf of voters.⁶⁰ ODIHR previously recommended the implementation of standardized regulations for processing and verifying postal ballots as well as training for postal voting administration so as to ensure timely processing of ballots and transparency.

⁵⁵ For presidential election, this varies from 1 to 20 per cent.

⁵⁶ The first presidential primary was held in February 2020. The Democratic National Convention will take place from 17 to 20 August and the Republican National Convention, later, from 24 to 27 August.

⁵⁷ See 2017 Government Accountability Office report “[Observations on Polling Place Accessibility and Related Federal Guidance](#).”

⁵⁸ Five states: Colorado, Hawaii, Oregon, Washington and Utah, currently provide mail voting for all eligible voters in the state while California, Nebraska and North Dakota allow counties to determine if an election will be held entirely by mail.

⁵⁹ Tennessee for instance has allowed for absentee ballots where voters have determined that it is impossible or unreasonable to vote in-person at a polling place due to the COVID-19 situation. By contrast, the Texas Supreme Court ruled in May 2020 that a lack of immunity to the coronavirus would not qualify a voter to apply for a mail-in ballot. On 16 June, the Democratic Party of Texas [appealed](#) this decision to the Supreme Court where, on 26 June, the appeal was denied.

⁶⁰ Among these concerns are the possibility to coerce or persuade voters into voting for a candidate, and potentially to destroy ballots intended for a candidate.

Many ODIHR NAM interlocutors shared concerns about risks associated with potential high volume of postal voting in the upcoming general elections including appropriate funding for postal voting, capacities of postal service to deliver the ballots, but also of election officials to count and tabulate all mailed ballots in a timely fashion. In addition, concerns were raised related to the ability of voters to properly apply for mail-in ballot, to fill them in and mail back, so that votes arrive in time and are taken into account as valid. Many officials, including at high levels, expressed publicly their concern that large-scale mail-in voting may lead to massive voter fraud. At the same time, some ODIHR NAM interlocutors raised concerns that, in light of seeking for alternative methods to make ballot casting safe, there are more initiatives to introduce internet voting.⁶¹

I. NEW VOTING TECHNOLOGIES

The use of NVT is extensive and varies considerably across and within states. Most states use more than one type of NVT, either because of county variations or to accommodate voters with disabilities or language needs. In line with a previous ODIHR recommendation, there is a tendency towards a return to paper-based voting, with 41 states and the District of Columbia using voter-verified paper audit trail (VVPAT) and fewer states using exclusively Direct Recording Electronic (DRE) voting machines without a paper trail. ODIHR NAM interlocutors estimated that some 90 per cent of all ballots in general elections will be cast on paper based system and shared their opinion that the shift towards paper-based voting machines was made possible by the additional HAVA funds from 2018.

In 38 states and the District of Columbia post-election audits of the equipment and procedures by checking paper ballots or records against the results produced by the voting system, are prescribed. These audits can lead to a full recount if errors are detected.⁶²

J. ELECTION CAMPAIGN

While election campaigning itself is generally unregulated, there are strong legal guarantees to protect fundamental freedoms associated with campaigning. The possibility to organize rallies is subject to the permission of local authorities and application of a fixed fee in some states.⁶³ Many ODIHR NAM interlocutors expressed serious concerns regarding freedom of peaceful assembly, drawing attention to law enforcement's response to some protests which took place in different parts of the United States, following death of George Floyd during his arrest in Minneapolis. Interlocutors also shared concerns over potential use of intolerant rhetoric during the campaign, including inflammatory speech targeting ethnic and racial minorities coming from high level officials.⁶⁴

Most ODIHR NAM interlocutors expect the campaign to be polarized and to focus on presidential election, but also on competitive congressional races, with key topics expected to be economic response to COVID-19, unemployment and measures taken to address the health crisis as well as

⁶¹ In their [joint assessment](#) issued on 7 May, the DHS, the FBI, the EAC and the National Institute of Standards and Technology, identify risks and considerations for election administrators seeking to use electronic ballot delivery, electronic ballot marking, and/or electronic return of marked ballots, warning about the “significant security risk” of internet-based voting systems.

