

INTERIM REPORT
26 September–18 October 2022

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I. EXECUTIVE SUMMARY

- Mid-term congressional elections will be held on 8 November 2022 to elect 35 of 100 senators and all 435 members of the House of Representatives. A total of 1,275 candidates are standing for a seat in Congress, including 343 women. At the state levels, 36 governors and most state legislators as well as 27 secretaries of state, 25 of whom also serve as the chief election administrators in their states, will also be elected.
- The electoral legal framework is complex and diverse, with states adopting their own laws and regulations on most aspects. States have enacted more than 400 separate bills or amendments since the last elections, mostly related to absentee and mail voting, early voting, ballot drop boxes and ballot collection, voter identification and voter registration. The elements of elections regulated by federal law are limited to the voting rights of racial and linguistic minorities, military and overseas voting, voting of persons with disabilities, campaign finance, and minimum standards for the use of New Voting Technologies (NVT). The federal legal framework has not changed since the 2020 elections.
- Following the 2020 population census, the share of the 435 House seats held by each state were reapportioned, and electoral district boundaries within the 44 states that have more than one House seat were redrawn. Redistricting is highly politicized, with state legislatures responsible for delimitation in 33 of the 44 states with more than one congressional district. Bipartisan commissions conduct redistricting in three states, and eight states use hybrid commissions composed of experts and political representatives. As of May 2022, 78 challenges have been filed, in state and federal courts, against redrawn district maps, often alleging partisan gerrymandering. Pursuant to court decisions, district maps were changed in 13 states. Some cases are still pending as there is no deadline for review.
- States are responsible for managing elections, and some 6,460 entities are charged with administering elections in jurisdictions across the country. At the federal level, the Federal Election Commission (FEC) regulates campaign finance, and the Election Assistance Commission (EAC) is charged with channeling federal funds to local authorities, and functions in an advisory role providing guidance to jurisdictions on meeting federal requirements and serving as a clearinghouse for information about election administration including chain of custody best practices, election security, voting accessibility, procurement, audits and recounts.
- In 41 states, elections are completely or partly managed by elected or appointed officials, many of whom are running for reelection. Most ODIHR Limited Election Observation Mission (LEOM) interlocutors noted concerns with threats of violence targeted at election officials at state and county level since 2021. Congress has allocated funds to counter threats against election workers, and a Joint Taskforce of the Department of Justice and the Federal Bureau of Investigation was created in July 2022 to gather information on threats and deal with these at the federal level.
- The use of NVT is broad and varies considerably across and within states. Ballot scanning combined with automatic tabulation is used in most jurisdictions, and around 70 per cent of voters can choose between using a voting machine and marking a paper ballot by hand. Most states require or have the

option for post-election audits. States and local election officials cooperate with the Cybersecurity and Infrastructure Security Agency to mitigate potential cybersecurity risks.

- Voting rights are subject to numerous restrictions. Some 4.1 million citizens resident in the District of Columbia and U.S. territories lack full representation in Congress. In all but two states and the District of Columbia, and Puerto Rico, the voting rights of inmates and former felons are restricted. Some voters with psychosocial and intellectual disabilities remain disenfranchised in all but ten states.
- Voter registration is active and implemented at the state level, with rules varying between states. Forty states and Washington D.C. offer online voter registration. There has been a growing trend towards the introduction of identity documents (IDs), with 35 states requiring some form of voter ID. Proponents of ID requirements cite better safeguards, while opponents claim that strict ID rules and varying access to ID target racial and ethnic minority groups and disadvantaged communities.
- Early in-person voting is allowed in 44 states and was ongoing in 17, as of 17 October. Absentee voting by mail is possible in all states, with some states requiring a justification. Military personnel serving abroad, their families, and registered voters who are resident overseas use absentee voting to cast their ballots. Early voting is seen by election officials as a way to reduce pressure on election day, while absentee voting allows mainly voters who cannot vote in person on election day to participate in the process. Widespread and continued claims that absentee ballots are susceptible to fraud appear to have an impact on the level of trust in the current election process.
- The political campaigns by the two major parties are marked by intensely divisive and at times inflammatory rhetoric. A number of Republican candidates in key races, including candidates for secretary of state who would have direct responsibility for overseeing future elections in their states, challenged, or refused to accept the legitimacy of the 2020 results.
- Campaign finance is regulated by federal law and enforced by the FEC and the U.S. Department of Justice (DoJ). While candidates and parties are bound by individual donation limits and disclosure requirements, entities which are deemed ‘independent’ are not required to observe donation limits but are subject to disclosure requirements and are prohibited from co-ordinating their campaigns with candidates or their committees. Some non-profit organizations, which are bound by neither donation limits nor public disclosure requirements, can also engage in campaigning, provided that this is not their primary activity. ODIHR LEOM interlocutors express concern that undisclosed contributions do not allow voters to make a well-informed choice. It is projected that the campaign expenditures in this electoral cycle will reach USD 9.3 billion.
- While pluralistic and diverse, the media landscape is highly polarized. Declining trust in traditional news media has been exacerbated by derogatory comments and legal action against critical media by political actors, as well as online misinformation and disinformation. Major social media companies have adjusted their policies regarding the spread of misleading information, including in relation to elections, although with varying emphasis and concerns.
- Available election dispute resolution mechanisms are diverse and include judicial and administrative avenues, including state and federal courts and county election boards. Pursuant to a redistricting appeal, the U.S. Supreme Court will decide whether state election laws and district maps adopted by state legislatures are subject to judicial review by state courts. Following the 2020 elections, additional mechanisms for investigation and prosecution of election crimes were established or existing ones were strengthened, often coupled with criminalization of some irregularities in 28 states. While some stakeholders perceive these measures as strengthening election integrity, others view them as criminalization of common mistakes of the election administration.

- Election observation is regulated by state law, with rules regulating observers' access to the different stages of the process varying widely between states. Seventeen states do not allow for international observation. Some interlocutors raised concerns that in light of growing skepticism of the integrity of election administration, some partisan observers may use their position to unduly interfere in the process on election day.

II. INTRODUCTION

Following an invitation from the United States government to observe the 8 November 2022 mid-term congressional elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 26 September.¹ The mission, led by Tana de Zulueta, consists of a 17-member core team based in Washington D.C. and 40 long-term observers (LTOs) deployed on 4 October throughout the country.² Mission members come from 25 OSCE participating States.

III. BACKGROUND AND POLITICAL CONTEXT

The U.S. is a federal presidential republic comprising 50 states, the District of Columbia, and a number of overseas territories. The president holds executive power, serving as head of state and government, with legislative power vested in Congress, consisting of the Senate and the House of Representatives. Each state has a governor and a state legislature.

