

OCTOBER 3, 2017
PRIMARIES AND
DECEMBER 12, 2017
GENERAL ELECTIONS
IN CHEYENNE AND ARAPAHO

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FINAL REPORT

THE
CARTER CENTER



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Executive Summary

At the invitation of the Cheyenne & Arapaho legislative branch, the Cheyenne & Arapaho Tribal Council, and the Cheyenne & Arapaho Election Commission, and with the welcome of Cheyenne & Arapaho citizens, The Carter Center deployed small observation teams to both the Oct. 3 primary and the Dec. 12 general election.

The general election was originally scheduled for Nov. 7 but was postponed following an emergency injunction granted by the Cheyenne & Arapaho Supreme Court on Nov. 6, just one day before the general election was to take place. The court injunction and the election postponement followed complaints about the primary submitted by primary candidate and then-Gov. Eddie Hamilton. The court upheld the primary results in a Nov. 17 decision, which allowed the general election to go forward in December.

During the election process, registered voters cast ballots for governor and for members of the tribal legislature and the Cheyenne & Arapaho Election Commission. During both missions, Carter Center observers met with the election commission, candidates, polling officials, the current governor, and other election stakeholders.

Carter Center teams visited almost all of the polling stations in both the Oct. 3 primary and the Dec. 12 general election. The teams observed the retrieval of the absentee ballots from the El Reno post office, and the central counting process at the end of both election days. Overall, election-day activities during both the primary and general election were assessed positively by the Center's observer missions. The polls took place in an organized and calm manner, allowing voters to freely cast their votes. The positive environment can be attributed to both the election administration and the patience and resolve of the Cheyenne & Arapaho tribal members.

A source of concern for this and future elections is the voter register. Many Cheyenne & Arapaho members fear that some potential voters are being disenfranchised because of significant lapses in the work of election commissioners to update the register. Far greater efforts are required to resolve this critical element of the electoral process. This is particularly the case in the Cheyenne & Arapaho electoral environment, in which results are consistently close and every vote counts.

Polling staff, including election commissioners and their appointees, were courteous and helpful to the voters where the Center observed. The same was true for polling representatives of TrueBallot, the private vendor contracted to administer the balloting and counting. While only limited instruction was provided to voters, most appeared to understand the process and could vote without hindrance. Some delays were noted, chiefly caused by weak internet connections that required polling staff to improvise regarding where to place hotspot devices. Polling stations were generally set up to facilitate voting, including by persons with disabilities, and ensured the secrecy of the vote. The ability of voters to cast their ballots at any of the tribal polling sites was a positive step that helped to facilitate participation. However, in both the primary and general elections, turnout was relatively low.



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The counting of the ballots was conducted at a central location on election night in the presence of the members of the election commission, election observers, and a large number of candidate representatives. While the presence of these key stakeholders is an important transparency measure, the counting process fell short in many aspects. It lacked written procedures and established practices for ensuring integrity, including a detailed reconciliation process. Vendors managing the counting provided insufficient information for candidate agents and nonpartisan observers to easily follow the process.

To improve future elections, The Carter Center recommends, among other things, that the Cheyenne & Arapaho Election Commission and any contracted private vendors take several steps to improve the inclusiveness and accuracy of the voter list, implement additional procedures and training for all parts of the electoral process, increase the transparency of the counting process, and ensure that all stakeholders understand and can follow as it unfolds.

Background

The Cheyenne and Arapaho are two distinct tribes that formed an alliance in the 18th and 19th centuries. In 1867, the U.S. government relocated both tribes to shared land in what is now Oklahoma. The tribal government consists of a tribal council, an executive branch, a legislative branch, and a judicial branch. The tribal council includes all tribal members over the age of 18. The executive branch is led by the governor and lieutenant governor. The legislative branch is made up of eight legislators, four from Arapaho districts and four from Cheyenne districts.

The 2017 election followed previously troubled elections that reduced confidence in the electoral processes. In 2006, a new constitution was ratified, and each of the three national elections held since have been controversial, with extremely close outcomes and numerous recounts and litigation. The elections have produced governments that some tribal members have not considered legitimate, and not all were recognized by the Bureau of Indian Affairs (BIA). The constant disputes have led to difficulties in service delivery and signing contracts for new business development, as well as challenges related to management of ongoing business. In short, recent Cheyenne & Arapaho elections have been marked by an environment of distrust, rumor, and animosity that has contributed to a breakdown in governmental functions and trust within the community.

The 2017 election included a primary held on Oct. 3 and a general election that was originally scheduled for Nov. 7 and eventually held on Dec. 12. These elections included the race for governor and lieutenant governor on a single ticket, as well as for members of the legislature representing districts A1, A2, C2, and C4. Additionally, four election commissioner races were held in districts A3, A4, C1 and C3, which correspond to the districts in which legislative elections were not held.