⁶² Twenty states and the District of Columbia provide for [automatic recounts](#), which are conducted if the margin between the top two candidates is within certain parameters. In other states, a losing candidate or a voter may request a recount, often at their own cost. See also NCSL webpage on [post-election audits](#).

⁶³ Some concerns about peaceful assembly were raised in the 2017 [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow-up mission to the United States of America](#).

⁶⁴ On 18 June, Facebook removed an advertisement from the Trump campaign, stating that it violated its policy against organized hate. See also the 5 June [Statement on the Protests against Systemic Racism in the United States](#), issued by independent experts of the Special Procedures of the United Nations Human Rights Council.

longstanding issues such as immigration, and prominent local issues. Traditional campaign activities that involve personal contact with voters, such as door-to-door canvassing and rallies, are expected to be lowered. It is expected that media advertising, billboards, telephone banks will be increasingly used as a tool to reach out to voters, including through the use of social media, especially Twitter, YouTube and Facebook, also as a means to place targeted advertisements. While many ODIHR NAM interlocutors expressed concern about potential misinformation and disinformation, including from foreign sources, no interlocutor expressed concerns about the possibility to campaign freely.

K. CAMPAIGN FINANCE

Campaign finance is regulated by federal law under the oversight of the Federal Election Commission (FEC), which has six commissioners, of whom no more than three can represent the same party. Decisions require at least four votes. Since February 2018 until August 2019, the FEC was operating with four commissioners, meaning that all decisions must be unanimous. In August 2019, following resignation of another commissioner, the FEC lost quorum for decisions until a new commissioner was confirmed by the Senate on 19 May. Many ODIHR NAM interlocutors saw the longstanding issue of the failure to reach quorum in the FEC composition as an important issue affecting the effectiveness of the commission's work.⁶⁵

Election campaigns may be funded by individuals, political parties, and Political Action Committees (PACs), while direct donations from trade unions and corporations, as well as foreign or anonymous donations, are forbidden.⁶⁶ Corporations and trade unions cannot make direct contributions to parties and candidates but can make contributions to a PAC, subject to limits. Federal public financing is available for presidential but not congressional elections. There are no expenditure limits, as such limitations have been deemed by the Supreme Court to constrain free speech, in violation of the First Amendment. The Court has also extended the right to "independent speech" to legal entities, including so-called Super PACs, allowing them too to spend without limit.⁶⁷ To be considered independent, outside groups cannot co-ordinate spending with a candidate or party. A longstanding ODIHR recommendation to review and clarify the FEC's co-ordination rules remains unaddressed. Some ODIHR NAM interlocutors expressed expectation that the spending in the upcoming general elections will be the highest ever.

Candidates, political parties, and PACs are required to file regular reports to the FEC on funds raised and spent.⁶⁸ The reports list donors who contributed over USD 200, along with their address, employer and job title. The FEC publishes the reports on its website within 48 hours of receipt. However, some non-profit organizations (501(c) organizations) are not obliged to disclose their donors to the FEC, or the Internal Revenue Service as long as election campaigning is not their primary activity. ODIHR previously recommended that disclosure requirements be applied to all persons and groups engaged in campaigning regardless of their form or whether they are registered with the FEC.⁶⁹ While the FEC in past initiated discussions and held public hearings aimed to amend its regulations related to disclosure of online advertisements, to date no regulation was amended in this respect. Most ODIHR NAM interlocutors shared concerns about the lack of transparency in campaign financing, especially for online platforms which would deserve particular attention in a

⁶⁵ There is a backlog of more than 200 decisions pending, since the FEC has lost the quorum in August 2019.