On 8 November, voters will elect 35 of the 100 senators and all 435 representatives.³ Voters will also elect 36 governors, 27 secretaries of state, and legislators in 88 of the 99 chambers of the state legislatures.⁴ Additionally, there are 129 ballot measures being voted on in 36 states. The most recent congressional elections, held in 2020, resulted in 222 Democrat and 213 Republican representatives in the House, and a Senate split with both parties holding 50 seats, and with Vice President Kamala Harris holding the deciding vote, thereby giving the Democratic Party the majority in both chambers, in addition to winning the presidency.⁵

The political climate has been dominated by a number of contentious political, economic, and social issues. These include: the unsubstantiated claims by former President Donald Trump that he won the 2020

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

² In its Needs Assessment Mission report, ODIHR recommended an Election Observation Mission (EOM) that would include, in addition to a core team of analysts, 100 long-term observers as well as 400 short-term observers (STOs) for observation of election day procedures. However, in response to its request for secondment of observers, ODIHR received an insignificant number of STOs from participating States, which made a statistically valid observation of election day proceedings impossible. Against this backdrop, ODIHR has taken a decision to change the format of the observation activity deployed to the United States of America from an Election Observation Mission to a Limited Election Observation Mission (LEOM). In line with ODIHR standard methodology for LEOMs, the mission will not carry out a comprehensive or systematic observation of election-day proceedings but intends to visit a number of polling stations on election day.

³ See data from the [Federal Election Commission](#). Thirty-four senators will be elected through regular elections. Additionally, there is a special election to fill the remaining four years of Oklahoma Senator Jim Inhofe's seat following the announcement of his pending resignation in January 2023. Vice President Kamala Harris' vacant Senate seat was filled by the Governor of California after her election in 2020. In keeping with state legislation, a special election (not counted above) will be held to elect a senator for the remaining two months of the 117th Congress, in addition to the regular six-year term due to start in January 2023. While these are two separate elections, the same candidates are standing in both contests.

⁴ Nebraska has a unicameral state legislature. Only Louisiana, Mississippi, New Jersey, and Virginia do not have any elections for state legislatures on 8 November.

⁵ Included in the Democratic caucus are two senators elected as independents, neither of whose terms of office expires at these elections.

elections, as well as issues related to the attack on the U.S. Capitol on 6 January 2021, which sought to disrupt the certification of the 2020 presidential election results.⁶ An investigation of former President Trump's handling of classified documents has also featured prominently in the recent political discourse. Other issues that featured significantly include concerns about inflation and potential economic recession, the June 2022 Supreme Court decision in *Dobbs vs. Jackson Women's Health Organization* and the right to abortion, and immigration policy.

IV. LEGAL FRAMEWORK

The U.S. is party to international and regional instruments related to democratic elections.⁷ The Constitution, along with the first ten amendments, known as the Bill of Rights, and subsequent amendments, constitute the fundamental law of the country. Combined, they set out a broad framework for federal elections as well as fundamental civil and political rights. They are supplemented by various federal laws that protect the voting rights of racial and linguistic minorities and persons with disabilities, and that regulate military and overseas voting.⁸ Federal laws also regulate campaign finance and provide minimum standards for New Voting Technologies (NVT). State laws prescribe virtually all detailed aspects of the electoral legal framework and, as such, a diverse body of laws and regulations on numerous aspects of the electoral process exist across states, including variations among counties in some states. Decisions by courts interpreting federal and state laws also form an active and integral part of the legal framework with the ability to change important aspects of the electoral process, including in the days leading up to the elections.

The federal legal framework has not changed since the 2020 elections. A legislative gap remains, as Congress has yet to enact an alternative formula for determining jurisdictions required to undergo preclearance by the Department of Justice (DoJ) before making changes to election laws and procedures.⁹ Two comprehensive electoral reform bills, the For the People Act and the John Lewis Voting Rights Advancement Act, were passed in the House of Representatives in 2021 but not in the Senate.¹⁰ Additionally, the Democracy Is Strengthened by Casting Light on Spending in Elections Act (Disclosure Act of 2021), which would have amended the Federal Election Campaign Act of 1971 and required any entity to disclose donors that contributed more than USD 10,000 in an election cycle, was introduced in the Senate in February 2021 but also failed to summon the required majority to advance to the Senate floor in September 2022.¹¹

States have enacted more than 400 separate bills or amendments since the last elections most of which

⁶ Former President Trump was impeached by the House of Representatives following the January 6 attacks and a series of legal and congressional investigations followed. See the records of the hearings by the House of Representatives [Select Committee to Investigate the January 6th Attack on the United States Capitol](#).

⁷ The U.S. 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). The [1966 International Covenant on Civil and Political Rights](#) (ICCPR) was ratified in 1992, with a number of [reservations and declarations](#).

⁸ These include the [1965 Voting Rights Act](#) (VRA), the [1986 Uniformed and Overseas Citizens Absentee Voting Act](#) (UOCAVA), the [2009 Military and Overseas Voting Empowerment Act](#) (MOVE), the [1984 Voting Accessibility for the Elderly and Handicapped Act](#), the [1990 Americans with Disabilities Act](#) (ADA), and the [1993 National Voter Registration Act](#) (NVRA).

⁹ The preclearance formula, for determining jurisdictions required to undergo preclearance for changes to voting laws and practices based on a history of voting discrimination, as provided in Section 4 of the VRA, had been invalidated by the Supreme Court decision in *Shelby v. Holder* in 2013. The [Voting Rights Advancement Act](#), adopted by the House of Representatives in 2019 and proposing new criteria for preclearance, is currently pending in the Senate.

¹⁰ The [For The People Act](#), as introduced, sought to address perceived obstacles to voting in federal elections, the partisan redistricting of congressional districts, as well as overhauling federal campaign finance laws, increasing safeguards against foreign interference, and strengthening government ethics rules. The [John R. Lewis Voting Rights Advancement Act of 2021](#), proposed a new formula for determining jurisdictions required to undergo preclearance for changes to voting laws and practices based on a history of voting discrimination which had been invalidated by *Shelby v. Holder*.

¹¹ On 8 November, Arizona voters will decide through a [ballot measure](#) whether to introduce a donor disclosure obligation for any entity or person that spends over USD 50,000 on a state-wide campaign.

regulate alternative voting mechanisms, ballot collection, voter identification, voter registration, and electoral offenses. Lawsuits on some provisions of these bills were initiated in at least 11 states.

V. ELECTORAL SYSTEM AND REDISTRICTING

Congressional elections are held every two years to elect one third of the 100 senators and all 435 representatives.¹² Senate electoral districts correspond to the entire state, with each state electing two senators. Representatives are elected from single-member districts. All states have at least one representative in the House, with additional seats allocated in proportion to the population based on the most recent census. Some 4.1 million citizens resident in the District of Columbia and five U.S. territories lack full representation in Congress as they each elect a non-voting member to the House but have no representation in the Senate.¹³ The Constitution grants states the authority to determine the rules by which they elect members of Congress. The respective electoral systems vary: forty-six states determine the winners by plurality vote ('first-past-the-post' contests); Georgia and Louisiana elect their members of Congress by majority vote, with a run-off if no candidate receives an absolute majority; while Alaska and Maine use ranked-choice voting.

