



REPORT TO THE PERMANENT COUNCIL¹
OAS ELECTORAL OBSERVATION MISSION
United States of America
General Election held on November 8, 2016
January 17, 2017

Background

On June 30, 2016, the Government of the United States of America invited the Organization of American States (OAS) to observe the General Elections to be held on November 8, 2016. On July 11, 2016, the OAS Secretary General accepted the invitation and appointed former President of Costa Rica, Laura Chinchilla, as Chief of Mission. This was the first-ever OAS Electoral Observation Mission in the United States of America, and brings to 27 the number of Member States that have received an OAS Electoral Observation Mission (OAS/EOM).

On November 8, 2016, U.S. citizens voted to elect the president and vice president, 34 senators, and 435 members of the House of Representatives. In addition, the U.S. electorate voted to fill 93 state executive offices² across 22 states, as well as a number of state legislators, city mayors, judges, other local officials and ballot measures³.

The OAS/EOM, comprised of 41 experts and observers from 18 different countries, was deployed one week prior to Election Day. Because of the decentralized nature of the U.S. electoral system, the Mission coordinated with individual states in order to observe their voting processes.

On Election Day, the EOM was present in the following states: California, Colorado, Iowa, Kansas, Maryland, Minnesota, Montana, Nebraska, New York, Rhode Island, Virginia and Wisconsin, as well as the District of Columbia. Some states⁴ do not allow or lack specific provisions for regulating international observation. For future electoral processes, the OAS would welcome that these states consider the benefits of receiving international observers and reflect this in their legislation.

¹ Presented by the Chief of Mission, Former President of Costa Rica, Laura Chinchilla, on January 17, 2017.

² Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor, Superintendent of Schools, Insurance Commissioner, Controller, Agriculture Commissioner, Natural Resources Commissioner, Labor Commissioner, Public Service Commissioner.

³ In 2016, 154 ballot measures took place. For more information please visit:

http://www.ncsl.org/Portals/1/Statevote/StateVote_Combined%20Presentation.pdf

⁴ For information regarding international observation please visit: <http://www.ncsl.org/research/elections-and-campaigns/international-election-observation.aspx>

To select the states for deployment, the following criteria was utilized: i) states that allow international observers; ii) geographic representation; iii) political tendency; and iv) plurality of electoral systems and organization. This selection process allowed the Mission to obtain a broad perspective of the characteristics of the U.S. electoral process, including the different options for casting ballots, the various voting systems in place, the use or not of voter identification, and the methods for establishing voting districts, among others.

As in every mission deployed by the Organization, this EOM observed specific areas of the electoral process in a systematic way, including electoral organization, the use of technology in elections, political participation, financing, and media coverage.

Pre-Electoral Period

Prior to the election, the OAS Electoral Observation Mission had meetings and contact with a wide variety of actors, including: the National Association of Secretaries of States (NASS), the National Conference of State Legislators (NCSL), the National Association of State Election Directors (NASED), the U.S. Election Assistance Commission (EAC), the Federal Election Commission (FEC), the Federal Communications Commission (FCC), the Federal Voting Assistance Program (FVAP), the Federal Government, electoral authorities, representatives of political parties, state authorities, members of civil society and advocacy organizations and international observers, in order to gather information and discuss their views on the electoral process. The Mission also had the opportunity to gather information regarding the organization of the elections during preliminary visits to Pennsylvania, Georgia and Washington D.C.

During this period, the Mission followed the debates organized by the Commission on Presidential Debates (CPD), which included three presidential and one vice-presidential debate.⁵ All four were broadcast live on television by major networks and had large audiences. Due to the high threshold⁶ required for candidates to participate in these debates, in 2016 only the Democratic and Republican candidates qualified for them, which resulted in complaints from the independent and third party candidates. The Mission considers that this situation, similar to other U.S. electoral cycles, may serve to reinforce the two-party system.

Amidst accusations of a rigged electoral system, the reality in the U.S. is that citizens trust their institutions. The immense amount of checks and balances throughout the process, the right to redress and appeal decisions, the effectiveness of the courts, and the transparency and publicity of the process are paramount in the construction of that trust.

⁵ The Presidential debates were held on September 26, October 9 and October 19, 2016, while the Vice-Presidential debate was held on October 4, 2016.

⁶ The criteria established for participation in the debates required that candidates be: Constitutionally eligible for election; Appear on a sufficient number of state ballots to have a mathematical chance of winning a majority vote in the Electoral College; and have a level of support of at least 15 percent of the national electorate as determined by five selected national public opinion polling organizations, using the average of those organizations' most recently publicly-reported results at the time of the determination. For more information please visit: <http://debates.org/index.php?page=overview>

Election Day

On Election Day, the members of the Mission were tasked with observing all the activities carried out at voting precincts from their opening until the return of electoral materials to the corresponding local authorities.