In deploying an independent observation mission to observe the Cheyenne & Arapaho election, The Carter Center hoped to increase voter confidence in the tribe's electoral process. The Center also envisioned conducting a thorough assessment and analysis that would permit it to provide final conclusions and recommendations to enhance future electoral processes.



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Carter Center election observation missions are conducted in accordance with the Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers, which were adopted at the United Nations in 2005 and have since been endorsed by more than 50 election observation groups. The Carter Center assesses electoral processes against the constitution, election laws, and other pertinent legislation of the host nation.

The Carter Center Mission for the 2017 Cheyenne & Arapaho Election

In May 2016, The Carter Center received a letter of invitation to observe the election from the Tribal Council of the Cheyenne & Arapaho Tribes. Subsequently, the legislature passed a resolution to extend a letter of invitation to the Carter Center. This resolution was vetoed by the governor on procedural grounds. The legislature later overrode the governor's veto, utilizing power provided for in the tribes' constitution. In addition to the invitations from the tribal council and legislature, the election commission also extended an invitation to The Carter Center.

The Center deployed a two-person team for the primary held on Oct. 3, and a three-person team for the Dec. 12 general election. The Center's observers were provided unlimited access to the polling stations and the counting process, and were welcomed by most stakeholders.

Electoral System & Legal Framework

The Cheyenne & Arapaho governor and lieutenant governor, as well as the eight representatives of the legislature, serve four-year terms. The legislative terms are staggered so only half the legislature is up for election every two years. Members of the election commission are also elected to serve four-year terms, and each represent one district, just as legislative representatives do.¹ The election process begins with primary elections for each race. The two candidates that receive the highest number of votes proceed to a runoff general election. In the general election, the candidates with the highest number of votes in each race is declared the winner.

In 2006, the tribes voted and ratified the Cheyenne & Arapaho Tribes Constitution, which replaced the 1975 constitution. The electoral law was revised in 2009 and 2015, with further revisions in 2016 and March 2017.

The legal framework is generally conducive to the conduct of democratic elections. However, it has a number of shortcomings that should be addressed. These concerns generally relate to improving the transparency of the electoral process and increasing safeguards to protect the integrity of the elections, including a clear timeline for important elements of the process, such as a comprehensive set of deadlines, including for the submission of complaints. In addition, because the legal framework currently does not provide a right for nonpartisan election observation – and implicitly prohibits it at the count by specifically stating who may be present – consideration should be given to enacting legislation to allow for nonpartisan observation.²

¹ Eight districts exist – four Arapaho and four Cheyenne (A1, A2, A3, A4, C1, C2, C3 and C4).

² Article 4.4(D) of the electoral law.



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Several shortcomings and recommendations were identified in the Carter Center’s statement of findings for the Oct. 3 primary, but few were addressed in time for the Dec. 12 general election.³ This report provides several recommendations to improve future elections for the tribes.

Recommendation: To enhance transparency and trust in the electoral process, legislation should be amended to explicitly provide a right for citizen and independent observation, including of unhindered access to the entire electoral process.

Election Dispute Resolution

The constitution provides for the Supreme Court of the Cheyenne & Arapaho Tribes, as well as a trial court and other lower courts as deemed necessary by the legislature. The Supreme Court is comprised of a chief justice and four associate justices. Judges at all levels are nominated by the governor and confirmed by the legislature and the tribal council. Judges can be “deemed confirmed” in instances where the legislature and/or tribal council fail to vote to approve or disapprove.⁴ Complaints and appeals regarding the results of an election may initially be filed with the election commission, and any appeal against its decisions is submitted directly to the Supreme Court. Some interlocutors expressed concern to The Carter Center that judges may be beholden to the governor because they are nominated by and receive their salaries from the governor.

The attorney general brought a number of suits to the trial court seeking to remove nominated candidates based on residency requirements. Another case sought an injunction against the election commission for members who did not recuse themselves when taking decisions in which a conflict of interest was present because they had family members on the ballot.⁵ The trial court imposed an injunction on Commissioner Dale Hamilton on Sept. 15 and a more general injunction against all the commissioners on Sept. 18.⁶ Allegations were made that these injunctions were openly violated.

Legal challenge to the Oct. 3 primary election. A key dispute in the electoral process involved a case brought to the Supreme Court on Oct. 19, shortly after the Oct. 3 primary. Filed by incumbent Eddie Hamilton in his capacity as governor and candidate, the suit sought to reverse the certification of the Oct. 3 primary election results. The suit brought forward numerous allegations, including those brought to the tribal court by the attorney general and more. The Supreme Court provided time for the parties to submit briefs, and the trial began Nov. 6, one day before the scheduled election and over two weeks after the case was submitted. The case was only partly

³ The Carter Center released a finding report for the Oct. 3 elections on Oct. 13.

