

On the United States's Observance of Citizen Voting Rights in the Presidential Election on November 6, 2012

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FOR A WHOLE YEAR, the world community closely followed the ups and downs of political struggle, and analysts and pundits carefully scrutinized the experience of organizing and conducting elections in the United States. Russian relevant NGOs, having done their first-ever comprehensive remote monitoring of a U.S. presidential election campaign, concluded that a majority of the generally recognized principles for democratic elections, which the U.S. has an international obligation to implement, had not been fully met in organizing the 2012 presidential election.¹ A similar conclusion was also reached by the election observation missions sent by the OSCE Office for Democratic Institutions and Human Rights, which in its reports since the beginning of 2002, including on November 6, 2012² provide an enormous amount of factual evidence of massive voting rights violations. In particular, there is a recommendation that the United States authorities should solve the problem of disproportionate restrictions on the right to active suffrage for whole categories of American citizens, ensure adequate access for international observers to the election procedures and address other important issues of the organization of the electoral process.

In the course of the November 6, 2012 presidential election, problems again arose, the main reason behind which lies in the fact that the election of the U.S. President is not direct, not universal, not equal, not fair, not transparent, and, in a number of cases, does not safeguard the secrecy of voting as well. Let us consider some of these problems.

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Electoral System: Electors versus Direct Election

THE HEAD OF STATE was not elected by voters but by a very limited number of the so-called electors often not bound to vote for this or that candidate. It is known that the Electoral College is made up of U.S. citizens elected by each state in the primary elections solely to ensure the election of President and Vice President. The U.S. Constitution requires that candidates for President and Vice President receive an absolute majority of electoral votes in order to be elected (that is not fewer than 270 votes). Under the law, the presidency winner is not decided by popular vote but by 538 electors in the Electoral College (of the 315 million populace of the U.S.).* The history of presidential elections knows instances when electors ignored the popular vote or voted for a candidate other than of their political party. If, however, no candidate receives the required majority, the House of Representatives elects the President from the three Presidential candidates who received the most electoral votes.** We shall note in passing that here, too, the principle of indirect presidential elections is embedded as an additional administrative safeguard. Each state has as many electors as it has members in the U.S. Senate and House of Representatives. Washington D.C. as a special federal district, not having voting representation in the U.S. Congress, is entitled to three electors in the Electoral College.

Electors themselves are elected on a winner-take-all basis, except in Maine and Nebraska, which use a proportional vote system. This means that all electors pledged to the presidential candidate who wins the most votes in a state become electors for that state (in Maine and Nebraska, electors are awarded in proportion to popular vote results). The deviation from the average representation level constitutes up to 440 thousand voters. This mechanism also shows that the weight of an electoral vote is not uniform for all of the Electoral College; these weights vary (depending on the electoral system), which violates the principle of equality among the

* Barack Obama got 332 electoral votes, Mitt Romney 206; in the 29 presidential elections held since 1900, Obama's result is 20th, and besides he received fewer electoral votes than in 2008 when he was first elected President of the United States (then he got 365 electoral votes).

** In the presidential elections in 1800, Thomas Jefferson and Aaron Burr each received 73 electoral votes (at that time, the Electoral College was made up of 138 electors, each of the electors had two votes, but could give both or one of them only for the candidate for President, and the runner-up automatically became Vice President. As a result of the tie, the House of Representatives elected the President.

electors. In general, under this mechanism there is also failure in maintaining the principle of equality of voters in the election for Head of State (voters of the various states are in different and unequal legal conditions). Note that this does not exclude the situation (in practice it has already happened) where a U.S. President is elected by the electors with a lesser popular vote than the loser.* The number of voters per state elector varies over an impermissibly broad range, for example:

State	Number of state residents 18 years old and over	Number of electors	Number of residents per elector
Wyoming	428,224	3	142,741
Vermont	496,508	3	165,503
District of Columbia	500,908	3	166,969
California	27,958,916	55	508,344
Florida	14,799,219	29	510,318
New York	15,053,173	29	519,075

An alternative Electoral College system is now being increasingly discussed in the USA. The National Popular Vote Interstate Compact, aka the “Amar Plan,” has been promoted since 2007. Because the U.S. Constitution does not expressly state how states must determine their electors and, to be sure, does not establish rules as to who they should vote for, while state laws also generally do not set them (states have legal control over their electors, but only in 24 states is an improper vote by an

