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LAUNCH JOINT ELECTION REFORM PROJECT

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[TRANSCRIPT PRODUCED FROM
TAPE RECORDINGS]

KEYNOTE ADDRESS:

The Honorable **BARACK OBAMA**
United States Senator, Illinois

PANEL 1: HAVA - How Is It Working?

NORM ORNSTEIN, Moderator
Resident Scholar, AEI

PAUL DeGREGORIO
Chair, Election Assistance Commission

DOUG CHAPIN
Director, electionline.org

The Honorable **DEBORAH MARKOWITZ**
Vermont Secretary of State

PANEL 2: Election Reform - Looking Ahead

THOMAS MANN, Moderator
Senior Fellow, The Brookings Institution

MICHAEL ALVAREZ
Professor and Director,
Cal Tech-MIT Voting Technology Project

RICK HASEN
William H. Hannon Distinguished Professor
of Law, Loyola Law School, Los Angeles

ROBERT PASTOR
Executive Director,
Carter-Baker Commission

PAUL VINOVICH
Staff Director,
Committee on House Administration of the
U.S. House of Representatives

P R O C E E D I N G S

MR. TALBOTT: Good morning, everybody. I'm Strobe Talbott of the Brookings Institution. I want to welcome all of you here today for what promises to be a really terrific event. As you can tell, I trust, from this sign up here, Brookings is celebrating its 90th anniversary, and we're delighted to be able to use that occasion for the conversation that we're going to be having over the course of the morning.

This is the kickoff of the Election Reform Project. That's a joint venture between Brookings and the American Enterprise Institute, which is an institutional partnership, but it's also a very personal one—which is to say, it's a partnership personified by the two gentlemen sitting down here in the front row, whom you will be seeing up here on the podium shortly: Tom Mann and Norm Ornstein, who are kind of an institution in their own right. I want to join them in thanking the Knight Foundation for its support of this four-year effort to strengthen the link between the research and policy communities as they work on the issue of improving our electoral process.

I cannot imagine a better person to give the keynote address for this event than Senator Barack Obama of Illinois. As I think all of you know, he started out as a civil rights attorney and a community organizer in Chicago. He spent seven years as a leader in the Illinois State Senate. As for his arrival at and his role in that other senate, which

is across town here in Washington, D.C., I'm just going to make three points.

First, Senator Obama won his seat, in 2004, by a margin of 70 percent to 27 percent. Now, that doesn't apparently translate into seniority in the United States Senate. He is number 98. And when we get to Q&A, I hope one of you will ask him two questions: First, how does that work, exactly, since we're interested in process here; and second, does being number 98 give you an opportunity, or at least a temptation, to really boss around Senators Salazar and Menendez?

[Laughter.]

MR. TALBOTT: In any event, in that very short time that Senator Obama has been here, he is already very much at the top of the charts in terms of effectiveness and the renown in which he is held. He sits on the Environment and Public Works Committee, the Veterans Affairs Committee, and the Foreign Affairs Committee. He has shown an ability to master complex and diverse subjects. I've had a chance to see that myself in watching the way that he has worked with Senator Dick Lugar in addressing the critically important and very complex issue of how to monitor the security of nuclear material, particularly in the former Soviet Union. He has also been a powerful voice on the challenges facing this nation after Katrina. And I think what is especially relevant to today's topic is that he has been named by Senate Democrats as the

point man on internal reform. That has to do with lobbying, ethics, and procedural fairness.

Now, the process this morning for us is going to be the following: after Senator Obama speaks to us, he has agreed to take some questions. Tom and Norm will come up here to the podium and serve as moderators in that discussion. Then we're going to move to two panels assessing the Help America Vote Act.

Senator Obama, welcome to Brookings and to AEI and to this form. Thank you very much.

[Applause.]

SENATOR OBAMA: Thank you. Thank you so much, Strobe. Thank you to Brookings and the American Enterprise Institute for hosting this terrific forum. I appreciate the large crowd. I was thinking that at a 9 in the morning meeting I might have to do something to build the crowd, so I was going to invite John McCain to come with me, stir up a little excitement.

[Laughter.]

SENATOR OBAMA: But you guys showed up anyway. So I'm extremely grateful to all of you. I can't imagine a more important topic than the issue of election reform.