⁶⁶ Individuals may contribute up to USD 2,700 per election to a candidate, USD 10,000 per calendar year to a state party, USD 33,900 per calendar year to a national party, and USD 5,000 per calendar year to a PAC. See, the [FEC's full breakdown on contribution limits](#). See also, [McCutcheon v. FEC](#) where aggregate limits on the amount an individual may contribute during a two-year period to federal candidates, parties and PACs were struck down.

⁶⁷ See, respectively, [Buckley v. Valeo](#) and [Citizens United v. FEC](#).

⁶⁸ For PACs (527 organizations) that either contribute or spend at least USD 1,000 to influence an election.

⁶⁹ See also, the [2011 GRECO Evaluation Report on the US on the Transparency of Party Funding](#) and the [2016 GRECO Second Compliance Report on the US](#).

context where spending on online advertisements is expected to increase. At the same time, social media networks made different internal policies revisions to address the issue.

Like in previous elections, the FEC is conducting various activities to assist candidates and committees to understand and comply with the law, including by providing publications and hosting a number of webinars on different topics. In cases of identified infringement, the FEC has authority to issue an administrative fine proportionate to the violation or to submit the case to a District Court.

L. MEDIA

The media landscape is pluralistic and diverse, albeit increasingly polarized. Registered broadcast media include over 1,700 commercial and public television stations and more than 15,000 radio stations. The environment is traditionally dominated by major television networks and cable channels. There are approximately 1,300 print publications.

The legal framework for traditional media is characterized by a robust protection for media independence, with various self-regulation mechanisms and Supreme Court decisions affirming that no limits should constrain freedom of speech. The 1996 Telecommunications Act and Federal Communication Commission (FCC) regulations outline the basic framework for broadcasters to adhere to during elections. The FCC reviews complaints related to broadcast media coverage of candidates but does not conduct any systematic media monitoring. Print media are not bound by any statutory requirements.

In the 60 days prior to general elections, commercial broadcasters must provide “reasonable access” to all legally qualified federal candidates who request to purchase airtime. Candidates can purchase paid political airtime at the lowest sum charged for a comparable advertisement on the channel. All advertisements must include sponsorship identification and broadcasters must maintain a publicly accessible ‘political file’ of all requests to purchase airtime.

In addition, the “equal opportunity” rule means that if a broadcaster grants airtime to one candidate it must allow equal conditions for other candidates in that contest. This rule, however, has an increasing number of exceptions aimed at protecting editorial freedom, including appearance on newscasts, scheduled interviews, and debates. Since 2014, the FCC has interpreted that the equal opportunity rule only applies to candidates, not their supporters. As such, the rule does not apply where the candidate’s voice or image is not featured. The Public Broadcasting Service (PBS) are prohibited from endorsing or opposing candidates for public office and cannot air paid advertisements. All ODIHR NAM interlocutors expect increase in political advertisement in media, due to limited opportunity for candidates to have direct contact with voters during the campaign. In response to COVID-19 pandemic, the FCC issued specific guidance on political advertising lowest unit charge following the onset of the pandemic.⁷⁰

Media consumption of political news, particularly among young and middle-aged groups, has mostly shifted to online media sources and social networks. Most ODIHR NAM interlocutors stated that social media networks and online news sources are the ones most susceptible to misinformation and disinformation, an issue that they highlighted as one of major concerns in the upcoming elections. Some ODIHR NAM interlocutors also expressed concerns over attempts by President Trump to limit the broad legal protections to freedom of expression enjoyed by social media companies.⁷¹

⁷⁰ See the FCC [Public Notice on COVID-19](#) from 25 March.

⁷¹ On 28 May President Trump signed an [Executive Order on Preventing Online Censorship](#) after Twitter placed fact-checking warnings on two of his tweets that claimed that casting ballots by mail allows for voter fraud. The order is related to [Section 230](#) of 1996 Communications Decency Act.

