

**United States of America - 6 November 2012 General Elections  
Preliminary Post-Election Statement by the Short Term OSCE Observer Mission**

OSCE parliamentary short-term observers for the 6 November 2012 U.S. General Elections were received well by the authorities in charge. They were able to observe the process in a very comprehensive manner, having full access to polling stations and receiving all necessary information in the District of Columbia and the states that they were deployed to. After their observation, they came to the following conclusions:

These elections were yet another demonstration of the country's commitment to democracy. However, the unprecedented and often negative role played by private campaign financing has a potential to impact negatively on the fairness of the process. There also were a number of other concerns the OSCE has already outlined in previous reports, among them a partisan controversy about possible voter suppression.

On the other hand, all issues observed are subject of intensive public debate in the U.S. and of court decisions. They have also been addressed by academia, most prominently in the 87 recommendations of the 2005 report of the Commission on Federal Election Reform, the so-called Carter-Baker Commission.

After a generally peaceful, but highly polarized, often ideological campaign divided along lines of race, ethnicity or religion, voters were given a genuine opportunity to make an informed choice between the presidential candidates of the Democratic and the Republican parties and their candidates for the House of Representatives and the U.S. Senate. Largely due to the majoritarian system, the other 30 presidential candidates in these presidential elections – several of whom appeared on a significant number of ballot papers (the Green Party, the Libertarian Party, the Justice Party and the Constitutional Party) - played the traditionally marginal role of so-called third-party candidates.

On Election Day, citizens cast their votes in a calm and orderly manner. In a number of polling stations there were at times long lines of voters waiting patiently for their turn and there were also a number of cases of overcrowding inside the polling stations, which were handled in a disciplined and suitable manner. Where voters were given a choice between electronic voting and paper ballot voting, they seemed to prefer electronic voting, which led to a shortage of available devices. Assistance to voters who experienced difficulties in the handling of the machines occasionally compromised the secrecy of the vote. Technical difficulties with the machines were generally solved quickly and did not seem to negatively influence the integrity of the vote.

The fact that electoral legislation in the states has become an issue of party controversies, with one side of the political camp accusing the other of wanting to misuse legislation for partisan purposes, has a tendency to reduce voter confidence in the process. Also, while conceding that most of the process is handled within the law, some analysts regard many of the existing systems of election administration, voter registration and voter identification as largely inadequate and confusing.

Although article 1 section 4 of the Constitution explicitly authorizes Congress to pass electoral legislation, national law only regulates certain minimum standards for the national elections. The electoral system is highly decentralized and diverse with approximately 13.000 electoral authorities. In many states elections are led by political officers who are up for re-election in the

elections they are supervising. The system continues to lack uniform standards, creating vulnerabilities in the system, particularly with regard to the integrity and complexity of voter registration, voter identification, and electronic voting machines. The Election Assistance Commission created by the “Help America Vote Act” (HAVA) is not functioning, since four of its seats are vacant.

At the same time, despite continuous criticism of many aspects of the electoral process, many stakeholders describe U.S. elections as a “culture of trust”, as demonstrated by the fact how quickly a candidate who lost an election acknowledges defeat. Also, while there is a general awareness of the problems created by the diverse and complicated system, many believe that it enables electoral administrations to test new procedures and to learn from each others’ good practices.

The U.S. Supreme Court decisions *Citizens United v. FEC* and *Speech Now.org v. FEC* have had an even stronger effect on elections than any piece of legislation in the past years. As noted in the 2010 statement of the OSCE, the decision created expanded possibilities for special interest groups, including private corporations, to get involved and provide funds, especially for political commercials on television and radio. They also engaged in other campaign activities, which were not illegal as long as they are not directly coordinated with the candidates or parties. In addition, millions of dollars were spent on ads that did not identify who was paying for them

As a consequence, the 2012 elections are considered to have been the most expensive elections in the history of the U.S. Presidential and congressional candidates have received 4 billion dollars in direct contributions. It is estimated that almost 6 billion U.S. dollars have been spent on the presidential campaign alone. Although spending has been high also in previous campaigns, the Supreme Court decisions have led to greater influence by outside money and less control by the candidates and parties. While this did not yet create an uneven playing field between the two major presidential candidates, it is considered by many analysts as having a potentially negative effect on the political independence of elected officials.

The avalanche of paid advertisements contributed to the tense and in many instances dirty campaign environment, often without the degree of transparency (“effective disclosure”) that the Supreme Court had asked for. According to estimates a quarter billion U.S. dollars of campaign spending have not been disclosed. Misleading advertisements and billboards, in particular when coming from undisclosed sources massively confronting voters late in the process, can impact negatively on the possibility for voters to make an informed choice. Observers found that the lack of information concerning the sponsorship of the advertisements undermined the transparency and accountability in the elections.