The Constitution mandates that a population census be held every ten years. According to the 2020 census, the total population of the 50 states is 330,759,736. Based on the 2020 Census, six states gained seats, while seven states lost seats.¹⁴ Redistricting was undertaken in all 44 states that have more than one congressional seat, to account for demographic changes within a state. Federal legislation requires that congressional districts be delineated in a manner that ensures equality of the vote and that is not racially discriminatory.¹⁵ State Constitutions and laws prescribe a variety of additional principles for the delineation of district boundaries.¹⁶

Redistricting is carried out by various bodies in the different states and is highly politicized. In 33 of the 44 states with more than one congressional district, state legislators are responsible for drawing the district maps. In 30 of these states, the governor can veto the map, but the legislature can overrule the governor's veto. The remaining 11 states use commissions, of which three are composed of bipartisan representatives, and eight are composed of bipartisan and non-affiliated members. In two states, the maps drawn by these external commissions require legislative approval. The number of independent commissions has grown from four in 2010 to seven in 2020 and is seen by some ODIHR LEOM interlocutors as a way to reduce partisan gerrymandering.

¹² Senators serve six-year, overlapping terms; every two years, one-third of Senate seats are up for re-election.

¹³ The District of Columbia, American Samoa, Guam, the Northern Mariana Islands and the U.S. Virgin Islands are each represented by a delegate, while Puerto Rico is represented by a Resident Commissioner.

¹⁴ Texas gained two seats, North Carolina, Florida, Colorado, Montana and Oregon each gained one seat, while California, Illinois, Michigan, New York, Ohio, Pennsylvania and West Virginia each lost one seat. The number of persons needed for one House seat varies from 542,113 in Montana to 989,948 in Delaware.

¹⁵ The Apportionment Clause of Article I, Section 2 of the U.S. Constitution requires that all congressional districts be as equal in population as practicable. For legislative districts, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires that districts be substantially equal. In [Harris v. Arizona Independent Redistricting Commission](#) (2016), the U.S. Supreme Court held that challengers to maps with a deviation of less than 10 per cent bear the burden of proof that 'the deviation reflects the predominance of illegitimate reapportionment factors', concluding that challenges of district maps with deviations of less than 10 per cent will succeed only rarely, in unusual cases. Additionally Section 2 of the VRA prohibits district plans that intentionally or inadvertently discriminate on the basis of race, which could dilute the vote of a minority or community of colour, e.g. by packing minority voters into fewer districts or spreading them out thinly in majority areas. In [Thornburg v. Gingles](#) (1986), the U.S. Supreme Court set the preconditions for establishing that a redistricting plan dilutes the strength of minority voters under Section 2 of the VRA. The plaintiff must demonstrate that (a) minority voters are geographically compact and numerous enough to constitute a majority in a differently drawn district; (b) minority voters in the area are politically cohesive; and (c) the majority usually votes to defeat the minority-preferred candidate.

¹⁶ These include compactness, contiguity, preserving administrative boundaries and 'communities of interest,' refraining from using partisan data, and ensuring competitiveness.

Seventy-eight challenges against district maps for various races were filed in state and federal courts. The congressional district maps in 28 states were challenged on various grounds.¹⁷ Several challenges cited multiple grounds.¹⁸ Challenges were brought mainly by civil-society groups and voters, while the DoJ also challenged the maps of Texas and Kansas.¹⁹ Upholding challenges, courts ordered 13 state legislatures either to redesign the maps or to adopt the congressional maps suggested by the plaintiffs or designed by court-hired experts.²⁰ Some cases were pending review through the election primaries, and some are still pending as there is no deadline for review.²¹

VI. ELECTION ADMINISTRATION

The administration of elections is highly decentralized with states responsible for their overall management, and with some 6,460 entities charged with implementing elections across the country.²² At the central level, the main actors are the Federal Election Commission (FEC), which regulates campaign finance, and the Election Assistance Commission (EAC). The EAC is comprised of four members (two from each major party). It provides financial support to election administrators through the Help America Vote Act (HAVA) funds, manages the National Mail Voter Registration Form, certifies voting equipment, and provides guidance and advice on election procedures.

In 41 states, elections are entirely or partly managed by elected or appointed secretaries of state or lieutenant governors, while bipartisan election boards manage elections in the remaining nine states.²³ Twenty-five of the secretaries of state who are responsible for elections are up for election in 2022 (22 through direct elections and 3 through the election of the governor who appoints the secretary of state). Some ODIHR LEOM interlocutors voiced concerns that the partisanship of the highest election administrator in the state may create a conflict of interest and impact negatively on the election process in some states.

Most ODIHR LEOM interlocutors highlighted concerns with threats of violence against election officials at state and local level since 2021. Congress has allocated USD 75 million through the EAC for activities to enhance election technology and improve election security, which can also be used for the physical protection of election workers. A Joint Taskforce of the DoJ and the Federal Bureau of Investigation on

¹⁷ Congressional district maps may be challenged at state courts on the grounds of partisan and racial gerrymandering, as well as to federal courts on the latter grounds. District maps for other races were challenged in Alaska, California, Hawaii, and Illinois. See [here](#) for a list of challenges.

¹⁸ Plaintiffs alleged unequal districts in terms of population in 15 states, (Alabama, Arkansas, Florida, Louisiana, Michigan, Missouri, Minnesota, Mississippi, New Hampshire, Nevada, New York, Pennsylvania, South Carolina, Texas, and Wisconsin); dilution of the vote of African American, Latino and South Pacific communities in six states (Alabama, Arkansas, Georgia, Louisiana, Michigan, and Texas); gerrymandering in favour of the Republicans in seven states (Arizona, Florida, Kansas, Kentucky, North Carolina, Ohio, and Utah) and in favour of the Democrats in five states (Maryland, Nevada, New Mexico, New York, and Oregon). In Arkansas, Florida, Kansas, and North Carolina, plaintiffs alleged both racial and partisan gerrymandering. Plaintiffs alleged that the Congressional redistricting plans were unconstitutional partisan gerrymanders that violate the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and Article I, Section 2 of the U.S. Constitution, and that in adopting the plan the legislature exceeded the authority granted by Article I, Section 4 of the U.S. Constitution, which provides that state legislatures “determine the times, places and manner of election” of members of the U.S. House of Representatives.

¹⁹ The DoJ alleged racial gerrymandering in the congressional map in Texas and inequality of vote in a legislative map in Kansas. State court in [Texas](#) and [Kansas](#) rejected both challenges.

²⁰ In Alabama, Connecticut, Florida, Kansas, Louisiana, Maryland, Minnesota, North Carolina, New Hampshire, New York, Pennsylvania and Virginia.