Throughout the day, the OAS/EOM team observed various voting systems and procedures, including the use of paper ballots, postal voting, optical and digital scanners, and direct-recording electronic voting machines with and without paper trails. Similarly, the EOM observed different levels of identification requirements to vote. Citizens appeared to understand the process and were able to appropriately cast their ballot in a reasonable amount of time.

The polling places observed by the OAS/EOM opened on time, had all the essential electoral materials on hand, and were managed by dedicated citizens in an orderly manner, notwithstanding the large amount of people waiting in line. Observers reported long lines, with waiting times of over an hour in some cases, especially early in the morning and in the afternoon when people vote either before or after going to work. In addition, in some polling stations there were delays due to an insufficient amount of voting machines or due to the time needed by poll workers to explain how to cast the ballot.

Occasionally, long lines were a result of sporadic technical malfunctions with electoral equipment such as scanners, or as in the case of Colorado, with the Statewide Colorado Registration and Election (SCORE) system, which collapsed for about 20 minutes. However, these technical challenges were solved efficiently by following the contingency procedures that were in place.

Polling places were in general terms adequate but in some cases were too small for the amount of machines and people concentrated in one place. While the trust of citizens allowed the process to continue smoothly, it is suggested that local authorities consider this matter in order to avoid overcrowding and ensure that voters can cast their ballots in secret.

The EOM observed large numbers of women and senior citizens taking different roles at polling places throughout the country. Despite their limited knowledge of international observation, poll workers received OAS observers in a friendly and open manner.

Similarly, the Mission observed workers giving priority to senior citizens and people with disabilities, as well as to pregnant women. The Mission would like to highlight the remarkable efforts made by electoral authorities to facilitate access to people with disabilities through the use of special devices, and initiatives such as drive-through polling places (observed in Colorado and California) or the option to have ballots brought to your car (Kansas). In Rhode Island a program was created for people with serious physical disabilities to vote in their homes (Nursing Home Program).

The Mission would also like to highlight the culture of service and professionalism of electoral officials observed across the different states. During the organization of the election, these workers provided voters with safe and convenient ways to vote.

Post-Electoral Period

In the U.S., electoral results are tabulated at the state and county level. There is no federal or central body that tabulates results at the national level. As such, there is a heavy reliance on the media and independent actors to provide information regarding results on the night of the election. To this end, one can see that while the decentralized system may entail a more difficult way to tabulate the results, the tight control of this process at the county level serves to make each state's individual process for disseminating the results more trustworthy.

Despite a hard fought campaign, once results came in, candidates acted responsibly. Former Secretary of State Hillary Clinton displayed a commitment to the democratic process by conceding the election to Mr. Trump, who subsequently delivered a speech calling on citizens to come together.

A few weeks after the election, the Green party candidate, Jill Stein, requested ballot recounts in Wisconsin, Michigan and Pennsylvania.⁷ The recount in Wisconsin reaffirmed Mr. Trump's victory, while federal judges rejected the requests in Pennsylvania and Michigan. On December 19, 2016, electors met at their respective state capitols to cast their votes and on January 6, 2017, the Congress met in a joint session to count the electoral votes. As a result of this process, President-elect Donald Trump obtained 304 electoral votes while Ms. Hillary Clinton ended with 227.⁸

During the first days of December, the President requested intelligence officials to prepare a full review of cyber activity intended to interfere in the elections. The Intelligence Community completed the report and briefed President Obama, President-elect Trump and Congressional leadership. A declassified version of the report was made public. According to the information released: "the types of systems the Russian actors targeted or compromised were not involved in vote tallying".⁹ In that context, the President took some actions in response to Russian cyber activities.¹⁰

Observations, Conclusions and Recommendations

The strength of U.S. democracy goes beyond the particularities of an electoral process. It is based on its institutional strength, freedom of expression and press, balance of power, the rule of law and the principles on which the country was founded.

⁷ For information regarding the Elections in Wisconsin please visit: <http://elections.wi.gov/elections-voting/results>; For information regarding the Elections in Michigan please visit: <http://www.michigan.gov/sos/0,4670,7-127-1633---,00.html>; For information regarding the Elections in Pennsylvania please visit: <http://www.dos.pa.gov/votingelections/Pages/default.aspx>

⁸ This count was done by the OAS/EOM based on information made public by the National Archives and Records Administration. (Last accessed on January 13, 2017): <https://www.archives.gov/federal-register/electoral-college/2016/index.html>

⁹ Office of the Director of National Intelligence, *ODNI Statement on Declassified Intelligence Community Assessment of Russian Activities and Intentions in Recent U.S. Elections*. For more information please visit: <https://www.dni.gov/index.php/newsroom/press-releases/224-press-releases-2017/1466-odni-statement-on-declassified-intelligence-community-assessment-of-russian-activities-and-intentions-in-recent-u-s-elections>

¹⁰ For more information regarding these actions please visit: <https://www.whitehouse.gov/the-press-office/2016/12/29/statement-president-actions-response-russian-malicious-cyber-activity>

With the constructive spirit that characterizes Electoral Observation Missions, a series of observations and recommendations are presented below with the objective of identifying both strengths and opportunities for improvement of the U.S. electoral system.

