

# UKRAINE'S UPCOMING ELECTIONS: A PIVOTAL MOMENT

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## HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE ONE HUNDRED TWELFTH CONGRESS SECOND SESSION

MAY 17, 2012

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A PIVOTAL MOMENT**

**MAY 17, 2012**

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## UKRAINE'S UPCOMING ELECTIONS: A PIVOTAL MOMENT

May 17, 2012

COMMISSION ON SECURITY AND COOPERATION IN EUROPE  
WASHINGTON, DC

The hearing was held at 2 p.m. in room 1310, Longworth House Office Building, Washington, DC, Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe, presiding.

*Commissioners present:* Hon. Christopher H. Smith, Chairman, Commission on Security and Cooperation in Europe; Hon. Michael Burgess, Commissioner, Commission on Security and Cooperation in Europe; and Hon. Steve Cohen, Commissioner, Commission on Security and Cooperation in Europe.

*Witnesses present:* Yehvenia Tymoshenko, daughter of imprisoned former prime minister Yulia Tymoshenko; Stephen B. Nix, Director, Eurasia Division, International Republican Institute (IRI); David Kramer, President, Freedom House; Katie Fox, Deputy Director, Eurasia, National Democratic Institute (NDI); and Gavin Weise, Deputy Director, Europe and Asia, International Foundation for Electoral Systems (IFES).

### HON. CHRISTOPHER H. SMITH, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

We do have a vote and a series of votes, and then Dr. Burgess and I and the other members of the Commission will start and go as far as we can before we have to rush to the other vote, and then we'll come right back. So I apologize and ask you to bear with that delay.

Welcome to this Helsinki Commission hearing on the October 28th parliamentary elections in Ukraine. Even though the actual voting is still five months away, in the hope of—that matters great can still be properly addressed, we believe it is important to focus attention now. Ukraine's past four national elections, two presidential and two parliamentary, have met international democratic standards. They received positive assessments from the OSCE-led international observation missions and other international observers.

But given Ukraine's democratic backsliding under Viktor Yanukovich, we still have reason to be concerned about the pre-election climate and watchful for attempts to skew the conditions in which the campaigns will be conducted.

The October 2010 elections, the local elections, and more recently the March mayoral elections, were problematic, and Ukraine's general backsliding is very troubling. We see it in the independence of the judiciary, in corruption, tightening controls over the media and harassment of NGOs. All these things could also have a debilitating impact on the election process.

Concerns are emerging that in addition to potential overt voting day election-rigging, more subtle measures of manipulation may already be taking place, such as putting pressure on opposition candidates to not run or to switch allegiances to the ruling regime's party. Equally disconcerting—and I would say disgusting—is the unjust imprisonment of political opposition leaders from Prime Minister—former Prime Minister Tymoshenko to former Interior Minister Yuri Lutsenko, removing their participation in the elections and casting a shadow over the entire election process.

Of course everyone remembers that last October, former prime minister Tymoshenko was given a seven-year sentence on Soviet-era specious charges of abuse of office in a highly irregular judicial process, that nobody's buying, specifically for signing a 2009 gas contract with Russia, allegedly without approval from the cabinet of ministers. Unless she and other senior foreign government officials are released from prison and restored to their full potential and civil rights, the October elections will, by the very fact of their imprisonment, be tainted. The imprisonment of leading opposition figures alone is so significant and so outrageous that they will make it impossible for the international community to assess these elections as having met international democratic standards.

These elections are a litmus test for Ukrainian democracy of the degree and kind of democracy it still has. The election process, including the pre-election environment—registration, campaign voting, counting and tabulation—will tell us a lot about Ukraine's future course. Will Ukraine continue sliding towards authoritarianism or will it resume its path to democracy?

Another factor here is that, in 2013, Ukraine will assume the leadership of the OSCE, which makes it even more important that these elections be conducted in line with OSCE standards of freedom and fairness. If not, Ukraine's chairmanship itself will be under a cloud.

As a long-time advocate of democracy, human rights and the rule of law in Ukraine, I hope that the Yanukovich government will not tear Ukraine away from its recent tradition of free and fair national elections and will permit a genuinely democratic election process, one in which political parties and candidates compete on a level playing field, there exists equitable media access, and the balloting is conducted in a manner that instills confidence. And again, those who have been imprisoned absolutely must be released. I'd like to now turn to my friend and colleague Dr. Burgess, a fellow Commissioner.

**HON. MICHAEL BURGESS, COMMISSIONER, COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE**

Thank you, Mr. Chairman, I'll forgo an opening statement because of the pendency of votes and I am anxious to hear from our witnesses. I will just say that I've become increasingly concerned,

from what I've read in the lay press, about the medical condition of former prime minister Tymoshenko and the necessity of getting her the medical help that she needs in addition to securing her release from what sounds like an unjust incarceration.

So I'll yield back and resume after votes.

Mr. SMITH. Before getting to our panel of witnesses, we do have a very important panelist who will be testifying from Kyiv. Yevhenia, who's the daughter of the former prime minister, has graciously agreed to join us and will speak to us. And again, we will have to leave at some point. If she can hang on, we will come back and ask some questions. But I would like to open up the connection. And I would also ask that any of our panelists, when Dr. Burgess and I leave, have a question they'd like to pose to pose to her. Please proceed, and thank you so much for joining us and for the very courageous stand and defense of your mother.

**YEHVENIA TYMOSHENKO, DAUGHTER OF IMPRISONED  
FORMER PRIME MINISTER YULIA TYMOSHENKO**

[via Skype]: Hello, ladies and gentlemen. I hope that you can hear me because I cannot hear what Mr. Chairman was saying. Can you hear me?

Mr. SMITH. Yes, we can hear you just fine. Thank you.

Ms. TYMOSHENKO OK, thank you so much for the introduction and for this opportunity to speak today to you. I just wanted to briefly summarize the latest events that happened here in Kyiv in regards to my mother and other political prisoners.

First of all, I wanted to mention that the recent incident that I think you all heard of is when my mother was taken by force to a hospital and beaten by the prison guards. When I found out, it was already four days after the attack happened, and the authorities were hoping that her bruises will disappear. And they only met the defense team after some senator—[inaudible]—that they thought of just to cover up this incident. But eventually, we could come in after four days, and we saw the results of the beating.

I heard my mother's statement, and we made straight away official appeals to the prison, to the prosecutors about this incident. We made official request for the video of this instance to be shown and given to us. She also asked the medical team—independent medical team from the members of Parliament, from all the factions—to come and visit and make expertise statement. She also, during the two days, gave the account—showed the bruises to the medical team in prison and prosecutors that she called especially to record the bruises.

This all was done, but now defense team also, during the investigation that was mounted by the prosecutor's office, didn't have any chance to see the medical card where bruises were recorded. We were officially replied by the prison authorities that this video of this incident doesn't exist.

Also there were a lot of falsifications with information about this attack because, first of all, the head of the prison said that he didn't see the bruises. And afterwards, when it all became evident and because of Karpachova ombudsman—actually we—the world could see the bruises, they started thinking of more and more ways

to falsify this information. And that is why it is really surprising for us to hear that Prime Minister Azarov in Brussels two days ago stated that he saw that video, and he didn't see any violence on this video. So either Prime Minister Azarov was lying about this or a video does exist. But why didn't authorities show it right after the incident to dismiss all kinds of conspiracy behind it and so-called false accusations? So this hasn't been done. None of the diplomats were allowed in, and we're still very sure that the authorities are now trying to cover up this fact.

Of course, more important, more than this, what is worrying us now is the legal aspect of the case because so far the last court of appeal, which was scheduled for the 15th of May and all the people involved could make sure that they looked at the case, obviously because of reasons to dismiss it. There's no legal grounds to call my mother a criminal or to sentence her. And we're very thankful to Danish Helsinki Committee—to claim and to make their statement—conclusions after very thorough research that this case against my mother is politically motivated. So is the next case that was closed by the Supreme Court in 2005 by 56 judges and prosecutors general. So now they are illegally reopening this old new case.

We knew General Prosecutor Pshonka claims that 56 judges in the Supreme Court and general prosecutor made illegal act by closing this case. So why don't we also make attempt to ask the people who closed this case and bring them to the witness stand and make sure they state why they closed this case? So far we're not hoping for any justice in the court because the appeal courts and the last court of appeal were held by the people who are completely subordinate to the regime, they're subordinate to the high council of justice, the majority of members of which are subordinate to the president and presidential team.

So far, these two cases—the two appeals that happened in the last month, they've been held exactly in the same manner as the first court when my mother was sentenced. None of the evidence was looked at. No defense strategy [remarked ?] or were listened to. And so far, we really have no hope because they—even the president who claims that the courts—that the trial would let—not under European standards, they didn't make any kind of move towards solving the situation, not only just about my mother, but about a case for other political prisoners now that have been imprisoned without sentence for over a year and now have been sentenced with no criminal basis and illegally.

There is also another major aspect in this situation with political prisoners is the humanitarian and medical aspects. So far, during all this time— and for some prisoners, it's over a year now, more than one year and a half for, say—[inaudible]—Mr. Lutsenko. They have—[inaudible]—

Mr. SMITH. Excuse me, Yevhenia, if I could be so rude to interrupt, we have—Dr. Burgess and I—about 45 seconds to get to the floor of the House and vote. We have four votes; it should be relatively quick, but the hearing will stand down in recess. We will turn this into a briefing for a few moments because we do have a very distinguished panel who, I believe, would like to ask you a question or two. Then we'll come back and resume the hearing, if



that would be OK with all? So we stand in momentary recess. I would ask again if the panelists—if they have questions, if they would want to come up here, because those mics don't work for some reason, on the hookup, and then we'll resume the hearing as soon as—

MR.: The hearing becomes a briefing and because the congressmen don't want to miss any of Ms. Tymoshenko's statement, we're going to interrupt that statement for the witnesses to the hearing to come up to the dais and we can have a question and answer, which should still be very fruitful. Of course it will be part of the transcript, on the record. And as soon as the members are done voting, I'm sure they'll hurry back and we'll resume the testimony and the hearing.

Who'd like to start with a question?

**STEPHEN B. NIX, DIRECTOR, EURASIA DIVISION,  
INTERNATIONAL REPUBLICAN INSTITUTE (IRI)**

This is Stephen Nix asking the question. We understand your mother's attorneys have filed an appeal at the European Court of Human Rights. And my question was merely, do you have any idea when the court—when you might expect to receive a ruling, a decision from that court?

Ms. TYMOSHENKO. Thank you. We have filed several appeals to the European Court of Human Rights. At first it was in general about the case—the gas case. And in general then added about the other cases that's been filed against my mother, which was the latest accusation. The papers and the documents from the government were passed just a month ago. And today it was the last day for us to provide our plight to the government's comment. And so we have done so today. And now we are waiting for the European Court of Human Rights to announce the date of the first hearing on the general case.

Also, our defense—[inaudible]—to European Court of Human Rights, issue of medical treatment for my mother after the incident when she was unconscious for two hours. [Inaudible]—didn't receive medical treatment. European Court of Human Rights made a substantive decision on the 15th of March and to demand Ukrainian Government to treat her in a specialized clinic by independent doctors. So far, for two months almost, this decision was not fulfilled, although it had to be fulfilled straight away by the government of Ukraine.

My mother for—[inaudible]—appealed for—to government of Ukraine to provide her with access of the doctor—of the professor who she trusts, which is Ukrainian professor. For two months she's been rejected to have this right. And now, after she's been moved to the hospital, but we're really only hope now for the decision of the European Court of Human Rights—[inaudible]—the general cases and her illegal arrest, the impossibility to participate in the political life but also other—[inaudible]—breaches of her rights that been going on for months now, like, for example, breach of private information according to Article 8, et cetera, et cetera.

Mr. NIX. Thank you. Just a follow-up question then; have you had the opportunity to speak with President Grybauskaite of Lith-

uania since her visit to your mother, or have you had the opportunity to speak with U.S. ambassador John Tefft after his visit?

Ms. TYMOSHENKO. I personally didn't have the chance to do that because I was always traveling to see my mother in hospital. But Dr.—[name inaudible]—member of the team, and Mr. Vlasenko, the defense lawyer, had the chance to speak to Ambassador Tefft after the meeting. But I know that my mother outlined the critical situation that she's in, illegally, politically, kept in a medical inhumanitarian way. And she outlined that in hospital she's under very strict illegal surveillance by video cameras, that her rights for privacy are constantly breached.

And she, just two days ago, refused to go for treatment and now she—[inaudible]—after the authorities admitted some of these breaches of rights and tried to correct. So we'll see. So I didn't manage to meet personally—to speak to ambassador and president.

**DAVID KRAMER, PRESIDENT, FREEDOM HOUSE**

Yevhenia, this is David Kramer from Freedom House. I wanted to ask you about your view of the reaction of the international community. Are you and your mother satisfied with how the European Union and the United States have responded to this situation?

Ms. TYMOSHENKO. Yes. We're very much thankful to the support and the—[inaudible]—protest against the repression in Ukraine that's been going on since arrests—[inaudible]—but specifically after my mother's been violently attacked in prison. So far, you know, we just think that if it wasn't for this support, I wouldn't know what would happen to my mother, whether she would be completely isolated or would have any hope at all for her release or for any justice for other political prisoners.