²¹ The primaries began in March 2022. At that time, [cases](#) were pending in Alabama, Georgia, Kentucky, Maryland, Michigan, New York, Nevada, New Mexico, Ohio, and Texas. See [data from the American Redistricting Project](#).

²² See the [EAC Election Administration and Voting Survey 2020](#).

²³ In 29 states, elections are administered by the secretary of state (24 of whom are elected on a party ticket, and 5 appointed by the governor), in 2 states by the elected lieutenant governor, and in 3 states by election officials selected by the legislature. In seven states, elections are under the dual responsibility of the secretary of state and a bipartisan election board, and in 9 states, they are administered by bipartisan election boards.

Election Workers Threats was created to look into threats to election officials. According to a 1 August statement, the Joint Taskforce has received over 1,000 reports of hostile or harassing contacts affecting election workers since 1 July 2021.²⁴

Resources to implement the elections at the local level come from federal, state and local sources. Numerous ODIHR LEOM interlocutors noted that funds may not be sufficient and that there is a lack of clarity on the availability and timelines of funding for local election administrations, especially regarding funds coming from the federal level.

VII. NEW VOTING TECHNOLOGIES AND CYBERSECURITY

The use of NVT is broad and varies considerably across and within states. Ballot scanning combined with automatic tabulation is used in almost all jurisdictions. There has been a significant transition from the use of Direct Recording Electronic machines (DREs) to Ballot Marking Devices (BMDs) over the last decade, with BMDs making up 90 per cent of the voting machines used in 2022. Moreover, the number of DREs without a Voter-Verified Paper Audit Trail (VVPAT) continues to shrink.²⁵ Around 70 per cent of voters across the US have the choice between using a voting machine and marking a paper ballot by hand; the other 30 per cent have to use a machine to vote.²⁶

Voting systems that produce paper records can be used for post-election audits to ensure the integrity of the results. DREs without VVPAT do not produce paper records, and post-election audits are therefore not possible where they are used. The number of states which have the option or requirement for post-election audits continues to increase, with Kentucky and Texas piloting risk-limiting audit (RLA) procedures for the first time this year.²⁷

Updated guidelines for testing and certifying election technology, known as Voluntary Voting System Guidelines (VVSG), were adopted by the EAC in February 2021.²⁸ However, implementation of these new guidelines will not take place ahead of these elections.²⁹ Many states and jurisdictions choose not to follow either VVSG but use their own certification requirements or require none at all.³⁰ The guidelines have not widened in scope to include BMDs and technologies connected to the Internet such as electronic poll books, voter registration systems, and results transmission systems.

States and local election officials continue to work with the Cybersecurity and Infrastructure Security Agency (CISA) that was established by the Department of Homeland Security in 2018. The Elections Infrastructure Information Sharing and Analysis Center (EI-ISAC) under CISA serves as an open community of election officials and cybersecurity professionals offering a suite of elections-focused cyber defense tools. In 2022, Congress allocated USD 75 million to enhance technology and security in the election administration.³¹

²⁴ See 1 August Joint Taskforce [statement](#). Approximately 11 per cent of these contacts met the threshold for a federal criminal investigation.

²⁵ Six states still deploy DREs without VVPATs in some jurisdictions, with Louisiana using them in all polling places. Five percent of voters in these six states will use DREs without VVPAT in these elections. Indiana, Louisiana, Mississippi, and Tennessee have legal enactments from 2022 requiring that all DREs shall have VVPAT from 2024.

²⁶ See data on [VerifiedVoting](#).

²⁷ Louisiana, Maine, Mississippi, North Dakota, South Dakota, and Wyoming have no legal provisions for post-election audits. Alabama and New Hampshire are introducing post-election audits for the first time following these elections. An RLA is a procedure that uses prespecified parameters to audit ballots cast, based on a set risk level in conjunction with a contest margin. RLA is considered the ‘gold standard’ for post-election audits.

²⁸ The previous version of the VVSG was adopted in 2005.

²⁹ No laboratories testing voting systems were accredited under VVSG 2.0 before the 2022 mid-term elections.

³⁰ See EAC [Election Administration and Voting Survey 2020](#).

³¹ This is significantly less than the USD 425 million allocated in 2020 and the USD 370 million allocated in 2018 which the EAC explained as arising from the urgency for cybersecurity improvements in 2018 and 2020.

VIII. VOTING RIGHTS, VOTER REGISTRATION AND IDENTIFICATION

U.S. citizens who are at least 18 years old on election day and are residents of a state have the right to vote. However, limitations to voting rights are determined by the respective law of each state and vary considerably.

Only Maine, Vermont, the District of Columbia, and Puerto Rico allow citizens to vote from prison. In the remaining 48 states, citizens with current or previous criminal convictions forfeit voting privileges.³² Recent changes eased restrictions in some states. Most notably, Connecticut, Hawaii and Washington restored voting rights to citizens on parole. California, New York and Maryland require the authorities to inform persons who have been released from imprisonment that their voting rights are restored. New Hampshire enables certain persons confined to penal institutions for a misdemeanour or while awaiting trial to vote by absentee ballot.

Restrictions on voting rights based on intellectual disability or guardianship are extensive and vary across the country. With the exception of ten states, citizens are disenfranchised for reasons of intellectual capacity, for being under guardianship and by a court decision. A number of recent amendments have expanded the access for voters with disabilities in various ways, largely through easing or lifting requirements for voting by absentee ballot or by permitting the electronic transmission of ballots.

Voter registration is active, meaning that citizens must register in order to cast a ballot, in all states except North Dakota. Voters can register in person in the jurisdiction of their residence at the Department for Motor Vehicles (DMV), county election offices, state agencies, online, or through third parties. The NVRA and HAVA set minimum conditions for registration and a template registration form.³³ The NVRA mandates states to make their driver's license application form also serve as voter registration application, with registration starting 30 days before elections; state deadlines vary widely, with 22 states and the District of Columbia offering same-day registration, and 23 states implementing 'automatic' or 'motor voter' registration.³⁴ In these cases, voters are automatically registered at the time of applying for or renewing a driver's license. Depending on the state individuals have the opportunity to opt-out either at the point of service or after receiving a post-transaction notification. Ahead of these elections, 40 states and Washington D.C. offer online voter registration. HAVA requires first-time voters registering by post to provide proof of identity. At least four states have laws requiring documentary proof of citizenship, although these have been previously judged unconstitutional.³⁵

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

³² Based on the legislation, in 21 states, felons lose their voting rights while incarcerated, and receive automatic restoration upon release. In 16 states, felons lose their voting rights during incarceration and for a period of time after release. However, in practice the restoration of rights depends on paying any outstanding fines, fees or restitution disenfranchising disproportionately former felons. See [study by the Georgetown University Civil Rights Clinic](#). In 11 states, felons lose their voting rights indefinitely for certain crimes.