⁴ Cheyenne & Arapaho Constitution, Chapter VIII, Sect. 2: “Selection. Each Judge and Justice shall be selected upon nomination by the Governor, subject to confirmation by the Legislature and approval by the Tribal Council, provided that, if the Legislature fails to approve or disapprove a nominee for Judge or Justice within thirty days of nomination by the Governor, then the nominee shall be deemed confirmed by the Legislature, provided, further that, if the Tribal Council fails to approve or disapprove a nominee who has been confirmed by the Legislature, or who has been deemed confirmed by the Legislature, within sixty days of confirmation by the Legislature, then the Judge or Justice shall be deemed approved by the Tribal Council.”

⁵ Challenging the eligibility of a candidate or the results of an election requires a \$200 fee.

⁶ These cases cited Article 3.6(H) of the election legislation, which provides methods for commissioners to recuse themselves in cases of conflict of interest.



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heard on Nov. 6, which meant that the election had to be postponed. The trial continued on Nov. 15, and a final decision was made on Nov. 17. The Supreme Court upheld the primary election in a 2-1 vote, noting that “the governor’s petition unquestionably presents sufficiently serious questions.... Nonetheless, on the present record, the balance of hardships does not tip decidedly in plaintiffs’ favor.... Because the conduct of elections is so essential... the strong public interest in having elections go forward generally weighs heavily against an injunction that would postpone an upcoming election.”

It should be noted that the Supreme Court missed the legislated deadline to decide the case. It is vitally important in a time-sensitive electoral process that all stakeholders involved in election disputes, especially the election commission and courts, abide by legislated timelines. The prolonged timeline of the case regarding the primary election poses serious problems in an electoral context. According to legal standards, courts should reach prompt decisions within the legally mandated timeframe of the given electoral process. Every effort should be made to refrain from postponing elections, as such last-minute changes can harm the integrity of the election process and cause unneeded voter confusion in a delicate democratic process. More broadly, several dispute-resolution deadlines are missing or unclear in the relevant legislation, including the timeline to submit complaints to the election commission.⁷

Recommendation: All election dispute-resolution timelines should be clearly identified in legislation and coordinated to fit within the electoral timeframe.

Election Administration

The Cheyenne & Arapaho Election Commission, an independent body, should have eight members, each commissioner representing and responsible for one of eight electoral districts.⁸ Commissioners serve four-year terms, and quorum is set at five. The chair, vice chair, secretary, and treasurer are elected from among the election commission members. For the 2017 election, two vacancies existed. Thus, the remaining six commissioners were completing tasks for the vacant constituencies as well.⁹ Beyond making the ultimate decisions regarding the electoral process, the commissioners’ primary task is to maintain and update the voter register in their district. The governor has the authority to nominate commissioners when a vacancy exists, and the legislature confirms their appointment.¹⁰ Only one of these six commissioners was duly elected; the other five were appointed to fill vacant positions. Of the six commissioners, five were women. It is unclear why the remaining two vacancies were not filled, though they were the two least populous districts.

⁷ Article IX, Section 13, of the constitution states that “the Supreme Court shall hear and decide all election appeals within twenty days.” Furthermore, should the Supreme Court fail “to decide such appeals within twenty days, then the decision of the Election Commission shall be final and no subsequent judicial review shall be permitted.”

⁸ While the election commission is an independent body, vacancies are filled by the governor/legislature, and it relies on funding from the governor’s office. Several interlocutors expressed concern that the governor signs all paychecks, including those for election commissioners, which can create high levels of intimidation and a practice of “starving out” those who might disagree with the governor by withholding paychecks.

⁹ Districts A3 and A4 were vacant for the 2017 election.

¹⁰ Article XII (12) of the constitution.



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Commissioners are paid \$24,000 per year. Many interlocutors suggested the need to ensure that commissioners have sufficient experience or training to fulfill the responsibilities of the position. Commissioners are not trained, and because of the lack of administrative support, the election commission is dependent on private vendors to conduct the balloting, polling, and counting processes. The commission hires a part-time clerk and has retained legal counsel. In addition, the election commission hires temporary contract employees to represent the commission at the polling stations on election days.

As noted above, concerns about the commissioners' potential conflicts of interest in the process are common. Commissioners are elected by the voters for whom they have responsibility to register in their districts, creating the perception that commissioners could be registering, or not registering, voters in their districts in order to further their own interests.

Recommendation: Commissioners should act impartially and should recuse themselves in any instances of conflict of interest. Training in election administration could be considered to support the commission in fulfilling its oversight role and electoral responsibilities.