Although guaranteeing a free and pluralistic media environment, this environment is as polarized as is the political landscape, with a tendency to confrontational and often partisan coverage of the campaign. The television debates between the candidates – three were held between the Presidential candidates and one with the Vice-Presidential candidates – were the highlight of the extensive media coverage. In line with the characteristics of the U.S. political system, the two leading presidential candidates were the main focus of journalistic reporting, leading to a very limited visibility of other political parties and candidates.

It is estimated that overall well over a third of the voters took advantage of the opportunity for early voting. During the last days of early voting, there were long queues with voters waiting in line for more than four hours in many places and voters being turned away when the stations were closing. Again, this led to partisan controversies about whether or not the opening hours of the polling

stations where early voting took place needed to be extended. In some states that had already shortened the time and even reduced the number of polling stations for early voting, no extension was granted.

Many analysts and stakeholders point at the danger of fraudulent practices being promoted by early voting and in particular voting by mail, while others accuse one political side of wanting to limit voter access, thereby disenfranchising specific groups of voters believed to be supporters of the other political side. The same discussion is taking place regarding same-day registrations.

This public controversy about easy access versus integrity of the process featured prominently in the debates about the electoral system; opinions were again divided along party lines. This also regards the issue of voter identification. Before the elections, several states whose legislative majority belonged to one political camp, had introduced or tried to introduce voter identification laws arguing that this was needed to ensure the integrity of elections. The other political side viewed these measures as attempts to disenfranchise voters and deny that voter fraud is a serious problem in the U.S.

There is an understandable interest in establishing an easy-to-handle mechanism of voter identification. For instance, some argue that the possibility to vote without any picture ID increases the possibility of identifying instances of double voting. On the other hand, the required photo ID card does create additional problems for some groups (minorities, low-income, elderly, students) which are often already deterred by the hurdles created by the system of active voter registration. The present situation only contributes further to a reduction of voter confidence.

Stakeholders have expressed concerns about the accuracy of the voter register. According to a research report by the Pew Center, app. 24 million active voter registrations are no longer valid and even inaccurate. Approximately 2,75 million voters have active registrations in more than one state. The possibilities to verify the correctness of the voter register and to crosscheck it with neighboring states, in order to avoid double registrations or multiple voting, are limited and not widely used. However, cases of impersonation or of double voting are a third-degree felony in most states and violate federal election fraud laws. Most analysts believe that such violations are rare and have no impact on the overall integrity of the elections. On the other hand, purging of voter lists, as undertaken by some federal states, again led to very controversial and – in some instances – questionable results and was intensively debated along party lines.

U.S. citizens residing in jurisdictions other than the 50 states are not fully represented at the federal level. As a consequence, some 4.1 million citizens are not eligible in the general elections. In addition, according to the law in many states, an estimated 5.9 million U.S. citizens cannot vote due to a criminal conviction, including some 2.1 million who have served their prison sentences.

Concerns were also raised about reported practices intended to prevent people from voting (voter suppression). Alleged examples include systematic challenges of voters in fiercely contested areas, local misinformation, campaigns disseminating incorrect information on timing and places of voting, and intentionally providing too few voting machines in lower-income communities. Despite the many reports in the media about such practices, the observers did not observe any case of open voter suppression.

## **Mission information**

The Parliamentary Assembly of the OSCE (OSCE PA) is the parliamentary institution of the Organization for Security and Co-operation in Europe, whose 56 participating States – including the United States of America - span the geographical area from Vancouver to Vladivostok.

In line with the commitments undertaken by the United States of America in the Copenhagen Document, the State Department has invited the OSCE (Parliamentary Assembly and ODIHR) and OSCE participating States who may wish to do so to observe the 2012 general elections, as it happened in previous elections.

The short term OSCE observer mission was led – for the third time since 2008 and 2010 - by former PA President Joao Soares (Portugal), who had been appointed as Special Coordinator by the OSCE Chairperson-in-Office, currently the Irish Deputy Prime Minister and Foreign Minister Eamon Gilmore. The OSCE Parliamentary Assembly assessed the presidential elections as well as the election of the members of the House of Representatives and the Senate of the U.S. Congress for their conformity with the OSCE commitments as stated in the 1990 Copenhagen Document, to which the United States has subscribed.

The OSCE PA started its election observation early on establishing an office in Washington D.C. as early as September 15, 2012. The short term OSCE observer mission with a total of 100 observers of whom 73 were Members of Parliament from 26 countries began its on-site observations on November 1 and was deployed to the District of Columbia, North Carolina, Virginia, Maryland, and Pennsylvania.

Since only four out of the 50 federal states and the District of Columbia have electoral laws that contain provisions on international election observers, access to polling stations for observers depends largely on the good-will of polling-workers; in some states it is explicitly prohibited. However, parliamentary observers were largely well received and – with one exception - got access to the polling stations as well as all the assistance they requested.

The ODIHR, a technical OSCE institution, also conducted research on the elections with a team of 44 long term observers in various state capitals.

The OSCE would like to thank the U.S. State Department for the invitation and the authorities that the observers met with for their hospitality and cooperation.

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