Electoral College

One particularly unique aspect of the U.S. system is the use of the Electoral College through which the president is elected by an indirect vote consisting of the accumulation of electoral votes (at least 270 of 538 are necessary to win) tallied state by state, as opposed to the most common electoral practice in other countries of direct election by winning the majority of the popular vote. It is important to note that with this method the U.S. has experienced 45 peaceful and democratic transitions of power.

Within this system, it is possible for a candidate to win the Electoral College while losing the popular vote, which was the case in this election. The Republican candidate, Donald Trump, won 306 electors with 62,955,212 votes while the Democratic candidate, Hillary Clinton, won 232 electors with 65,794,399 votes.¹¹

This was not the first time a candidate won the Presidency without winning the popular vote. Presidents elected in 1876, 1888, and 2000 received fewer popular votes than their major party opponents. In 1824, the runner-up in both popular and electoral votes was elected by the House of Representatives when four candidates split the vote in the presidential election as no one was able to reach the majority.¹²

The Mission took note of at least three proposals to reform the system. The first proposes to use the mechanism of district election as is currently used in Nebraska and Maine.¹³ A second suggests proportional representation in the allocation of electors. The third proposes a "National Popular Vote", and would play within the rules of the current system. In this proposal, voting would continue to take place on a state-by-state basis, but members of the Electoral College, instead of supporting the candidate who won the state - and whom they represent - would elect the candidate who won the largest number of citizens' votes. The initiative has support in certain sectors of both political parties and the backing of ten states, including some of the most populated (California, New York), and the District of Columbia,. It could enter into force when the number of states supporting the proposal is equivalent to the number (270) of electoral votes needed to win the Electoral College.

The aim of these proposals would be to ensure that presidential candidates campaign equally in all states and do not focus only on swing states, where political preferences are not as clearly

¹¹ This count was done by the OAS/EOM based on information made public by the National Archives and Records Administration. (Last accessed on January 13, 2017): <https://www.archives.gov/federal-register/electoral-college/2016/index.html>

¹² John R. Koza, Barry Fadem, Mark Grueskin, Michael S. Mandell, Robert Richie, and Joseph F. Zimmerman, *Every Vote Equal*, National Popular Vote Press, 2013. Available at: <http://www.every-vote-equal.com/sites/default/files/eve-4th-ed-ch1-web-v1.pdf>

¹³ Maine and Nebraska have adopted a method in which the winner of each district is awarded one electoral vote, and the winner of the state-wide vote is then awarded the state's remaining two electoral votes.

defined. In addition, they are an effort to ensure that public policy priorities are not distorted in an effort to win the vote of the most contested states. Such practices could also help to ensure that parties develop national campaigns and prevent political crises or contentious electoral disputes over narrow results that are more likely to occur when only 538 Electoral College voters, sometimes defined by narrow margins in each state, decide the election rather than the hundreds of millions of votes cast.

Early Voting

For this election, most states had a method in place to cast a ballot before Election Day, either during the early voting period or by requesting an absentee ballot. In 37 states (including 3 that mail ballots to all voters¹⁴) and the District of Columbia, individuals could vote in person with no justification required.¹⁵ According to the information reported, more than 47 million citizens voted before Election Day.

One advantage of early voting is that it significantly expands the voting timeframe. Depending on the state, people may have the option to vote days or weeks before the actual election. Early voting usually closes several days before Election Day, although in some states it is available up until the day before the election (Minnesota, Nebraska, and Montana, among the states observed). Usually, the measure is applied uniformly in a state; however, in some states there are different start dates and/or hours of operation.

The Mission observed that this method is generally accepted by the voting population and administrators alike. This measure requires a high degree of citizen confidence in the institutions because it implies that the votes must be stored for that period of time; often at the electoral body headquarters, and with varying levels of security. Votes are then counted on Election Day. The purpose of this voting option is twofold: first, it eases the flow of voters for the electoral authority by helping to avoid long lines on Election Day; second, it facilitates the voting process for citizens, who can take advantage of the extended period of time to vote without having to vote on a specific day.

Since each state is responsible for developing its own electoral registry and there is no obligation on their part to share this information with other states or to integrate them at the national level, one person could potentially vote more than once for the same election. It is important to notice that only a few particular cases of this kind were identified and prosecuted.

As such, the Mission recommends that states continue to utilize mechanisms to share and compare information in order for each state to avoid duplication of registration for the same election. One of those tools is the Electronic Registration Information Center which allows participating states¹⁶ to improve the accuracy of voter rolls and increase access to voter

¹⁴ Colorado, Oregon, and Washington.