TrueBallot

For the 2017 election, the election commission contracted a private vendor, TrueBallot (based in Maryland), to print ballots and conduct the polling and counting processes. In the past, competitive bidding was used to select the vendor to carry out the elections. A previous vendor, Automated Election Services (Rio Rancho, New Mexico), is in the midst of a dispute with the election commission regarding its billing from past elections and refused to bid for the 2017 contract. TrueBallot was awarded the contract without a competitive bid process, even though it handled the 2013 election, which was marred by serious suspicion and controversy.

Most TrueBallot polling station staff are contract employees who reside in Oklahoma and are not Cheyenne or Arapaho. Many came from other nearby tribes. TrueBallot contract staff are provided a short training session before the elections. Prior to the Oct. 3 primary election, Carter Center observers were allowed to observe a training session. However, TrueBallot refused to allow The Carter Center to observe the training session held the evening before the Dec. 12 polls. Some staff noted that they did not receive training in the session prior to the December general election but rather focused on distributing the equipment that staff were required to bring to their respective polling stations on election day.

In general, Carter Center observers noted that the relationship between TrueBallot representatives and key stakeholders – most importantly the election commissioners – seemed to vary across commissioners. Some election commissioners raised concerns that TrueBallot only spoke with the election commission chair and that important information was not shared with all commissioners. Some commissioners indicated that TrueBallot was focused primarily on the technical tasks for administering polling and counting operations, and did not take time to engage with commissioners and other stakeholders. The Center notes that such engagement might have helped strengthen public confidence in the process, as well as provided valuable opportunities for commissioners to strengthen their technical skills in election administration.



Voter Registration

There are approximately 15,000 members enrolled in the tribe, of which some 9,000 may be of age and eligible to register and vote. Tribe members who are 18 years and older are eligible to vote. Currently, there are approximately 5,500 registered voters, the majority of which are registered in districts A2, C2, and C3.

Registration is active, so eligible members must physically sign up to be listed on the voter register.¹¹ In order to register to vote, enrolled tribal members must complete a voter registration form and file it with the voter's district election commissioner.¹² Maintenance of the voter register is the prime operational task of the election commissioners. However, Carter Center observers' discussions with various commissioners revealed that there were different views regarding their responsibilities.

The voter register is held on a database provided by TrueBallot. Each commissioner is supposed to have access to the entire database with a single shared login credential, though some election commissioners appeared not to understand how to access it. While having a centralized list allows the tribe to better manage data and easily remove duplicates, commissioners appeared to have received limited training on how to effectively use and update the data. In addition, having only a single login credential means that administrators cannot identify who made which changes, severely limiting accountability in this important process. Furthermore, voters receive differing levels of assistance based on which commissioner they communicate with. And, as noted above, some commissioners perceive that others could have a conflict of interest in how they register voters. Most stakeholders had little confidence in the voter list and were particularly concerned about absentee voters on the list.

Recommendation: Election commissioners should be provided training on collecting, entering, and amending data, and commissioners and/or secretariat staff should act impartially, allowing independent, transparent reviews of the voter registration list to ensure confidence and accuracy. Login credentials should be personalized so each individual with access to the database may have their changes tracked.

Absentee ballots. Voters residing outside the tribal district boundaries are eligible to register and vote by absentee ballot, which they receive by mail. The voter then returns the completed ballot by post.¹³ Absentee voters must register at least 30 days prior to the primary election and 21 days prior to a general election to receive a ballot.

¹¹ As per Article IX, Section 2(d), if a registered voter fails to vote in two consecutive tribal elections, the voter shall be removed from the voter rolls and is required to re-register to vote in future elections.

¹² In several cases, interlocutors informed Carter Center observers that some commissioners rarely answer their phones in order to avoid voter requests.

¹³ Tribal members living within the districts but unable to cast a ballot in a polling station because the voter expects to be absent from their resident voting district on the date of the election may also request an absentee ballot.



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For a variety of reasons, the number of absentee ballots returned as “undeliverable” in recent elections has been exceptionally high. Tribe members are remarkably mobile, and the tribes have stated that they do not publish the voters list for the membership to review and correct, in part because they do not want to disclose the address of women in the tribe who may be in protected living situations following domestic violence cases.

Importantly, while legislation requires the election commission to work with the tribes’ enrollment department, which manages the distribution of dividend checks to tribal members, the commission did not request any data from the department, even though several interlocutors informed Carter Center observers that the department’s data is more accurate. According to the governor, the return rate from the enrollment department mailings is less than two percent.

In the 2017 election, absentee voting was further hampered when a mistake was made in mailing out the approximately 2,700 ballots for the primary election, resulting in voters receiving ballots that did not correspond to their constituency. Within a week, new ballots were issued and mailed to voters, but no information or instructions were provided in the new mailing to explain the mistake. The election commission and TrueBallot issued a short press release on Sept. 5, and some information was posted on the tribes’ Facebook page, after some voters had already mailed in their ballots.

