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PANEL 1: HAVA - How Is It Working?

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P R O C E E D I N G S

Panel 1: HAVA - How Is It Working?

MR. ORNSTEIN: [In progress] –the Help America Vote Act—HAVA, as it is known—starting with "how it's working" and then "looking ahead."

I don't think we could have done better to examine the nature and state of HAVA and how it's working than the panelists we have with us today.

Starting on my left, Paul DeGregorio is the chairman of the federal Election Assistance Commission. He's been on the commission since its, really, I suppose "inception" would be maybe a slightly loose use of the term, given some of the difficulties of getting going, but since the end of 2003, but has been, of course, before that very well-known to all involved in issues of elections through a whole host of positions, including very prominently the executive vice president and chief operating officer of the International Foundation for Election Systems.

Deb Markowitz is Vermont's secretary of state. She has been in that position since 1988 and is serving her fourth term. She has done a number of quite remarkable things in Vermont, which has an extraordinarily robust turnout in the context of American elections, and is the president-elect of the National Association of Secretaries of State.

Doug Chapin was introduced in part by Tom Mann in the last session, but is known to anybody involved with elections for his estimable site, electionline.gov.

[Laughter.]

MR. ORNSTEIN: No, that's electionline.org, which most of us turn to at least daily if not weekly. But he backed up his current position, of course, with service in the Federal Election Commission, Election Data Services, and also, as a lawyer, an election counsel engaged in the political process and with a wide range of experience and expertise on election issues. As Tom mentioned--and there are copies at the back--anybody interested in this issue should have this new report, "Election Reform: What's Changed, What Hasn't, and Why, 2000-2006." It's a very, very good resource.

And we hope in this project, I should note, overall, a good part of our role is going to be to try to work in conjunction with Doug, electionline.org, and many other organizations and individuals, universities, researchers working in this area so that we can at least coordinate what's being done and who's focusing on issues out there, and try and make sure that we can move to an effective and continuing implementation of HAVA, and focus on what needs to be done in the future.

So let me start with some comments by Paul.

MR. DeGREGORIO: Thank you, Norm. And thank you to the Brookings Institution and American Enterprise Institute for bringing together all of you. I look out in the audience and I see many of our stakeholders and people that we have interacted with at the EAC in the past two years, including our friends in the GAO in the back.

It's good to be here and it's good to have a discussion about election reform and the Help America Vote Act. I'm honored to be here with Doug Chapin and Secretary Deb Markowitz. These two, like me and many others, have devoted, really, every day of our lives for the last two years to the implementation of the Help America Vote Act. I know that Secretary Markowitz is very well respected around the country. And I know that electionline.org has done the public a great service in the information that it has provided, really on a daily basis, to Americans out there who are interested in elections and election reform.

Just this past weekend, the nation's secretaries of state and the state election directors met in Washington and spent a significant amount of their time discussing the implementation of the Help America Vote Act in where they are.

Back in 2000, not many Americans paid attention to how elections were conducted. When I was director of elections in St. Louis County, Missouri, from 1985 to 1993, typically in an April election we had 92 municipalities, we had 24 school districts, and we usually had 10 races, sometimes more, decided by 10 votes or less. And we had to

conduct recounts, and we used punch cards. So back then, in the '80s, we were discussing pregnant chads, hanging chads. We used to have to hand-count many of these ballots to decide the outcome. And the candidates certainly paid attention to it. If you were running for alderman in Ward 2 of the City of Overland in St. Louis County, you paid attention to it. But the public was certainly not engaged and had no idea what hanging chads were. But we did.

The 2000 election changed all that and the world certainly paid attention to hanging chads and certainly to the way our elections are conducted. Focus on election reform and legislative changes at the federal, state, and local level in the past five years has been unprecedented in American history. HAVA ushered in a new era in election administration and also provided funds to make significant improvements. After three years, I would say the country is well on its way to fulfilling the promise of HAVA. All states, the District of Columbia, and territories have received nearly \$3.1 billion in federal funds. That represents a first for the United States.

State and local governments have also contributed a significant amount of their own funds and people resources to implement the Help America Vote Act. This funding is being used to buy new equipment, improve older voting devices, serve the needs of the disability community, conduct training for election officials and poll workers, provide for voter education and implementing statewide voter

registration databases, and many other things involved in the administration of elections in America.

HAVA mandates have been phased in over the last three years. Requirements for provisional voting and ID requirements for first-time mail registrants were focused upon in the 2004 election. Other mandates, like improving the voting process for the disabled community and requiring statewide voter registration lists for the first time, became a reality just a few weeks ago, on January 1.

With a strong push by HAVA, punch card and lever machine voting will nearly be gone by the end of this year. So much has changed, and much is being changed just this year.