While many ODIHR NAM interlocutors pointed to a history of adversarial politics in media, which increases in elections period, some pointed out potential concerns related to the safety of journalists, particularly ahead of elections. On 31 May, the OSCE Representative for Freedom of the Media (RFoM) called on authorities to exercise restraint and to ensure that journalists can report safely on public protests.⁷²

M. ELECTION OBSERVATION

In line with its OSCE commitments, the US Government has invited ODIHR to observe the upcoming elections. However, observation is regulated by state law, which does not always and explicitly provide for international observers.⁷³ California, Missouri, New Mexico and the District of Columbia provide for international observers by law, and four additional states have statutory language that is inclusive of many types of observers, which may include international observers.⁷⁴ At least eight states allow the public to observe elections, while other state laws are silent on observation, leaving it to the discretion of election officials.⁷⁵

The DoJ informed ODIHR NAM that it intends to deploy monitors throughout the country to oversee state compliance with federal election law, at same time exploring alternatives should the deployment of monitors be limited, due to COVID-19 pandemic. Election observation by political parties and civil society is expected to be widespread, including deployment of lawyers to provide immediate support in case of disputes, as well as volunteers to facilitate voter access. After more than 30 years, the Republican National Committee (RNC) will be allowed to extend its election day observation, after the federal Consent Decree from 1982 expired in December 2017.⁷⁶ While some ODIHR NAM interlocutors welcomed this development, several interlocutors expressed reservations about it referencing the origins of the Consent Decree.

Most ODIHR NAM interlocutors opined that, in an atmosphere of increased polarization, and accusations from all political sides on potential voter fraud and mistrust in the election process and results, the presence of external observers to assess the process will be highly valuable, adding an important layer of transparency.

IV. CONCLUSIONS AND RECOMMENDATIONS

Overall, ODIHR NAM interlocutors noted that the conduct of these elections will be the most challenging in recent decades. Many ODIHR NAM interlocutors expressed confidence in the election administration dedication to conduct elections professionally and impartially. At the same time, they expect that election officials will face serious challenges prior to and on election day, due to new measures in response to COVID-19 pandemic, and expressed concerns over their ability to overcome them. This, in the view of ODIHR NAM interlocutors, may have an impact on the level of trust in

⁷² See [tweet from OSCE RFoM](#) on 29 May.

⁷³ A National Association of Secretaries of State (NASS) 2015 resolution welcomes “OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law”. The Resolution expires in summer 2020 and ODIHR NAM was informed of NASS intention to renew it.

⁷⁴ Hawaii, North Dakota, South Dakota and Virginia.

⁷⁵ In 2018, explicit restrictions on observation of voting were in place in 11 states. According to the [NCSL](#), international observation is explicitly prohibited or restricted in Alabama, Alaska, Arizona, Connecticut, Florida, Louisiana, Mississippi, Ohio, Oklahoma, Tennessee, and Texas.

⁷⁶ The Decree was the result of the settlement of a lawsuit which claimed that, in connection with the 1981 New Jersey Gubernatorial election, the RNC and the New Jersey Republican State Committee attempted to intimidate the minority voters, in violation of the Voting Rights Act.

election administration, which, in turn, can harm the integrity of election day proceedings, and ultimately cast doubt in the outcome of the elections. Although only some previous ODIHR recommendations have been addressed, most interlocutors noted the added value of a potential ODIHR observation activity for these elections, recognising its possible contribution to improvements of the electoral process. Elements of the electoral process that ODIHR NAM considers to merit specific attention include voter rights, registration and identification, security of election technologies, legal framework for and implementation of alternative voting methods, campaign finance, and the conduct of the electoral campaign, particularly online and in the media. In addition, interlocutors noted that, in a highly polarized environment, there is an increased need for external and independent overview of the electoral process, including of the election day proceedings.

On this basis, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) to observe the general elections. In addition to a core team of analysts, the mission recommends the secondment of 100 long-term observers from OSCE participating States to follow the electoral process countrywide, and 400 short-term observers to follow election day proceedings. In line with the ODIHR's standard methodology, the EOM would contain a media monitoring element.