This kind of absentee ballot error, compounded by a lack of clear instructions, created confusion for voters who received two different ballots and did not know what to do. Even stakeholders who received information about the mistakes were unsure how these ballots would be handled during counting. Tribal members expressed frustration via social media, and the ballot mix-up reduced confidence in the overall process.

Recommendations: Far greater efforts are required to resolve the large levels of disenfranchisement taking place because of the poor upkeep of the voter register, especially when several simple actions to address these concerns are available. This is particularly the case in an electoral environment where the margin of results historically has been razor thin. The election commission should prioritize efforts to improve the accuracy of the voter registration system to reduce the disenfranchisement of Cheyenne & Arapaho members.

In addition, greater efforts are needed to reach out to Cheyenne & Arapaho tribal members to encourage voter registration and participation in the election process. Basic voter education could enhance the overall process and potentially increase participation.

Candidate Registration

Eligibility criteria for candidates in Cheyenne & Arapaho elections are somewhat restrictive. On top of several other requirements, executive candidates must be age 35 or over and have attained a bachelor’s degree, while legislative candidates must be age 25 or over and have attained a high



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school diploma. There is a broad ban on persons who have been sentenced to a felony in the last 10 years. Candidates are also required to pay a filing fee.¹⁴

Candidate registration was generally deemed inclusive by stakeholders and provided voters a genuine choice among a wide range of political alternatives. The number of candidates who competed in the Oct. 3 primary election was the highest in the history of the Cheyenne-Arapaho tribes, with 58 candidates contesting. Of these, there were eight competing tickets for the governorship during the primary, including the incumbent pair. Nearly 40 percent of primary candidates were women. A total of seven candidate challenges were filed with the election commission, all of which were dismissed. Four of the seven challenges were taken to the trial court, where the court ruled that one set of executive candidates did not meet residency requirements and were subsequently removed from the ballot.¹⁵

Campaign

There is no official campaign period, and parties can campaign at any point ahead of the election. In practice, most candidates began their campaign activities following their registration as candidates. Signs of the campaign were present throughout the Cheyenne & Arapaho lands, with the greatest density of advertising observed near Concho and El Reno. Candidates rented billboards, posted signs, took to the radio, placed newspaper ads, campaigned door to door and at pow wows, and set up meet-and-greet events. Candidates also used social media, particularly Facebook and Twitter, to reach voters. Some stakeholders noted that the Facebook page of the tribal council became political. Candidates with whom Carter Center observers met expressed satisfaction with the conditions for campaigning, though some noted that a small number of election signs disappeared before the elections.

No campaign finance regulations exist in the legal framework.

Recommendation: The Cheyenne & Arapaho Tribes should consider enacting legislation on campaign finance, most importantly regarding disclosure and transparency of campaign contributions and spending.

Election Days: Oct. 3 Primary Election and Dec. 12 General Election

During the Oct. 3 primary, Carter Center observers visited nine of 10 polling stations, covering all eight electoral districts. For the Dec. 12 general election, observers covered all 10 polling stations. During both election days, Carter Center observers accompanied the election commissioners to retrieve absentee ballots from the El Reno post office.

Both the primary and general election days were largely conducted in an efficient, organized, and transparent manner. Polling took place from 7 a.m. to 7 p.m. In each station, at least one TrueBallot

¹⁴ Filing fees are \$250 each for the executive positions, \$200 for the legislature, and \$100 for election commission.

¹⁵ The tribal court issued an injunction halting the election candidate certification process and, following an evidentiary hearing, the court disqualified a governor/lieutenant governor candidate team that had been accepted by the election commission but was legally ineligible to run because they failed to meet the tribes' residency requirements.



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polling agent was in charge of the polling process. Generally, a representative of the election commission was also present in each polling station, though their role was more limited. Polling staff politely processed voters, and queues seldom formed.¹⁶ TrueBallot election staff were generally competent, friendly, and ready to assist when questions were asked of them. Importantly, voters also seemed to understand the process with little to no direction. While the polling procedure was not terribly complex, no polling procedures manual seemed to be available to staff.

For the 2017 election, the election commission sought the presence of the Bureau of Indian Affairs (BIA) to provide security at the polling stations and to transport ballots back to Concho at the end of polling. Candidate observers were also allowed to be present at the sites, but none were noted by Carter Center observers.

TrueBallot staff members operated the electronic check-in and ballot printing devices. This system requires all stations to be connected to the internet in order to check voter data against a centralized list and to print ballots. On a positive note, this centralized, cloud-based system allowed voters to cast their ballot in any polling place, as the ballot-on-demand system made it possible for the voter's particular ballot to be printed at any polling station.¹⁷ The system updates in real time to ensure a voter does not vote twice on election day.