¹⁵ For more information on absentee and early voting please visit the Web site of the National Conference of State Legislators, *Absentee and Early Voting*, available at: <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

¹⁶ Currently, 21 States are a part of ERIC. For more information on the Electronic Registration Information Center please visit: <http://www.ericstates.org>

registration for all eligible citizens. Another mechanism in place is the Interstate Crosscheck Program¹⁷, which has the purpose of identifying possible duplicate registrations among states.¹⁸

Electoral Organization and the Use of Technology in the Election

U.S. elections have been held on a Tuesday since 1845. The fact that the election takes place on a working day may present difficulties for citizens that have to go to work. Taking this fact into consideration, the Mission suggests that Election Day be granted as a holiday in every state.

States are responsible for organizing elections and they have developed their own political, institutional and legal cultures around them. Typically, electoral management is the purview of each state's Secretary of the State; however, in some cases states assign the electoral administration to a State Board of Elections.

Nationwide, states delegate the autonomy to administer elections to thousands of different counties. In spite of common guidelines, there are variations on the functions assigned to each county. In some cases, municipalities will play a role on an even smaller, more local scale; for example, under the State Board of Elections in Wisconsin, there are 72 county officials and 1,854 municipal officials responsible for organizing elections.

The autonomy given to counties, and the fact that voting equipment technologies vary, frequently results in different voting modalities within the same state; for example, one county may use paper ballots, while another uses a voting machine and a third uses a different type of voting machine. This is the case in both New York and Iowa, which have four certified systems in use. In contrast, Oklahoma and Georgia are among the few states that enforce the use of the same equipment in all counties. Then there are the states of Colorado, Oregon, and Washington that hold their elections entirely by mail.

Notwithstanding the differences in the systems and technology used during the voting process, most states have adopted the Voluntary Voting System Guidelines provided by the Election Assistance Commission (EAC).¹⁹ In addition to that, the EAC operates a program to test and certify voting systems. States that do not have EAC-certified voting systems have developed comprehensive testing programs and can perform forensic audits of the units if it becomes necessary.

Regarding the selection of voting centers, both public and private spaces are utilized; including schools, churches and other common spaces where members of the community can interact. The voting period on Election Day varies between 11 and 15 hours, with polling stations often receiving more voters in the morning and at the time of closing. In this sense, the Mission recommends consideration of the establishment of more polling stations to avoid long lines of voters.

¹⁷ As of May 5, 2016, 30 states were part of the Interstate Crosscheck Program.

¹⁸ For more information about voter list accuracy please visit: <http://www.ncsl.org/research/elections-and-campaigns/voter-list-accuracy.aspx>

¹⁹ For more information on the Election Assistance Commission, its guidelines and voting system and certification programs please visit: <https://www.eac.gov/default.aspx>.

The use of provisional ballots is contemplated in most states and has been used, either in early voting or on the day of the election, within the on-site voting scheme. Although each state establishes its own rules, there are common guidelines. For example, if a citizen does not appear on the list and cannot provide any proof of identity or their voting status is unclear, the voter is still authorized to vote through a provisional ballot. In this case, that citizen has a period of time to prove before the relevant authority that he is eligible to vote, and if so confirmed, his vote will count.

The federal Help America Vote Act of 2002 requires the use of provisional ballots for those cases in which there is uncertainty about the voter's eligibility. Although how these ballots are handled and how many are issued varies, there are common guidelines and standards often determined by state law. In almost all states, they are kept separate from the other ballots until after the election when a determination is made on whether the citizen was eligible or not.

Regarding overseas voting, it is estimated that there are approximately six million American citizens living abroad, from which 2.6 million are eligible to vote under the rules of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). This Act provides the right to vote to active members of the military and their relatives residing outside the United States, which total about 1.2 million voters. The Act also applies to citizens residing outside the United States. It establishes general principles, such as the right to send a ballot no later than 45 days before federal elections; however, as each citizen living abroad also votes in a particular state, they must also comply with the specific rules of their state.

Electoral District Delimitation

In the U.S., individual states are responsible for establishing the boundaries of electoral districts. In various states the Mission observed a partisan design of the electoral districts for the House of Representatives, which impacts the competitiveness of elections. This issue has been the subject of numerous controversies and the biased design of electoral districts, known as gerrymandering, has been a long-standing issue in U.S. electoral processes. For example, in November 2016, after the election was held, a federal court ordered North Carolina to redraw House and Senate districts and to hold special primary and general elections in 2017.²⁰

Some States have developed a more impartial design of electoral districts that is guided by the convergence of demographic and geographic criteria rather than by political considerations. This practice is found especially in those states that have established independent redistricting commissions to design their electoral districts; for example, the Citizens Redistricting Commission²¹ in California and the Legislative Services Agency²² in Iowa.