* This situation has already occurred thrice in the past presidential elections: in 1876, Republican Rutherford B. Hayes received 185 electoral votes and 4,034,311 (47.95%) popular votes, while his loser rival, Democrat Samuel J. Tilden, got 184 electoral votes and 4,288,546 (50.97%) popular votes; in 1888, Republican Benjamin Harrison garnered 233 electoral votes and 5,443,892 (47.82%) popular votes as compared to 168 electoral votes and 5,534,488 (48.62 %) popular votes for Democrat Grover Cleveland; in 2000, Democrat Al Gore received 50,992,335 popular votes and had 266 electoral votes, while Republican George W. Bush got 50,455,156 popular votes (which was less than Al Gore) and 271 electoral votes, and was elected President of the USA.

elector punishable by law, although these laws have never ever been applied in practice), then under the aforesaid national compact which states are joining, the Electoral College members representing their states will not vote for the winner in the state, but for the national popular vote winner (i.e., the situation of 2000 with Al Gore and Florida's 25 electoral votes will not be repeated). However, this will go into effect only when states with a majority of electoral votes (270 out of 538) have ratified the compact. As of now, it has been joined by eight states, in particular Washington, Hawaii, Illinois, Maryland, New Jersey, and the District of Columbia, which have in the aggregate 132 votes in the Electoral College.

Indirect presidential elections also give rise to a paradox where the election institution itself, namely the institution of election of the President of the USA, under certain conditions turns into its very opposite, when the office of President may be assumed by a person who has not even passed the procedure of indirect elections through the Electoral College. Thus, in certain cases, the Vice President can become President, not having been elected by the Electoral College; that is, not having gone through the procedure of indirect elections, including an official nomination at a national convention of a political party (the case of Gerald Ford). In general, the American electoral system, based on the provisions of the U.S. Constitution, allows the possibility of assuming an elective office without election procedures, which should not be acceptable for a democratic law-governed state. In these conditions, the institution of indirect elections needs to be replaced by a direct general election of U.S. President.

Another feature of the American electoral system is the lack of political pluralism and the virtual impossibility to bring a third-party candidate to power. In the U.S., there are 38 registered political parties at the federal level; 32 presidential candidates appeared on ballots in the various states, but only four of them were on ballots in a sufficient number of states to compete for victory.* But in reality the American electoral system gave the opportunity to fight for the presidency only to two candidates: Democrat Barack Obama and Republican Mitt Romney.

* These candidates were incumbent President Barack Obama from the Democratic Party, former Massachusetts Governor Mitt Romney from the Republican Party, former New Mexico Governor Gary Johnson from the Libertarian Party, included on ballots in 48 states and the District of Columbia, and Jill Stein from the Green Party, listed on ballots in 38 states and the District of Columbia.

The number of presidential candidates included on ballots for voting in some states in 2012

State	Number of candidates included on ballots
Alaska	4
Indiana	19
Colorado	16
Louisiana	11
Minnesota	10
Montana	3
New Jersey	10
Oklahoma	2
Florida	17
Total in the USA	32

The Electoral Legislation

IN THE USA, there is a decentralized system of organizing and conducting federal elections. All 50 states, the District of Columbia and six territories have separate legislation on elections for U.S. President as Head of State. Differences in laws and procedures exist even among the counties of a state. Furthermore, a considerable amount of electoral body functions are legislatively bestowed on executive bodies of states, and campaign finance and electioneering regulations are virtually nonexistent. In the run-up to the presidential election, at least 180 bills were submitted to various instances in 41 states to toughen citizen voting rules; another 27 similar laws were pending in six states; there were passed 25 laws and issued two executive orders affecting the election process in 19 states (Iowa, Alabama, Virginia, Wisconsin, Georgia, West Virginia, Illinois, Kansas, Mississippi, Maine, New Hampshire, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Florida, South Dakota, and South Carolina), of

them 17 states (except Alabama and Maine) passed laws of a restrictive nature that influenced the outcome of the election. The above states in the aggregate nominate 218 electors, or almost 80 percent necessary to elect a U.S. President. In general, changes in state legislation on presidential elections were introduced almost up to the very day of voting, which gave rise to substantial legal uncertainty regarding the realization of the voting rights of Americans and is contrary to U.S. international obligations to create in advance a stable legal framework for elections.