What I wanted to add, if I may, is that my mother today—[inaudible]—applied and—[inaudible]—to the FATF organization to ask them to publicly start investigation into—[inaudible]—activities of—[inaudible]—in Ukraine. She believes that only this way, when this investigation can start and the facts of this breach of law by these high officials. I know they've been investigated by journalists and on few occasions already, certain countries, the prosecution have started investigation of this incident. And she also is asking if it's possible that after many months of insisting that it's the only way the regime will stop its illegal activity is by starting this kind of public investigation so that—[inaudible]—to really ask that. Also, she's asking and all political prisoners are asking—who actually admit officially in some way, if it's possible, that they are political prisoners, that they are prisoners of consciousness, because the, for example, official definitions of this [firm ?] completely corresponds to— [inaudible]—and the reasons why they are political.

**KATIE FOX, DEPUTY DIRECTOR, EURASIA, NATIONAL  
DEMOCRATIC INSTITUTE (NDI)**

Hi. I'm Katie Fox. I'm from the National Democratic Institute. Now, I would like to ask you what—as Chairman Smith mentioned the electoral process—for the parliamentary elections has already been tainted by the exclusion of a major political figure, your mother. But could you also comment on additional problems that you may expect to see, if any, in this electoral process and things that

the international community and particularly Ukrainians should be looking for.

Ms. TYMOSHENKO. Thank you. So far, of course, we have—I mean, opposition has very strong worries about the elections now in October. First worry is of course about falsifications and that regime has accumulated so much financial power by different schemes—especially connected, for example, to Euro 2012, but other issues to do with laundering—[inaudible]—money. They will use this financial resource to do anything possible to falsify the elections. Plus, they have very strong administrative tools now and power in the regions of Ukraine to try to manipulate and put pressure on the people, for example, who work in the state organizations like factories and budget organizations.

Also, the pressure and persecution of the candidates from the opposition in the regions have already started. For example, in Dnipropetrovsk region, a single candidate from the opposition was arrested illegally for some accident that happened about five years ago when there were no real victims and nobody suffered. The person who was in this car accident is already working and doesn't have any claims against this candidate. But independent from that, he was taken for questioning and arrested straight away at this point. So now he's representing one of the polls in the Dnipropetrovsk region, which is one of the most populated and eastern—it's in this region, the country—now is without, you know, one major, very popular opposition candidate. This is going on in almost every region more or less controlled by pro-presidential people. Of course, it's mostly populated eastern region.

So on my mother's behalf, she also asked me to pass to you the request not just—[inaudible]—the coming elections, but maybe it would be possible to have inside now and analyze the situation already with these breaches of law against this opposition.

**GAVIN WEISE, DEPUTY DIRECTOR, EUROPE AND ASIA, INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)**

Hi, Eugenia. Gavin Weise from the International Foundation for Electoral Systems. As we all know, Ukraine will return to an election system that will look very similar to what it had in 2002. And—I'm sorry, maybe you're too young to remember 2002. However, I for one have noticed a number of similarities or parallels, of course, to both the political situation in the country and the creation of this type of electoral system. And I was wondering maybe if—not to put you on the spot—but you could talk a little bit about how maybe the creation of those districts is influencing or affecting the way that perhaps your mother and also the party is thinking at this moment.

Ms. TYMOSHENKO. Yeah. Unfortunately, you know, I'm not able, of course, to analyze this situation, you know, in full. I just know that the main electoral committee have made already very few changes in determining the electoral districts. And they, for example in my region, added the areas which are, for example, pro-opposition. They're very supportive of opposition. They've added two more—two more areas which are completely pro-presidential, that are by the pro-presidential people, in order to kind of—to put

the electorate there and to make sure they control this kind of—so they cannot capture those areas which are pro-opposition.

I don't know—I'm sorry whether that answers your question at all. But I also wanted to pass the message that it's always been in history of the elections of Ukraine the situation—is that it's not that people have voted for the parties or candidates, is then how those votes are counted. And this is another major part in this scenario and this situation, whether the central electoral committee members have already been established and they already been basically pinpointed by the pro-presidential people—[inaudible]—believe that a majority of them are already controlled.

So independent of the way how people will fight in the actual districts with the malfunction and falsifications. And the results and bulletins or anything else to the central committee, they're going to be miscalculated. So this is another major issue.

Mr. KRAMER. It's David, again. Can you update us on the status of the investigations and the other charges and accusations against your mother, the Shcherban murder case—where do all these other investigations stand? What's the status?

Ms. TYMOSHENKO. Thank you very much. Well, the second case that's been opened against my mother after the gas case was a case of alleged tax evasion and accusations similar to that. We call it—our defense lawyers call it a case of moral orders. Why we call it that is that because during the time when my mother is accused of this action, she was not working in that corporation. And the prosecution and investigators accused her of giving part of her office to her accountant to claim for VAT.

First of all, claiming for VAT is a normal procedure for any businessman in the country. And not receiving VAT is also normal procedure—or receiving VAT is also a normal procedure. So she is accused of giving this order, which nobody really can prove, to the accountant that claimed that VAT. So kind of the whole accusation, which obviously nobody, first of all, can prove that and there's no evidence for that. But first, the main point that she didn't work in that corporation at that time.

The other accusation—it actually hasn't been formally given to her—is of kind of considering money officially to the account—some of it for the separatist party. This accusation hasn't been formally given to her, and she hasn't even managed—and she wasn't even given the opportunity to give her statement or witnessing statement. So that is why we received the statement of—[inaudible]—that would mean that she is already a murderer, a complete falsified statement while she's not even been a proper witness in the case. So we think that this is absurd false accusations have only put forward to shock the world and to try and to label her as a criminal and to blacken her name without having evidence.

We're very thankful also to Ambassador Tefft, who stated that U.S. authorities don't have any evidence connecting my mother to this case. So far, on the 21st of May, on Monday, there will be a court hearing in the second case of the alleged tax evasion for my mother. This court—[inaudible]—hasn't started yet, because she wasn't able to be present in the court because she's in hospital. So the actual process hasn't started yet, but they just—[inaudible]—just to basically start—[inaudible]—to her.

Mr. MILOSCH. [Commission staffer] Thank you, Eugenia. At this point, we're about five or ten minutes for the members returning. We have some people working on the microphones. I think we're going to stand down and hope the mics on the dais can be plugged into the Skype mic by the time the members return.

Ms. TYMOSHENKO. Thank you.

[Break.]

\* \* \*

Mr. SMITH. The Commission will resume its hearing. I want to thank our witnesses for their forbearance, again, and their—but also more importantly for asking questions and engaging our very distinguished witness.

Ms. TYMOSHENKO. Hello.

Mr. SMITH. Now I'll just say parenthetically, former Congressman Jim Slattery is here. Congressman Slattery is a great friend from years back. We served together when he was a House member. People say in the United States bipartisanship is dead. Well, not so with Jim.

Jim was always a very, very capable and effective lawmaker. And the only times I think we were really at odds is when our kids played against each other in a basketball game under the auspices of the CYO here in the United States.

But to be serious as well on a very serious subject, if you could just briefly say whether or not you believe the United States, both the executive branch and the Congress, is doing enough on behalf of your mother. Any specific things that the EU might do and we might do to do—you know, to try to accelerate her release? And has the United Nations weighed in at all, whether it be the Human Rights Council or any of its treaty bodies?

Ms. TYMOSHENKO. Thank you, Mr. Chairman. Thank you so much for the question. Just wanted to say to the—[inaudible]—that so far I have the support of the democratic world, international community that—[inaudible]—repressions. And now—[inaudible]—so much—[inaudible]—really critical level after the regime crossed the line to actually applying physical violence against—[inaudible]—against political prisoners. I am very thankful because otherwise, without your support and without the attention of diplomats here in Ukraine, we won't be able to probably access the prisoners or help them or have any hope at all. Beyond the message that my mother wanted to pass on to you is that she yesterday—[inaudible]—her defense lawyers applied and made an appeal to the FATF organization to— [inaudible]—investigate the—[inaudible]—and investigate—[inaudible]— that will prevent—[inaudible]—of the high officials in the government. This she believes, and she believes— [inaudible]—that's for any—[inaudible]—apparently—[inaudible]—how these repressions can be stopped and the regime punished with sanctions.

[Inaudible]—is of course very, very thankful for the attention of the Congress, Senate hearings, for most of the—[inaudible]—visits of the senators and congressman in the next few months. And—[inaudible]—there can't be another solution but emergency—[inaudible]—Ukraine where—[inaudible]—accept and make official the

status of these prisoners and name the political prisoners, because so far the official definition of these people behind bars for—[inaudible]—for many years, not just—[inaudible]—few years—[inaudible]—since the 2001—you know, since my mother—[inaudible]—in 1996, she was always the—[inaudible]—methods that we realized that— [inaudible]—they are prisoners of conscience.

There are other political prisoners that also don't receive medical treatment there. And—[inaudible]—status, their health status is very critical now. So we want to ask to—senator also international—[inaudible]—hospital team to see them and to see—[inaudible]—because for example, Mr. Lutsenko, the ex-minister of interior—according to his—[inaudible]—TB and has told about this. So now he knows that he has this and must be quiet in prison—[inaudible]. That is why I'm very afraid for my mother's life now. Hospital where she's— [inaudible]—very professional. They are—[inaudible]—the regime as well as prosecutors and judges. They can do something to her—[inaudible]. So we're just asking you please to keep the pressure on and to just—we don't know many—[inaudible]—that—just please don't leave us alone, because we pray there's—[inaudible]—people. We're not strong enough to fight against this injustice.

Mr. SMITH. Well, in the followup to this hearing, we will be updating text and introducing a resolution here on the House side. We're looking at the probability of a delegation—I would like to put together a delegation to go and visit Kyiv. And so we want to let you know that—you know, we're just going to increase rather than—our efforts. And finally, are you at any risk yourself?

Ms. TYMOSHENKO. At the moment I don't—[inaudible]—directed pressure or threat on me per se, no.

Mr. SMITH. OK. Well, you're in our thoughts and prayers. I want you to know that. Commissioner Cohen is here, a member of our Helsinki Commission.

**HON. STEVE COHEN, COMMISSIONER, COMMISSION ON  
SECURITY AND COOPERATION IN EUROPE**

I'm a Democrat as well; I felt like chopped liver a few minutes ago when he was extolling the virtues of Mr. Slattery. But we work together in a bipartisan fashion as well.

Mr. SMITH. Of course.

Mr. COHEN. And we had a hearing this week on the problems in Uzbekistan and others—this—nations in Central Asia in imprisoning people of conscience, political journalists and religious people. And we're preparing a letter to our colleagues as we speak on this subject and encouraging the State Department to use whatever pressures and sanctions they can. And the same thing goes with Ukraine, and possibly we'll do a separate letter or work together on that. But I just—I look forward to coming to Kyiv and visiting. I see your panda bear in the back there; we have a panda in the Memphis Zoo, and I like your panda. That's good. [Laughter.]

Ms. TYMOSHENKO. Yeah—[chuckles.]

Mr. SMITH. So we will see you soon. You know, we hope to have other members going. And I think it'll be a worthwhile trip. And I would just add, we will also be writing Ban Ki-moon and—to see if the U.N. system sleeps through this one and allows a former

prime minister and other high-ranking officials to be unjustly incarcerated, it does call into question the very viability and the *raison-d'être*, if you will, of the United Nations itself. My hope is that they will weigh in very robustly, but we will contact them. Again, this hearing is for us to recalibrate and to accelerate our efforts on the Commission. So thank you so much, and God bless you.

Ms. TYMOSHENKO. So much—thank you so much—[inaudible].

Mr. SMITH. Bye. [Pause.]

We will resume our—we already did resume our hearing. [Chuckles.] Let me just—David Kramer, I understand does have to leave. And I apologize again to all of you for being so late with those votes. If it would be all right, we will go right to Mr. Kramer, and then go to Stephen Nix, Katie Fox and Gavin Weise. And I'll do a little more introduction momentarily. Please.

Mr. KRAMER. Great. Mr. Chairman, thanks very much. My apologies for having to leave fairly soon; my apologies to my colleagues on this panel. It's a great privilege to be with them and also to appear before the Commission again. I'm a late addition to the witness list, and so I also apologize for not having a written statement.

But let me offer a few thoughts based on a recent trip to Ukraine that Freedom House conducted at the beginning of April as part of our second assessment of the state of democracy and human rights in Ukraine, a follow-on to the report we issued last year, which was called "Sounding the Alarm," which I have to say I think has turned out to be rather prescient given the trends that we've seen in the past year.

We met with a number of officials, including President Yanukovich, on this last visit. We also had the opportunity to visit two of the political prisoners, including Yulia Tymoshenko and Yuri Lutsenko, the former minister of interior, who is in prison in Kyiv. And this was an issue that was prevalent throughout our discussions with high-level officials in Ukraine.

But it's not the only issue that I think we need to focus on. And I know my colleagues here are going to talk about the election coming up in October for the parliament, for the Rada, which is going to be a critical test of whether Ukraine can continue to conduct national elections in a fashion that meets the criteria that the OSCE's ODIHR arm has—and I'll let my colleagues address that.

The two other issues involve the incarceration and persecution and prosecution of political opposition figures. And it is important to keep in mind not only the powerful representation of Yevheniya Tymoshenko of her mother's case, but that there are other people in jail from the opposition who many suspect are in jail because they were part of the opposition.