This practice guarantees clearer standards in the definition of district lines, thus increasing the possibilities for political alternation. In this context, the Mission recognizes the establishment of

²⁰ Covington v. North Carolina, Case No. 1:15-cv-399 (M.D.N.C. 2016)

²¹ In California, the 14-member Commission is made up of five Republicans, five Democrats, and 4 not affiliated with either of those two parties but registered with another party or as decline-to-state. For more information on the California Citizens redistricting Commission please visit: <http://wedrawthelines.ca.gov/>

²² For more information regarding the Legislative Services Agency of Iowa please visit: <https://www.legis.iowa.gov/docs/Central/Guides/redist.pdf>

independent commissions for the design of electoral districts as a better practice and recommends that other states analyze the possibility of having such bodies in charge of this process.

Voter Registration

As with the other components of the electoral process, each state has the power to regulate the methods and timing for voter registration, resulting in different rules for each state. For the most part, voter registration is uninterrupted and is carried out even during non-electoral periods. While some states close voter registration months before the election, it is more common that registration is permitted up until weeks before the election. Twelve states²³, plus the District of Columbia, offer the possibility of registering to vote on the day of the election.

The modalities for voter registration are equally diverse. In certain states, an individual voter's registration application may be either sent by mail or the voter may go directly to a registration center. One of the modalities that has increased in recent years is that of online registration. In the context of this election, 31 states plus the District of Columbia offered online registration services.²⁴

Online registration is considered the simplest method and one that is more attuned to the current realities of the everyday use of technology. This method usually requires that citizens present proof of identity issued by a public institution. Additionally, Alaska, California, Connecticut, the District of Columbia, Oregon, Vermont and West Virginia have approved automatic enrollment.²⁵ While it was only implemented in one state (Oregon) for the 2016 election, it is likely that this modality will spread in the coming years due to the benefits it provides.

It is worth noting that the United States' electoral system is the only one in the Western Hemisphere that does not have a unified national electoral registry. As with electoral procedures, there are as many electoral rolls as there are states. In addition, electoral authorities face the challenge of maintaining an up-to-date electoral roll while the methods used for cleansing them vary from state to state.

The Mission took note of efforts to mine data from voter registration systems in at least two states. It is also important to note that election administrators took security measures to keep this information safe.

Voter Identification

²³ States that allow same day voter registration are: Colorado, Connecticut, District of Columbia, Idaho, Illinois, Iowa, Maine, Maryland (only early voting), Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming. California, Hawaii and Vermont have approved same day registration, but it was not yet in place for this election. For more information please visit: <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx>

²⁴ For more information regarding this practice please visit: <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>

²⁵ For information regarding this practice please visit: <http://www.ncsl.org/research/elections-and-campaigns/automatic-voter-registration.aspx>

Another aspect in which the U.S. system differs from others in the hemisphere relates to voter identification. Practically all countries in the region provide at least one free form of national identification to their citizens, which are used for electoral purposes. In the U.S., 32 states currently have laws in force that require voters to show some form of prescribed identification to verify their identity before casting a vote.²⁶

Proponents of these laws justify them as a means to prevent in-person voter fraud and increase public confidence in the electoral process. Opponents cite the lack of evidence that such fraud occurs²⁷ and argue that such laws impose unnecessary fiscal and administrative burdens on election administrators.²⁸ Opponents further argue that restrictive voter ID laws serve to disenfranchise otherwise eligible voters and have a disproportionate impact on low-income and minority voters who are less likely to possess the prescribed types of identification, and who may experience difficulty acquiring it.²⁹

Voting Rights

In terms of political participation, this election was the first since 1965 to take place without full protection of the Voting Rights Act (VRA), a piece of federal civil rights legislation enacted with the express purpose of guaranteeing the voting rights enshrined in the Fifteenth Amendment, and which prohibits any voting standard, practice, or procedure that results in the denial or abridgement of the right of any citizen to vote on account of race, color, or membership in certain language minority groups.³⁰

The VRA furthermore grants federal authorities various oversight powers, particularly in respect of jurisdictions that were determined, pursuant to a coverage formula established in Section 4(b) of the VRA, to have a history of discriminatory practices. Under Section 5 of the VRA, any change with respect to voting in jurisdictions identified by the coverage formula in Section 4(b) cannot be enforced until the jurisdiction had obtained preclearance from the Attorney General - -an executive branch official-- or from a federal court in the District of Columbia. In effect, Section 5 established a mechanism providing for federal supervision of electoral reforms in states which had a history of discriminatory practices in respect to voting rights.