When tribal members were not found on the voter list, they were told there was nothing the polling staff could do and generally were informed that they would need to contact the election commission to resolve the issue, though this information was not uniformly provided.

Some aspects of the system fell short of good practices. When mistakes were made while confirming voter check-in, polling staff were required to call the TrueBallot supervisor to address the error, including reversing a voter who had been erroneously marked as having voted. This kind of error was observed on several occasions. This highlighted the fact that the vendor had the capability to alter the voter register with no oversight. While no stakeholders raised this concern, this is not good practice. The current system creates a situation in which the vendor has the ability to print ballots or alter the voter list without any effective controls or checks. Given the political disputes in the tribes, it is possible that some might perceive the vendor as having a financial interest in the incumbent winning.

One polling station in the Oct. 3 primary and one station in the Dec. 12 general election were observed to begin polling late. During the primary, the Geary polling station opened at 7:22 a.m., with five voters in line to vote. In the general election, polling in Watonga began considerably late because the equipment had not been properly prepared in advance. The staff got the system running and the polling station open at 8:45 a.m. Only one very patient voter was affected.

¹⁶ The polling station in Weatherford was observed to be overly small for the process, and its size made it difficult for more than one voter to be present at any one time.

¹⁷ This system was particularly effective in the Concho polling place, which allowed voters from all over the region who worked at the nearby casino and tribal operations center to cast a ballot centrally. This resulted in a particularly large number of ballots cast in that location.



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When polling staff required assistance from the vendor, remote access software (TeamViewer) was used to directly control the laptop at the polling station in question.

In most polling stations visited by Carter Center observers, hotspots provided to the polling staff lost connection frequently or had slow connections. In one station visited, observers noted polling staff setting up a hotspot on the roof of the polling station to seek a stronger connection. In some cases, staff used hotspots from their mobile phones that were superior to those officially issued to them.

Counting & Results

Immediately after polling stations closed, ballots were packed and transported to a central counting center located in the main tribal administration center in Concho. Counting began only after the ballot boxes from all polling stations had arrived in Concho. No reconciliation of ballots was executed at the polling stations or during the counting process. The failure to reconcile ballots with the number of voters who received ballots negatively impacted the accountability of results.¹⁸ While ballot boxes were transported with BIA security, it was noted during the general election that ballot boxes were locked, but not sealed, for the transport process.

TrueBallot runs the counting process, but no formal procedures are written down, followed, or publicized. Because of this lack of established procedures, election administrators had to make decisions on the spot about how to carry out certain portions of the process, which is far from ideal.¹⁹ In addition, the vendor did not conduct any official public logic and accuracy test to provide assurances that the system was counting ballots accurately. Such a practice would not require extensive time and would further bolster the integrity of the count.

Counting is conducted by scanning ballots from each polling station separately and allowing TrueBallot software to count marks on the scanned ballots. The counting process was viewable to the commission, observers, and candidate representatives in real time on a large screen. TrueBallot's software made several portions of the process easier to follow, including how the software highlighted counted marks for easy visual identification. However, the vendor's explanations of the process were extremely limited, and as the counting process wore on, the information provided decreased, apparently because of a desire to complete the process. While the TrueBallot representative managing the process provided information on vote tallies to candidate representatives and other observers, information about vote tallies at each stage of the process was provided reluctantly, and observers had to scramble to note vote totals for each individual polling station. This limited the transparency of the process.

During both the primary and general election count, TrueBallot staff encountered some software and hardware difficulties that required either batches or the computer or scanner to be restarted.

¹⁸ Article 4.4 (A) of the election law states that "the Election Commission shall properly account for all official ballots."

¹⁹ For example, during the count of primary ballots, a decision needed to be made regarding whether to count the original incorrectly mailed absentee ballots in the executive race. This could have been determined and included in a procedures manual in advance of the count.



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During both elections, the ballot scanner was recalibrated to count ballots more effectively. Despite these problems, counting in both elections was calm and was carried out without any major incidents.

During the Oct. 3 primary election counting process, the question of how to tabulate absentee ballots proved controversial, given the initial mistake of sending the wrong ballots to absentee voters. Even though the election administration mailed out a second set of corrected ballots, some original ballots were received.

The Carter Center observed the collection of absentee ballots by the election commission from the post office at 3 p.m. on Oct. 3. In a measure of inclusiveness, the election commission decided to allow both the new corrected ballots and the original incorrect ballots to be counted for the governor's race after first conducting checks to ensure that voters who cast absentee ballots using the original incorrect ballots had not also sent in a corrected ballot, thus avoiding double voting. A total of 82 original absentee ballots were counted in the race for governor. For the primary election as a whole, 1,845 ballots were counted during the initial counting process. Absentee ballots accounted for 670 votes, or 36 percent of the turnout (including 82 ballots, as noted above, from the incorrect absentee ballot mailing).