And this has been a major concern for many observers. And I think we have seen the reaction in the international community among officials from the European Union, as well as the United States, to this continued situation: the latest developments with Yulia Tymoshenko; the visit by the human rights ombudswoman in Ukraine to her prison and the release of photos from that visit, which I think fed the concern than many people have had about the situation.

I commend—after significant, extensive efforts—Ambassador John Tefft and Tom Melia, the deputy assistant secretary in the DRL Bureau at State, for being able to visit her on—earlier this week, I believe it was. They issued a statement from the embassy expressing their concern about her continued incarceration and also expressing the hope of the release not only of Tymoshenko but also of the other members of the previous government and restoration of their full civil and political rights, which I think is a critical point.

There have been positive developments in Ukraine. And it is not an entirely black-and-white picture. There is NGO legislation that actually has been deemed rather good. There has been access to information; open government efforts; the development with the European Union last December where Yanukovich initialed this agreement, though has not yet been able to sign it because of the concerns about the trends in Ukraine; the efforts with the United States on highly enriched uranium, which—I do have some concern that that has become too much of a focus of U.S. government officials and distracting from some of the trends, at least earlier; but also, I would even argue, standing up somewhat to pressure from Moscow, where once again we see Russian officials overplaying their hand and not helping their cause and even alienating parts of Ukraine that in the past have been more sympathetic toward Russia.

But the three main issues coming up, or that have been in play: the prosecution and persecution of opposition figures and their incarceration; the elections, which my colleagues will talk about; but then also the issue of corruption. And a term that I heard that came up during my visit in April was “family-ization,” that this is actually becoming rather personal; and the corruption allegations extending to even parts of the first family, where you have one of the sons whose wealth has soared 18 times just in the past year alone, according to reports; and questions about how this wealth has been accumulated.

Corruption is a problem throughout the region, but it’s a particular concern in Ukraine. The energy sector is rife with corruption. And the return of RosUkrEnergo, the energy middleman company, I think is not a welcome sign in this situation.

The summit that was supposed to be held with a number of East Central European and other officials—European officials, I should say—that was to have taken place last week was canceled because a number of heads of state decided they were not going to visit Ukraine in light of the current situation. I think you’re also seeing a situation where Ukraine is hosting the Euro 2012 soccer championships, along with Poland, starting in—June 8th, I think it is. And a number of officials, including EU officials, have indicated they have no plans to visit Ukraine because of what’s happening on the political scene.

Ukraine is going to be the chair—as you know, Mr. Chairman—of the OSCE next year. And many concerns that Ukraine’s chairmanship is going to make the Kazakh chairmanship of several years ago look pretty good. I certainly hope that won’t be the case, because that will do significant damage to the organization as well as Ukraine’s standing.



There are a number of events where Ukraine should be proud—of hosting the Euro 2012, of being chair of the OSCE. These should be reflections of a Ukraine that is moving in the right direction. But instead, as we warned when we were in Ukraine in April, these events are likely going to be instead not the focus of attention, as you have many journalists and others arriving in the country questioning why Ukraine is hosting such events or chairing the organization. And I think all too predictably, the continued situation with the Tymoshenko case, the other cases, the problems of corruption, and concerns even about the elections—where there was a mayoral election in the city of Obukhiv before we arrived that was widely ridiculed and criticized—concerns about how the elections themselves will shape up.

The last thing I would say, Mr. Chairman—and I'll stop here—is it is critically important that we continue to engage. But, at the same time, there is a growing level of frustration with the officials in Ukraine, where, I think, for the first time, in the past few months, we've heard the words "Ukraine" and "sanctions" mentioned in the same sentence, which is terribly unfortunate.

Ukraine, after all, I would argue, despite the recent comments of one official, is not Belarus. It's not Russia. But if the current leadership in Ukraine is not careful, that's how it's going to be viewed in the West. And it would be a mistake on the part of Ukrainian officials to assume that Ukraine is so central and important to European officials that Europe will do whatever it can in order to try to lure Ukraine into the West.

Europe has so many problems on its hands right now that I'm not sure it really wants to take on what is a growing headache for Ukraine. And so Ukraine and the leadership in Ukraine and civil society, which I did detect is more active now than a year ago—I think they too are frustrated—it's really important that Ukraine get back on the right track. And I certainly hope they will do so. Thank you very much.

Mr. SMITH. Thank you very much, Mr. Kramer. And I just—I'm glad you noted the good work that Ambassador John Tefft is doing, both in Ukraine and before that. I actually visited with him when he was in Tbilisi right as the Russians rolled in to South Ossetia and Abkhazia. And he's very wise and very, very effective—so it's good that he's on the scene for all—for all of the concerns that we all have.

I'd like to now—and, again, your full résumés will be made a part of the record—but I would like to ask first Stephen Nix, who's regional director for Eurasia, International Republican Institute, the IRI. Then we'll go to Katie Fox, deputy director of national—for Eurasia, National Democratic Institute. And then we'll go to Gavin Weise, deputy director, Europe and Asia, International Foundation for Electoral Systems.

Very knowledgeable and heavily credentialed witnesses—all four of you. Thank you for sharing your insights and wisdom and thank you for posing questions earlier, which answered a lot of questions that this panel would have asked, and you did it much better. I'd like to now ask Mr. Nix if you'd go.

Mr. NIX. First of all, thank you, Mr. Chairman. Thank you for convening this hearing today. Thank you for a focus on this part

of the world. We're all cognizant of the fact that much attention and focus is now being placed on the Middle East and North Africa. However, Eurasia remains strategically important to the United States and events in that part of the world, particularly in the field of democracy are critical to the U.S. interests abroad.

So, thank you again, Mr. Chairman, for convening this. I would ask that my remarks be entered into the record.

Mr. SMITH. Without objection, so ordered.

Mr. NIX. Mr. Chairman, we meet here today at a critical time in Ukraine's democratic development. For the past two years, we've watched what can only be described as democratic backsliding in Ukraine. The international community has witnessed the continued selective prosecution, as you saw earlier today and heard from your first witness—the selective prosecution of the political opposition in Ukraine. The almost daily announcement of European leaders that they will not attend the soccer championships that Ukraine is hosting; the continued discussion of visa bans and freezing of assets that are taking place in both Brussels and in Washington.

None of this would have been imaginable two years ago. However, the reality is that Ukraine has changed significantly. It's instructive to understand how the country arrived where it is today and to analyze the context of how that might affect the upcoming parliamentary election.

The October 2012 parliamentary elections will be the first parliamentary elections in Ukraine since 2007. As you noted yourself, Mr. Chairman, several elections have taken place in Ukraine that have been deemed to be free and fair and meeting international standards.

In February 2010, in an election that was administered by the previous administration, Victor Yanukovich was elected president, and these elections were deemed to have met, by and large, international standards.

However, since his election, the Yanukovich administration has engaged in the practice of selective justice, targeting opposition political figures. The only elections conducted thus far under the current administration are the 2010 local elections. Unfortunately these were recognized by both U.S. and international observation missions as falling short of democratic standards. Massive government resources were used to consolidate power, while political parties not aligned with the governing party were not able to fully and fairly participate in those elections.

As a result of this consolidation of power, there is growing public discontent with the authorities. In public opinion polls conducted by IRI, respondents were asked if they would support the freezing of assets and banning of visas of Ukrainian officials, including judges that engaged in corruption. Eighty-two percent responded in the affirmative, that they would support such moves.

These are dramatic figures, Mr. Chairman. We see this nowhere else in the region, and I think it speaks to the level of discontent that is emerging in Ukraine.

In November, Ukraine's parliament adopted a law on parliamentary elections. The new law establishes a mixed system, which is a return to the system last used in 2002 and establishes a 5 percent threshold for any political party to be represented in par-

liament and does not allow electoral blocs to compete in the election.

The Venice Commission strongly criticized this draft parliamentary election law. Unfortunately the commission's analysis was mostly ignored. Its report was critical of the change to the mixed system. It advocated an open party list system. It also expressed concern about unclear criteria and deadlines for the designation of election districts, a lack of clarity on appealing results of elections, and an absence of full disclosure on sources and sums of election campaign funding.

Now with regard to the upcoming elections, I just wanted to give you and the members a bit of a preview on how things are shaping up. According to IRI polling data, it appears that six political parties will likely pass the 5 percent threshold. Those are the Party of Regions, Batkivshchyna or Fatherland Party, Front of Change, the Ukrainian Democratic Alliance for Reform, the Communist Party and the Freedom Party.

Many parties are starting to coalesce. The Strong Ukraine political party has merged with the Party of Regions, and the opposition is also seeking to coalesce. Batkivshchyna and Front for Change have united in a single list of candidates for the single mandate districts and are currently in discussions with the Udar political party. However, leading up to these elections, government officials have intensified their pressure on multiple sectors of Ukrainian society, and I'd like to speak about three of those: media, civil society organizations, and the political opposition.

With regard to the media, Mr. Chairman, one of the preeminent legacies of the Orange Revolution was a free and vibrant media. Soon after assuming power in 2010, the current government directly and indirectly pressured the media to limit critical coverage and report more positively on the government. In addition, one of the country's deputy prime ministers is the owner of the largest media conglomerate in Ukraine, known as Inter. The government has tried to censor TV state companies.

In civil society, the Ukrainian Government began to more closely monitor and regulate activities of NGOs, including those of IRI. A cabinet of ministers' decree signed in January of 2011 amends the registration regulations in Ukraine, making it easier to deregister international civil society organizations and placing much higher reporting requirements on these—their grantees.

With regard to the opposition, you've already heard from several today about the marginalization and the political persecution of political figures. I won't go into that any further. I would like to share with you some of the things that IRI is doing to try to strengthen democracy in Ukraine.

IRI has had a long-standing program in Ukraine. We support the promotion of democracy in Ukraine, and we try to address the above-referenced challenges and respond to Ukraine's rapidly deteriorating political environment and by working to strengthen political parties, foster mechanisms for good governance, support the next generation of political activists, and develop a more transparent electoral system. To assist in the development of Ukraine's electoral processes, IRI has conducted international election obser-

vation missions, observing every parliamentary and presidential election in Ukraine since it became independent in 1991.

As far as next steps, Mr. Chairman, let me summarize by saying I'd like to reiterate the importance of the upcoming elections. Elections are critical for Ukraine's continued integration into Euro-Atlantic structures. Failure to conduct elections which meet international standards will cause Ukraine to be further isolated from the West.

We encourage the U.S. Congress to continue to make it clear to the Ukrainian Government that free and fair elections will determine the course of the future relationship between our two countries. In anticipation of the possibility of excessive fraud in the parliamentary elections, we call on Ukrainian authorities to support international election observation missions and to allow district and regional election commissioners to conduct their work independent of pressure, intimidation from central authorities.

In summary, Mr. Chairman, I'd like to thank you and the members for focusing on the parliamentary elections. The way in which elections are conducted in Ukraine are every bit as important as the outcome. So, I thank you again, and I'll be prepared to answer any questions you might have.

Mr. SMITH. Mr. Nix, thank you so very much for your testimony. Ms. Fox.

Ms. FOX. Thank you, Mr. Chairman and distinguished members of the Commission. I want to apologize for my voice. I'm getting over a cold, but I'm not contagious, but—thank you for this opportunity to comment on next October's Ukrainian parliamentary elections. I want to note that this is a particularly important time to be holding this hearing. Although the election is still several months off, there are important decisions being made right now.

Ukraine's constitutional court recently invalidated parts of the parliamentary election law. The very important territorial and precinct election commissions will soon be chosen. Opora, which is the major domestic nonpartisan election monitoring group, is beginning to issue reports, and the political parties, with which NDI and IRI work, are making their plans for protecting electoral integrity. Moreover, of course, as you know, it is established international practice to evaluate all parts of the election cycle, not only election day, but the broader electoral context that affects the character and quality of elections.

In fact, both the Ukrainian Government and its critics agree that this election should be viewed in a broader political context. The Ukrainian Government asserts that it is preparing to hold a fully democratic election, one that will demonstrate its ability to balance strong, centralized governance with democratic values sufficient to justify European Union membership for Ukraine.

Unfortunately, this notion of balance remains wishful thinking despite the efforts of some well-intentioned people in the current government. In the electoral arena, as my colleague Steve Nix has noted, there was a promising start when a democratic election was held in 2010 and President Yanukovich came to power. Since then, as my colleague has also noted, the only nationwide elections under the current administration, the local elections in fall 2010, were flawed in the view of credible domestic and international observers.

That tainted performance undermined confidence among the opposition that this government would uphold international and domestic standards for fair elections. Very long and unfortunately opaque deliberations over a new parliamentary election law fueled further mistrust in the electoral process. And as has been noted in a recent troubling development, international observers were not allowed to monitor critical aspects of the election vote count in March in a local election in the Kyiv suburb of Obukhiv.

As several people have already commented, the last two years have seen a general deterioration of political pluralism in Ukraine. The ruling party has taken control over most of the institutions of government. In addition to the parliamentary election law, the last two years have seen of course the jailing of the most popular opposition politician, Ms. Tymoshenko; constitutional changes to strengthen the presidency relative to parliament; and greatly expanded control by the ruling Party of Regions over local governments as well as law enforcement and regulatory bodies. Ukraine's courts, including the constitutional courts, have rebuffed challenges to all of these changes. And in David's organization, Freedom House, which puts out the very influential Freedom in the World Index, Ukraine dropped from free to partly free under the current government.