In 2013, in the *Shelby County v. Holder* decision, the United States Supreme Court struck down the coverage formula prescribed in Section 4(b) of the VRA as a basis for determining which jurisdictions were subject to the federal preclearance requirements of Section 5. The effect of this decision was to eliminate the requirement that states subject to the coverage formula in

²⁶ National Conference of State Legislatures, *Voter Identification Requirements* (September 2016), available at: <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

²⁷ Demos, *Millions to the Polls: Restrictive Photo ID Law for Voting* (February 2014), available at: <http://www.demos.org/publication/millions-polls-restrictive-photo-id-laws-voting>

²⁸ National Conference of State Legislatures, *Voter Identification ID Requirements* (September 2016), available at: <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

²⁹ Demos, *Millions to the Polls: Restrictive Photo ID Law for Voting* (February 2014), available at: <http://www.demos.org/publication/millions-polls-restrictive-photo-id-laws-voting>

³⁰ Voting Rights Act of 1965, 42 U.S.C. 1973 et seq. (1965). See also: <https://www.justice.gov/crt/history-federal-voting-rights-laws>; While the VRA was originally enacted for a five year term, it was renewed and partially amended on several occasions. In 1970, the VRA was renewed for five extra years; in 1975 for seven, and in 1982 for twenty-five years. In 2006, Congress extended the legislation until 2031.

Section 4(b) seek federal preclearance for changes to voting rules or practices. The Shelby decision further limited other forms of federal supervision linked to the Section 4(b) coverage formula, including the deployment of election observers by the federal Department of Justice to polling centers in covered jurisdictions.

It is important to note that since 2013, several states which were previously subject to the Section 5 preclearance requirement have introduced restrictive voter legislation.³¹ Voting rights advocates have challenged some of such legislations in the courts and in some cases they have been struck down.

As the Department of Justice is no longer able to block changes to voting rules and practices found to be discriminatory before they take effect, civil rights organizations have been critical of the Shelby County decision and raised their concerns to the OAS/EOM during different meetings. Taking this into consideration, the Mission recommends that the impact of this decision be analyzed with hard data.

Political Financing

At the federal level in the U.S., there is public direct funding only for presidential candidates.³² Presidential nominees of each major party were eligible to the same amount of funds (\$20 million plus cost-of-living adjustment). The Mission took note that minor party candidates and new party candidates can receive partial public funding based on different formulas³³.

Indirect financing to candidates and parties, which includes free or subsidized access to media time and space, does not exist at any level. The prevailing trend is that major party candidates and nominees do not use public financing because presidential candidates that accept public funding must limit their spending to the amount of the grant.³⁴ In addition, they are not allowed to receive private contributions except to pay for legal and accounting expenses associated with complying with the campaign finance law. They can spend personal funds, but only up to \$50,000.

Given this scenario, in the 2016 race the two major party nominees, Hillary Clinton and Donald Trump, did not accept public funding. Former Governor of Maryland Martin O'Malley was the only presidential hopeful to accept public financing in the 2016 Democratic Party presidential primaries.

The United States campaign finance regime is the most deregulated it has been in 40 years. As a result of Supreme Court and lower court rulings³⁵, the U.S. political finance system relies mostly on private financing, whether from individuals, political action committees (PACs), super PACs, or other outside groups. Contribution limits vary according to the type of race, type of donor

³¹ See for example, Alabama, Mississippi, Virginia, Texas and North Carolina.

³² For more information regarding public financing of Presidential Elections, please visit: <http://www.fec.gov/pages/brochures/pubfund.shtml>.

³³ For more information on this topic, please visit: <http://www.fec.gov/pages/brochures/pubfund.shtml>.

³⁴ For more information regarding public financing of Presidential Elections, please visit: <http://www.fec.gov/pages/brochures/pubfund.shtml#anchor684182>.

³⁵ Among those rulings is important to highlight: Buckley v. Valeo, Citizens United v. Federal Election.

and recipient. While an individual's contribution limit for an election is \$2,700 to a candidate campaign committee, there is no limit to what corporations and unions can voluntarily contribute to independent expenditures by forming a super PAC that advocates expressly for or against a candidate without coordination. At the state-level, limits on contributions vary from case to case.³⁶

In all jurisdictions, there are no spending limits. As previously mentioned, limits are applicable only if a candidate voluntarily accepts public funding. In this context, the EOM observed that the role of outside spending in elections, particularly super PACs, has increased dramatically since the deregulation mandated in 2010.³⁷ Corporations and unions can use treasury funds to engage in issue and candidate advocacy as long as there is no coordination with the candidate and/or the party. In addition, before 2010, unions and corporations were limited in their ability to fund electioneering communications within 30 days of an election. Currently, they can expressly advocate for or against particular candidates, and at any time.

The Federal Elections Commission (FEC) is the regulatory federal agency responsible for disclosing campaign finance information, enforcing the provisions of the law and overseeing the public funding of Presidential elections.³⁸ Created in 1974 to administer and enforce the Federal Election Campaign Act (FECA) of 1971, the bipartisan structure of the commission can be conducive to gridlock and can present challenges to effectively supervise and enforce campaign finance law.

The OAS/EOM observed that the FEC has an effective reporting and access-to-information system in place. Any individual that contributes more than \$200 must disclose his or her name, address, occupation and employer, as well as the date and amount of contribution. PACs, super PACs, politically active tax exempt nonprofits, and other outside groups must also report to the FEC. All reports are available within 48 hours.