You know, on the eve of the 2004 election, my campaign held a large rally on the South Side of Chicago. It was held in a church. We were about to start the rally, there were a couple thousand people

there, and one of my staff persons came up to me and said, you know, there's a woman who'd like to meet you, shake your hand, take a picture with you. And I said fine, I'd be happy to meet her. I was a little rushed and distracted because I was about to have to make a speech. But I went into a back room, met the woman. We talked. She said that she was extraordinarily proud of me, was pleased to be able to vote for me, and hoped that I would do good things when I got to Washington.

All of which would have been relatively unremarkable except for the fact that the woman, Marguerite Lewis, happened to be born in 1899. So she is 105 years old. And ever since I met this frail African American woman who had somehow found the strength to make it from her house to the rally, because she believed that her voice mattered, I've thought about all that she's seen in her life. I've thought about the fact that when she came into the world, there weren't any cars on the road or airplanes in the sky. I realized that she was born under the cloud of Jim Crow—free in theory, but enslaved in so many ways; that she grew up at a time when black people were subject to lynchings. Lynchings were not uncommon, but voting remained uncommon.

I thought about how she lived to see the world war and a great depression and then a second world war and how she saw her brothers and uncles and nephews and cousins coming back from those wars and still have to sit at the back of the bus.

And I thought about how she saw women finally win the right to vote, and how she watched FDR lift this nation out of its fear and send millions to college on the GI Bill and lift millions out of poverty with Social Security. And how she must have seen unions rise up and a middle class prosper, and watched immigrants leave distant shores in search of this idea that we have called America.

She believed in this idea with all her heart. And she saw this progress around her and she had faith that someday it would be her turn. And when she finally saw hope breaking through the horizon in the civil rights movement, she thought that her turn had come. Because in that movement she saw women who were willing to walk instead of ride the bus after a long day of doing somebody else's laundry and looking after somebody else's children, because they were walking for freedom. And she saw young people of every race and every creed take a bus down to Mississippi and Alabama to register voters, because they believed, too. And she saw four little girls die in a Sunday school and catalyze a nation.

And at last, at last she saw the passage of the Civil Rights Act and the Voting Rights Act. And she saw people lining up to vote for the first time, and she got in that line. And she never forgot it. She kept voting each and every election since, because she knew that blood had been shed and risks taken for her to exercise that right.

She had seen what the ballot could do, how it could give voice to the voiceless and hope to cynics, how it could inspire boundless

progress and forever change the course of history. And so, at 105, Marguerite Lewis takes her responsibility to vote as seriously as ever.

In 2006, over 40 years after that right was secured for every citizen of this country, I think it's time for America to do the same. With the resources and the technology we have available today, there's no imaginable reason why any American should have problems casting a ballot. There shouldn't be any politics involved, there shouldn't be any ploys to keep people away from the polls; every name should be registered, every machine should be working, every single vote should count. Unfortunately, as we've seen in the last two presidential elections, this still is not the case.

We have made some important strides. We passed the Help America Vote Act in 2002. But despite all the progress that we've made, despite how far we've come since the says when Marguerite Lewis was denied the vote because of both her skin color and her gender, we still can't guarantee our own citizens that their voice will be heard on election day. Everybody in this room has heard the stories—hanging chads, impossibly long lines, misplaced ballots, countless attempts at intimidation and suppression.

In Wisconsin, a group that called itself the "Milwaukee Black Voters League" circulated a flyer in the city's black neighborhoods saying that "if you've already voted in any election this year, you can't vote in the presidential election. If you violate any of these laws, you

can get 10 years in prison and your children will get taken away from you." Meanwhile, in another part of the city, five men were charged with slashing the tires of the Republican get-out-the-vote vans.

In Louisiana, flyers were distributed in African American communities telling voters they could go to the polls on Tuesday, December 10th—three days after the 2002 Senate run-off election was held.

Just days before the 2004 election in Ohio, baseless legal challenges were filed against 35,000 properly registered voters, forcing them to immediately defend themselves in court or face purging from the voter rolls.

And of course we all remember Florida, when a Miami Herald investigation revealed what the state had refused to reveal—a purged list of felons that also included over 2,000 perfectly eligible voters who were turned away from the polls in an election that was decided by 537 votes.

