

**U.S. Association of Former Members of Congress
With the Support of the U.S.-Ukraine Foundation**

Presidential Election Observer Project

**Delegation Report
August 22-28, 2004**

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I. PROGRAM OVERVIEW

The U.S.-Ukraine Foundation (USUF) is a nonprofit, non-governmental organization established in 1991 to facilitate democratic development, encourage free market reform, and enhance human rights in Ukraine. Through a partnership with the U.S. Association of Former Members of Congress (USAFMC) and with funding from the United States Agency for International Development (USAID), the U.S.-Ukraine Foundation sent its second delegation of former Members of Congress to Ukraine as official election observers for the presidential election campaign, officially underway since July 3, 2004. This August delegation also included two former Members of the European Parliament from Spain and the Netherlands. These observers were registered by the Central Election Commission (CEC) of Ukraine and accorded all the rights and privileges provided to foreign observers by Ukraine's law on presidential elections.

The Foundation's strategy of sending former Congressmen and former Parliamentarians as international observers will assist Ukraine in reaching international standards for free and fair elections through adherence to domestic election laws. First, the interest and care of these respected international observers in Ukraine's election supports and buoys up the public to stand for free elections, or at the very least to vote for their choice – not their boss' or rector's choice – when alone in the ballot box. In addition, these former legislators shine a spotlight on the irregularities in the election campaign, thereby demonstrating to the Government of Ukraine the international community's deep concern about the fairness of these elections, Ukraine's commitment to democracy and rule of law, and its role in the international community.

According to Ukrainian law, the people of Ukraine are entitled to express their views on candidates and parties at the ballot box, freely and without interference from any source. Therefore, this project is focused exclusively on the fairness of the election process and does not in any way advocate for any particular candidate or party.

The project draws on the Foundation's strong experience in Ukraine and its wealth of in-country resources to create a meaningful monitoring agenda for its observers. In addition, the members of the USAFMC have solid electoral experience, and many have experience as election observers in various parts of the world. This combination of a strong program infrastructure and talented, respected human resources in the former Members renders this project unique, effective, and what is needed for Ukraine at this time.

The following report was produced by the delegates from the U.S. Association of Former Members of Congress and former Members of the European Parliament, with support provided by the U.S.-Ukraine Foundation.

II. AUGUST DELEGATION

The delegation included the following former Members:

Lawrence J. Hogan (R-MD)
Mike Kopetski (D-OR)
Dan Miller (R-FL)
Ronald Packard (R-CA)
Jose Posada (Spain)
Maartje van Putten (Netherlands)
John J. Rhodes, III (R-AZ)

The delegation's visit began with two days of briefings and meetings in Kyiv. On the first day the delegates met with representatives of Viktor Yushchenko's campaign and Mykhailo Riabets, Advisor to Prime Minister Viktor Yanykovich and former chairman of the Central Election Commission. Before traveling to Cherkasy on the second day, Ukrainian Independence Day, the delegation met with representatives of the U.S. Embassy and USAID, representatives from the Ukrainian Congress Committee of America and their guest U.S. Congressman Danny K. Davis, and Mr. Yevhen Pidbereznyi, Vice President of the Committee of Voters of Ukraine.

Over the following three days, the delegation was split up into three groups and traveled to the designated communities to meet with local government officials, representatives of NGOs, political parties, the media, and ordinary citizens to get their respective views on the campaign thus far. The communities visited were: Cherkasy, Kaniv, Kamianka and Zolotonosha in the Cherkasy oblast; Svitlovodsk and Novomyrhorod in the Kirovohrad oblast; Brovary, Kaharlyk and Ukrayinka in the Kyiv oblast.

Upon their return to Kyiv, the delegation met with Ambassador Herbst and other representatives of the U.S. Embassy and USAID. Their trip concluded with a reception at the residence of the Mrs. Van Es, Charge d'Affaires a.i. of the Dutch Embassy, which was attended by diplomats from 12 European Embassies, including the Greek Ambassador.

III. FINDINGS

A. Refusal to meet with the delegation

While the level of cooperation in Ukraine as a whole was excellent, it should be noted that the city and district officials in Svitlovodsk, Kirovohrad Oblast were not present to meet with the delegation, in spite of advance notice by mail. The delegation was told that the officials were out of the building on business and would not return on that particular day. The unnamed city official, who informed the delegation of the officials' absence, also refused the use of meeting space in the building. However, the delegation met with representatives of the media, NGOs and political parties in two parks adjacent to the city and district building. Considering the ample advance notice and the refusal of meeting space, the delegation infers that the absence of city and district officials was a refusal to meet with international observers. If true, this is a violation of Ukraine's election law.

Unable to meet with local city officials, the delegation did not hear any response to the complaints raised by the assembled citizens. Therefore, the delegation has not been given any evidence to refute the charges by local citizens of local government officials' bias in favor of the Yanukovich campaign. Without hearing evidence to the contrary, the delegation expresses its concern about the fairness of the presidential campaign and ballot count in Svitlovodsk.