At the same time, Ukraine still benefits from strong democratic voices and alternative points of view. For example, in the election law debate the opposition parties were able to marshal media and public attention, and they were able to negotiate significant changes into the law. This presence of a viable opposition sets Ukraine apart from most of its ex-Soviet neighbors. And it is this multiparty system that may be undermined if the October elections are seriously flawed.

The international community can and should use both words and deeds to guard against the further erosion of democratic rights in Ukraine. But the primary driver of change, however, must be the Ukrainians themselves. There should be no mistaking Ukrainians' desires. A common refrain you hear among certain commentators is that Ukrainians are either apathetic about their political life or ready to sacrifice democratic institutions and principles for a, quote, "strong hand" in governance.

Neither is true and they both do disservice to Ukrainians' aspirations. While it is true that citizens express disappointment with their political leaders, they do care about the direction of the country, which is evidenced by the growing numbers who are participating in peaceful protests. Recent increases in demonstrations and the so-called protest mood have been documented by pollsters and by civil society, including an NDI partner, the society—Center for Society Research, excuse me.

The all too common wisdom that Ukrainians will sacrifice democracy for progress on bread and butter issues is also false. Ukrainian civic groups have successfully married the two concerns in an advocacy campaign on the freedom of assembly. Thousands of Ukrainians have signed petitions that call upon the government to allow freedom of assembly as a means of protecting their economic rights. Polling supported by NDI along with Lake Research Associates prior to this petition campaign showed that Ukrainians are

well aware of threats to democracy and to individual civil liberties, notably political influence over the judiciary—a topic we discussed today.

As the election approaches, Ukrainian civil society will become more active, particularly in monitoring and reporting on threats to electoral integrity. Five key issues are most important to restoring some measure of credibility to Ukraine's electoral process. I will list them here: one, government impartiality in the administration of the elections. This means no misuse of governmental resources and authority in support of a candidate or party, including abuse of the taxing or licensing and regulatory powers of government, or governmental pressure on courts involved in such things as candidate registration.

Two, a campaign environment in which candidates, campaign activists and observers can operate free of harassment and intimidation. Three, transparent and equitable formation of territorial and precinct election commissions. Four, respect for, and adherence to the legal framework for the election, and for the compromise that was negotiated between government and opposition when the law was ultimately passed. Finally, five, a post-election environment free from pressure or incentives to induce deputies to switch allegiances.

It's important to note that this, in particular, was a major problem following the 2002 parliamentary elections, the last time Ukraine used a single mandate system as they are for half the seats this time. The opposition party in that election won the greatest number of seats, but because of post-election defections, the pro-governmental bloc eventually was able to form a parliamentary majority.

Observers from Opora have been monitoring in every oblast since early April. In July, Opora will deploy additional observers to the 225 electoral districts. And on Election Day, it will field up to 3,500 observers. With NDI's technical support, Opora will be able to draw accurate conclusions about the fairness of the election nationwide, based on observation in a statistically representative sample of polling places.

Opora will be reporting on electoral processes and incidents, not just in monthly press conferences but also as they are happening in real time. It will employ sophisticated data visualization techniques to display maps of electoral violations online. It will circulate reports using email and social networks. All of these efforts will enable Ukrainian citizens and international groups to react immediately to electoral problems and events.

Opora will also work with other groups to post verified reports from ordinary citizens, using what's called crowdsourcing techniques that were so important in recent Russian elections. Of course, in all these efforts, the organization, Opora, will also cooperate with the OSCE and other nonpartisan domestic and international election monitoring groups.

In addition to Opora, NDI hopes to support a monitoring effort by the European Network of Election Monitoring Organizations. This is a network of the leading nonpartisan monitoring groups from the former Soviet Union and Central Europe. Its members,

who have observed a number of previous Ukrainian elections, are well-versed in Ukraine's electoral processes.

Opora, ENEMO and other monitors can give Ukrainians crucial information that they need so that they are able to demand from their government clean elections as part of a genuine, long-term commitment to democracy. We hope that all of those here who care about Ukraine help to amplify the findings of these credible Ukrainian—excuse me—credible monitoring groups.

Thank you, again, Mr. Chairman, members of the Commission, for holding this hearing and for the opportunity to speak. And I have—there's a schedule of Opora's reports on the table out there if people want to follow.

Mr. SMITH. Ms. Fox, thank you very much for struggling through with your difficult cold and voice, and thank you for doing it. One quick question before Mr. Kramer—and all of you I would ask the same thing, but after of course the next witness.

You mentioned the leaders have no plans—or some of the leaders have no plans to go to Euro 2012. What about teams? Is that something that should be promoted, that teams ought to boycott this?

Mr. KRAMER. It's a great question. I am inclined to keep the teams out of this; have this decided at the political level. I think the teams are looking forward to participating in these games. And I think enough of a political statement will be made by political leaders and heads of state deciding not to go.

Mr. SMITH. Thank you.

Mr. KRAMER. And my apologies, Mr. Chairman, I appreciate—

Mr. SMITH. Thank you so much.

Mr. KRAMER. Thanks.

Mr. SMITH. And have a nice trip. Mr. Weise. And thank you for your patience.

Mr. WEISE. Thank you, Mr. Chairman. Good afternoon, ladies and gentlemen, members and staff of the Commission. I'd like to ask that my full written statement as well as some other materials which I will refer to in this presentation be included in the record.

Mr. SMITH. Without objection it will be so ordered.

Mr. WEISE. Thank you. IFES is an independent, non-profit leader in election assistance and democracy promotion. In Ukraine, we have provided support to nascent electoral institutions, offered legislative assistance to fundamental laws and worked with a range of civil society groups and experts to improve the quality and transparency of elections in the country.

I would like to begin today by first sincerely thanking the Commission for inviting IFES to speak—and, in fact, all of us to speak—but more so for simply holding this event. Over the past few years, the organizations represented here today have followed closely events in Ukraine with an eye towards this October's parliamentary election.

As we have now already heard, problems arising in the 2010 local elections, some recent developments in election law for this election, the subsequent deterioration of rights and freedoms, the much-publicized and seemingly selective political persecution of former government and current opposition figures have all collectively fueled our growing concern over how free, fair and credible these elections may be.

I will focus my remarks on the legal framework and administration of elections. In doing so I touch upon a number of new or persisting weaknesses in the electoral legislation, I draw your attention to recent developments in preparation for October's election and I briefly highlight some additional issues that may surface in the coming months based on IFES' own observations and work in the country.

On the heels of the 2010 local elections, which we've referred to a number of times now, President Yanukovich announced his intent to embark on comprehensive electoral reform. And there was soon considerable disappointment when it was clear that the government made many key decisions, including a change to the electoral system, even before the working group on election reform held its initial meeting.

Out of this process that lasted a few to several months, a new draft parliamentary election law was eventually put forward. IFES, together with the Council of Europe Venice Commission and OSCE ODHIR drew attention to both positive and negative provisions in the law. The final version of the law largely reflected this draft law with some notable exceptions. And it is of course this law which now will regulate these elections in October.

In Ukraine's new parliamentary election system, half the deputies will be elected through proportional representation according to a nationwide vote and half will be elected in winner-takes-all electoral constituencies, not unlike our elections, for example, for the House of Representatives. Inherently, there is nothing right or wrong in such a system.

However, I would like to draw your attention to the last time such a system was in place exactly 10 years ago, as was mentioned today—this being the 2002 parliamentary elections. These elections were held at a time of a government waning in popularity, yet they eventually produced somewhat surprising results to the benefit of the pro-government political force to the point of it successfully retaining significant control of the legislature.

The pro-government, pro-presidential parties achieve this feat largely or partially certainly by doing extraordinarily well in these single-member districts, disproportionately so. The commonly held assertion amongst experts and academics at the time and, indeed, still was that in some cases administrative resource use and control of certain territorial regions and resources helped ensure a victory for the pro-governmental candidates where the pro-governmental party did not enjoy a plurality of voter support.

Now I bring up this point because today in Ukraine we have a similar scenario unfolding. A parallel election system is now firmly in place. A number of polls, as you've heard today, and including IFES's own from two weeks ago show the support for the ruling party in Ukraine is in decline. So in a sense, we have the similar mix as we had in 2002—on one hand, a governing force that's waning in popular support, which on the other is about to complete in an election where half the seats will be determined through these single-member districts. Of course we can conclude nothing at this time, nor should we, but the parallel is striking and must not be dismissed.



A more technical issue we're just now confronted within the last few weeks concerns the boundaries of those new single-member districts. It is difficult to assess—to assess the Central Election Commission's performance in creating boundaries only because the law included just three brief subarticles to regulate this process. We should also point out that between the initial draft of the new law and the final version, one of the only provisions in the law to regulate this process, that districts must at least be contiguous, was inexplicably removed. Not surprisingly, in examining the new boundaries, we see that there are districts which are noncontiguous. By international standards, there are very few reasons for justifiably doing this, and such reasons do not appear to apply in these cases.

IFES, together with civil society partners, is now working on a comprehensive technical analysis of the districts, which it hopes to release in the coming week. How the districts may have been drawn in terms of political intentions will require some degree of insight into Ukrainian politics, but certainly this will come to light in the days, weeks and months to come.

An additional area to watch relates to the formation of district and polling station election commissions which are essentially the chief electoral bodies for their respective areas. In Ukraine, all commissioners are nominated by a political entity. Because of the number of parties and candidates expected to compete for these elections, places on these commissions will be at a premium and largely decided by a lottery. On April 29th, the CEC adopted a lottery procedure that could severely hamper parties' chances of obtaining these valuable district commission places and is contrary to an earlier IFES recommendation.

In addition, the timeframe for a political entity to submit candidates for the commission is extremely tight—just three days, with any nomination returned for correction needing to be resubmitted the following day. We are concerned that political entities may forfeit their commission nominees simply because they will not learn until later that there was an issue with their initial submission.

In terms of electoral administration, let me begin by saying the CEC of Ukraine has an unenviable task in preparing up to half a million temporary election commissioners in a matter of just a few weeks. The CEC also be burdened with many other tasks in the upcoming months; for example, registering candidates on party lists and accrediting thousands of local and international non-partisan observers and thousands more candidates and party proxies and observers.

Beyond these logistical challenges, we recall, in Ukraine election commissions are *de facto* not independent from political influence, as they are formed by the entities and whose interests they *de facto* represent on the commission. Such a concern has been raised by international organizations such as the OSCE ODIHR.

Finally, I would point to a few additional issues to be cognizant of in the upcoming campaign and election. First is the possibility that voters will be able to use the option in Ukraine of voting in their current temporary place of location to strategically change their place of voting, meaning from one district to another. This

was a potential issue that we raised in one of our earlier analyses of the draft law and we simply believe that it should be closely monitored.

Second concerns the commonly recognized phenomenon that all major political entities receive considerable financial and other resources from Ukraine's wealthiest benefactors. The new parliamentary election law does very little to bring transparency to these relationships, requiring only the modest basic level of disclosure and leaves ample room for campaign costs to be hidden as third-party expenditures or services in kind.

Third, Election Day itself may well complicate it by unwieldy procedures that need to be clarified by the CEC in advance of the election.

And finally, there exists the ever-present possibilities in Ukraine of abuses of state resources, vote-buying schemes and other illegal practices that can thrive with impunity under a weak system of law enforcement.

Now let me conclude by stating what the international community, including the United States, could do to support consolidation of democracy in Ukraine through a transparent, competitive and credible election this October.

First, I would say, don't take your eye off the ball now. Over the next few months important developments will take place that will surely tell us how transparent, credible and evenly contested these elections might be. I urge you all to stay focused on the issues raised today by myself and all the colleagues, and those that may come to light in the upcoming weeks and months.

To this end, it is of course vital for the U.S. and the larger international community to pay close attention to and respond to election administration and observation needs and, through statements from entities such as your own, to continue to show that the U.S. is supportive of a democratic, free and fair election in Ukraine.

Second and finally, I urge you not to take your eye off the ball later. Ukraine fatigue in the West has correlated positively with the government's recidivism with respect to human rights, obvious aggression towards political rivals and efforts to solidify a hold on power.

For our part, IFES has and will continue to advocate for improved democratic election legislation and practices in compliance with international standards.

Now despite issues or concerns raised today, I would say that we certainly do not know what the outcome of these elections will be. But however the conduct and whatever the outcomes, it will be necessary to continue to engage Ukraine, and of course the performance in these elections will in large part determine just how that engagement may take shape.

Thank you all for the opportunity to testify today, and I am happy to answer any questions you may have. Thank you.

Mr. SMITH. Thank you very much, Mr. Weise, for indicating what's happening now, but equally important, when you talked about and admonished us to keep our eye on the ball, what to look out for. And I can assure you this Commission will stay very, very focused, but your words, I think, are very important. And of all the issues in the world today, we need not lose focus, and Kyiv needs

to be very well aware of it, at least in terms of the U.S. Congress and this Commission. We really do understand what's going on, and you have helped us—the three of you and Mr. Kramer, before he left—to have a much better sense of the threats that are occurring there.