Voter Registration

VOTER REGISTRATION was carried out with numerous violations of citizens' rights. As of the start of 2012, one in five Americans was not listed on the voter lists; the details of 24 million voters were inaccurate; 2.75 million people were registered simultaneously in several states. The lists also number about 1.8 million "dead souls." In the USA, there is no single register of voters, including in most states. And besides, there are no internal passports in the United States (you can show, for example, a driver's license), on account of which the country has no unified approach to citizen identification at the polling places. In 19 states, voters at the precincts were not asked at all to show their ID cards, but were simply checked against the lists, and another 16 states allowed voters without photo identification to cast votes. According to the statistics, 11 million Americans, mostly from low income sectors, had no photo identification and the idea of a mandatory presentation of any ID with a photo for eligibility to vote caused a heated debate. The Republicans insisted on this, while the Democrats staunchly opposed them. In 15 states that required those voting to show photo ID, citizens could be denied the right to vote, even if they were on the lists. In itself, the introduction of a single identification card for voting purposes appears to be a logical step only in case if it does not lead to a breach of a number of legal rights of Americans, which sometimes happened, because, for example, in some states the only office issuing this document had worked only once a month. In some states, voters' identification documents were used by law to cut off from voting a part of the politically objectionable electorate.³ As the practice of registering voters has shown, a significant portion of American voters turned out not to be included on the voter lists and, therefore, could not participate in the vote.

In general, the presidential election can in no way be considered a

general election because the formal victory of the Democratic nominee, incumbent President Barack Obama was achieved by a margin of 326,000 votes in just eight so-called swing states. Moreover, in the USA, about 26 million citizens eligible to vote were not registered as voters, about 5.9 million citizens were denied the right to vote due to criminal convictions, including 2.6 million ex-offenders, and 6 million people who came to vote could not find their names on the voter lists.

State	Number of state residents 18 years old and over	Number of registered voters statewide	Registered voters percentage of population
Wyoming	428,224	292,146	68.22
Hawaii	1,056,483	705,668	66.79
West Virginia	1,465,576	1,026,221	70.02
California	27,958,916	18,245,970	65.26
Nevada	2,035,543	1,258,409	61.82
Tennessee	4,850,104	3,447,163	71.07
Texas	18,279,737	13,065,425	71.47
Utah	1,892,858	1,310,760	69.25
Total in the USA	234, 822,511	186,875,481	79.58

Federal Election Administration

THE OBVIOUS DISADVANTAGE of the American electoral system is the lack of a centralized independent agency that would administer presidential elections. State and territory authorities deal with organizing the voting process. In the USA, there are two federal election commissions: the Federal Election Commission, which oversees compliance with federal election laws mainly in the financial sphere, and the Election Assistance Commission, which serves as a national clearinghouse on matters concerning the administration of elections under federal law and distributes payments to states on the basis of a U.S. law with the eloquent

title Help America Vote Act (HAVA).⁴ Both the commissions are constituted strictly on a bipartisan basis, although the American political system is known to be a multiparty one. As early as 2005, the special Carter-Baker report on federal election reform contained a proposal for the reconstitution of election agencies on a non-partisan basis. Bipartisan dominance sometimes leads to the fact that the commissions cannot be formed in a timely manner or are not in a position to make decisions, and those have to be made for them by their staff: in the November 6, 2012 presidential election, the federal election commissions actually did not work due to partisan contradictions and the equal number of their Democratic and Republican members, which even the observer mission from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) was compelled to indicate. The lack of an independent non-politicized central election agency is one of the causes of violations of citizen voting rights in the USA.

Financing of Elections

LIMITS ON DONATION AMOUNTS were declared unconstitutional by the U.S. Supreme Court. In this connection many have criticized the imperfectness of the legislation allowing for the expenditure of huge amounts of money on election campaigns, which actually leaves out of the election process any candidate without strong financial support or significant personal capital and reduces the political arena.

For the first time, both candidates rejected public funding for their campaigns, and private money became the “maker” of the elections. Buddy Roemer was the only candidate among the Republicans who took public money (91.2 million dollars) for the primaries, but later he withdrew from the presidential race.