The electoral legislation requires mandatory recounts when the difference between second and third place in a primary – and between first and second place during a general election – is less than 10 percent.²⁰ Notably, initial results during the primary saw a difference of 11 votes between the second and third place candidates for governor. A recount was conducted, which enlarged the difference to 13 votes. During the recount process, 27 previously uncounted ballots were added, bringing the total to 1,872 ballots. The additions represent more than 1 percent of the total number of ballots counted and underscore the importance of reconciling ballots at the polling-station level and during the counting process. Reconciliation of ballots strengthens the integrity of the process, rooting out potential mistakes as well as possible fraud.

The Dec. 12 general election also saw a number of recounts. In neither the primary nor general election recount were initial results overturned. However, it was noted that recounts were conducted by quickly reviewing previously scanned ballots on a large viewable screen. This process neglected to re-scan the ballots in question, meaning the potential for scanning errors was not checked. A slight increase in turnout was seen during the general election, with 1,952 ballots counted, including 561 absentee ballots.

Recommendation: The election administration should ensure that a public logic and accuracy test of the ballot-scanning equipment be conducted prior to the start of counting. Using sample ballots, a logic and accuracy test would make sure that machines are counting ballots accurately and can be compared to a hand count of the sample ballots.

Recommendation: The election administration should ensure that a full reconciliation process is conducted, including reconciling the number of signatures for ballots at each polling station with

²⁰ Article 4.5 regulates recounts, however 4.5(B) sets no timeline for when a recount must occur when the margin between candidates is less than 10 percent.



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the number of ballots found in each ballot box and the number of ballots scanned per polling station during counting. Protocol documents should be used for each stage of the packing, counting, and tabulation process, including for the publication of results.

Conclusion

Overall, the 2017 Cheyenne & Arapaho elections were conducted smoothly without major incidents and in a calm atmosphere. Although some irregularities were noted, there was no evidence of attempts to manipulate the process. More importantly, the lapses and inaccuracies in the voter list are a source of significant concern and should be a high priority to address in future elections. The Center did not see evidence that these inaccuracies in the list were abused, nor did they appear to compromise the integrity of the process. Nevertheless, several conclusions and recommendations have been presented in this report to help the tribes improve future elections and increase confidence in the electoral authorities.

The Center believes the election commission should put itself in position to take more direct responsibility for future election processes, and should ensure that appropriate procedures and safeguards are in place to provide for accountability and transparency in key elements of process, including those aspects that rely on the support of private vendors. The election commission represents the members of the tribe, and commissioners should remain vigilant, informed, and educated about the process, including any decisions about the operations of vendors. Vendors should be chosen based on both their expertise in implementing election procedures and their commitment to empowering and strengthening the knowledge and capabilities of the election commissioners themselves.

In addition, increased efforts are needed to refine training and procedures for all staff and commissioners and for all elements of the electoral process. This is especially true for voter registration, polling, and counting, to ensure consistency in the application of procedures and to promote the professionalism of the election administration. Development of written, public, procedures is essential to ensuring the overall credibility of the electoral process.

Recommendations

Based on its observation of the 2017 electoral process, and in a spirit of respect for the members and government of the Cheyenne & Arapaho Tribes, the Center offers the following recommendations for improving future elections:

Election dispute resolution. All election dispute-resolution timelines should be clearly identified in legislation and be coordinated to fit within the electoral timeframe.

Nonpartisan observation. To enhance transparency and trust in the electoral process, legislation should be amended to explicitly provide for citizen and independent observation, including of unhindered access to the entire electoral process.



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Election administration. Commissioners should act impartially and should recuse themselves in any instances of conflict of interest. Training in election administration could be considered to support the commission in fulfilling its responsibilities.

Voter registration. Far greater efforts are required to resolve the large levels of disenfranchisement taking place because of the poor upkeep of the voter register, especially when several simple actions to alleviate these concerns are available. This is particularly the case in an electoral environment in which the margin of results historically has been razor thin. As a priority, the voter registration system must be updated to reduce disenfranchisement of Cheyenne & Arapaho members.

Voter registration: voter education. Greater efforts are needed to reach out to Cheyenne & Arapaho tribal members to encourage voter registration and participation in the election process. Basic voter education could enhance the overall process and potentially increase participation.

Voter registration: training and independent reviews. Election commissioners should be provided training on collecting, entering, and amending data, and commissioners and/or secretariat staff should act impartially, allowing independent, transparent reviews of voter registration lists to ensure confidence and accuracy.

Voter registration: login credentials. Login credentials to the voters list should be personalized so each individual with access to the database may have their changes tracked.

Campaign finance legislation. The Cheyenne & Arapaho Tribes should consider enacting legislation on campaign finance, most importantly regarding disclosure and transparency of campaign contributions and spending.