I'll ask really all of my questions, in the interest of time, then yield to Mr. Cohen, so whichever ones you would like to respond to, I would ask that you do.

Starting first of all with a more general question, do you think that the Ukrainian government is showing any signs of responding to the force, the pressure, if you will, really just calling on the Yanukovich government to just simply do what it ought to do and it has promised to do with regards to those they've jailed, including and especially Prime Minister or former Prime Minister Tymoshenko? And are they all listening, or are they tone deaf with regards to the very real issues you've raised about the upcoming election? It seems to me if you—if you plan it to—or rig the election, you're going to get the outcome you like.

And secondly, on the intimidation of candidates, by holding people who have—or are in jail for trumped-up charges, does that have a chilling effect? Or does that have the opposite effect, especially with the world watching and encouraging for candidates to step forward and assume what could be very real risks?

With regards to the Euro 2012, as I asked Mr. Kramer earlier, do you think there's any room for soccer teams themselves to boycott, or is it better left to the political side of the equation?

And then with regards to religious leaders, it's my understanding that religious leaders from the Catholic, Orthodox, Jewish, Protestant, Muslim all met with Yanukovich and pushed the human rights issue in general. I'm not sure if they brought up the prime minister or the other incarcerated leaders. If you have any insights on that, that would be helpful.

And then the issue of the United Nations and its engagement from Ban Ki-moon to the United Nations Human Rights Council to any other treaty bodies or any other aspect of it—how engaged are they? We know the EU's engaged, the U.S. is engaged. And finally, should we be doing more, and should the EU be doing more?

Mr. NIX. Thank you, Mr. Chairman. All great questions; I'll try to answer them briefly. Let me address your first two questions, if I may.

With regard to whether the government is being responsive or at least paying attention to what is being said about the elections and the previously noted selective prosecution of political figures, I would say this: that what certainly has gotten attention is increased discussion about the possibility of sanctions, about the possibility of freezing of assets of selected individuals, of denying visas to selected individuals. That is certainly something that I think has created some awareness on the Ukrainian side. In addition to that, raising questions about Ukraine's role as possible chair of the OSCE I think has certainly gained the attention of authorities in Kyiv. So those are two very central issues, and I think that the government is certainly taking note of those types of issues.

With regard to your second question, which was the net effect of the prosecution of political figures, similar to our polling that we

conduct in Ukraine, many of the polls that I've looked at indicate that the incarceration of the opposition has only increased their political ratings. That seems—that seems to be the trend, in any case. Whether that will continue, we don't know. But that has been the case so far. In turn, the government's rating has decreased since these cases have been brought.

Ms. FOX. Thank you. I also would like to respond to, I think it—the first, second and maybe fifth of these questions. [Chuckles.] On whether the Ukrainian government is open to pressure or whether they just are completely tone deaf, I want to note the reaction that NDI got. We had an international assessment mission in these local elections in Obukiv in March.

And the authorities were very anxious to give us every accommodation. They wanted us; they were very open to briefing us and making conditions comfortable for us, to listening to us, to asking for our views. Even though we did not issue a formal report, because it was not an observation mission—we didn't see the pre-election period—a number of government officials at the Kyiv Oblast level, at the Kyiv City level and the Party of Regions were interested informally in asking for our views.

So I do think they have a lot invested in getting a clean bill of health from the international community on these elections. And I think they are capable of, for better or for worse, separating that a little bit—would like to separate that from the Tymoshenko issue.

On what we—what you, Mr. Chairman, members of the Commission and the Congress, the U.S. Government—can do further, I would say two things. One is to amplify the findings of the non-partisan election-monitoring groups, including the Ukrainians themselves. Don't allow them to be painted as being irrelevant or biased or something of that nature. Pay attention to what these groups are saying, and use the influence that you have to amplify them.

The other is sort of a diplomatic function, I would also stress, working with the EU to ensure that they don't suffer from what has been called Ukraine fatigue and that they continue to hold Ukrainians to the standards that should be required for membership in European bodies and for the trade agreement, which is very important to Ukrainians.

I want to make one quick point on the candidate intimidation. Steve made a good point about ratings going up. But also we have to remember that there's a lot of candidate and political activist intimidation going on out in the regions where it isn't becoming known and where it's much easier to scare people. And that just—it makes it all the more important that observers are out there reporting on this. And I want to particularly commend Ambassador Tefft in the past for the support we've had. And we've been able to bring these cases of specifically observer intimidation to his attention. He's been very helpful.

Mr. SMITH. Did you want to touch on the U.N. before we go, Mr. Weise?

Mr. NIX. Mr. Chairman, if I can just respond to your fourth question with regard to the meeting with religious leaders, I would only say that our polling clearly shows—we asked respondents to rate

institutions. And the church in Ukraine—whether that's the Orthodox Church, Kyiv patriarch, Moscow patriarch, or the Ukrainian Catholic or Roman Catholic faith—those combined institutions are always received invariably the highest rating in polling in terms of institutions. So if the administration is going to listen to any particular body in the country, it would likely be the united churches.

Mr. SMITH. Have they been public enough? You know, after all those years of communism and being voiceless almost, have they learned to get their voice in the public square?

Mr. NIX. Well, that I think is something that's developing, but it's certainly a fact that the president met with them, I think, is a positive and promising sign.

Mr. SMITH. Mr. Weiss.

Mr. WEISE. Thank you, Mr. Chairman. I'll try to also address some of the issues that were not picked up on by my colleagues, if I can remember, indeed.

First, with regards to the effect of some of the messages and noise that has been coming at the authorities, I will leave the macro-level issues out of my response but look really at regards to the election itself. And here I'd like to point out just on the election law itself, you know, there was an initial draft law put forward by the MOJ, which organizations like IFES and Venice Commission reviewed. And indeed, there were a number of things that were changed in that legislation that were contained in both of our analyses, which we do believe will make it a much more—have the—I would say have the potential to make it a more free and fair election, and certainly will make the election run more smoothly. So I can give an example of this by releasing the territorial districts to the candidates and the public more than just the very day that the election itself starts. You can imagine trying to run in a race where you actually don't know what your district is and the election starts on that day when you finally learn what it is.

Also, guidance on the—what we'll do with overseas voters, which was lacking from the law. Also the removal of some—in the final draft they removed some precincts which could have been by law opened up in various locations not related to a military or diplomatic post but merely in a shopping mall or what have you, another location that they sanctioned. Another—a couple of other things, like putting free access to government funds for TV airtime and perhaps in media, et cetera, et cetera. I would also say that the CEC, while they did not pick up on all civil society's recommendations to be transparent in how they were drawing boundaries by any means, they did stick to a couple of provisions such as the 12 percent maximum deviation rule between the sizes of the districts and also distributed the districts evenly among Ukraine's regions in a relatively straightforward and let's say standard manner.

As far as the political—as far as the effect of the persecution of the opposition, I would just agree with my colleagues and say that I think that absolutely has been the cause for a significant increase in the popularity in the polls. And I do not know the extent of some of those former opposition leaders, how popular they were before ratcheting of persecution happened.

And with regards to the Euro 2012 boycott, I would agree with my colleague David Kramer to, you know, let's keep it political, if we can. Let's also remember that Russia is competing in those games and also has a pretty good team. And I don't know if they would be willing to boycott this event. So it would be hard to do it sort of on a widespread basis. And I would also say that the history of boycotts has been mixed, I think, when we look back at it through history with the 1980 and 1984 Olympics, I think it was. So in that respect, I would say let's—well, hopefully it will stay political. And hopefully, there actually will be some political pressure because of course—and political boycotts, because we're not actually at that point of the games just yet.

Thank you.

Mr. SMITH. Thank you. Commissioner Cohen.

Mr. COHEN. Thank you, Mr. Chairman. I think the questions are pretty well covered, but I would like to ask this: Have other countries brought actions or taken action that the United States should emulate?

Mr. NIX. I think that the United States, through our embassy in Kyiv, has joined with our European friends in making very strong statements in advance of these elections. They're of critical importance. Every time we have a national election in Ukraine, we say it is the most critical election ever. And every time we say that, it's true. It's just as true this time.

So I think the statements coming out now are timely, because the fact that districts have been drawn and the election law has been amended—the official campaign will start. And so I think speaking up now is appropriate. To speak with one voice across the Atlantic is appropriate. I think that's being done. But finally, I think the key is to be persistent in holding officials to account, in the hope that these elections can be well-administered and meet international standards for fairness and transparency. That's the goal. That's what we hope Ukraine can achieve. We all want Ukraine to achieve this.

Mr. COHEN. OK. On the election issue, do the other two panelists agree that we're working in concert with our European allies and should do so and that nobody's taken any steps beyond us? Ms. Fox.

Ms. FOX. Yes, I agree that it's very important to be working in concert with European allies and to be persistent and to follow up, as Mr. Nix has said. And I also agree with him that we have—we've had a very strong voice in this and are doing what we should be doing. We just need to keep doing it.

Mr. COHEN. Mr. Weise, you concur?

Mr. WEISE. Yes, I do. I concur, and I also would like to point out that not only—it's not so much maybe that we should be emulating some of our European allies, but maybe they should be emulating us as well. I think that the U.S. has actually done a very good job and should be commended for often leading some of the statements and some of the issues that we have concentrated on over the past several months. And again, we've mentioned Ambassador Tefft, and I think he's done an excellent job in Ukraine. And he has really, let's say, pushed, I think, the European allies to sort of all be on the same page. And we certainly thank him very much for that.

Mr. COHEN. And those statements are about the elections. And are they also consistent with the treatment of the former prime minister and the prison conditions of people being imprisoned for same?

Let me ask you this. On the—just to—Mr. Nix, you first. We had briefings yesterday on the Uzbekistan and all of those other “stans” in Central Asia. If you take all the former Soviet republics, where does Ukraine rank as far as democratic principles and actions of the present government? Above who and beneath who?

Mr. NIX. Well, sure. I’d—comparatively I’d like to say at the outset that it’s not at the same level as it was, say, after the election of 2005. Obviously there has been regression. Where does it stand now? I was pointed out earlier by Mr. Kramer, it’s not Belarus, it’s not Russia; but it’s certainly not Western Europe. It’s somewhere in between. And if Ukraine wants to realize its European ambitions, if it truly wants to be part of the Euro-Atlantic alliance, it has to do better than its doing now.

Mr. COHEN. And Mr. Kramer’s—I kind of guess he gives, like, a report card. And he’s got, you know, fair and not so fair and whatever. Are you familiar with this report card?

Mr. NIX. Oh yes. I refer to regularly. It’s very comprehensive. It’s done regularly. It’s relied on by the NGO community.

Mr. COHEN. So with Western Europe and Belarus, it’s—and Russia—they’re in the middle, but how are they with all the other former Soviet Union, scratch Western Europe?

Mr. NIX. Well—

Mr. COHEN. In that division—if they’re—

Mr. NIX. Sure, in terms of Eastern Europe—

Mr. COHEN. You know, are they a one seed or an eight seed or do they not make the playoffs? [Laughter.]

Mr. NIX. Well, that’s an interesting analogy. But I would say this in terms of Eastern Europe, Ukraine is lagging far behind the Baltic countries and the other countries—Slovakia and Poland. It needs to do better; hopefully it will. That’s what this is all about. And I think the strong voices of Congress in supporting Ukraine in its efforts to democratize will have real effect. So they’re not where they should be. Hopefully they will get there, and sooner the better.

Mr. COHEN. Are they better than the “stans”?

Mr. NIX. Oh, yes, sir. Yes. I would—I could say that I think unequivocally. But you know, even in Kyrgyzstan, where we’ve had a—something of a democratic breakthrough, at least we have the constitutional makings of a parliamentary republic—a parliamentary system of government. But that’s still very fragile. No one knows how that will pan out. So yes, obviously, Ukraine has gained strides. Its location, I think, dictates that it acts so. So in sum, absolutely ahead of the “stans.”

Mr. COHEN. Thank you very much. Yield back.

Mr. SMITH. Thank you very much, Commissioner Cohen.

Just final question, would a congressional or codel of this Commission be helpful, say, between now and July?

Mr. WEISE. Well, I think I speak for all of us when I say absolutely. And of course, all of our organizations would also be happy

to assist with information or other background materials in advance of such a trip.

Mr. SMITH. We will take you on that. Thank you. We will try to put that together as quickly as possible.

And just one final—on a more humorous note, I'm sure Ambassador Tefft showed you his Green Bay—his beloved Green Bay Packers helmet. Thank you so much for your insight, your counsel, your tremendous work on behalf of human rights. It is extraordinary. And the people of Ukraine benefit because of you. Thank you so much.

Hearing's adjourned.

[Whereupon, at 3:30 p.m., the hearing was adjourned.]



# APPENDIX

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PREPARED STATEMENTS

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## PREPARED STATEMENT OF HON. CHRISTOPHER H. SMITH, CHAIRMAN, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Welcome to this Helsinki Commission hearing on the October 28 parliamentary elections in Ukraine. Even though the actual voting is still five months away, in the hope that matters raised can still be properly addressed we believe it is important to focus attention now. Ukraine's past four national elections—two presidential and two parliamentary—have met international democratic standards. They received positive assessments from the OSCE-led international observation missions and other international observers.