It should be stressed that the lack of cooperation by city and district officials in Svitlovodsk should not overshadow the excellent cooperation the delegation received in the other communities visited. Most city and district officials were generous with their time and helped make the delegation's work go smoothly.

B. Discussions with NGO and political party representatives

In each town visited, delegates attended a number of meetings with local citizens and NGO and political party representatives. Presidential candidates Prime Minister Viktor Yanukovich, Our Ukraine leader, Viktor Yushchenko, Socialist Party leader, Oleksandr

Moroz, and Communist Party leader, Petro Symonenko appeared to have the strongest presence in this region and sent their respective local representatives to attend the meetings with the delegates.

Delegates also heard a variety of complaints about candidates being blocked from opening local headquarters, putting up signs, getting coverage in the local media, being barred from using meeting rooms for rallies and political meetings, having political meetings interrupted by thugs and being harassed to support Mr. Yanukovych, especially to sign his petitions.

Ballot tampering

Party representatives all expressed doubts about the fairness of the ballot count. They and experts stated that the transport of the ballot papers from the polling stations to the Territorial Election Commissions and then to the Central Election Committee is a particularly critical and vulnerable time when the protocols can be changed and/or adulterated. Joseph Stalin's quote, "It doesn't matter who votes, just who counts the votes," was often cited. The political parties in opposition stated that they intend to have party observers to watch the tabulation, but still were not confident that they would be able to protect the integrity of the vote count. Citizens frequently stated that elections were freer and fairer in previous times than they are today.

One of the tactics that was mentioned as likely to occur is the use of chain ballots. Instead of placing his ballot in the ballot box, a voter brings the blank ballot out of the polling place and gives it to someone in exchange for money. The person receiving the blank ballot then proceeds to fill out the ballot and gives it to the next voter, who takes it and deposits it in the ballot box. He then brings his blank ballot out, receives the payment, and gives the blank ballot to the person paying for it. The process continues in this manner.

Others are concerned about the absence of a central voters' register, since only local lists are made, thereby creating the risk that people will be placed on several lists or deleted intentionally. The people expressed their apprehension that "dead souls" voting – or registering the dead, psychiatric patients, and prisoners on the voter lists – will be a common method of vote fraud, as was the practice in the 2002 parliamentary election.

Economic leveraging

Citizens pointed out that the Ukrainian people, especially pensioners, are going through a difficult economic period. In such an environment, those who wish to "steal" the election have a huge advantage. They point out that the government is using the state budget to buy votes by raising wages and pensions. One employee of the Ministry of Defense alleged that salaries had been raised by 90% to keep the loyalty of the military should the need arise to overturn the election results. It should be pointed out, that the person making that charge is the local leader of Our Ukraine block and, apparently, has not faced retaliation by the authorities for her opposition views. It was, in fact, noteworthy how free people felt to express their respective views without obvious fear of retaliation.

Another allegation was that the Labor of Ukraine Party was providing pensioners and veterans with free bus service to their gardens in return for their signing Yanukovych petitions. One elderly woman told delegation members that she took advantage of the free bus rides and, out of gratitude, circulated petitions on behalf of Yanukovych. She maintained that the free bus service was initiated long before Yanukovych was even a candidate for president. She saw nothing improper in providing free bus service to people who can barely afford food.

Signatures

According to Ukrainian election law, each candidate for president must collect the signatures of 500,000 citizens to get on the ballot; many complaints centered on the collection of those signatures. It was alleged by many people that hospital employees, teachers and other public employees were threatened with the loss of their jobs if they did not sign a petition for Yanukovich. They also reported that trickery was used to obtain signatures. It was also reported that after some people signed the petitions they were told that they had to vote for Yanukovich since they signed his petition. Perhaps, most disturbing, were reports that people going to health clinics were told they had to sign a petition for Yanukovich before receiving medical attention. However, the delegation did not hear from anyone who experienced this firsthand.

Campaign advertising

There were reports of city and district officials taking down opposition candidates' signs, citing safety concerns as the reason. The delegation noted that billboards for Yanukovich were ubiquitous throughout the areas traveled. Similar signs for other candidates were non-existent. A local consultant traveling with the delegation commented that the Yanukovich campaign purchased all billboard space months in advance. Those posting billboards for Viktor Yushchenko were threatened or their billboards were destroyed.

One particular billboard for Viktor Yanukovich featured a large Ukrainian flag with the trident on it. The delegation was told that the use of the state symbol, the trident, for advertising or political purposes is contrary to Ukrainian law. If true, it of course should be removed. However, we do not regard violations of that nature to be significant in determining whether the election is free and fair.

Political meetings

There was some testimony that political meetings were being held in plants and factories to build support for Yanukovich. While the delegation heard from at least one person who helped organize a meeting in a local plant, he maintained that it was perfectly legal because it was held after work hours and was not compulsory. He reported that only 145 workers attended out of 2,000 employed.