The list goes on. The examples are countless. And I bring them up not to rehash old gripes or challenge the outcomes of any particular election, but to point out that, as we face the 2006 election and beyond, these are problems that still have not been fixed.

See, election reform is one of these issues where America has a tendency to go from shock to trance. We're shocked right after an election when the news reports horror stories about disenfranchisement

and intimidation and suppression; there's a public outcry; there's a flurry of legislation; but then the politics gets tough and the problems aren't solved and pretty soon everyone forgets about it until the next electoral crisis.

We can't wait that long. There are some issues in this country that are inherently difficult—how do we deal with the issue of energy independent; what are we going to do about health care? This is not one of them. Making sure that every American can cast a ballot isn't that tough. There shouldn't be a place for politics in this debate, no room for those who feel that they can gain a partisan advantage by keeping people away from the polls. It's time that we got this done.

So far, one of the major political obstacles in the way of protecting voting access has been a concern from some that we need to instead focus on ballot security or ballot integrity, making sure that people who come to the polls are who they say they are. I come from Chicago. And we have—we're a little bit notorious for people who've been dead awhile showing up at the polls.

But I have to say that, if you look at the evidence over the last several elections, you are hard-pressed to find any evidence that in fact voter fraud is a significant problem. The most extensive study on voter fraud to date, conducted right after the 2002 election, found that instances of multiple voting or trying to vote as someone else are negligible. And after all those challenges filed in Ohio, a statewide

survey found that in 2002 and 2004, voting fraud occurred at a rate of .0004 percent. This means that if you were on the way to the polls to commit a fraud, you were far more likely to be hit by lightning before you succeeded.

Of course, the problem with waving the banner of ballot security is that it leads to laws that keep people away from the polls even further, by restricting their access—laws like Georgia's photo ID requirement, which would require 150,000 Georgians without a photo ID, the majority of whom are poor, elderly, or disabled, to purchase background documents, find birth certificates, and drive miles and miles to the nearest federal building so that they can pick up their ID. All this after Georgia's secretary of state said she couldn't remember one single documented case of voter fraud in her 10 years of running the state's elections.

Whether voter initiatives like this one are intentionally designed to keep people away from the polls or not, the effect is the same. Not only are they undemocratic, they're unnecessary. We have technology today that can ensure that all eligible voters, and only eligible voters, have equal and easy access to voting.

HAVA has already mandated that every state install statewide voter registration databases. By linking these voter databases to other state agencies—the DMV, the post office, tax rolls, felon lists, death records—the potential to reduce fraud and prevent ineligible voters

from being turned away is tremendous. If you move, your new address will show up. If you're a felon, they will know. There will be no excuse for accidentally purging people from the rolls and no need to hand you a provisional ballot and make you defend your eligibility in court later on. All of the information on every voter will be up-to-date, and the burden of maintaining these records will fall on state governments, not individual voters.

Of course, not only have some states failed to install these databases four years and two deadlines later, most states aren't maximizing their potential by linking them to all of these other databases. And that's just not acceptable. On the federal level, we have to get serious about enforcing this law and serious about funding. And we just haven't been so up until now.

So that's a first step.

But while these databases will go a long way toward correcting some of the technical and unintentional errors that have kept people from voting, we need to do something about the despicable cases where Americans are purposely deceived or intimidated into staying home on election day. Never again should we stand by while law-abiding citizens are threatened with jail time just for exercising their right to vote. This is a crime against our Constitution and it should be treated that way.

In November, I introduced legislation that would criminalize and heavily penalize these types of misinformation campaigns while also devising a way to reveal them to voters before it's too late. This should be a part of any election reform that we take up in Congress.

Now, there are other good ideas out there on election reform that I think we can pursue in the months ahead—proposals to make it harder to purge eligible voters from the rolls, deal with excessively long lines, and fix those confusing machines. But to get any of this done, we have to take the politics out of election reform.

A few months ago, the Washington Post reported that political appointees at the Voting Rights Division of the Department of Justice had approved the Georgia photo ID law over the objections of several expert staffers who'd been there for years—the same law that was ruled unconstitutional by two federal courts. Similar objections were ignored when these political appointees approved the controversial Texas redistricting plan designed by Tom DeLay.