Election administration: electoral procedures. The election commission should provide written instructions on the correct procedures for each stage of the process to everyone involved in administering the election. These procedures should include clear guidance on the physical security of voting materials at all times, including the need for the ballot boxes to be in the clear view of the election commission staff, and protocols for the handling of lock/keys for ballot boxes. This should be supplemented with a short in-person training and written checklists for all polling staff.

Election administration: absentee ballots. Absentee ballots were collected at 3 p.m. To ensure that all absentee ballots are counted, the election commission should consider waiting to collect absentee ballots from the post office until immediately before its closure.

Counting process: logic and accuracy test. The election administration should ensure that a public logic and accuracy test of the ballot scanning equipment be conducted prior to the start of counting. Using sample ballots, a logic and accuracy test would make sure that machines are counting ballots accurately and could be compared to a hand count of the sample ballots to enhance the integrity of the count.



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Counting process. The election commission should ensure that all information about the counting process is shared publicly with all commissioners and also explained clearly to candidate observers and any nonpartisan observers at the counting site, prior to the beginning of ballot counting. Vendors using electronic equipment to count the ballots should document any issues with machine calibration or computer restarts and share them immediately with the election commission.

Counting process: reconciliation of ballots and publishing results. The election administration should ensure that a full reconciliation process is conducted, including reconciling the number of signatures for ballots at each polling station with the number of ballots found in each ballot box, spoiled ballots, and the number of ballots scanned per polling station during counting. Protocol documents should be used for each stage of the packing, counting, and tabulation process, including for the publication of results, and should be signed by the election commission representatives and the election vendor. The commission should publicly announce or post the number of voters per polling place as well as the number of absentee ballots sent, received, and counted.



October 3, 2017 Primary and December 12, 2017 General Elections in Cheyenne and Arapaho

Dec. 12, 2017 General Election Results

Total Ballots Counted 1,952

Governor/Lt. Governor

Reggie Wassana/Gilbert Miles 982
Funston Whiteman/Chris Derenzo 951

A1 Legislator

Billie Sutton 89
Diane Willis 84

A2 Legislator

Kendricks Sleeper 271
Christine Morton 134

A3 Election Commissioner

Patricia Smothers 41
Anthony Spotted Wolf Sr. 31

C1 Election Commissioner

Sandra Hinshaw 126
Frederick Blackbear 105

C2 Legislator

George Woods 277
Frances Howell 200

C3 Election Commissioner

Ramona Welch 177
Kayty Curtis 173

C4 Legislator

Byron Byrd 102
Francine Bullcoming 81



October 3, 2017 Primary and December 12, 2017 General Elections in Cheyenne and Arapaho

Oct. 3, 2017 Primary Election Results, following Oct. 8 Audit

Total Ballots Counted 1,872

Governor/Lt. Governor

Reggie Wassana/Gilbert Miles	357
Funston Whiteman/Chris Derenzo	272
Eddie Hamilton/Nicolas Barton	259
Jeanine Seger/Darrell Flyingman	250
Roberta Hamilton/Debra Woolworth	217
Hershel Gorham/Teresa Dorsett	217
Henrietta Mann/Alden Whiteman	206
Adrian S. Prairie Chief/Don Nowlin	52

A1 Legislator

Billie Sutton	54
Diane Willis	36
Kenny Williams	19
Edward Eugene Mosqueda	15
Scottie Sankey	11
Bonita Cruz	8

A2 Legislator

Kendricks Sleeper	151
Christine Morton	98
Michael Bell	58
Mike Martin	35
Michael J. Kodaseet	30
Michael Whitecloud	21

A3 Election Commissioner

Patricia Smothers	25
Anthony Spotted Wolf, Sr.	19
Jane Nightwalker	15

A4 Election Commissioner

Elizabeth Birdshead (unopposed)	4
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October 3, 2017 Primary and December 12, 2017 General Elections in Cheyenne and Arapaho

C2 Legislator

George Woods	84
Frances Howell	78
Robert Wilson, Sr.	66
Alan Fletcher	59
Marlin Hawk	51
Connie Hart Yellowman	46
Leonard Goodbear, Jr.	24
Irene Deer	24

C4 Legislator

Byron Byrd	41
Francine Bullcoming	34
Delfred L. White Crow	26
Robert Rector Candy	23
Ida Hoffman	15
Fiona Whiteskunk	9
Thurman Starr	8
Ronald Kaulay	6
Victor Orange	4
Matthew Kendall Kauley	4

C1 Election Commissioner

Sandra Hinshaw	100
Frederick Blackbear	91

C3 Election Commissioner

Kayty Curtis	89
Ramona Welch	79
Sara Whiteshield	54
Robyn French	51
Sharon All Runner	34
Jerolyn Rodriquez	14