Adjudication of violations

It was reported to the delegates that attempts to bring violations to court have had no success in the communities visited. People do not trust the actual judicial system and claim rampant corruption. The law provides proper regulations, nevertheless, they are directed to benefit those that have the power or who can pay for it.

Media

The delegation notes that the lack of a free and independent press in Ukraine is a reason for serious concern. Many of the local media outlets are funded by the city or district budget. Many others are funded by wealthy businessmen who are susceptible to pressure from local authorities, especially tax police. The delegation also notes with alarm the high percentage of national media owned or controlled by leading figures in the presidential administration. That fact alone casts doubts upon the fairness of Ukraine's presidential election. As in most societies, Ukraine's citizens receive more and more of their news from the electronic media. Unfortunately, the delegation believes that the major television stations are not providing independent news coverage of the presidential election. Witness after witness in our public meetings commented on this. The one exception is Channel 5, which reaches only 5% of the

Ukrainian audience and has faced many legal challenges by the local and national government in its programming. The delegation doubts that these legal challenges are coincidental. Delegates also heard that media outlets and journalists receive an average of 200 instructions per day to on how to report. It was also reported that journalists who report on opposition candidates' campaign activities and meetings are receiving threats.

Thomas Jefferson repeatedly wrote and spoke of the importance of an "enlightened citizenry." Ukrainian citizens are educated, bright people. They have the right, as citizens, to be exposed to objective reporting and coverage of the campaign. The delegation does not believe they are receiving fair coverage of the candidates or the issues to date.

President Kuchma should understand that his own credibility and the credibility of the election results are endangered by the fact that media outlets under his control and under the control of officials in his administration are showing their personal bias in the election and are failing to provide any independent and professional news coverage.

IV. RECOMMENDATIONS

The delegation believes the international media, particularly the European and American, have a responsibility and duty to provide much more extensive coverage of the presidential campaign in Ukraine. The professional media acknowledge that they play an important role in a democracy. Politicians, ordinary citizens and political scientists agree. Outside professional news organizations bring light to the election process. They also serve as an example to indigenous media as to professional and objective means of covering campaigns. Unfortunately, the international media hardly includes Ukraine in its coverage, thereby denying Ukraine additional access to reliable information. The delegation encourages the outside media to begin covering the campaign immediately and on a regular basis.

The delegation notes that most citizens and representatives of the media, NGOs and political parties were not sufficiently familiar with Ukraine's election law. Most were not aware of how or where to file a complaint. In talking to members of the local election commissions, it appears that many of them do not yet know their responsibilities according to Ukrainian law. Time is short and much should be done to inform citizens about the election law and how to go about asserting their rights as citizens of Ukraine.

The delegation recommends that as many observers as possible, both domestic and international, be recruited to cover as many polling places as possible throughout Ukraine. The OSCE is planning to bring approximately 650 observers to Ukraine. That is a very good start, but many more should be brought in by other organizations. Not only is it important to protect the integrity of the ballot box, but it is also important that the process be transparent. People must have free and fair elections, and perceive them as such, in order to give the next leader of Ukraine the legitimacy expected from a democratic society.

The delegation notes the reports that some organizations expect to have exit polling and "parallel" vote counts. It encourages such activities. Both approaches will provide a necessary check on the accuracy of the tabulations, thus providing the people of Ukraine and the international community with assurances of the integrity of the results.

To the West, the delegation reminds the strategic position of Ukraine and its importance to Europe, Russia, the region, United States, and the world. At the reception with Mrs. Van Es, Charge d'Affaires a.i. of the Dutch Embassy, one of the EU Ambassadors spoke to the delegation about the dilemma of the international community's criticism of Ukraine and its election campaign coupled with silence about the same fraud and corruption in Russia. Such action by the international community can be a force to drive Ukraine towards Russia and

further separate it from Western Europe. The international community should be aware of the problems ahead and collaborate with the Ukrainian society to develop systems that may improve democracy in Ukraine.

V. SUMMARY

The delegation cannot pass judgment on the allegations made by opposition campaigns. It can, however, note with alarm the large number of allegations of wrongdoing, especially as it relates to the use of administrative resources and stifling of the media. Free and independent media, providing fair and balanced reporting, are essential to conducting free and fair elections. Despite probable deviations and violations, it is still possible that the results of the election will be an accurate expression of the will of the citizens of Ukraine. To that end, the delegation encourages international organizations, NGOs and others to provide as many trained observers as possible and to follow through on plans for exit polling by reputable polling organizations and to organize parallel vote counts. The European members of this delegation would like to underline that the U.S. is preparing to send over 3000 observers to Ukraine, while the figures from Europe so far are not more than 600. The delegation recommends that Europe form more observation missions and that more attention to the press is a necessity in the West. The Europeans in this delegation say the following: "Europe - wake up."

The delegation also encourages President Kuchma, the Central Election Committee and other government entities to follow through in a tangible way with their pledge to ensure a free and fair presidential election. President Kuchma's credibility is at risk, as well as that of the new president, whoever he might be. Indeed, Ukraine's international credibility is at risk.