Although PACs, super PACs, and unions³⁹ are required by law to disclose expenditures and report their list of donors to the FEC, social welfare nonprofit interest groups⁴⁰ and trade association⁴¹ organizations must disclose expenditures but not their donors.⁴² This exception is due to the fact that social welfare nonprofits and trade associations are regulated by U.S. tax law, which prioritizes taxpayer privacy and therefore does not oblige them to report their list of contributors. Therefore, in the current regulatory framework, anonymous contributions may be used to fund campaigns.

³⁶ Spending limits are unconstitutional, but contribution limits vary by State. The following link contains a chart with State limits on Contributions to Candidates for the 2015-2016 election cycle:

<http://www.ncsl.org/Portals/1/documents/legismgt/elect/ContributionLimitstoCandidates2015-2016.pdf>

³⁷ While in the 2008 race, independent expenditures were \$134.6 million, it increased to \$982.3 million in 2012, and it is estimated it will reach \$1.3 billion in 2016 – in other words, an increase of 865% in independent expenditures since 2008. Data calculated based on information reported in Open Secrets available at:

<https://www.opensecrets.org/outsidespending/> (Information retrieved on November 5, 2016).

³⁸ For more information on the Federal Elections Commission, please visit: <http://www.fec.gov/about.shtml>

³⁹ Name given to unions in the tax law: 501 (c) 4

⁴⁰ Name given to social welfare nonprofit interest groups in the tax law: 501(c)4

⁴¹ Name given to trade association in the tax law: 501 (c) 6

⁴² Code of Federal Regulations (CFR) 104.5(c)(1)(ii); [104.3\(b\)\(3\)\(vii\)\(A\)](#); 104.4(a), (b) and (c); and [11 CFR 104.3\(b\)\(3\)\(vii\)\(C\)](#)

With the increased role of super PACs, which can raise unlimited funds, advocate for or against a candidate, spend without limits as long as they don't coordinate with the candidates or parties, the issue of coordination enforcement is important to revisit.

The Mission recommends that disclosure laws be strengthened in order to allow for more information on the sources of outside spending. Addressing this issue would entail actions taken by different government agencies. Furthermore, new and more precise coordination rules that address super PACs in particular would also increase the level of transparency of the financing system as they may potentially minimize back-door influence and collusion of interests.

The use of government resources to help incumbents or any candidate is prohibited.⁴³ Employees covered by the Hatch Act, the federal law that prohibits federal employees from participating in campaign activities and/or directly supporting candidates, may run for office in a nonpartisan election (e.g., school board). Other branches of government, as well as federal agencies and states, have created their own guidelines to institutionalize this principle that government funds and affairs should not be spent for electoral purposes. Other bans also apply, such as no campaign activity in federal buildings, solicitation of federal employees, or use of equipment and supplies.

Media

The First Amendment to the United States Constitution protects freedom of the press and of expression.⁴⁴ The U.S. legal system provides instruments in order to protect freedom of expression in an election. The Communications Act establishes that broadcasting stations should give reasonable access to all legally qualified candidates for federal elective office.⁴⁵ The Federal Communications Commission may revoke any station license or construction permit for willful or repeated failure to grant reasonable airtime.⁴⁶

Regarding equal opportunities for candidates, current regulations establish that if any station grants airtime to any one candidate it shall guarantee the same opportunities to other candidates.⁴⁷ However, there are exceptions to the equal opportunity of access such as

⁴³ The Hatch Act of 1939 is the Federal law that prohibits federal employees from participating in campaign activities and/or directly supporting candidates. Under the Act, employees are permitted to contribute to a candidate's campaign, but are restricted from using official authority to influence an election, including soliciting or receiving political contributions and engaging in political activity — including wearing or displaying political promotional materials — while on duty. The Hatch Act is not a criminal statute; it is considered an administrative constraint on government employees.

⁴⁴ U.S. Const. amend. I. *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

⁴⁵ Section 312 [47 U.S.C. §312] Administrative sanctions. Communications Act of 1934. And Section 73.1944 [47 CFR §73.1944] Reasonable Access.

⁴⁶ Section 312 [47 U.S.C. §312] Administrative sanctions. Communications Act of 1934. And Section 73.1944 [47 CFR §73.1944] Reasonable Access.

⁴⁷ Section 315 [47 U.S.C. §315] Facilities for candidates for public office. Communications Act of 1934. And Section 73.1941 [47 CFR §73.1941] Equal Opportunities.

newscasts, news interviews, news documentaries -if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary-, or on-the-spot coverage of news events.⁴⁸

The Mission analyzed media coverage of the campaign. The two major party candidates received significant coverage by TV, radio, and print outlets. A large media market and fierce competition among the biggest media groups delivered thousands of hours of electoral coverage for diverse audiences.

The Mission found coverage for both major candidates to be for the most part equal in time and more personally oriented rather than policy driven. In addition, traditional media outlets stepped up efforts to check facts and limit bias during the election, with journalists attempting to call out candidates' mistakes in real-time.

