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is above the law!*

## **JUDICIAL WATCH ELECTION MONITORING REPORT: FIRSTHAND OBSERVATIONS OF THE HUNGARIAN NATIONAL ELECTIONS OF APRIL 3, 2022**

### Mission

To observe and report on election administration during the Hungarian parliamentary and referendum national elections on April 3, 2022.

### Methodology

Judicial Watch sent a six-member team to observe Election Day procedures during the April 3rd national election in Hungary. The team was led by two attorneys who formerly worked in the United States Department of Justice's Voting Section and who had extensive experience monitoring general elections in the United States. The team was further staffed by experienced lawyers who have monitored elections previously for Judicial Watch and a former Judicial Watch staffer with substantial experience studying Hungarian politics and history. The team was divided into delegations, each of which was accompanied by a translator.

Judicial Watch employed an observational methodology previously used by its team members when monitoring domestic elections for compliance with the Voting Rights Act and other federal laws on behalf of the U.S. Department of Justice. Members of our team used this same method while observing over 30-plus state and national elections in the United States, including elections in Alabama, California, Georgia, Louisiana, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, Pennsylvania, Texas, and Virginia.

Judicial Watch's methodology emphasizes ballot access, meaning the ability of citizens to easily register and cast a free and equal vote in an election. It particularly focuses on specific, quantifiable behaviors and events observed on Election Day, including but not limited to:

- Unlawful electioneering.
- Arbitrary variations in demands for identification.
- Arbitrary variations in any options available to voters.
- Polling booth assistance without justification.
- Any aggressive or controlling assistance.
- Suspicious handling of ballots.
- Subtle and overt intimidation.
- Poll site confrontations of any kind.
- Late opening sites, long or slow lines, or other signs of poor administration.
- Perhaps most importantly, a "turn away," which is a failure to vote at all.

Aside from direct observation, team members document an event by questioning (1) poll officials, but only when they were not busy with voters; (2) voters, but only outside of a polling site; and (3) any other witnesses, preferably off-site. Team members only document observed events; they offer no contemporaneous comments or advice.

Prior to any election monitoring, our observers try to determine which kinds of unwanted events are most likely to occur. This assessment is made in the context of news and internet reports and information obtained from our private sources.

### Other Methodologies

It must be noted that our team's reliance on this classic approach contrasts with methods we saw employed by some other groups of international election observers. These methods involved qualitative judgments about candidates, domestic affairs, and the media environment that, in our opinion, obscure the most important criterion for judging an election: ballot access.

As José Ortega y Gasset observed long ago: "The health of democracies, of whatever type and range, depends on a wretched technical detail—electoral procedure. All the rest is secondary."<sup>1</sup> Some observers seem to focus on such secondary criteria. But media critiques and criticism about campaign tactics do not answer the more basic question of whether every voter who desired to participate was allowed equal freedom to cast a ballot.

We were puzzled, to cite just one example, by the sweeping conclusions offered by the Organization for Security and Cooperation in Europe (OSCE) that the "3 April parliamentary elections and referendum were well administered and professionally managed but marred by the absence of a level playing field."<sup>2</sup> The first part of the sentence seems a more or less objective statement, while the second part embodies a number of subjective judgments. The OSCE explains that "the campaign was highly negative in tone," that "insufficient oversight of campaign finances further benefited the governing coalition," that "bias and lack of balance in monitored news coverage and the absence of debates ... significantly limited the voters' opportunity to make an informed choice," and that "[w]omen were underrepresented in the campaign and as candidates."<sup>3</sup>

The extent and the impact of any or all these factors defies reasonable measurement, as they are inherently qualitative and inherently debatable.

For example, in the United States in 2016, every publicly funded media outlet, and almost every private media outlet, more or less openly editorialized in favor of the Democratic candidate Hillary Clinton. Despite this "absence of a level playing field" and "bias and lack of balance" in news coverage, the OSCE concluded that the November 8, 2016 general election in the United

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<sup>1</sup> THE REVOLT OF THE MASSES, José Ortega y Gasset, W.W. Norton & Co., Inc. (1932), p. 158.

<sup>2</sup> INTERNATIONAL ELECTION OBSERVATION MISSION: HUNGARY – PARLIAMENTARY ELECTIONS AND REFERENDUM, 3 April 2022, STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS, p. 1.

<sup>3</sup> *Id.*

States “demonstrated commitment to fundamental freedoms of expression, assembly and association” and that “[d]iverse media coverage allowed voters to make an informed choice.”<sup>4</sup>

Discussing criticism of the Hungarian elections, an editorialist for the Washington Post noted that “it’s also true that Orban was reelected because of his combination of market economics, nationalism and social conservatism. This is what a majority of Hungarians want.”<sup>5</sup> He argued that “Fidesz’s domination of the media also likely helped pad its victory margin,” but then asked “what country in the West would expect its incumbent to lose when its economy is fine and the leader represents the majority’s values?”<sup>6</sup>

We do not cite these opinions to suggest that they are true. The point is that such qualitative arguments about the causes of electoral success can only be resolved by making a value judgment. These are matters more appropriately addressed by editorial boards, not election monitoring teams.