Now, I know that the president goes around talking about how important it is to renew the Voting Rights Act. I hear Ken Melman say the same and talk about how he wants to bring more African Americans into the Republican Party. Let me not challenge their sincerity. If what they say is true, then the administration should make sure it's not stocking justice departments with partisans who take precedence over voting rights experts. It would make sure that every

single precinct in America has the resources and the equipment it needs to accurately count every vote by the next election. And it would join us in taking action against those who would intimidate and deceive to suppress African American turnout.

I actually think that's not only the right thing to do, I think it's also the smart thing to do. I don't think that any party wants to be known as the party that stood in the way of ensuring that every American can vote. So I sincerely hope that both parties can work together on these issues in the near future.

Let me make one final point about election reform. The American people don't just expect us to protect their right to vote, we also need to protect their right to a meaningful vote. The fact is that in too many districts today people's vote really probably won't make a difference. I know that's sacrilege to say, but as a consequence of the gerrymandering of congressional districts, people aren't being illogical when they stay at home, because the outcome is a foregone conclusion.

As the next census approaches and the Supreme Court weighs the merits of the controversial Texas redistricting plan, I think we should begin an open bipartisan discussion about ensuring that future attempts at redistricting are as fair as possible. You know, it's one thing to draw lines that ensure the adequate representation of minority populations, it's another to draw them for purely partisan advantage. Both parties have

been responsible for doing this. Both parties should be responsible for ending it.

This is something that I find myself with strange bedfellows. Arnold Schwarzenegger, as you will recall, proposed this in California and it was fought vigorously by Democrats. In Ohio, it was fought vigorously by Republicans. But the fact of the matter is that we now have a system where, too often, our representatives are selecting their voters, as opposed to the voters selecting the representatives. That is a situation that I think the American people should not accept.

You know, last night I just returned from Atlanta, where I attended the funeral services for Coretta Scott King. And sitting there reflecting on her life, thinking about her husband and John Lewis and Rosa Parks and all those other heroes who worked so hard to ensure that every voice would be heard, I thought about how they faced down billy-clubs and firehoses and bombs and bullets, hatred and ignorance—all so their children could grow up in a world where every human being had a chance to participate in their government; a world where this change wouldn't come from riots or coups or violent revolutions that have brought down their governments, but peacefully, at the ballot box. A peaceful march. A march of opportunity like Marguerite Lewis, who still believes that her voice will make a difference in the life of her country.

I think it's time that we carried forth this legacy into the 21st century. I hope that we take those responsibilities seriously. And I thank you very much for the opportunity to speak to you.

[Applause.]

MR. ORNSTEIN: Thanks so much, Senator Obama.

Let me start by asking you a follow-up with the discussion of the Voting Rights Act. We know that somewhere on the agenda this year is a reauthorization of that act. Is there any chance that that could be used as a vehicle or a springboard for actually getting Congress to focus on some of the issues that you've raised beyond the act itself, but to move toward some additional election reform that would open up avenues for participation?

SENATOR OBAMA: Well, I think there are going to be those who are looking for that opportunity. But this is where politics tends to get in the way. I think there is a fear on the part of some in the civil rights community that if we open up the Voting Rights Act conversation more broadly, that those who are in power and can ultimately get a bill passed may do more harm than good. And so there may be an instinct on the part of those who are supporters and advocates for the Voting Rights Act to say let's keep this as narrow as possible this time out, see if the politics change in the next election, then we can look at broader reforms.

I'm not sure that that's the right strategy because I think that if we're able to make the case to the American people that these reforms are necessary and that we can't wait, then I think both parties may feel that people are watching them and that in fact some of these changes could go forward. But, you know, as you know, I think, better than anybody, Norm, the truth is that, when it comes to election reform, the issue of short-term tactical advantage on the part of the parties and elected officials is always a very great danger, and that may impeded the kind of reforms we'd like to see.