The EOM observed with concern a rise in polarizing and divisive rhetoric during the campaign that singled out certain groups in a negative context. Furthermore, threats to take judicial action against journalists for expressing their views and restricting their access to cover events were worrisome.

Digital media, and in particular social media, played an unprecedented role in the 2016 U.S. presidential election. According to a survey of the Pew Research Center, "three-in-ten Americans turned to the 2016 presidential candidates' digital messages for news and information about the election. The candidates' social media posts outpaced their websites and emails as sources of this news."⁴⁹

Purveyors of fake news and misinformation found a fast and highly effective means to spread information on social media outlets, prompting debates over whether platforms should intervene or not to filter out such information. For their part, the platforms asked that consumers use a critical eye to help weed out fake news rather than circulating click bait and misleading information.

Political Participation of Women

Equal representation of women and men in elected office remains a significant challenge for the country, despite the expectations raised at the presidential level, where for the first time a woman ran for the presidency after having won a presidential primary of a major party. With a total of 104 women set to serve in the 115th Congress in January 2017, the same number as in the 114th Congress, no progress was made in this election regarding the number of women in Congress.

For the Senate, 6 women were elected, which brought to 21 the total number of women that serve in the Senate after this election--one more than the number serving in the previous

⁴⁸ Section 315 [47 U.S.C. §315] Facilities for candidates for public office. Communications Act of 1934. And Section 73.1941 [47 CFR §73.1941] Equal Opportunities.

⁴⁹ Pew Research Center, *10 Facts about the Changing Digital News Landscape* (September 2016), available at: <http://www.pewresearch.org/fact-tank/2016/09/14/facts-about-the-changing-digital-news-landscape/>

Congress (20). For the U.S. House of Representatives, 83 women were elected, a decline of one from the total number of women previously serving (84).⁵⁰

The Mission has identified several obstacles of institutional, political and cultural nature that help explain the underrepresentation of women in legislatures and that affect competitiveness in the election from a gender perspective. Among the institutional barriers, the U.S. electoral system has some of the features that comparative research suggests tends to favor men, namely a majoritarian system of uninominal districts and the possibility of re-election. The lack of public funding for campaigns may also play a role in having less women running for office. In this context, women's PACs, such as Emily's List and Maggie's List, emerge as a critical strategy for recruiting and funding women candidates for office.

Likewise, the lack of conditions for adopting legislation requiring gender equality in politics may negatively impact the number of female political candidates. In other OAS Member States, changes in electoral rules requiring the adoption of gender quotas and parity have led to significant progress in having more women elected to legislatures. With women occupying an average of only 20% of congressional seats, the U.S. is globally ranked ninety-ninth with regard to the percentage of women in its national legislature, which is significantly below the average in the rest of the Americas (27.8%) and in Europe (25.7%)⁵¹.

Given the particularities of the U.S. electoral and political system mentioned in this report, the Mission would like to highlight the critical role that political parties can play in the advancement towards a more equal representation of men and women in politics. In this context, the Mission would like to recommend that political parties consider the importance of implementing proactive strategies to increase the number of female political candidates. These strategies could include: female candidate recruitment; support for access to financing and relevant training; and the appointment of more women to party leadership roles in order to make the party organization itself a source of female candidates.

Conclusions and Acknowledgements

OAS Electoral Observation Missions are useful tools for strengthening democratic institutions in all the countries of the hemisphere. Not only do they support those countries that face significant institutional challenges, but they also provide inputs to consolidated, established democracies that recognize the need for continuous improvement.

This Mission was not able to fully allocate the financial resources needed and as such had to carry out its work under conditions that posed significant administrative and financial challenges for the Department of Electoral Cooperation and Observation and for the Mission itself. This deployment required the combined effort of all areas of the OAS General Secretariat, which supported the department with great willingness and worked hand-in-hand with DECO team members.

⁵⁰ Information published by the Center for American Women and Politics at the Eagleton Institute of Politics (Rutgers University).

⁵¹ OSCE countries, including Nordic countries. Data available at: <http://www.ipu.org/wmn-e/world.htm>

The Mission would like to once again appeal to OAS Member States and observer countries to continue to financially support the electoral observation program.

The Mission would like to express its gratitude to the National Association of Secretaries of States, the National Conference of State Legislators, the National Association of State Election Directors, the U.S. Election Assistance Commission, the Federal Election Commission, the Federal Government, Secretaries of State and State Boards of Elections, as well as all the institutions and individuals that kindly opened their doors to the members of the Mission.

The Mission commends the U.S. citizenry which both carried out and participated in an important electoral process. Even in the context of a strong and controversial campaign, the Mission witnessed an electoral process during which citizens were able to express their differences through institutional mechanisms, in a free and respectful manner.

Finally, the EOM would also like to thank the donors whose generous support made the deployment of this Mission possible, including Bolivia, Chile, the Dominican Republic, Mexico, and Peru.