### Monitoring

Prior to the election, we conducted a series of interviews with Hungarian government officials, Hungarian media, as well as local voters, including voters very much opposed to the existing government. Additionally, our team monitored postal ballot processing at the National Election Office (NEO) prior to the national election on 1 April 2022.

We identified polling locations at random, including locations within Budapest and up to 45 kilometers outside the city in various directions. Additionally, we selected locations that were in areas that might have voting problems as identified by supporters of the coalition party, who we interviewed. We received indications from private sources that the kinds of irregularities that might occur could involve voters being told that they simply were not registered. We were told to observe polling sites in opposition strongholds. We made a point of doing so.

Hungary has a population of approximately 9.75 million as of 2022. Voter registration is automatic, based on residence. Voter registration is maintained by the NEO, which recently reported around 8.2 million voters. Accordingly, Hungarian citizens register at approximately an 85% rate. By contrast, United States’ citizens registered at a 67% rate during the 2020 presidential election.

On Election Day, Judicial Watch divided its staff into three two-member observer teams, each accompanied by an interpreter. These three teams observed voting at 52 precincts at 27 locations. Many locations were in Budapest, but several were outside the city in the countryside, as far as Esztergom. We arrived at our initial poll sites at approximately 6:05 to 6:15 am. The last team to leave the field completed its observations at 6:00 pm, an hour before the polls closed.

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<sup>4</sup> OSCE OSCE/ODIHR ELECTION OBSERVATION MISSION FINAL REPORT, UNITED STATES OF AMERICA 8 NOVEMBER 2016 GENERAL ELECTIONS, 18 January 2017, EXECUTIVE SUMMARY, p. 1.

<sup>5</sup> *Orban’s victory might not make sense to the West. But it’s what Hungary wants*, by Henry Olsen, The Washington Post, April 5, 2022.

<sup>6</sup> *Id.*

Our teams did not observe any meaningful problems throughout the day. Initial locations were fully operational when we arrived at opening. Lines either did not exist or were brief, ranging anywhere from 0-15 minutes. Only one unusually large site, which we believe to have been serving a disabled community, had a line we timed at 30 minutes, although no one seemed to be abandoning the line.

At every location, the administration of the vote was efficient, orderly, and unremarkable. The practice, unusual in our experience, of having representatives of every party of any size working at the registration desk appears to contribute to an environment in which controversy was unlikely. In some ways, the administration of the vote was more effective, and less chaotic, than what we have observed in parts of the United States.

At two precincts, voters expressed annoyance at our presence (“It’s an insult that you are here. Democracy is not a kindergarten”), but opinions were respectfully expressed.

We saw no unlawful electioneering; arbitrary variations in demands for identification; aggressive or controlling assistance, in or out of a polling booth; suspicious handling of ballots; intimidation of any kind; or confrontations. We saw no outright denials that a voter was registered to vote.

We saw no “turn aways.” A few voters showed up at the wrong precinct and were directed to another one in the same building. We saw no problems in the opposition strongholds we observed.

We did notice that poll workers at different precincts inconsistently distributed referendum ballots. (This problem was also referred to during the day in internet reports which were, however, of unverifiable quality.) Specifically, at one location, when voters asked to vote, a poll worker would openly question whether they wanted a referendum ballot.

If fewer than 50% of Hungarian voters approved a referendum, it was invalid. Accordingly, this public querying of voters could be seen as a deliberate tactic to discourage participation in the referendum, because voters who publicly ask for a referendum ballot could be indicating that they intend to support the referendum. It is reasonable to believe that some voters would be hesitant to make such a public statement on a referendum that some consider highly controversial.

Even if the poll workers’ queries were not made with any partisan intent, they intruded on the privacy of voters whose intention to support the referendum might be revealed. Indeed, even if the voter’s intent were not meaningfully revealed, it is wrong to treat voters differently at different polling sites, or to put pressure on some but not other voters.

In the future, in any similar situation, we recommend more training or clearer instructions regarding the consistent distribution of referendum ballots.

## Conclusion

The Election Day administration of Hungary's April 3, 2022 national parliamentary and referenda was efficient, orderly, and unremarkable. In almost every category of Election Day administration monitored, Judicial Watch's experienced observers witnessed no meaningful problems throughout the day. We saw no voter "turn aways" all day.

The sole possible exception was the approach taken by some poll workers who openly asked voters whether they would be filling out all ballots, meaning, in context, whether they wanted to fill out the controversial referendum ballot. This constituted an arbitrary variation in how voters were treated, threatened to put unnecessary pressure on voters, and was at least consistent with a deliberate effort to defeat the referendum.

In contrast with an approach adopted by other international observers, Judicial Watch does not believe it is appropriate in a report on election administration to comment on broad, qualitative social or policy issues such as negative campaigns, the proper way to conduct campaign financing, media bias, or the representation of women as candidates.

Dated: April 12, 2022.

The official version of this document is in English.