³³ Based on the latest EAC [Election Administration and Voting Survey](#) (EAVS) from 2021, DMV offices accounted for the largest share of registration applications, with 39.3 per cent, followed by online registration, with 28.2 per cent. According to the EAC survey, states that allowed same-day voter registration reported handling more than 1.6 million such applications for the 2020 general elections.

³⁴ Montana changed the registration deadline from election day to the day before election day, which was challenged by civic-rights groups on behalf of the Native American community. The Montana Supreme Court declared on 21 September 2022 that three applicable laws passed in 2021 violate provisions of the state's Constitution. The Delaware Supreme Court declared a bill allowing election-day registration to be in conflict with the Constitution.

³⁵ Alabama, Arizona, Georgia, and Kansas have laws requiring documentary proof of citizenship. Kansas' law was judged unconstitutional. See [Fish v. Kobach](#) and [League of Women Voters v. Harrington](#).

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 co-ordinating 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.

At present, 33 states and Washington D.C. take part in the interstate data sharing Electronic Registration Information Center (ERIC). This non-profit center provides information on identified inaccuracies, but it is up to the states to clean up the voter lists.³⁶ Voter lists containing public records data can be accessed by political parties, candidates, or by every citizen. Depending on the state voter registration eligibility can be challenged by other voters, party observers, or election officials. Recent cases of such challenges have raised concerns about potential suppression or intimidation of voters.³⁷ Several interlocutors informed the ODIHR LEOM that state databases do not provide for cross-comparison of data, thus allowing for possible duplicate entries or other inaccuracies.

Voter identification requirements differ across states, with 35 states requiring identification in order to cast a ballot, while the remaining 15 states and Washington D.C. use ‘non-documentary’ proof of identity, such as signing an affidavit or the poll book or providing personal information. Voter identification documents remain a contentious issue. Proponents of ID requirements cite better safeguards, deterring electoral fraud and introducing higher integrity measures in the electoral process such as safeguards against multiple voting.³⁸ The opponents of strict identification point to a lack of inclusive access to ID documents that may disproportionately impact racial and ethnic minority groups and disadvantaged communities.

IX. CANDIDATE REGISTRATION

To run for the Senate, candidates must be at least 30 years old and have been a citizen for at least 9 years. Candidates for the House of Representatives must be at least 25 years of age, and a citizen for at least 7 years. Congressional candidates have to be residents of the state in which they are standing. States allow ‘recognized parties’ to nominate candidates. To qualify as a ‘recognized party’, parties must meet a number of filing requirements, deadlines and regulations, known as ballot access laws, which are adopted and enforced at the state level. In some cases, parties are required to provide proof of a certain number of registered affiliated voters or to have surpassed a threshold of votes in previous elections. Smaller parties and independent candidates may need to collect supporting signatures to stand. Thresholds for such signatures and deadlines for submission vary across states. All but seven states allow ‘write-in’ candidates.³⁹ Several ODIHR LEOM interlocutors expressed concerns that ballot access requirements may disproportionately hinder access to the ballot for smaller parties or independent candidates.⁴⁰

A total of 171 candidates are contesting the 35 Senate seats, and 1,104 candidates are running for a House

³⁶ Before cleaning up the list of inactive voters, state authorities are required to send notices to the citizens concerned. Upon failure to respond and if citizens do not vote in a number of federal elections, their entries will be removed. Regulations vary from state to state.

³⁷ See the American Civil Liberties Union (ACLU) [report on challenges to voters’ eligibility in Georgia](#).

³⁸ See the Heritage Foundation’s [Election Integrity Scorecard which proposes voter ID as a central component of integrity](#). For perspectives arguing that burdensome voter ID requirements result in the suppression of voting rights for members of disadvantaged groups, see Brennan Center for Justice: [Voter ID](#), and ACLU [Factsheet](#).

³⁹ Write-in candidates are candidates whose name does not appear on the ballot but can be added to the ballot by voters. In some states, write-in candidates have to notify the election authorities in order to be eligible to be written on the ballot.

⁴⁰ ODIHR LEOM observers noted that the Libertarian party faced a number of challenges to their registration. For example, the State Supreme Court in Texas [reviewed](#) a challenge to remove 23 Libertarian candidates from the ballot. State law requires Libertarian candidates to pay filing fees or gather petition signatures, in contrast to easier conditions applicable for the two major parties. The court ruled in the Libertarian candidates’ favour. In [Cowen v. Raffensperger](#), the Libertarian party challenged the constitutionality of Georgia’s ballot access restrictions for third-party and independent candidates seeking election to the United States House of Representatives. The petition was [denied](#) by the Supreme Court of the United States on 3 October.

seat.⁴¹ Fourteen House candidates are running unopposed, and three are only facing write-in candidates. Thirty-two candidates for Senate and 311 candidates for the House are women.⁴² The numbers of female Democrat and Republican candidates for governors and state legislatures are higher than in all previous elections.⁴³

People who identify as Latino/Hispanic, multiracial or as one of four non-white racial categories defined by the U.S. Census Bureau, are underrepresented in the current Congress, comprising some 23 per cent of seats, despite constituting more than 40 per cent of the population overall.⁴⁴

Persons with disabilities remain under-represented in elected office, holding an estimated 14 out of 535 seats in the current Congress, as compared to an estimated 1 in 4 Americans who have some type of disability. In these elections, 11 Senate and 23 House candidates are living with disabilities.⁴⁵

X. ALTERNATIVE VOTING METHODS

Alternative voting methods encompass early and absentee voting. While both methods existed and were widely used prior to the 2020 elections, the conditions under which they could be used were expanded due to the COVID-19 pandemic, and a higher number of voters than in previous elections made use of them in 2020.⁴⁶ Claims by politicians and in the media that absentee ballots are susceptible to fraud are widespread and appear to have an impact on the level of trust in the current election process.

Early voting of some type is allowed in 48 states.⁴⁷ As of 17 October, early voting had started in 17 states. The duration and timeframe of early voting vary greatly between states, between 3 and 46 days.⁴⁸ Election officials generally referenced the benefits of early voting in reducing their workload on election day.

Absentee voting is possible in all states. Eight states are so-called all-mail states, where all voters automatically receive absentee ballots by mail; in 27 states, voters can request an absentee ballot without having to provide a justification, while in 15 states, a justification is required.⁴⁹ Some states have a permanent absentee voting list, whereby voters automatically receive absentee ballots for each election once they are on the list.⁵⁰ Identification requirements, time frames and deadlines for requesting and sending absentee ballots, and the processing and counting periods vary greatly from state to state. Twenty states use the postmark to determine if the ballot will be counted, with election day being the deadline. When the postmark is not considered, ballots have to arrive by election day at the latest in all but four

⁴¹ In addition, eight candidates are standing in Washington DC and the territories for non-voting delegate.

⁴² These figures include 52 female third-party or independent candidates for the House, and 12 for the Senate. In the current Congress, there are a total of 147 women (107 Democrats and 40 Republicans). See report from the [Center for American Women in Politics](#).