Meanwhile the demand for less financial influence and impact on politics and elections is getting increasingly insistent. The mega-role of big political money, including anonymous money, as well as of political action committees and non-profit public organizations in electioneering undermines, in the opinion of Americans themselves, the democratic character of elections. Political action committees transformed presidential election 2012. Americans are against them. According to opinion polls, one in seven Americans favors them being ruled illegal. The U.S. example illustrates that the market, commercial approach to electoral organizing can't be a mainstream road or – to use American terminology

– a development highway for the institution of democratic elections, a tool for the expression of the will of voters.

Voting by Voters: Early Voting

IN 2012, EARLY VOTING was enacted in thirty-two states. Currently more and more voters prefer early voting. Iowa and Ohio in this election were the first states to begin early voting on September 27 and October 2, respectively. On October 15, the U.S. President’s wife, First Lady Michelle Obama, used the early-voting privilege. She said on Twitter that she had voted for her husband and publicly called on her readers and supporters to vote for the incumbent. On October 25, he also voted early and urged voters to follow suit. Thus, Obama became the first U.S. President who used early voting as a means of political campaign for his re-election.

During the period of early voting, a number of important events occur in the country, including especially presidential debates, which could affect the expression of voters’ will, but cannot because they have already cast their votes early. In 21 states, voters must prove they will be out of town, busy at work or unable to attend a polling place for family or health reasons on election day and would therefore like to vote early; in 27 states one can vote early by mail without giving any reasons; and two states – Oregon and Washington – have all elections vote by mail.

The number of voters who voted early in some states

State	Number of voters who took part in the election	Number of early voters	Percentage of early voters
Washington	3,172,779	1,629,699	51.37%
Colorado	2,564,959	1,872,987	73.02%
Montana	484,048	257,591	53.22%
Nevada	1,016,664	701,845	69.03%
Oregon	1,789,270	1,109,175	61.99%
North Carolina	4,542,468	2,757,476	60.70%
Tennessee	2,454,470	1,456,804	59.35%
Florida	8,474,179	4,469,393	52.74%

State electoral systems use facilities for remote voting primarily by some categories of voters such as those serving overseas in the military or otherwise.

In 31 states, the possibility is provided for remote voting by such voters with the employment of electronic hardware – by sending a paper ballot by fax, with the use of e-mail, a safe (protected) website or through other combinations of facilities. In this case, however, not all of the technologies used ensure the safety and proper accounting of the votes, as well as the observance of the principle of the secret ballot.

Voter preferences when voting early and on polling day in the so-called swing states, that is, in states where the major battle raged between the candidates and whose voting results were going to be decisive for overall victory, differ substantially, according to data from U.S. internet resources.⁵ It was the swing state results that determined the overall outcome of the election. If there had not been the administrative support by the incumbent president of early voting in the swing states on such a large scale (over 70 percent), then in all probability Mitt Romney would have received the majority of popular votes in those states. The data below show that Barack Obama won in the swing states – Iowa, Virginia, Wisconsin, Nevada, Ohio, North Carolina, Florida – primarily due to the early voting process.

In general, the results of the election cannot be considered convincing also because Obama's victory was clinched by early voting which began – according to the legislation of individual states – 30-45 days prior to Election Day, November 6, and which was attended by about 33% of all U.S. registered voters. Moreover, it was accompanied by open use of the so-called administrative resources, even including the fact that Democrats arranged transportation for their supporters to vote. And it is not impossible that they voted in several precincts.

Ensuring the Secrecy of Voting

THE PRINCIPLE of the secret ballot is declared in the legislation of all the states, but in practice things are not always so neat. Some of the states provide for voting by fax and email by voters outside the U.S., which does not ensure the observance of the principle of the secret ballot.

In most states, citizens can when registering as voters declare their party affiliation, which is the basis for their being allowed to vote at the respective party's primaries. Another violation of the principle of the

Voter preferences when voting early and on polling day in the swing states

State	Results of early voting, thousand votes		Results of voting on polling day, thousand votes		Total vote in thousands	
	Obama	Romney	Obama	Romney	Obama	Romney
Iowa	385	287	437	443	822	730
Virginia	229	198	1742	1624	1971	1822
Wisconsin	146	110	1474	1300	1620	1410
Colorado	913	959	325	166	1238	1125
Nevada	379	321	149	141	528	462
Ohio	998	792	1699	1801	2697	2593
North Carolina	1654	1102	524	1173	2178	2275
Florida	2315	2153	1920	2009	4235	4162
Total	7019	5922	8270	8657	15289	14579
Total, %	54.24	45.76	48.86	51.14	51.19	48.81

Another violation of the principle of the secret ballot is casting provisional ballots, which requires subsequent verification of a voter’s eligibility. As follows from the rules for such voting, a provisional ballot must be kept with reference to the concrete voter, which is not consistent with the principle under consideration.