The Election Assistance Commission is a four-member bipartisan commission established by the Help America Vote Act. I'm fortunate this morning, and you're fortunate this morning, to have two of my colleagues in attendance, Vice Chairman Ray Martinez and Commissioner Donetta Davidson. Would you just stand, so people know who you are?

So there are three of us here, so we can--there are only four commissioners, so we can take a vote.

[Laughter.]

MR. DeGREGORIO: We won't do that.

It's been indeed an honor for me to serve with Ray and with Donetta and with Gracia Hillman, our fourth commissioner. These are

distinguished Americans, and we've worked very hard to do our work. We just came into existence just two years ago. January of '04 was when we had our first meeting. It was about a year after Congress intended. So it made it difficult for us to implement some of the requirements of HAVA because of that late start and because of funding difficulties in the very beginning.

But the EAC role under HAVA is to help states meet the law's mandates, interpret the law, provide funding for improvements, set new voting system guidelines, take over the certification of election equipment, interpret the National Voting Rights Act, conduct significant research, serve as a clearinghouse of information, conduct hearings and account for the \$3.1 billion in HAVA funds that's been distributed. That's a pretty tall order for an agency that only has 22 FTEs and four of the 22 includes the four commissioners.

In spite of some initial funding obstacles, we plunged into our work and made a significant difference in improving election administration in the United States. We conducted public meetings and hearings to ensure transparency and openness, to hear from election officials, voter advocates, and the public. Indeed, many of you in the room have testified before the EAC. We've provided specific guidance to election officials on statewide voter registration lists, what constitutes a disabled voting device, a best practices tool kit, and guidance on provisional voting.

Provisional voting has had a great impact on America. One example is the 2004 election, where 1.2 Americans who voted by provisional ballot, their ballots were counted; nearly 67 percent of those who attempted to vote by provisional ballot were counted. In the 2000 election in my home state of Missouri, we didn't have provisional balloting. Thousands of people came to the polls to vote and their names were not on the rolls, but actually were somehow lost in an election office. Those people did not have the opportunity to vote in 2000. In 2004, they did, because Missouri passed provisional voting in 2002. But the whole nation engaged in provisional voting, because of HAVA, in 2004. So it's made a big difference and a positive difference in giving people the opportunity to participate in elections where they didn't have a chance to before.

We've conducted significant research and provided invaluable data for election officials when making decisions at the local level. It is research I did not have at my fingertips when I was an election official in St. Louis County, Missouri, during the '80s--research such as public access portals, communicating and educating voters on the process of voting.

We're doing research in setting up a legal research clearinghouse, a central location for conducting election-related research.

We're doing, and have done in the past, best practices for recruiting, training, and retaining poll workers and enticing college

workers to serve as poll workers. Do you know the 1.5 million people in America that serve all of you on Election Day are distinguished Americans because they're the backbone of our process that makes it work? It's a difficult process because many people don't want to do this. Many of you probably, you know, are not engaged nor have the time to do something like this. But many Americans do, and we owe a debt of gratitude to those who do. But election officials are increasingly having a difficult time to recruit poll workers.

We're doing a study on vote count and recount procedures. We're doing a study on voter fraud and voter identification issues, and voter intimidation issues. We've engaged Design for Democracy to help the election officials of the country have better ideas to design ballots and voter information--posters and things like that that are used in the process of conducting elections.

We conducted a 2004 Election Day survey, in fact the first in the nation conducted by a federal agency, to actually get some real statistics on how many people participated in the election and how many ballots were cast and what the votes were. So that study in itself was a first, and we certainly are going to continue that in 2006.

Those are just a few of the projects we have worked on and we're going to work on in the future.

We've also provided leadership to the states of Louisiana, Mississippi, and Alabama that suffered during the Katrina disaster last

summer. In September, we brought together officials from those states to the EAC and we brought in officials from Florida and other states in the nation that have gone through a disaster, where FEMA has provided assistance to them and provided funds to them and they had to go through a process of rebuilding election systems that were totally destroyed. Just this last Saturday morning we met with those officials again while they were here in Washington and heard their stories about the difficulties they were having in getting adequate funding to make the process whole again in those states. We intend to advocate on their behalf here in Washington to make sure that the voters of those states have every opportunity to participate in the elections as they have in the past.

Perhaps one of our most significant achievements to date has been the development of the voluntary voting system guidelines. Working with the National Institute for Standards and Technology, as well as a committee of experts, the EAC raised the bar for voting equipment use in the United States. We did our due diligence in conducting hearings all over America and took into account the comments of over 6,500 Americans and many organizations. I doubt if 500 Americans would have been interested in this subject prior to the year 2000.

The guidelines are voluntary, but most--we recognize that the guidelines are voluntary. That's the way Congress intended it to be. But we also recognize that most states take them very seriously and adopt

them as their own. These guidelines will take effect in 24 months, but certainly the states can decide to adopt them and implement them sooner if they so choose.