⁴³ See press release from the [Center for American Women in Politics](#).

⁴⁴ See data from the [Pew Research Center](#). The [U.S. Census Bureau](#) uses five categories of racial self-identification, as well as “multiracial.” Additionally, people may self-identify as either Hispanic/Latino or not Hispanic/Latino as an ethnic group. Of the seats held in the current Congress by minorities and Native Americans, 83 per cent are held by Democrats and 17 per cent by Republicans.

⁴⁵ See [National Council on Independent Living](#) data on the 117th Congress and their list of [candidates with disabilities](#).

⁴⁶ According to the [Census Bureau](#), in 2004, 79.3 per cent voted on election day, 12.9 per cent by mail, and 7.8 per cent used early voting. In 2020, only 30.6 per cent voted on election day, 43.2 per cent voted by mail, and 26.2 per cent used early voting.

⁴⁷ In 11 states, the early voting procedure is called in-person absentee voting, where voters put their ballots in an absentee envelope. Only two states, Connecticut and Alabama, do not provide for early voting, but they do have absentee voting.

⁴⁸ South Dakota and Minnesota allow for 46 days of early voting, while Kentucky allows for 3 days.

⁴⁹ California, Colorado, Hawaii, Nevada, Oregon, Utah, Vermont, and Washington send ballots to all registered voters. Voters can send them back by mail, deposit them in ballot drop boxes, deliver them in person to early voting centers or elections offices, or on election day to a polling site.

⁵⁰ This is the case in five states for all voters, and in another 11 states for persons with disabilities.

states.⁵¹ Thirty-eight states allow the processing of absentee ballots to begin prior to election day, nine allow processing only on election day, and Maryland processes them two days after election day.⁵² The counting of absentee votes starts on election day in 23 states, after closing of polls on election day in 16 states, and prior to election day in 10 states.⁵³

Military personnel serving abroad, their family members, and overseas voters use absentee voting to cast their ballots. Thirty-one states allow overseas voters and 11 states voters with disabilities to use email, fax or online voting to deliver their vote, in addition to returning their absentee ballot by mail. As faxing and emailing ballots do not guarantee the secrecy of the vote, voters are required to waive their right to secrecy of their vote.

The ‘curing’ or processing of absentee ballots with missing details is a contentious topic. Personal details have to be included in the envelope in which ballots are posted. The amount of personal data to be provided has increased in some states. If some details are missing or do not match the data on file, voters have the possibility to correct them during a short period of time by coming to the election office.

XI. CAMPAIGN ENVIRONMENT

Political campaigns by both Democratic and Republican parties are marked by intensely divisive and at times inflammatory rhetoric, including allegations by some political leaders and candidates from both sides that their opponents were seeking to subvert democracy and were a threat to the United States.⁵⁴ Some of the language used in rallies observed and social networks monitored by the ODIHR LEOM sought to delegitimize the other party, was potentially defamatory and in several instances invoked racist xenophobic, transphobic, and homophobic tropes.⁵⁵

According to media reports, a number of Republican candidates in key races, including 10 candidates for secretary of state, of which 9 would have direct responsibility in their states to oversee future elections, and 20 out of 36 gubernatorial candidates, challenged or refused to accept the legitimacy of the 2020 results.⁵⁶ Misinformation concerning the 2020 elections and other issues has continued to circulate widely. Both parties campaigned on platforms of ensuring electoral integrity but presented markedly different issues when doing so: Republicans emphasized the perceived need to prevent the casting and counting of illegal votes, while Democrats focused on preventing what they see as the potential for rejection of legitimate votes. ODIHR LEOM interlocutors noted that through these statements, the parties contributed to a diminishing trust in a fundamentally robust electoral process.⁵⁷

Other Republican campaign messages have focused on the economy and immigration. The high-profile

⁵¹ In Louisiana, North Dakota, Ohio, and Vermont, mail ballots must arrive one day before election day. The U.S. Postal Service advises voters to mail their envelopes at least one week prior to election day in order for them to arrive in time for processing by states that do not follow postmark rules but have a specific cut-off date for the arrival of envelopes.

⁵² Connecticut and Ohio do not specify when processing can start, leaving the decision to the registrar of voters and board of elections, respectively.

⁵³ In Connecticut, it is at the discretion of the local registrar of voters when the vote count starts.

⁵⁴ See contrasting speeches from [August 23 2022](#) and [1 September](#) by President Biden, referring to former President Trump and the [3 September](#) by former President Trump, referring to President Biden.

⁵⁵ The ODIHR LEOM observed a campaign rally in which an incumbent Republican representative made inflammatory xenophobic remarks while other campaign points were transphobic and sought to conflate LGBT acceptance with child “grooming”.

⁵⁶ The [Washington Post](#) published research indicating that of 591 Republican candidates for high office (U.S. Senate and House, governor, lieutenant governor, state secretary of state, and state attorney general), 291 had at some point cast doubt on the legitimacy of the 2020 results. The [New York Times](#) published a similar, but less specific analysis suggesting that 370 Republican candidates had in some way questioned the legitimacy of the 2020 elections.

⁵⁷ See for instance the Republican National Committee’s [Election Integrity Report](#) from August 2021 which found no evidence of election fraud, although it did note that COVID-19 in 2020 resulted in measures easing access to the electoral process, which they claimed may have weakened safeguards.

transportation of migrants from Republican-governed southern states to Democrat-governed northern states and Washington D.C. served variously to highlight Republican claims of federal failure to secure the border and Democrats' claims of politicizing vulnerable victims of trafficking.⁵⁸ Democrats have, since the *Dobbs* Supreme Court decision, focused a large part of their campaign on abortion rights, and to a lesser extent on healthcare, and climate change. Some, but not all candidates for high office debated on television.⁵⁹ On social networks, candidates made extensive use of candidate-generated content, and on platforms where it is allowed, paid-for advertising.⁶⁰ National party structures in the United States are highly decentralized, and candidate selection is as a result of primaries, rather than party decisions. Neither of the major parties has a full federal manifesto for these elections, leading to distinct campaigns at state and lower levels.