But given Ukraine's democratic backsliding under Viktor Yanukovich, we have reason to be concerned about the pre-election climate and watchful for attempts to skew the conditions in which the campaigns will be conducted.

The October 2010 local elections, and, more recently, the March mayoral election in Obukhiv in Kyiv oblast were problematic. And Ukraine's general backsliding is very troubling; we see it in the independence of the judiciary, in corruption, tightening controls over the media and harassment of NGOs—all these things could also have a debilitating impact on the election process.

Concerns are emerging that, in addition to potential overt voting day election rigging, more subtle measures of manipulation may already be taking place, such as putting pressure on opposition candidates to not run or to switch allegiances to the ruling Regions party.

Especially disconcerting—and disgusting—is the unjust imprisonment of political opposition leaders, former Prime Minister Yuliya Tymoshenko and former Interior Minister Yuri Lutsenko, removing their participation in the elections and casting a shadow over the entire election process.

Unless they and other senior former government officials are released from prison and restored to their full political and civil rights, the October elections will, by the very fact of their imprisonment, be tainted. The imprisonment of leading opposition figures alone is so significant, and outrageous, that they will make it impossible for the international community to assess these elections as having fully met international democratic standards.

These elections are a litmus test for Ukrainian democracy—of the degree and kind of democracy it still has. The elections process, including the pre-election environment, registration, campaign, voting, counting and tabulation, will tell us a lot about Ukraine's future course. Will Ukraine continue sliding towards authoritarianism, or will it resume its path to democracy? Another factor here is that in 2013 Ukraine will assume the leadership of the OSCE—which makes it even more important that these elections be conducted in line with OSCE standards of freedom and fairness—if not, Ukraine's Chairmanship will begin under a cloud.

As a long-time advocate of democracy, human rights and rule of law in Ukraine, I hope that the Yanukovich government will not tear Ukraine away from its recent tradition of free and fair national elections and will permit a genuinely democratic election process—one in which political parties and candidates compete on a level playing field, there exists equitable media access, and the balloting is conducted in a manner that instills confidence.

PREPARED STATEMENT OF STEPHEN B. NIX, DIRECTOR, EURASIA DIVISION,  
INTERNATIONAL REPUBLICAN INSTITUTE

I wish to thank the Members of the Helsinki Commission for conducting this public hearing and for inviting me to testify on an extremely important part of the world. We are all cognizant of the fact that much attention is currently placed on North Africa and sections of the Middle East. However, Europe and Eurasia remain of great strategic importance for the United States, and developments, particularly in the area of democracy, are critical to the United States' interests globally.

Again, thank you for this opportunity and I request that my remarks be entered into the record.

We meet here today at a critical time in Ukraine's democratic development. For the past two years, we have watched what can only be described as backsliding of democracy in Ukraine. The international community has witnessed the continued selective prosecution of the political opposition in Ukraine; the report from the Ukrainian Human Rights Ombudsman with photographs that show what appear to be bruises on the imprisoned former Prime Minister Yulia Tymoshenko following an alleged attempt to forcibly transport her to a medical facility for treatment against her will; the almost daily announcement of European leaders indicating their refusal to attend the European soccer championship in Ukraine as a result of its human rights situation; and increasing talk in Washington and Brussels of the development of a visa-ban list and freezing of international assets which would seek to punish those government officials and their families who are the cause of the continued backsliding of democracy in Ukraine. None of this would have been imaginable a year ago. However the reality in Ukraine has changed significantly. Amid all of the political instability in Ukraine, it is instructive to understand how the country arrived at where it is today and analyze this in the context of how it will affect the October 2012 parliamentary elections.

The October 2012 elections will be the first parliamentary elections in Ukraine since 2007. At the time, Ukraine had just experienced the Orange Revolution resulting in a grassroots democratic breakthrough and a series of free and fair presidential and parliamentary elections. In February 2010, Victor Yanukovich was elected President in an election which was deemed by most observers to have met internationally accepted democratic standards. However, since his election, the Yanukovich administration has engaged in the practice of selective justice, targeting opposition politicians. On October 1, 2010, the Constitutional Court, following a Yanukovich-supported change in the composition of the court to include judges mostly from his home region, ruled that the amendments made to the constitution in 2005 following the Orange Revolution were invalid. In so doing, powers previously vested in the presidency under the previous constitution were reinstated, returning Ukraine to a presidential system of government. The only elections conducted thus far under the Yanukovich presidency, the 2010 local elections, were recognized by the U.S. and international organizations as having fallen short of meeting democratic standards. Massive government resources were used to consolidate power, while parties not aligned with the governing party were not able to fully and fairly participate in the elections nationwide.

The Yanukovich government has justified any perceived consolidation of power as a means to undertake unprecedented governmental and institutional reforms. However, many international organizations have not positively assessed these reforms, and Ukraine's democratic development. Freedom House, in its 2011 report, downgraded Ukraine from being "free" to being "partly free." In addition, Freedom House published a report at the one-year anniversary of Yanukovich's government, in which it stated that "If left unchecked, the trends set by Ukraine's current leadership will move the country toward greater centralization and consolidation of power—that is, toward authoritarianism."<sup>1</sup> In the report, the authors say Ukraine is characterized by:

"... consolidation of power, with a narrow ruling group under Yanukovich intent on restoring political order and implementing policy using a more intrusive and visible SBU (Security Services of Ukraine) presence as well as an increasingly malleable judicial system; a ruling group that is equally interested in dividing spoils and protecting its own (though egregious corrupt behavior has also been associated with prior governments); lingering resentment over the failure of the Orange Revolution leaders, in power from 2005 through 2009, and the continued fragmentation of the political opposition; the effects of the financial

<sup>1</sup> Freedom House Special Report; Sounding the Alarm: Protecting Democracy in Ukraine 2011, page ii (April 2011) [http://freedomhouse.org/uploads/special\\_report/98.pdf](http://freedomhouse.org/uploads/special_report/98.pdf)

crisis, the International Monetary Fund (IMF) bailout, and ensuing economic reforms; and enervated civil society groups and independent media that are increasingly under pressure from government authorities, including the security services, with particularly difficult conditions in the regions.”<sup>2</sup>

Recently, the presidential administration reshuffled key positions in the Ministry of Interior with former Minister Anatoliy Mohylev appointed Prime Minister of the Autonomous Republic of Crimea. Mohylev was replaced with the former head of the State Tax Service of Ukraine, Vitaliy Zakharchenko. Zakharchenko is a native of the President Yanukovich’s home region in Donetsk. In January, President Yanukovich signed decrees to remove Fedir Yaroshenko, the Minister of Finance, from his post and replace him with the head of the Ukrainian Security Services SBU, Valeriy Khoroshkovsky. Khoroshkovsky’s position as SBU chief was given to Igor Kalinin who is a former Russian citizen and formerly in charge of Yanukovich’s security detail. Khoroshkovsky has since been named a Deputy Prime Minister. The new Minister of Finance, Yuri Kolubov, is a known business associate of one of the President’s sons. The President then named Dmytro Salamatin as Minister of Defense. Salamatin formerly was a citizen of the Russian Federation until 2005 and it is unclear how he obtained his Ukrainian citizenship. Finally, the head of the Central Bank of Ukraine is headed by another business associate of the President’s son, Serhiy Arbuzov, who previously managed a small bank in the President’s home region of Donetsk. This reshuffling suggests a consolidation of power in the Yanukovich “family”, as many of these new ministers and officials can trace their rise to their connection the President and his sons.

As a result of the consolidation of power in the hands of a small group, closely connected to the President and the continuing democratic regression, there is a growing public discontent with the authorities. In public opinion surveys conducted by the International Republican Institute (IRI), participants were asked, “Would you support the international community freezing the international assets of and suspending visas for Ukrainian officials, including judges, engaged in corrupt practices?” In a November IRI public opinion survey, 81 percent supported this idea while six percent opposed. In March 2012, 82 percent supported this idea while six percent opposed.

On November 17, Ukraine’s Parliament adopted a Law on Parliamentary Elections, which are scheduled for October 2012. The new law establishes a mixed system by which half of the deputies will be elected under a closed-list proportional system and the other half selected through individual mandates in a majoritarian system. The mixed electoral system is a return to the system last used in 2002 when international observers reported significant fraud. The law also establishes a five-percent threshold for any political party to be represented through the proportional vote and does not allow electoral blocs to compete in the election.

The Venice Commission strongly criticized the draft of the Parliamentary Election Law; however, the commission’s analysis was mostly ignored. Its report was critical of the change to the mixed election list system. It had advocated for an open party list system. The commission also expressed concern about unclear criteria and deadlines for the designation of electoral districts; a lack of clarity on appealing results of elections; and an absence of full disclosure on sources and sums of election campaign funding.

According to recent IRI polling, it appears that six political parties would pass the five-percent threshold; the Party of Regions which is headed by the current Prime Minister Mykola Azarov; the Fatherland Party headed by Yulia Tymoshenko (currently serving a seven-year prison sentence) and run by Oleksandr Turchynov in her absence; Front of Change, led by the former Speaker of Parliament, Arseniy Yatseniuk; the Ukrainian Democratic Alliance for Reform led by Vitaliy Klychko; the Communist Party led by Vasyl Symonenko; and the Freedom Party headed by Oley Tyahnybok.

At the March Regions Political Party Congress, the Strong Ukraine political party headed by the third runner up in the 2010 presidential election, Serhiy Tigipko was folded into the Party of Regions. The base of support for Strong Ukraine had been small and medium businessmen. It is believed that the addition of Strong Ukraine will add several percentage points to the Party of Regions’ rating. The opposition is seeking to coalesce before the elections. The Fatherland Party and the Front of Change agreed to unite under a unified list. The Fatherland Party and the Front of Change are currently in negotiations with the Ukrainian Democratic Alliance for Reform to join a unified opposition list.

<sup>2</sup> Freedom House; Sounding the Alarm: Protecting Democracy in Ukraine 2011, page 1 (April 2011) [http://www.freedomhouse.org/uploads/special\\_report/98.pdf](http://www.freedomhouse.org/uploads/special_report/98.pdf)

Leading up to the 2012 elections, government officials have intensified their pressure on multiple sectors of Ukrainian society such as media, civil society organizations and the opposition.

#### *The Media*

One of the preeminent legacies of the Orange Revolution was a free and vibrant media. Very soon after assuming the presidency in 2010, the current government directly and indirectly pressured the media to limit critical coverage and report more positively on the government. In addition, one of the country's Deputy Prime Ministers is the owner of the largest media conglomerate in Ukraine, *Inter*. The government has tried to censor state TV companies. For example, recently the State Television- and Radio-Company of Ukraine, in a move reminiscent of the Soviet propaganda, sent letters to local state TV channels demanding that they "popularize" the President's social initiatives. According to a June 2011 Ukrainian Press Academy news report, 74 percent of the seven leading television channels in Ukraine cover government authorities, 20 percent cover the opposition, and six percent other. Coverage on the First National Channel was 94 percent on governmental officials and four percent on the opposition and other.<sup>3</sup> A few months ago an independent television station in Kharkiv was closed under suspicious circumstances. In April, the tax authorities, a body increasingly used as a tool of government to exert pressure on the media and other parts of society, began to target one of the remaining independent channels, the TVi Channel.

#### *Civil Society Organizations*

The Ukrainian government has begun to more closely monitor and regulate activities of non-governmental organizations, including those of IRI. A Cabinet of Ministers decree signed on January 19, 2011 amends the registration regulations in Ukraine, making it easier to deregister international civil society organizations (CSO) and placing much higher reporting requirements on sub-grantees. Officials from SBU, have also started to intimidate and exert pressure directly on more independent CSOs. Most recently, members of Parliament from the Party of Regions have suggested legislation which would ban foreign funding of CSOs. The national security doctrine of Ukraine adopted by the National Security and Defense Council was updated in March 2011 to declare as a national security threat "any international or domestic organization which provides financial or moral support to political parties or non-governmental organizations whose goal it is to discredit the government of Ukraine." This statement could be interpreted to apply to any number of organizations working in Ukraine. Adding further to the sense of encroachment by the government on civic association, the Parliament passed and the President signed into law legislation which requires every database which contains personal information to be registered with the national government. Therefore, all CSOs would have to disclose all information which falls under the database category with the government.

#### *Marginalization of the Opposition*

The government and its allies apply economic and/or political pressure to coerce members of opposition parties to join the government on local, regional, and national levels. Ukrainian authorities have also targeted those who do not join the government or government-aligned parties with criminal prosecution. As a result, many of the most viable figures in the democratic Ukrainian opposition are currently under investigation or imprisoned. In spite of numerous European and U.S. government statements of concern about the application of selective justice in Ukraine, the Ukrainian government continues to prosecute and incarcerate the leading opposition figures.

As of today, the following opposition figures have been sentenced to prison;

- Yulia Tymoshenko—former Prime Minister, head of leading opposition party, Fatherland, sentenced to seven years in prison. Her health has significantly deteriorated in prison. Prison authorities have refused to allow her to travel to Germany to seek treatment from independent medical providers as suggested by German officials.
- Yuriy Lutsenko—former Interior Minister, leader of People's Self Defense Party sentenced to four years in prison.
- Volodymyr Ivashchenko—former Acting Minister of Defense sentenced to five years in prison.
- Grigoriy Filipchuk—former Minister of Environmental Protection sentenced to three years in prison.