There are also other forms of violation of secrecy of voting in some U.S. states. Thus, in Texas, observers have the right to verify a ballot if the voter is physically unable to fill it out or lacks a command of English and has been helped by an employee of the election commission. Another

source of violation was related to the Instagram service – a free photo sharing app, where voters in the course of voting posted photos of their filled-out ballots, which totaled more than 460,000. Only in some states do laws prohibit photographing completed ballots.*

Voter Registration and Vote Counting

ELECTRONIC VOTING SYSTEMS are being vigorously introduced in the USA. However, the American hardware does not provide printed output or any other documentary proof of citizen participation in the electoral process. The software, moreover, is declared a trade secret and not subject to control, which in principle allows operators of such systems to dump or rewrite votes in favor of this or that candidate without leaving a trace of wrongdoing.

Since the early 2000s, ODIHR experts have always pointed to the computer-related voting problems in the U.S.: failure to observe the secrecy of voting; the need for proper hardcopy accounting of voting results with the possibility of mechanical checking; ensuring transparency of the operation of the electronic machines; issues related to public trust in the voting facilities with the possibility of receiving software codes; independent testing of computers; introducing the possibility of a vote recount given the minimum difference of votes, and much more. But none of these problems are solved at the federal level.

An interesting phenomenon associated with the discrepancy between polls and election results was recorded in the November 6, 2012 election. In 22 states and the D.C. (45% of all states), the divergence of vote predictions (according to the data on the website realclearpolitics.com***) from the actual vote constituted over 5% (see next page).

In 15 of 21 cases (71%), a sharp increase in voting results relative to the last pre-election polls (over 5%) occurred in favor of the party whose governor headed the state. All in all, Democrats chalked up more than 5 percent increase in 14 states, Republicans in 9. This indicator objectively characterizes the “consistency” of the ballot counting procedures with the conduct of fair and genuine elections.

*Thus, in North Carolina police seized the phone from one of the Instagram users when the latter tried to take a picture of his ballot, and fined him. In Wisconsin, photographing a ballot is a criminal offense; no such instances were recorded during this election.

** When comparing polls with final results, use was made of the latest (pre-Election-Day) figures posted at realclearpolitics.com

No.	States (the number of electors)	Opinion polls	Voting results	The greatest divergence
1.	Idaho (4)	63% - Rep., 27% - Dem.	64.5% - Rep., 32.6% - Dem.	+ 5.6 (Dem.)
2.	Alabama (9)	46.8% - Rep., 38.6% - Dem.	60.7% - Rep., 38.4% - Dem.	+ 13.9 (Rep.)
3.	Alaska (3)	48.9% - Rep., 31.9% - Dem.	54.8% - Rep., 41.3% - Dem.	+ 9.4 (Dem.)
4.	Arkansas (6)	58% - Rep., 31% - Dem.	60.5% - Rep., 36.9% - Dem.	+ 5.9 (Dem.)
5.	Wyoming (3)	55.7% - Rep., 24.9% - Dem.	69.3% - Rep., 28.0% - Dem.	+ 13.6 (Rep.)
6.	Vermont (3)	29.9% - Rep., 50.4% - Dem.	30.9% - Rep., 66.5% - Dem.	+ 6.16 (Dem.)
7.	Hawaii (4)	34% - Rep., 61% - Dem.	27.8% - Rep., 70.1% - Dem.	+ 9.6 (Dem.)
8.	Delaware (3)	34.3% - Rep., 51.2% - Dem.	40.0% - Rep., 58.6% - Dem.	+ 7.4 (Dem.)
9.	West Virginia (5)	54% - Rep., 33% - Dem.	62.3% - Rep., 35.5% - Dem.	+ 8.3 (Rep.)
10.	California (55)	39% - Rep., 54% - Dem.	37.2% - Rep., 60.3% - Dem.	+ 5.3 (Dem.)
11.	Kansas (6)	47.9% - Rep., 37.2% - Dem.	60% - Rep., 38% - Dem.	+ 12.1 (Rep.)
12.	Kentucky (8)	40.9% - Rep., 45.9% - Dem.	60.5% - Rep., 37.8% - Dem.	+ 19.5 (Rep.)
13.	Maryland (10)	36% - Rep., 55% - Dem.	36.6% - Rep., 61.7% - Dem.	+ 6.7 (Dem.)
14.	Mississippi (6)	54% - Rep., 36% - Dem.	55.5% - Rep., 43.5% - Dem.	+ 7.5 (Dem.)