XII. CAMPAIGN FINANCE

The key legal acts pertaining to campaign finance, the Federal Election Campaign Act (FECA) and the Bipartisan Campaign Reform Act (BCRA), which regulate the sources and limits of donations as well as the disclosure requirements, are amended by case law, including *Buckley v. Valeo* (1976), which removed limits on campaign expenditures, and *Citizens United v. Federal Election Commission* (2010), which gave corporations the right to independent campaigning, and in which the U.S. Supreme Court equated spending with freedom of speech. Most recently, in an appeal made by Senator Ted Cruz in relation to federal legislation and the Federal Election Commission (FEC), the Supreme Court ruled that regulations restricting the amount that a candidate may be repaid from post-election contributions for loans they may make to their own campaign ahead of the election, abridged First Amendment rights by deterring candidates from lending money to their own campaigns. The FEC argued that the limits had served to lessen the risk of *quid pro quo* corruption, which was possible in cases where post-election donations for the purpose of repaying loans to already elected officials were not restricted.⁶¹

Election campaigns can receive contributions from individuals, political parties, and Political Action Committees (PACs), though direct donations from trade unions and corporations are forbidden. While foreign donations are prohibited in campaigning for candidates, they are allowed in campaigns for ballot measures.⁶² Corporations and trade unions can sponsor PACs, with some limitations in place. Public financing is not available for congressional elections. The law allows for 'independent' campaigning entities, so-called super-PACs, which do not have to observe donation limits but are subject to disclosure requirements and are prohibited from coordinating their campaigns with candidates or their committees. Some non-profit organizations, which are bound by neither donation limits nor public disclosure requirements, can also engage in campaigning, provided that this is not their primary activity.⁶³ ODIHR LEOM interlocutors express concern that undisclosed contributions do not allow voters to make a well-informed choice. The Democracy Is Strengthened by Casting Light on Spending in Elections Act (Disclose Act of 2021), which would have required any entity to disclose donors that contributed more than USD 10,000 in an election cycle, failed to summon the required majority to advance to the Senate floor in September 2022.⁶⁴

Most campaign advertising, except on social media, must contain a disclaimer stating who commissioned and takes responsibility for the presented message. Of the key social media platforms, TikTok and Twitter

⁵⁸ See for instance the statement by the [governor of Florida](#) and the response from the President's [spokesperson](#).
⁵⁹ Among candidates who did not agree to debate were the Democrat governor candidate for Arizona. See [The Brookings Institution's report](#). The Republican candidates for governor of Nebraska and Ohio also declined to participate in debates.
⁶⁰ Notably Facebook, Instagram, and YouTube.
⁶¹ See the [2019 FEC's Motion](#) in the *FEC v. Ted Cruz for Senate* case, presented to the United States District Court for the District of Columbia.
⁶² In October 2021 [the FEC ruled](#) that ballot measures are not elections and are thus not bound by the FECA prohibitions.
⁶³ Reporting by [Open Secrets](#) assessed that such non-profit organizations spent over USD 1 billion on campaigning assessed that in the 2020 election cycle.
⁶⁴ On 8 November, Arizona voters will decide through a [ballot measure](#) whether to introduce a donor disclosure obligation for any entity or person that spends over USD 50,000 on a state-wide campaign.

ban political advertising. TikTok also recently blocked politicians and political parties from fundraising on its platform.⁶⁵ Meta and Alphabet introduced different measures such as ad libraries to increase transparency.

The oversight of campaign finance is vested with the FEC, the bipartisan campaign finance oversight body. It is composed of six commissioners appointed by the President and confirmed by the Senate, with no more than three commissioners representing one party, and four votes needed to pass any decision on the regulatory framework and on complaints. The FEC lacked a quorum in 2019 and 2020; it has only operated in its full composition since December 2020, and has been faced with a backlog of cases. The difficulty of reaching agreements across party lines affects the FEC's enforcement capability. The oversight of criminal liability related to campaign finance is conducted by the DoJ.

Campaign committees are required by law to report to the FEC on a quarterly or monthly basis and may also be required to submit pre- and post-election reports. As of 18 October, committees supporting congressional candidates fundraised USD 3.1 billion and spent USD 2.6 billion.⁶⁶ It is projected that the campaign expenditures in this electoral cycle will reach USD 9.3 billion, which would be higher than the USD 7 billion spent in the 2018 mid-term congressional elections.⁶⁷

XIII. MEDIA

While pluralistic and diverse, the media landscape in the U.S. is highly polarized. According to the Federal Communications Commission (FCC), there are 1,758 commercial, educational, and public television channels and 15,389 radio stations.⁶⁸ Due to a steady shift towards online media and social networks, the digital sphere has become the dominant source of political information. Major cable and national television networks serve as a comparably important source of political news. The impact of newspapers and, in particular, of local media is in continuous decline. There are two public networks, Public Broadcasting Service (PBS) and National Public Radio (NPR).

The First Amendment to the Constitution guarantees freedom of the press and expression, with Supreme Court decisions and self-regulation providing for a robust system of protection for media independence. The disparaging criticism levelled against mainstream media by top officials during the previous administration, has ceased; however, regular derogatory comments and legal action against traditional news media, compounded by pervasive online misinformation and disinformation, have contributed to a growing distrust towards the media. The OSCE Representative on Freedom of the Media has raised concerns over the decline in journalists' safety in recent years.⁶⁹

There is a growing public and legal discourse concerning social networks, including debates on protecting the freedom of speech, permissible limits on its moderation, accountability for harmful content, as well as lack of transparency of social networks.⁷⁰ As reported by expert groups, major social media companies have content policies to address the spread of election-related misinformation and disinformation. These policies demonstrate varied and diverging emphasis and concerns; for example, not all platforms specifically discuss voter suppression in their policies, and there is no consistent approach to election-

⁶⁵ TikTok [updated its policies for political accounts](#) on 21 September 2022.

⁶⁶ See FEC [campaign finance data](#).

⁶⁷ See the Open Secrets [projection](#) from 26 September 2022.

⁶⁸ See Federal Communications Commission, [Broadcast Station Totals](#), as of 31 December 2021.

⁶⁹ See OSCE Representative on Freedom of the Media, Regular [report](#) to the Permanent Council, November 2021.

⁷⁰ On 3 October 2021, the Supreme Court admitted the *Gonzales v. Google* case that is seen as a test of the current legal *status quo* under which, based on the Section 230 of the Communications Decency Act, online media are provided immunity with respect to third-party content. In 2021, two bills were introduced into Congress (the Platform Accountability and Transparency Act and the Online Consumer Protection Act) that would require social media companies to provide researchers and the public with access to certain platform data as well as would require platforms disclose their content moderation policies.

related misinformation and disinformation. Specific platforms also differ in their approaches to the prevention of repeat spreaders of misinformation monetizing or advertising.⁷¹

The 1934 Communications Act, the 1996 Telecommunications Act, and FCC regulations outline the broadcasting regulatory framework. The FCC oversees its implementation; however, it does not conduct media monitoring. During the 60 days prior to election day, commercial broadcasters must provide ‘reasonable access’ to all qualified federal candidates who request to purchase airtime.⁷² In addition, an ‘equal opportunity’ rule grants a candidate the right to use airtime on equal conditions with other candidates, with exceptions aimed at protecting editorial freedom. Print and online media are not bound by statutory requirements.