MR. MANN: Senator, maybe I could follow up on that. I was struck, and I'm sure everyone here was struck, by your statement, repeated several times, that the casting and counting of ballots should not be a place for politics. Yet it seems almost quaint in this city at this time. We're riven by partisan polarization. The parties are evenly balanced. The politics are tribal. And more voters are, kind of, predictable in their likely voting intention. Ninety percent of African Americans vote Democratic, maybe 75 to 80 percent of white suburbanite evangelicals in megachurches are voting Republican. That sort of tends to make the electoral process just another venue for this kind of partisan warfare. We've seen it in campaign finance. We've seen it on redistricting, as you mentioned, and certainly we've seen it on election administration.

How do you deal with that? How do you break through, as you put it, the sort of short-term immediate partisan interest when elections are bound to be so close and the stakes are so high because the parties really differ? How do you somehow get beyond that to encourage the changes in Congress and in the states that will actually produce the outcome all of us want?

SENATOR OBAMA: Well, I don't think the changes are going to start in Washington. I think they're going to start at the local level, at the grassroots level, and, hopefully, at the level of state governments.

You know, the example of campaign finance is instructive. We haven't had any serious campaign finance reform in quite some time. And yet what you're seeing at the state level in places as varied as Maine to Arizona are referendums getting on the ballot calling for public financing of campaigns. The people who see the outcomes of these reforms are happy with them and hopefully that spreads.

We're starting to see that around redistricting. It's a pretty arcane topic. Both the referenda in Ohio and California failed. But the fact that they were on the ballot meant that people are slowly being educated to the process. And we may see as a consequence of the Supreme Court's having taken that case that greater conversation will happen.

So I think that people are dissatisfied at the local level. They experience this sense of being disempowered by the choices that are available to them in the system that's set up, and that will, hopefully over time, push Washington to change its practices.

But just one thing I'd add. Part of the reason that we're not seeing any serious election reforms taking place is because people aren't taking our democracy particularly seriously now. People want something to vote for, as opposed to just something to vote against. And I think the polarization, and some of the factors involved in that polarization that you outlined, contributes to that. And one of the things that I've been trying to argue within my caucus and, you know, when I talk to Democratic activists generally is that, to the extent that we buy into a very tactical strategic way of talking about politics, where we think that people's opinions are fixed and set and it doesn't make sense for us to campaign in a megachurch out in a white suburb because somehow those are Republican voters, then we are complicit in this static system.

And you mentioned I did pretty well in my election. Well, a whole bunch of those were white evangelicals in suburban churches—mainly because I went there and talked to them. And it turned out that we had a set of common values that our politics tends to dismiss. And I think that that's part of the task as well, is creating the kind of politics that makes people say, hey, I want to get involved in that, and I will be outraged if in fact people—if I can't vote, and I'll be outraged if I see my

fellow citizens not being able to vote. And I don't think there's an outrage right now, because people feel so cynical about the process.

So we're going to have to change our language and how we talk about politics for people then to say this is worth fighting for, this is something we want to push for.

MR. MANN: So perhaps one of the most constructive things is for Democratic politicians to make forays into seemingly Republican territories, and vice versa.

SENATOR OBAMA: And vice versa. I mentioned Ken Melman. He and I went to school together at Harvard. And I—you know, I met him awhile back, we had a conversation, and I encouraged him to go after the African American vote. Not that he needs my encouragement.

[Laughter.]

SENATOR OBAMA: You know, he's doing pretty well.

MR. ORNSTEIN: Did you say "bring it on"?

SENATOR OBAMA: No. But I think that's a healthy thing, for Republicans to compete for the African American vote. I'm not sure that right now they've got ideas that they can deliver that will actually change how African Americans vote, but I think that it's a healthy thing.

So trying to break out of the fixed demographics of our politics and the static ideas in our politics, I think, goes a long way toward propelling the kinds of reforms that we need to have.

MR. ORNSTEIN: The Help America Vote Act was the first major federal effort to deal with these kinds of election problems. Our sense in talking to members of Congress, including the principals who put that together, was that there is very little appetite for doing anything more now. It's almost—the analogy that I thought of in this case is it's a little bit like giving birth without anesthetic, to them—at least what we've heard about the pain of giving birth; that—

[Laughter.]

SENATOR OBAMA: Way to amend your—

MR. MANN: That was good, Norm.

MR. ORNSTEIN: Well, minimal problems at home.