15.	Nebraska (5)	54% - Rep., 40% - Dem.	60.5% - Rep., 37.8% - Dem.	+ 6.5 (Rep.)
16.	New Jersey (14)	41% - Rep., 51% - Dem.	40.9% - Rep., 58.0% - Dem.	+ 7 (Dem.)
17.	Oklahoma (7)	59% - Rep., 33% - Dem.	66.8% - Rep., 33.2% - Dem.	+ 7.8 (Rep.)
18.	District of Columbia (3)	9.9% - Rep., 77.3% - Dem.	7.1% - Rep., 91.4% - Dem.	+ 14.1 (Dem.)
19.	Oregon (7)	41% - Rep., 47% - Dem.	42.7% - Rep., 54.5% - Dem.	+ 7.5 (Dem.)
20.	Rhode Island (4)	33% - Rep., 54% - Dem.	35.5% - Rep., 62.7% - Dem.	+ 8.7 (Dem.)
21.	North Dakota (3)	53% - Rep., 41% - Dem.	58.7% - Rep., 38.9% - Dem.	+ 5.7 (Rep.)
22.	Tennessee (11)	59% - Rep., 34% - Dem.	59.5% - Rep., 39.0% - Dem.	+ 5 (Dem.)
23.	South Carolina (9)	46% - Rep., 40% - Dem.	54.6% - Rep., 44.0% - Dem.	+ 8.6 (Rep.)

Judicial Protection of Voting Rights

U.S. AUTHORITIES prefer to avoid any public discussion of the voting rights violations brought to light. In the USA, there is no uniform system of dispute resolution by judicial and electoral bodies. Often, in order to avoid unfounded complaints, certain financial barriers are put in place (e.g., the cost of a recount of the votes in California is about \$3,600 per day of work), which are also in fact the barriers to candidate complaints. In addition, during the presidential election on November 6, 2012, states were required to wrap up the examination of election disputes no later than December 11, 2012, otherwise the U.S. Congress would be entitled to bring unresolved election disputes under its consideration and decide the matter on merits. This order of things does not meet the generally accepted standards of dispute resolution by electoral and judicial bodies

without involving a national parliament, the legislative and representative body that in the system of separation of powers must perform fundamentally different functions. In 24 states, voters may be subjected to unfounded accusations of submitting false information, can be barred from voting or made to vote a provisional ballot. Election officials, however, cannot be brought to account for such a false accusation. In some states, like Florida, appealing the accusation will automatically lead to the ballot being placed in the category of provisional ballots. The voter must prove his eligibility within a few days, which is often impossible and this results in the voiding of the ballot, with subsequent problems for the person in next election voting.

Putting Pressure on Non-System, “Third” Political Parties and Forcing Subordinate Employees to “Vote Correctly” as a Hallmark of the Presidential Election Campaign in the USA

CHARACTERISTIC OF THE USA is a lack of real pluralism in elections, preventing giving voters a political alternative, since the political system in general and the system of holding presidential elections in particular create legal and political conditions for keeping third parties out of the real electoral struggle. Thus, from the outset, any third party participants in the race, apart from representatives of the Democrats and Republicans, are never seriously considered by anyone. Moreover, however paradoxical it may seem, law enforcement has the right to prosecute candidates protesting against the violation of their electoral rights. Thus, Jill E. Stein, a presidential candidate for the dwarf Green Party, was arrested on October 16 while trying to stage a sit-in outside the site of the debate between Obama and Romney in a New York suburb. The ecologist was protesting against the exclusion of third party candidates from the debate. Police charged her with disorderly conduct, and the elderly American woman spent eight hours at the police station in handcuffs, although such treatment obviously does not correspond to the declared severity of the offense – hindering public traffic – especially as there were no vehicles around at that time due to the security closure of the street. Under New York’s penal code, the Green candidate could have faced up to 15 days in jail or a fine of up to \$250. In the more “strict” states, she might have gotten up to a year in jail.

