



## **OAS Observation Mission Highlights Institutional Strength of the U.S. System**

In response to an invitation from the State Department of the United States of America, the Organization of American States deployed its first-ever Electoral Observation Mission (OAS/EOM) to observe the November 8 General Elections. 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 US 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 states 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 local legislation. One such state, Pennsylvania, provided the Mission with information and the opportunity to visit electoral officials prior to the election on a preliminary mission that also included the state of Georgia.

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 has allowed the Mission to obtain a broad perspective of the various aspects observed in the US electoral process.

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.

- **Election Day**

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

Throughout the day, our team observed various voting systems and procedures, which included 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 vote in a reasonable amount of time considering the different choices on the ballot.

The polling places observed by the 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 especially early in the morning and in the afternoon, with waiting times of over an hour in some cases. 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. These technical challenges, however, were solved efficiently following the contingency procedures that were in place.

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

The EOM observed large amounts 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 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).

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 a safe and convenient way to vote.

- **Uniqueness of the U.S. electoral system**

The U.S. electoral system presents several characteristics that make it unique in the hemisphere. One of these aspects is the Electoral College by which the President is elected through an indirect vote consisting of the accumulation of electoral votes tallied state by state, as opposed to the most common electoral practice of direct election through popular vote.

The immense variety of election laws, rules and voting mechanisms is embedded in the decentralized nature of the U.S. system. How these different states coexist in elections at a national level make it truly unique. Organization is left to state, county, and township levels in some cases, varying in their degree of centralization.

- **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 voters) and the District of Columbia, individuals could vote in person with no justification required.<sup>1</sup> According to the information reported, more than 47 million citizens voted before Election Day.

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<sup>1</sup> National Conference of State Legislators, *Absentee and Early Voting* (October 2016), available at: <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>

This method is generally accepted by the voting population and administrators alike. 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.

As such, the Mission recommends that states continue to utilize and expand existing mechanisms<sup>2</sup> to share and compare information in order for each state to avoid duplicity of registration for the same election.

- **Electoral district delimitation**

The biased design of electoral districts, known as gerrymandering, has been a historic issue in U.S. electoral processes. In various states the Mission observed a partisan design of the electoral districts for the House of Representatives, which affects the competitiveness of these elections.

In California and Iowa, two states observed by the Mission, the design of electoral districts is drawn by an independent, non-partisan commission. 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 independent commissions for the design of electoral districts as a better practice.

- **Voter Identification**

Another aspect in which the U.S. system differs from others in the hemisphere is related to voter identification. Practically all countries in the region provide at least one free form of national identification to their citizens, which is 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.<sup>3</sup> Proponents of these laws justify them as a means to prevent in-person voter fraud and increase public confidence in the

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<sup>2</sup> Information available at the Electronic Registration Information Center (<http://ericstates.org/>) and at the Interstate Voter Registration Crosscheck Program

<sup>3</sup> National Conference of State Legislatures, *Voter Identification Requirements* (September 2016), available at: <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

electoral process. Opponents cite the lack of evidence that such fraud occurs<sup>4</sup> and argue that such laws impose unnecessary fiscal and administrative burdens on election administrators.<sup>5</sup> 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.<sup>6</sup>

- **Political rights**

In terms of political participation, this election was the first since 1965 to take place without full protection of the Voting Rights Act, a law designed with the express purpose of protecting the abridgement or denial of voting rights to any citizen on account of race, color, or language groups. In 2013, the Supreme Court struck down several Sections of the Act. The Mission recommends that the impact of this decision be analyzed with hard data.

- **Political financing**

The Mission takes note that the rules that govern the bipartisan structure of the Federal Elections Commission (FEC) make it difficult to effectively conduct oversight and enforcement of campaign finance law.

The campaign finance regime is the most deregulated it has been in 40 years, and for this election it relied mostly on private money. As a result of the Supreme Court ruling in *Citizens United v. FEC*, spending limits are unconstitutional unless candidates accept public funding. As a result, the role of outside spending in elections, particularly from independent expenditure-only committees (super PACs), has increased.

Although difficult to enforce, super PACs cannot coordinate their independent expenditures with candidates or parties. New, more precise and stricter coordination rules that address super

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<sup>4</sup> Demos, *Millions to the Polls: Restrictive Photo ID Law for Voting*, available at:

<http://www.demos.org/publication/millions-polls-restrictive-photo-id-laws-voting>

<sup>5</sup> National Conference of State Legislatures, *Voter Identification ID Requirements* (September 2016), available at:

<http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx>

<sup>6</sup> Demos, *Millions to the Polls: Restrictive Photo ID Law for Voting*, available at:

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PACs in particular would benefit the level of transparency of the financing system as it may potentially minimize back-door influence and the collusion of interests.

The Mission commends the work of the FEC with respect to the enforcement of current disclosure requirements. Candidates, PACs, super PACs, and other outside groups periodically file reports to the FEC, including contributions and expenditures, and such information is available online within 48 hours.

- **Media**

The Mission analyzed media coverage of the campaign. The two major party candidates received significant coverage by TV, radio, and print outlets. The Mission observed that digital and social media broadened the impact of news and commentary. According 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.”<sup>7</sup>

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 candidates to be for the most part equal in time and more personally oriented rather than policy driven.

The EOM observed with concern a rise in polarizing and divisive rhetoric during the campaign that could be interpreted as having a racial undertone. Furthermore, threats by one candidate to take judicial action against journalists for expressing their views and restricting their access to cover events were worrisome. The Mission hopes that these expressions were all part of campaign rhetoric and civil dialogue will prevail among opposing views.

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<sup>7</sup> 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/>

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 this country was founded.

Amidst accusations of a rigged electoral system, the reality 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.

- **Gender**

Our Mission analyzed issues related to women's access to the political arena. We observed that the absence of quotas for political participation and the possibility of re-election make the growth of female participation in elected positions very difficult. In this electoral process, for instance, the preliminary results indicate that the number of women in the House of Representatives could decrease to 82, in comparison with the 104 seats that are currently held by women. The Mission would like to highlight the need to promote actions and policies that encourage the presence of women in leading elected positions, in line with the significant progress in the Western hemisphere in this matter.

- **Acknowledgements**

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efforts that allowed us to surpass the objectives we originally set out for this Mission. The EOM also wishes to recognize OAS Secretary General Luis Almagro for his support and confidence.

Finally, the Mission commends U.S. citizenry who yesterday both carried out and participated in an important Election Day. Even in the context of a strong and controversial campaign, we witnessed an electoral process during which citizens were able to express their differences through institutional mechanisms, in a free and respectful manner. It is this attitude that should inspire this country's political leadership in order to meet the complex but urgent task of uniting a nation around the quest for common goals.

In that regard, we celebrate Mrs. Hillary Clinton's great democratic conviction in recognizing the electoral results and offering her collaboration to the next President. Similarly, we congratulate Mr. Donald Trump, who will become the 45th President of the United States and the inheritor of an institutional legacy of democratic values, freedom and tolerance.