—that having done that, they just don't have any particular interest in going back to it. You've introduced your bill; you've perhaps talked about these issues with some of your colleagues. Is there any interest or appetite in revisiting these issues? And that includes, as you suggested, funding and making sure we get implementation of HAVA, as well as some of these additional problems that the law did not address.

SENATOR OBAMA: Well, I think one thing that we should be able to do, and the Voting Rights Act reauthorization could help, is to at least get us to enforce the provisions of HAVA that currently are not being enforced. That would be a step in the right direction. You know, we could make a strong push on that front without necessarily trying to reopen a whole series of new negotiations about new provisions.

One of the things, when I sit down with civil rights lawyers and the community that will be actively advocating on behalf of reauthorization, one of the things that I'll suggest is that if you want to get people interested broadly in this issue, then you've got to have a conversation about how to enforce the provisions that we haven't dealt with.

You know, the state registration issue is a perfect example. That's not a technical problem. That's purely a funding problem and problem of political will. And if states are given the money and there's somebody in authority who is telling these states you've got to implement it, it will get implemented. We have the technology. You know, one thing I can assure you, that if every credit card company and mortgage loan company out there has a database on every single one of us and can send us e-mails and letters at the drop of a hat, obviously technologically there's no reason why we shouldn't be able to make sure that the same kind of database is maintained to ensure that people who are eligible to vote do vote.

You know, there's one other issue that I did not mention that I think is worth mentioning. I don't see any prospect of change at the federal level anytime soon, but I think it is worth noting the astounding number of African American males who are now disenfranchised in some states, like Florida, that have long-term disenfranchisement provisions as

a consequence of a felony. The numbers are staggering. And that's at least something worth thinking about, something worth mentioning.

MR. MANN: Senator, yesterday Doug Chapin and his estimable and essential organization, electionline.com, released—

MR. CHAPIN: Dot-org.

MR. MANN: Dot-org, excuse me. I keep saying dot-com. It's because Doug is so entrepreneurial. Electionline.org released a report on how far we've come and haven't come from 2000 to the present. It's been a checkered, as you pointed out, experience, with some states well behind the mandates. It's partly a matter of funding in the short term, but it's more than that. And Doug's reports suggest, as you do, that the action is almost certainly to reside in the states for the foreseeable future, and I think that's probably right.

The question is, blue-sky a bit as you think about American democracy and where it ought to be in the future. Is there a greater role for the federal government in setting the terms of the conduct of elections in America, or do you expect we will always have the system that we have now and have had, which is a highly decentralized one?

SENATOR OBAMA: You know, I think that the tradition of decentralized local control of elections is deeply rooted. And not only is it deeply rooted, but in states like Illinois they're elected posts. And one thing that I've generally experienced is that people who have elected posts don't usually vote to eliminate those posts. So, you know, you've

got a lot of county clerks and city clerks all across the country who I think are going to be interested in maintaining their positions and their budgets.

So I don't think it's necessary or desirable for the federal government to take over the machinery. What I do think the federal government can do is to set up some core standards. And that's what HAVA was trying to accomplish. If we actually had serious enforcement of that process, I see no reason why we can't say to every state you need a central database; we have the technology now so that the random purging process that currently takes place should be out the window, it doesn't work efficiently. That's something that we should be able to do.

I think that we should be able to say that you can select whatever vendor you want on your voting machine, but the voting machine has to be reliable; it has to be clear, it has to possess some sort of paper trail that can be checked, if it's computerized, to make sure that people's votes are properly counted. I think that's something that we should be able to do.

So there are some baseline standards that the federal government should be able to set—help local districts, who've got a lot of other priorities and whose budgets are going to be squeezed much more than the federal budget would be squeezed in implementing these reforms, and then having a strong enforcement provision. Have the Justice Department or whatever other agencies need to be involved

looking over the shoulders of these states to make sure that in fact they're carrying out these reforms in a timely fashion.

This is not rocket science. This is something that has to do— The reason it's not happening—I mean, let's be blunt—the reason these changes don't happen is because the political parties, at any given time, think that they have a tactical advantage by encouraging some people to vote and discouraging other people from voting. That's all it is. All the other stuff is pretense and rationalizations of people's desire to have an advantage in elections.