During the past election campaign, the practice became widespread when business owners were actually compelling workers to vote for the necessary candidate. Thus, the owners of conglomerate Koch Industries,

who are the main sponsors of the ultra-conservative Tea Party movement, sent out lists of the “right” candidates to their 50,000 employees. With them was a letter telling employees that the choice of candidate was a personal matter for a citizen, but also implicitly warning that layoffs were imminent if Obama won. Republican supporting hotel chain Westgate Resorts and computer firm ASG Software Solutions likewise sent out documents with similar content and focus to their employees. The above facts appear to represent only a small, visible part of a huge iceberg of dirty technologies and outright voting rights violations.

Election Observation

MONITORING of the presidential election in the USA was largely done by observers from the candidates and political parties. Under the laws of a number of states, local human rights activists are allowed to attend voting and ballot counting while in other states this permission applies only to the first or second stage. In many states, the law altogether evades the question of national observers, leaving the regulation of observation to officials of electoral bodies. The rules governing the activities of volunteer observers are contradictory: for example, in 39 U.S. states they have the right to challenge the legality of citizens to participate in elections at a polling station right on Election Day, but this must be done, as a rule, in writing or under oath. Despite the fact that the observer must have “reasonable grounds” for such challenge, only 15 states require that they be proven. There are cases when some NGOs publicly and groundlessly accused voters of illegal voting. In general, the volunteer monitoring of the organization of the expression of citizens’ will is bound to the two-party system and is guided by local custom rather than law. It is fragmentary and prone to influence by electoral bodies, which often leads not to the defense, but rather to a violation of the voting rights of American citizens, including through the expression of their own free will and by secret ballot.

International Election Observation

ONLY THE STATES of Missouri, New Mexico and South Dakota, and the District of Columbia have laws that allow international observers to monitor elections. In general, international observers invited to the U.S. risk criminal prosecution should they fail to obey U.S. laws even if those contradict federal international obligations. An illustrative example of the

“implementation” of the U.S. obligation to invite international observers was the statement by Texas Attorney General Greg Abbott, who said that it might be a criminal offence for OSCE/ODIHR observers to maintain a presence within 30 meters of a polling place’s entrance.

In a letter to the head of the mission the attorney general also noted: “If OSCE members want to learn more about our election processes so they can improve their own democratic systems, we welcome the opportunity to discuss” it with the Texan authorities. “However, groups and individuals from outside the United States are not allowed to influence or interfere with the election process in Texas.” It is also remarkable how he treats the recommendations of the OSCE/ODIHR concerning the use of ID cards in the electoral process: “The OSCE may be entitled to its opinions about Voter ID laws, but your opinion is legally irrelevant in the United States, where the Supreme Court has already determined that Voter ID laws are constitutional.” That is, he sees no need to even consider the possibility of complying with the recommendations of the OSCE/ODIHR. Thus, the Texas attorney general was quite specific in his attitude towards the international obligations of the USA and the organization whose methods of activity are, according to the U.S. Department of State, the “golden standard” of international election observation. Yet such an approach is not only contrary to the principles and norms of international law, but does not comply with Article VI of the U.S. Constitution, which establishes that “this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

Thus, the U.S. Constitution declares the primacy of the principles and norms of international law over national and state law that in the situation with the statement of the Texas attorney general was grossly violated. Very telling is also the fact that there have never been any full-fledged OSCE missions in the USA. Furthermore, the ODIHR has repeatedly urged U.S. authorities to take action to comply with its international obligations, particularly to secure the rights of international observers and ensure that they can be present in voting and ballot counting by force of law, and not at the discretion of local election organizers.

To sum up, it is necessary to note the following. The principle of universal suffrage has not been truly realized in the U.S. presidential elec-

tions on November 6, 2012. Nearly 50 million (approximately one-quarter of) United States citizens eligible to vote were not included on the voter lists. Given Americans' mobility, the existence of residency requirements for voters in a number of states denies the opportunity to vote to a significant group of voters. The virtual absence of voting rights for ex-offenders and even persons with an expunged criminal record, as well as overseas citizens adds approximately another 10 million Americans to the body of non-voters. Many abuses at the state level with regard to voter lists, the lack of a uniform voter ID card, coupled with a strict photo identification requirement in some states, and the deprivation of passive voting rights for naturalized Americans do not speak to the performance of obligations for the conduct of general elections.