<sup>3</sup> Ukrainian Press Academy June 2011; <http://www.mediaosvita.com.ua/material/2919>

In addition, Bohdan Danylyshyn, a former Minister of Economy in Tymoshenko's government, received political asylum in the Czech Republic in January 2011 after being accused of financial mismanagement. Former Kharkiv *oblast* governor and Fatherland Party member Arseny Avakov, who lost disputed mayoral elections in Kharkiv city in the flawed 2010 local elections, is in the process of applying for asylum in Italy after being charged with similar crimes.

The U.S. has issued statements highlighting these instances as examples of selective prosecution.

In summary, there is a clear trend of prosecuting political opposition leaders and activists.

#### *IRI Work in Ukraine*

Since 1994, IRI has actively supported the promotion of democracy in Ukraine. To address the aforementioned challenges and respond to Ukraine's rapidly deteriorating political environment, IRI is working to strengthen political parties, foster mechanisms for good governance, support the next generation of political activists, and develop a more transparent electoral system.

In order to ensure Ukraine has vibrant, democratic parties which reflect the needs of citizens, IRI trains parties on how to improve their structures and organization, coalesce, and recruit new members. Recently, IRI launched an innovative program to enhance communication between political parties and local CSOs.

To encourage Ukraine's elected officials to be responsive to citizens, IRI provides training to local elected officials on communications, constituent service, management and other skills necessary for effective and transparent governance.

One means to encourage government accountability is IRI's public hearing program, which enables Ukrainian civil society, particularly in Crimea, to bridge the gap between citizens and elected officials. By selecting a local problem and addressing it through the mechanism of a public hearing, citizens are able to participate in the decision-making process.

To ensure democracy has a strong and stable future, IRI has been supporting four youth-oriented CSOs, which established Youth Political Leadership Schools in Ukraine to teach political activism, particularly in Eastern Ukraine and Crimea. More than 920 students have graduated from these schools and more than 70 percent of whom have entered into some form of public service.

To assist in the development of Ukraine's electoral processes, IRI has conducted international election observation missions, observing every parliamentary and presidential election since Ukraine became independent in 1991. IRI also participated in a joint expert assessment team for the October 31, 2010 local elections.

In addition to observing elections, IRI has been assisting the country with electoral reform. In July, prior to the October 31 local elections, the Parliament adopted an election law which IRI and many other international and domestic organizations criticized for falling short of international democratic standards. Consequently, IRI and the National Democratic Institute drafted a detailed election law analysis in August, which pointed out certain undemocratic aspects of the law and the non-transparent manner in which the law was adopted. As a result, the President ordered Parliament to revise the election law. However, even though the law was slightly amended, international and domestic observers labeled the October 31, 2010 election as not meeting international standards. In response to widespread international criticism, Ukraine's President created a working group tasked with developing recommendations for new elections laws. IRI was a member of the working group until March, when it suspended its membership, after IRI made the determination that it was not being allowed to substantively contribute to the process.

#### *Next Steps*

Let me once again reiterate the importance of the upcoming parliamentary elections. Elections are critical for Ukraine's continued integration into Euro-Atlantic structures. Failure to conduct elections which meet international standards will cause Ukraine to be further isolated from the West.

We encourage the United States Congress to continue to make it clear to the Ukrainian government that free and fair elections will determine the course of the future relationship between our two countries. In anticipation of the possibility of excessive fraud in the parliamentary elections, we call on the Ukrainian authorities to support international election observation missions to Ukraine and to allow district and regional election commissioners to conduct their work independent of pressure and intimidation from central authorities.

In summary, I want to convey the extreme importance of the parliamentary elections in Ukraine. The way in which elections are conducted are every bit as impor-

tant as the outcome. I thank the Chairman and his staff for their focus and attention on Ukraine, and thank you again for the opportunity to appear here today.

Stephen Nix joined IRI in October 2000, as Regional Director. In that position, he oversees programs in Belarus, Georgia, Kyrgyz Republic, Moldavia, Russia and Ukraine. Nix joined IRI after serving for two years as Senior Democracy Specialist at the U.S. Agency for International Development.

Nix resided in Kyiv, Ukraine, for more than three years. During that time, he worked as legal counsel for IFES and served as outside legal counsel for the Committee on Legal Reform in the Ukrainian Parliament. He also assisted in the drafting of crucial reform legislation in Ukraine, including the constitution of Ukraine, the presidential and parliamentary election laws, and the law on the constitutional court of Ukraine.

PREPARED STATEMENT OF KATIE FOX, DEPUTY REGIONAL DIRECTOR, EURASIA,  
NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

Mr. Chairman and Distinguished Members of the Commission:

Thank you for this opportunity to comment on next October's Ukrainian parliamentary elections. NDI applauds the Commission's decision to hold this hearing at this juncture. Although election day is several months off, important decisions are being made now. Ukraine's Constitutional Court recently invalidated portions of the parliamentary election law. Territorial and precinct election commissions will soon be chosen. Opora, the major domestic nonpartisan election monitoring group, is beginning to issue reports, and the parties with which NDI and IRI work are drawing up their plans for protecting electoral integrity.

Moreover, it is established international practice to evaluate all parts of the election cycle as well as the broader political context that affects the character and quality of elections, as called for in both the Declaration of Principles for International Election Observation and the Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizens' Organizations, which are supported by the UN Secretariat, OSCE-ODIHR, NDI and other key international organizations. The Global Principles, which were launched on April 3 in a ceremony at the UN, are also endorsed by 165 citizen election monitoring organizations in 65 countries.

In fact, the Ukrainian government and its critics agree that this election should be viewed in a broader political context. The government asserts that it is preparing to hold a fully democratic election, one that will demonstrate its ability to balance strong centralized governance with democratic values sufficient to justify European Union membership.

Unfortunately, this notion of balance remains wishful thinking, despite the efforts of some well-intentioned people in the current government. In the electoral arena, there was a promising start with a democratic election in 2010 when President Yanukovich came to power. Since then the only nationwide elections under Ukraine's current administration, local elections in fall 2010, were flawed in the view of credible domestic and international observers, including NDI. That tainted performance undermined confidence among the opposition that this government would uphold international and domestic standards for fair elections. Long and opaque deliberations over a new parliamentary election law fueled further mistrust in the electoral process. And, in a troubling development, international observers were not allowed to monitor critical aspects of the vote count in the March local election in the Kyiv suburb of Obukhiv.

The last two years have also seen a general deterioration of political pluralism in Ukraine. The ruling party has gradually taken control over most institutions of government. In addition to the new parliamentary election law, the last two years have seen the jailing of the most popular opposition politician, former Prime Minister Yulia Tymoshenko; constitutional changes to strengthen the presidency relative to parliament; and greatly expanded control by the Party of Regions over local governments as well as law enforcement and regulatory authorities. Ukraine's courts, including the Constitutional Court, have rebuffed challenges to all of these changes. In Freedom House's Freedom in the World index, Ukraine dropped from "free" to "partly free" under the current government.

At the same time, Ukraine still benefits from strong democratic voices and alternative points of view. In the election law debate, for example, opposition parties marshaled media and public attention, and were able to negotiate significant changes to the law. The presence of viable opposition sets Ukraine apart from most of its ex-Soviet neighbors.

The international community can use both words and deeds to guard against the erosion of democratic rights in Ukraine. The primary driver of positive change, however, will be the Ukrainians themselves. And, there should be no mistaking Ukrainians' desires. A common refrain among certain commentators is that Ukrainians are either apathetic about political life or ready to sacrifice democratic institutions and principles for a 'strong hand' in governance.

Neither is true, and both do disservice to Ukrainians' aspirations. While citizens express disappointment with their political leaders, they do care about the direction of their country, as evidenced by the growing numbers participating in peaceful protests. Recent increases in demonstrations and in the "protest mood" have been documented by pollsters and by civil society, including an NDI partner, the Center for Society Research.

The all too common wisdom that Ukrainians will sacrifice democracy for progress on bread and butter issues is also false. Ukrainian civic groups have successfully married the two concerns in an advocacy campaign on freedom of assembly. Thousands of Ukrainians have signed petitions that call upon the government to allow



freedom of assembly as a means of protecting their economic rights. Polling supported by NDI along with Lake Research Associates prior to the petition campaign showed that Ukrainians are well aware of threats to democracy and individual civil liberties, notably political influence over the judiciary.

As the election approaches, Ukrainian civil society will become more active, particularly in monitoring and reporting on threats to electoral integrity.

Five key issues are most important to restoring some measure of credibility to the Ukraine's electoral process.

1. Government impartiality in the administration of the elections. This means no misuse of governmental resources and authority in support of a candidate or party, including abuse of the taxing or licensing and regulatory powers of government, or governmental pressure on courts involved in such things as candidate registration.
2. A campaign environment in which candidates, campaign activists and observers can operate free of harassment and intimidation.
3. Transparent and equitable formation of territorial and precinct election commissions.
4. Respect for, and adherence to the legal framework for elections, and for the compromise that was negotiated between government and opposition when the law was ultimately passed.
5. A post-election environment free from pressure or incentives to induce deputies to switch allegiances. This was a major problem following the 2002 parliamentary elections, the last time Ukraine used a single mandate system. The opposition party won the greatest number of seats but because of post-election defections, the pro-governmental bloc eventually formed a parliamentary majority.

Observers from Opora have been monitoring in every oblast since early April. In July, the group will deploy additional observers to the 225 electoral districts. On election day it will field up to 3,500 observers. With NDI's technical support, Opora will be able to draw accurate conclusions about the fairness of the election nationwide, based on its observation in a statistically representative sample of polling places.

Opora will report on electoral processes and incidents not only in monthly press conferences, but as they happen. It will employ sophisticated data visualization techniques to display maps of electoral violations online. It will circulate reports using email and social networks as well as traditional methods. These efforts will enable Ukrainian citizens and international groups to react immediately to electoral events.

Opora will also work with other groups to post verified reports from ordinary citizens, using the "crowdsourcing" techniques that played an important role in recent Russian elections. In all of these efforts, the organization will also cooperate with the OSCE, and other nonpartisan domestic and international election monitoring groups.

In addition to Opora, NDI hopes to support a monitoring effort by the European Network of Election Monitoring Organizations (ENEMO), a network of the leading nonpartisan monitoring groups from the former Soviet Union and Central and Eastern Europe. Its members, who have observed previous Ukrainian polls, are well versed in the country's electoral process.

Opora, ENEMO and other monitors can give Ukrainians the crucial information they need to demand from their government clean elections as part of a genuine, long-term commitment to democracy. We hope that all of those here who care about Ukraine will help to amplify the findings of these credible monitoring efforts.

Again, thank you, Mr. Chairman and Members of the Commission for holding this hearing and for the opportunity to speak today. For those who are interested, I have put copies of Opora's reporting schedule on the table in the hearing room.

Katie Fox is deputy director of the Eurasia department at NDI. Prior to joining the Institute more than 15 years ago, Ms. Fox was legislative director for a large labor union. A lawyer by training, Ms. Fox also served as an aide to two U.S. senators and a congressman. In her current role, Ms. Fox oversees NDI election monitoring, civic organizing and political party development programs in the former Soviet Union, with a focus on Ukraine, Russia, Belarus and Moldova. She has monitored elections in Bosnia, Georgia, Kyrgyzstan, Russia and Ukraine, and served on an NDI pre-election delegation to Ukraine in 2007. Ms. Fox was stationed in NDI's Ukraine office in 1995–1998, and again in 1999 and 2004.

PREPARED STATEMENT OF GAVIN WEISE, DEPUTY REGIONAL DIRECTOR, EUROPE AND ASIA, INTERNATIONAL FOUNDATION FOR ELECTORAL SYSTEMS (IFES)

Good afternoon ladies and gentlemen, members and staff of the Helsinki Commission. My name is Gavin Weise, I am the Deputy Director for Europe & Asia at the International Foundation for Electoral Systems, also known as IFES.

IFES is a global leader in democracy promotion. We advance good governance and democratic rights by providing technical assistance to election officials, empowering the under-represented to participate in the political process and applying field-based research. Since 1987, IFES has worked in 135 countries, from developing to mature democracies.

IFES has been active in Ukraine over the past two decades. IFES has provided support to nascent electoral institutions following Ukraine's independence; offered legislative assistance to fundamental laws; gauged citizens' sentiment and attitudes through annual public opinion research; and worked with a diverse range of civil society groups and experts to improve the quality and transparency of elections in the country. Currently we are actively promoting debate and analyses of electoral laws and other election issues among civil society experts; building the capacity of civic organizations to play a meaningful role in electoral and political processes and reform; supporting the Central Election Commission in its efforts to prepare for the 2012 elections; and will embark on longer-term institutional reforms.

Before moving to my remarks, I want to first pause and sincerely thank the Helsinki Commission for inviting IFES to speak today, but more so for simply holding this event. Over the past two years, really since Ukraine's last presidential election in 2010, organizations such as IFES, and those of my colleagues here today, have followed events closely in the country with an eye toward this October's parliamentary elections. While Ukraine had a record of relatively competitive, considerably free and fair, and competently run elections for several years up through the 2010 presidential election, the local elections in the fall of that year gave us all cause for serious concern. The conduct of those elections, subsequent deterioration of rights and freedoms as documented by a number of organizations, the much-publicized and seemingly selective political persecution of former government and current opposition figures, and recent developments with regards to the upcoming October election, have only heightened those concerns.