On 3 October, the ODIHR LEOM commenced its quantitative and qualitative assessment of political and election-related coverage by several major media outlets.⁷³

XIV. COMPLAINTS AND APPEALS

Available election dispute resolution mechanisms are diverse and include judicial and administrative avenues. Political parties, candidates, electoral campaigns, civil-society groups, and voters may file lawsuits and initiate cases before state and federal courts. Challenges of election results are permissible in some states, while requests for recounts are permissible under varying conditions.⁷⁴ In line with the *Purcell principle*, federal courts may not enjoin state election laws close to an election.⁷⁵ Although not binding for them, state courts occasionally also follow this principle. Both federal and state courts reviewed challenges of new district maps during the primaries, which created uncertainty for candidates and voters. Federal courts have no jurisdiction over partisan gerrymandering, which is under the purview of state courts, provided that such practices are prohibited by state laws.⁷⁶

Federal and state attorney general offices and law enforcement agencies are mandated with investigating and prosecuting election crimes. Following the 2020 elections, additional mechanisms for investigation and prosecution were established or existing ones were strengthened, often coupled with criminalization of some irregularities.⁷⁷ The DoJ monitors state compliance with federal legislation and may bring lawsuits

⁷¹ See the Open Technology Institute [assessment of ten internet social platforms](#), and the Integrity Institute’s [Elections Integrity Program](#).

⁷² The FCC maintains record of such requests in [Political File](#) through its [Public Inspection File](#). As non-commercial broadcasters, PBS and NPR are prohibited from airing paid advertisements.

⁷³ Public television *PBS* and radio *NPR* networks; television networks *ABC*, *CBS* and *NBC*; cable television channels *CNN*, *Fox News* and *MSNBC*; the daily newspapers *New York Times* and *Wall Street Journal*, and online news websites [HuffPost.com](#), [TheEpochTimes.com](#), [USAToday.com](#), and [WashingtonPost.com](#).

⁷⁴ In 39 states, candidates may request recounts, while in Massachusetts and Pennsylvania recounts must be requested via a petition by a prescribed number of voters. State laws in Arizona, Connecticut, Florida, Hawaii, Illinois, Mississippi, New York, and South Carolina do not provide for requests for recounts but prescribe automatic recounts in case of close results. Tennessee does not provide for requests nor for automatic recounts.

⁷⁵ See *Purcell v. Gonzalez* (2006), in which the U.S. Supreme Court established (i) that federal district courts ordinarily should not enjoin state election laws in the period close to an election; and (ii) that federal appellate courts should stay injunctions when lower federal courts contravene that principle. In *Reynolds v. Sims* (1964), the Supreme Court also ruled that “[i]n awarding or withholding immediate relief, a court [...] should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.”

⁷⁶ In *Rucho v. Common Cause* (2019), the U.S. Supreme Court concluded that redistricting plans that heavily favour one political party over another are not subject to federal constitutional constraints nor to federal court oversight. The case referred to alleged partisan gerrymandering in North Carolina for the 2016 elections. In *League of Women Voters of PA v. Pennsylvania* (2018), the Pennsylvania Supreme Court overturned the state legislature’s congressional map as a partisan gerrymander, citing the state constitutional provision for free and fair elections, which is also present in many other state constitutions.

⁷⁷ For instance, Election Integrity Units were established with the attorney general in Arizona, Florida, Georgia, Michigan, Ohio, Texas, and Virginia, and the Office of Election Crimes and Security within the Florida Department of State to

against non-compliant states and other jurisdictions to federal courts, including on denial or abridgement of voting rights. The DoJ Public Integrity Section supervises the investigation and prosecution of election-related crimes.

The ODIHR LEOM has been made aware of challenges filed in 28 states since 2021, including on new legislation in 11 states regulating voter identification, voter registration, early voting, and alternative voting methods; thousands of challenges of registration of individual voters in nine states; as well as 75 challenges of district maps.⁷⁸ The U.S. Supreme Court received three cases on district maps. Pending review on merits, the court issued temporary stay orders for district court injunctions which deemed the congressional district maps in Alabama and Louisiana racially gerrymandered.⁷⁹ Pursuant to an appeal of a court decision which deemed the district map of North Carolina a partisan gerrymander, the U.S. Supreme Court will decide whether state election laws and district maps adopted by state legislatures are subject to judicial review by state courts.⁸⁰

XV. ELECTION OBSERVATION

In line with its OSCE commitments, the U.S. Government invited ODIHR to observe these mid-term congressional elections.⁸¹ Election observation is regulated by state legislation, resulting in a significant variance of rules regulating observers' access to the different stages of the electoral process. The categories of recognized observers vary between states; they include domestic non-partisan groups, partisan groups or poll watchers and challengers, international observers, academic observers, and DoJ monitors. Only 12 states and the District of Columbia explicitly provide for international observation, seventeen states prohibit election-day observation for international observers, five have no explicit provisions, while procedures are open to the public in seven, and in nine states access is left to the discretion of state or county election officials.⁸² Access varies across the stages of the process. In some states, domestic partisan and non-partisan observers are guided by differing rules.

Non-partisan groups assist voters with legal advice, registration, and advocacy. Partisan poll watchers and challengers play a key role in enhancing transparency and oversight of the electoral process, and they have access to the process in most states. Some interlocutors raised concerns that in light of growing skepticism of the integrity of election administration these partisan observers may use their position to unduly interfere in the process on election day. In the majority of cases, poll watchers must be registered voters of the state where they will observe. Their role differs from state to state, with some recent cases expanding their rights with a focus on integrity.⁸³

aid the Secretary of State in Florida. In addition, there are voter fraud hotlines and law enforcement officers assigned to districts.

⁷⁸ States Newsroom analyzed every voting-related bill passed by state legislatures since the 2020 election, [creating a database](#) of every new criminal offense codified into law. In total, states enacted more than 60 new felonies and more than 50 new misdemeanors.

⁷⁹ The U.S. Supreme Court issued temporary [stay orders](#) in [Ardoin v. Robinson](#) in Louisiana and [Merrill v. Milligan](#) in Alabama. In [Merrill v. Milligan](#), the Court will decide whether Alabama's 2021 congressional redistricting plan, which contains one majority-Black district, violates Section 2 of the [Voting Rights Act](#). The ruling will also apply to Louisiana. In [Moore v. Harper](#), the U.S. Supreme Court will rule on the independent legislature doctrine. The hearing is scheduled for 7 December 2022. Article I, Section 4, Clause 1 of the U.S. Constitution states that: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

⁸¹ Paragraph 8 of the [1990 OSCE Copenhagen Document](#) provides that "the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law."

⁸² See reports on election observation by the [Carter Center](#) and [NCSL](#).

⁸³ Iowa and Texas enacted bills enhancing access for poll watchers.

XVI. ODIHR LEOM ACTIVITIES

The ODIHR LEOM opened in Washington D.C. on 26 September. The Head of Mission has met with the Department of State, Election Assistance Commission, Federal Election Commission, and civil society, among others. The ODIHR LEOM has also established contacts with the election administration at various levels, government institutions involved in the electoral process, as well as representatives of political parties, media, and civil society. The OSCE Parliamentary Assembly (PA) will deploy an observer delegation for election-day observation. The OSCE PA President, Margareta Cederfelt, has been appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observer mission.