The principle of equal suffrage remained unrealized due to the different weights of the popular vote, depending on the particular state. One elector from Wyoming represents 140,000 voters, while the figure for California, New York, and Florida is over 500,000 (nearly four times as many). The unequal media access available to the candidates, the exclusion of third party candidates from the debates, the absence of a limit on election spending, and the failure to provide adequate safeguards to non-English speaking individuals do not speak to the principle of equality in the past election campaign.

The principle of the secret ballot was not implemented in full, because it is not ensured when voting by fax and email, voting in the army, carrying out major party primaries, and employing provisional ballots.

The abundance with the principle of open and transparent elections is also very much open to question due to absent federal guarantees of the participation of national and international observers, the controversial regulation of their participation at the state level, and a significant limitation of the rights of international observers in most U.S. states.

The principle of free elections was not implemented in full because of many attempts to influence the free expression of the will of the electors, particularly on the part of employers threatening layoffs.

The principle of fair and genuine elections found little reflection in the election; that was so because of the employment of administrative resources by the candidates and their supporters; the lack of a unified electoral body and, as a consequence, the lack of uniform forms and procedures for the realization of voting rights and the difficulty of protecting them; the establishment of electoral bodies without the representation of all or most election participants; no-ID voting permitted in nineteen

states; the possibility of proxy voting; the availability in most states of early voting without a reason; and the existence of the obstacles and formal requirements that prevent small party representatives and independent candidates from participating, or engaging in real competition, in the election, which limits alternative choices and campaign pluralism. The absence of a mandatory requirement for disclosure of the official results, in conjunction with weak institutional guarantees of independent observation, give reason to doubt the fairness of vote counting. Furthermore, it's noteworthy that Barack Obama won in most of the swing states (Iowa, Virginia, Wisconsin, Nevada, Ohio, North Carolina, Florida) by early voting. It was the early voting results in swing states that determined the overall outcome of the election.

In line with the methodology outlined above for evaluating the election's compliance with international democratic principles and national obligations, our final assessment of the election is as follows:

The principle of elections	The degree of compliance with the principle (On a three-point scale)		
	Good	Satisfactory	Unsatisfactory
Universal suffrage			+
Equal suffrage			+
Secret ballot		+	
Direct suffrage	Not provided by U.S. obligations		
Free elections		+	
Open and transparent elections			+
Fair and genuine elections			+
Periodic elections	+		

Summing up, it should be stated that all the 223 years of history of the organization and conduct of democratic elections in the United States (the first presidential elections took place in 1789) are replete with examples of voting rights violations. The procedures of the U.S. presidential election on November 6, 2012 also did not meet the international principles of organization of the electoral process.

NOTES

¹ Rossiyskiy obshchestvennyy institut izbiratel'nogo prava, Assotsiatsiya nekommercheskikh organizatsiy po zashchite izbiratel'nykh prav "Grazhdanskiy kontrol", Nekommercheskaya organizatsiya Rossiyskiy fond svobodnykh vyborov, Mezhdunarodniy institut noveishikh gosudarstv, Tsentr prikladnykh issledovaniy i programm, Tsentr sotsialnykh i politicheskikh issledovaniy "Aspekt", regionalnaya obshchestvennaya organizatsiya "Za demokratiyu i prava narodov". Itogoviy otchet o rezultatakh distantsionnogo monitoringa vyborov Prezidenta SShA 6 noyabrya 2012 g., posted at www.roiip.ru

² See: [www.OSCE.org/odihr/elections/United States/General Elections](http://www.OSCE.org/odihr/elections/United%20States/General%20Elections), 6 November 2012/Final Report

³ Thus, Pennsylvania Republican House Leader Mike Turzai said that the state's new ID law will "allow" Mitt Romney to win the state in November. See, for example: PA Democrats Unhappy with GOP Comments about New Voter ID Law // 26.06.2012; Turzai's voter ID remark draws criticism // *Pittsburgh Post-Gazette*. 26/06/2012; <http://www.post-gazette.com/stories/local/state/turzais-voter-id-remark-draws-criticism-641982>

⁴ U.S. Federal Election Commission // www.fec.gov; US Election Assistance Commission // www.eac.gov

⁵ <http://www.politico.com/news/stories/1112/83176.html>, <http://www.businessweek.com/articles/2012-11-06/the-early-election-results-captured-by-democratic-microtargeters>

Key words: observance of citizen voting rights in the U.S. presidential election.