Since I am joined by my colleagues of the two political party institutes, I will focus my remarks on IFES' core competencies, namely the legal framework and administration of elections. In doing so, I will touch upon a number of persisting or new weaknesses in the electoral legislation, draw your attention to some recent developments in preparation for October's elections, and finally and perhaps most importantly, highlight what additional issues may surface in the coming months based on IFES' experience, observations and work in the country.

First of all, in regards to the current electoral legislation and the context under which it has come about, I would begin with the 2010 local elections, which were widely regarded as the most problematic elections in the recent history of Ukraine. For an account of the 2010 local elections and some of the issues encountered, you may refer to the U.S. Embassy in Ukraine's own statement of November 3, 2010. This preliminary statement cited concerns over insufficient training of election officials, ballot lottery, commission membership and complicated registration procedures, among others. It also stressed weaknesses in the recently passed local election law which changed the rules of the game late in the process and, in the opinion of most experts, to the detriment of the opposition parties and several prominent independent candidates. In that statement the embassy also indicated a willingness to provide assistance to future electoral reforms in Ukraine.

On the heels of these elections, President Yanukovich announced his intent to embark on comprehensive electoral reform. Reform is of course a natural, ongoing process when a government, legislature or interest group seeks to improve and amend an institution or practice. Our own country shows no shortage of controversial topics that many would like to change in one way or another: campaign finance, redistricting and the electoral college, just to name a few. And while this commitment to legal reform was welcome in Ukraine, many stakeholders were surprised, and indeed dismayed, by the government's choice to begin with the parliamentary election law, a law that was regarded by many as being the least flawed of Ukraine's four primary election laws.

A reluctance of many stakeholders within the opposition, civil society and international organizations to participate in the government's working group on election reform was increased by the fact that the government made many key decisions, including a change in the electoral system, even before the working group's first meeting. Out of this process a new draft parliamentary election law was put forward.

IFES, together with assessments of the Council of Europe's Venice Commission and OSCE/ODIHR, has drawn attention to both positive and negative provisions in the law through its formal assessment of the law, and subsequent analysis. This analysis is available on our website and copies are also available here today. Of note, the final version of the law prepared by the parliament's temporary special committee was not broadly discussed with experts and adopted in the first and final reading during one day with a number of changes from the drafts analyzed by international organizations. IFES later prepared its comments on the final law after its adoption which it circulated widely among stakeholders and the diplomatic community.

And it is of course this law which will regulate these elections in October.

Now, I would like to make a general comment regarding the electoral system, itself. Since the beginning of the reform process, the government of Ukraine let it be known that the electoral system would be a parallel electoral system, whereby half the deputies would be elected through proportional representation according to a nationwide vote, and half would be elected in winner-take-all electoral constituencies (not unlike our elections for the House of Representatives).

Inherently there is nothing wrong or right in such a system. However, I would like to draw your attention to the last time such a system was in place, exactly 10 years ago, during Ukraine's 2002 parliamentary elections. Those elections were held at a time of a government waning in popularity; yet eventually produced somewhat surprising results to the benefit of the pro-government political force, to the point of it successfully retaining significant control of the legislature. More specifically, in 2002, Nasha Ukraina received 23.57 percent of the popular vote in the nationwide constituency, and won 25 percent of the seats in the legislature, while pro-governmental pro-Kuchma "Zayedu" received 11.77 percent of the vote in the nationwide constituency, yet won 22.4 percent of the seats. How did this happen? The pro-Kuchma "Zayedu" bloc did extraordinarily well in single-member districts. Academics have since shown how in districts where the lion's share of the popular vote was clearly for one political party, the single member candidate vote in the same territory was rather oddly, not. A commonly held assertion among experts and academics was that in some cases use and control of administrative resource in certain territorial regions helped ensure a victory for pro-governmental candidates where the pro-governmental party did not enjoy a plurality of support.

What is important to note, is that today in Ukraine, we have a similar scenario unfolding: a parallel electoral system is now firmly in place. A number of polls, including IFES' own from two weeks ago, shows the leading party in Ukraine, the governing Party of Regions, is in decline with support from only about 20 percent of the electorate. Meanwhile, the major oppositional parties cumulative support totals are polling now higher than the Party of Regions. So in a sense, we have a similar "mix" heading into the 2012 polls as we had in 2002; a governing force waning in popular support, about to compete in an election where half of the seats will be determined in single-member districts. In addition, the government holds considerable power at the local territorial level, clearly helped by the outcomes of those controversial local elections two years ago. Of course, we are not in 2002 but 2012 and can conclude nothing at this time. However, the parallel is striking and must not be dismissed.

A more technical issue we are now confronted with concerns the boundaries of those new single member-electoral districts. Just how many districts each administrative region of Ukraine would have was determined on April 28, 2012, and the borders of the districts were released made widely public on May 5. It is difficult to assess the Central Election Commission's performance in creating the boundaries for these constituencies because the law included only three sub-articles to regulate this process. Efforts to develop a supplementary law on territorial organization of elections seem to have evaporated. Although there had been an earlier legislative intent, and indeed its creation was referenced in the early draft of the law, it simply did not happen. On a positive note, the Central Election Commission seems to have adhered to the 12 percent limit on the variation of voting population as prescribed by law, meaning the districts are to be relatively equal in population and thus the votes of citizens relatively equal. The Central Election Commission has allocated these districts to Ukraine's regions proportionally to the number of voters registered there. We understand that attempts were recently made to challenge the new boundaries through the court system, but that the cases were dismissed on the ground that the plaintiffs' allegations, even if proven to be true, would not amount to a contravention of the law. In other words, it is proving difficult to challenge the legality of an act, when said act has little in the way to regulate it.

As IFES cautioned in several of its reports, leaving the law vague and devoid of several basic international norms of districting has yielded little in the way of pre-

dictability for contestants or guidance for election commissioners, potentially leaving the commission open to criticism as a consequence. Here we should also point out that between the initial draft of the new law and the final version, one of the *only* provisions in the draft law related to districts—that districts must be contiguous—was inexplicably removed. As the districts have now been unveiled, we not surprised to see that there are districts which are noncontiguous. Unless the desire is to keep, in the same election district, a community of interest, such as an ethnic minority, or an established territorial unit (e.g. city, township, etc.) together, that, too, happens to be non-contiguous, by international standards there is no justifiable reason for doing this. In addition, there were no public or expert consultations, or certainly no expert input known to the public. How the districts were drawn in terms of political intentions, if they were indeed drawn for these reasons, will require some degree of political insight. A number of local groups have begun this analysis. Indeed, there is no doubt this expertise exists in Ukraine, and such information will certainly come to light. IFES, together with civil society partners, is itself working on a comprehensive technical analysis of the new districts which it hopes to release in the next week.

Another set of issues to watch relates to the formation of district and polling station election commissions, which are essentially the chief electoral bodies for their respective areas. This will take place by August 24, and September 26, respectively. Election commissioners in Ukraine, at each level of election administration, are chosen purely on a partisan basis. In other words: all commissioners are nominated by a political entity. Because of the number of registered parties in Ukraine, and the numbers expected to compete for these elections, places on these commissions will be at a premium.

Political factions already in the current parliament are guaranteed one place on each commission. With regards to the composition of the remainder of the commissions, there are a number of concerns. Instead of drawing lots from the entities competing in a district for the remainder of seats on the commission, on April 19 the Central Election Commission adopted a procedure whereby a single lottery will determine the ranking of political parties, which will then be used to fill each of the 225 district commissions around the country. This practice is contrary to an earlier IFES recommendation, as we believed separate lotteries for each district race should have been held. Each contestant to each electoral contest should have equal chance to gain the open positions on the presiding electoral commission. Should a party unfortunately draw near the bottom of the list in the lottery, they may lose any chance of getting even one of the 225 district commissions anywhere in the country. Drawing near the top gives them a high probability of membership or increased membership in every commission.

Also, the timeframe for submission of the candidates for membership in the commissions is very tight—three days. If there are any mistakes in the submission, the nominating party or candidate is informed and must file a corrected submission the very next day or an application is rejected. However, the manner in which parties and candidates are informed of such decisions is not clearly defined by the law. If a political entity misses the slim deadline because they did not learn until later that there was an issue with their submission, this is potentially an unfair practice. Should it be systemic, it could result in significant underrepresentation of certain parties and candidates on the commissions.

In terms of electoral administration, I should start by saying the Central Election Commission of Ukraine has an unenviable task. Training up to half a million election commissioners in a matter of a few weeks would be a difficult charge for any country. While organizations like IFES are willing partners of the election commission and will contribute some technical advice in planning, design and execution of training programs, overall, the burden of responsibility falls on the commission, itself. The Central Election Commission will also face a significant challenge in educating voters on changed voting procedures. Again, IFES and other members of the international community can be of assistance here, but ultimate responsibility will rest with the election commission.

Another challenge is that the commission will be overburdened with tasks in the upcoming months—it has to register candidates in each of the 225 single-member districts and the national party lists for the national district, accredit thousands of local and international nonpartisan observers, and thousands more candidates, party proxies and observers. Recently the election commission responded to this challenge through draft amendments to the parliamentary law, seeking to transfer some of its obligations to the district election commissions. However, experts do not believe this will prove successful. Understandably, there is resistance to further amending the legal framework so soon before an election.

Beyond mere logistical challenges, we must remember that in Ukraine election commissions are de facto not independent from political influence as they are formed by the political entities whose interests they represent on the commission. Such a concern has been raised by international organizations that observed previous elections, such as the OSCE/ODIHR. This issue is of crucial importance as commissions in Ukraine have a legal function to adjudicate certain types of election challenges and disputes; essentially deciding for or against a political entity's interests is arguably better served with a certain degree of neutrality.

Finally, I would point to a few additional issues to be cognizant of in the upcoming campaign and election. First, is the possibility that voters will be able to use the option in Ukraine of voting in their current temporary location to strategically change their polling place. This was a potential problem that IFES highlighted in its analysis of the draft law and should be closely monitored. In this regard it is worth noting that the system of voting in place, of temporary stay, bears a similarity to the absentee ballot system that was a major source of fraud during the 2004 Presidential elections.

Second, concerns the commonly recognized phenomenon that all major political entities receive financial and other support from Ukraine's wealthiest benefactors—a factor in perpetuating the corruption that is one of the hallmarks of political life in Ukraine. However, the legal framework does little to regulate or bring transparency to such relationships. The new parliamentary election law requires only the most basic level of disclosure and leaves ample room for campaign costs to be hidden as third party expenditures or services in-kind. Furthermore, discrepancies between the election law and the law on political parties make it easy for candidates to conceal both the sources of their funding and the full extent of their spending by funneling it through political parties.

Third, Election Day, itself, may well be complicated by unwieldy procedures that ought to be clarified by the Central Election Commission in advance of the election; and of course, the ever present possibilities of abuse of state resources, vote buying schemes and other illegal practices that can thrive with impunity under a weak system of law enforcement.

Let me conclude by stating what the international community, including the United States, could do to support consolidation of democracy in Ukraine through a transparent, competitive and credible election this October.

First, do not take your eye off ball now. It is understandable that organizations such as IFES, NDI, IRI and others who are deeply invested in electoral and political reform perhaps put greater priority on these developments in countries like Ukraine, and for a longer period of time. But now we are less than six months from Election Day. Over the next few months important developments will take place that will surely tell us just how transparent, credible and evenly contested these elections might be. Today's testimony has given you only highlights of some concerns; many others will be seen in the upcoming weeks and months, and I urge you all to stay focused on these concerns.

To this end, it is of course vital for the U.S. and the larger international community to support nonpartisan observation efforts. We must pay close attention to and respond to electoral administration needs and help non-partisan human rights organizations, NGOs and media outlets have meaningful access to needed resources—especially through statements from entities such as your own, that continue to show that the U.S. is supportive of a democratic, free and fair election in Ukraine.

Second, I urge you to not take your eye off the ball *later*. Ukraine fatigue in the West has correlated positively with the government's recidivism with respect to human rights, obvious aggressions towards political rivals and efforts to solidify the hold on power. For our part, IFES has and will continue to advocate for improved democratic electoral legislation and practices, and compliance with international standards and best practices, but with an understanding of nuances and particularities of the country. We hope that the U.S. will continue to value and advocate for the continued role of international organizations like IFES, the Venice Commission and others to their Ukrainian counterparts.

Despite issues or concerns raised today, I would say that we certainly do not know what the outcome of these elections will be. But however the conduct—and whatever the outcome—it will be necessary to continue to engage Ukraine. Performance in the elections will determine in large part just how that engagement may take shape.

Thank you for the opportunity to testify today and I am happy to answer any questions you may have.

Gavin Weise currently serves as Deputy Director for Europe and Asia, managing all Europe and Former Soviet Union programs. For the past decade, Weise has worked on Ukrainian issues at a number of international development organizations, imple-

menting programs in democracy, rule of law and community development. His election experience includes support to election management bodies, civic and voter education, and training and advisory assistance to NGOs, courts, election commissions and political representatives. Weise co-authored IFES' review of Ukraine's draft Parliamentary Election Law in September of last year.





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