ANNEX: LIST OF MEETINGS

Department of State

Michael Murphy, Deputy Assistant Secretary, Bureau of European and Eurasian Affairs
Jim Donegan, Director, Department of State Office of European Security and Political Affairs
Jennifer Laurendeau, Deputy Director for OSCE
Fred Brust, OSCE Coordinator
Ann E. Cody, Special Advisor for International Disability Rights, Bureau of Democracy, Human Rights and Labor
Lynne Davidson, Senior Advisor, Bureau of Democracy, Human Rights and Labor
Shannon Brink, OSCE Desk Officer

Department of Justice

Cristopher Herren, Voting Section Chief
Karen Stevens, Senior Counsel, Civil Rights Division

Department of Defense

Scott Wiedmann, Deputy Director, Federal Voting Assistance Program
Sara Hedlund, Program Analyst, Federal Voting Assistance Program

Department of Homeland Security

Matthew V. Masterson, Senior Cybersecurity Advisor
Allison Snell, Chief of Staff, Election Security Initiative
David Kuennen, Cybersecurity Specialist, Election Security Initiative
James Tipton, Cybersecurity Specialist

Federal Bureau of Investigation

Brady Olson, Unit Chief, Foreign Influence Task Force

Federal Election Commission

Ellen Weintraub, Commissioner

Federal Communications Commission

Gary Schoman, Special Counsel for Political Programming
Janice Shields, Outreach Initiatives Director
Maria Mullarkey, Policy Division Chief
Robert Baker, Policy Division Assistant Chief
Sima Nilsson, Policy Division Attorney
Andrew Pegues, Attorney Advisor and Regional Specialist for Europe

Election Assistance Commission

Benjamin Hovland, Chairman
Mona Harrington, Acting Executive Director
Kristen Muthig, Acting Communications Director
Maurice Turner, Senior Advisor
Olivia Letts, Program Assistant

Illinois State Board of Elections

Bernadette Matthews, Assistant Executive Director

House of Representatives Committee on House Administration

Cole Felder, General Counsel
Stephen Spaulding, General Counsel

National Association of Secretaries of State

Leslie D. Reynolds, Executive Director
Maria Benson, Communications Director
Lindsey Forson, Cybersecurity Program Manager

National Conference of State Legislators

Susan Parnas Frederick, Senior Federal Affairs Counsel

National Association of State Election Directors

Amy Cohen, Executive Director

National Council on Disability

Joan Durocher, General Counsel and Director of Policy
Clyde Terry, Council Member

US Commission on Security and Co-operation in Europe

Alex Johnson, Chief of Staff
Robert A. Hand, Senior Policy Advisor
Mark Toner, State Department Senior Advisor

Democratic National Committee

Waikinya Clanton, Senior Advisor
Reyna Walters-Morgan, Director of Civic Engagement and Voter Protection

Republican National Committee

Christopher White, Senior Counsel
Marc Robertson, Associate Counsel

Brennan Center for Justice

Elizabeth Howard, Cybersecurity and Elections Counsel
Daniel I. Weiner, Senior Counsel, Democracy Program

Center for Election Innovation and Research

David J. Becker, Executive Director

Facebook

Katie Harbath, Public Policy Director
Crystal Patterson, Head of Global Civic Partnerships

The Heritage Foundation

Hans A. von Spakovsky, Manager, Election Law Reform Initiative

The Sentencing Project

Marc Mauer, Executive Director

International Foundation for Election Systems

Beata Martin-Rozumilowicz, Regional Director, Europe and Eurasia

National Democratic Institute

Richard L. Klein, Senior Advisor, Elections

International Republican Institute

Scott Mastic, Vice President for Programs

The Carter Center

Jonathan Stonestreet, Associate Director, Democracy Program

Organization of American States

Gerardo de Icaza, Director, Department of Electoral Cooperation and Observation