These guidelines address increasingly complex voting system technology and how it impacts security, usability, and accessibility. The human factors section has been expanded. Just so you know, there were federal voting systems standards in place that were set by the Federal Election Commission in 1990, and most recently in 2002, prior to our adoption of new guidelines in December 2005. But we built upon and expanded human factors to make sure that all eligible voters have access to the voting process, that each ballot is cast accurately and captures the voter's selection, and that the secrecy of the ballot is maintained.

We also include a usability section to address the needs of all voters, including voters with disabilities. Vendors are going to be required now to do usability testing, where they haven't before. And accessibility requirements have been expanded from the 29 that existed in 2002 to, now, 120 requirements that exist today due to our adoption of these standards.

It promotes an open transparent process with testable requirements. The participation in a national software reference library housed at the National Institute for Standards and Technology is now a requirement. And one thing that we did is to recognize that states have made changes to their election laws, including the requirement for a

voter-verified paper audit trail. So we adopted guidelines for the use of that paper. It was an important development in election reform in America and perhaps our most important work at the EAC, and we devoted many hours and had many discussions to get it done.

Now what's facing us, and our top priority for 2006, is taking over the process of certifying voting systems. It's another requirement of the Help America Vote Act. There's an interim program in place to ensure that there are no disruptions. You might be aware, some of you, that the National Association of State Election Directors has been doing this for many years. But we're taking this over and we're working with NASED, again, to make it a better process than existed in the past. And we're going to certify independent testing authorities for the very first time. We anticipate being able to test the 2005 standards before the effective date takes place.

So our goals in 2006 are to get the certification program up and running, to continue to work to make sure voting systems are secure and accurate, that the guidelines that we developed in 2005 are going to continue and will be an ongoing process, because we recognize the technology changes that occur throughout the country in elections systems all the time, and we also understand that states pass new laws that affect voting systems. We want to make sure that we have guidelines that reflect that.

We're going to continue to provide assistance to the states on guidance on HAVA. We're going to continue the research. We have an inspector general now that is looking to do audits of the states and how the \$3.1 billion is being spent. And we're going to conduct a 2006 election survey to make improvements.

So that's a lot of work for us for 2006. But I think it's important for all of you to note that elections just don't happen; they take a lot of work and dedication by election officials throughout the country. HAVA is working, but it's just a start. Full implementation of the Help America Vote Act will really take many, many years.

As a former election official, I know the challenges election officials will face just this year. One in three voters will use new equipment. Cities like Chicago, my hometown of St. Louis, perhaps New York City, if they get their act together, will have new voting equipment this year. Recruiting and training poll workers to use this new equipment and to have people who understand the new laws that are in existence will be important. Many states will be using the statewide voter registration lists for the very first time, and that will be a difficult process in many states because many of them have counties, very small counties, that have to interact with the system on a daily basis.

In addition to the HAVA mandates, many states have imposed, of course, their own laws to help improve the voting process. But some of the laws may also complicate it. We're aware that some

states are behind on HAVA implementation, but I believe that most election officials have been ahead of the curve and will be ready for the 2006 elections. I just would point out to you that the EAC has no enforcement authority when it comes to enforcing HAVA. The Justice Department has that authority under the law. Beyond the 2006 election, we will continue to see the need for election reform and more funding. HAVA represents a great start, but our democracy continues to need more and more investment.

If you attend meetings of local election officials and state officials, as I did this weekend here in Washington, you'll find a true bipartisan spirit. I have been going to these meetings now for 20 years. And I see a true bipartisan spirit when it comes to the work in election administration. We at the EAC have set our own example and try to provide leadership in this area. We work very hard every single day. The four of us meet, we talk, we discuss, we reach a consensus. And the result has been that every one of our votes, our 100+ votes that we've taken since we've begun, has been unanimous. That's not something that happens in Washington, D.C. very often in this partisan atmosphere, but work very hard to do that because we believe that elections and democracy in this country deserve that kind of leadership.

We at the EAC have a common goal. We want to make sure that every American has the opportunity to participate in our elections

and that every American can trust and believe that every vote is counted accurately.

I thank you for giving me the opportunity to participate in this forum, and will take questions later. Thank you very much.

[Applause.]

MR. ORNSTEIN: Thanks so much, Paul.

Just one thing as Deb goes up to the stage--go ahead--just to put it into context, 22 full-time employees, including the four commissioners, every member of the House of Representatives has basically that number of employees. So that will tell you something about the breadth of your staff.

Deb Markowitz.

MS. MARKOWITZ: Thank you. Sorry for jumping the gun here. I always get worried about the podiums and whether or not I'll actually be able to see anybody, so I apologize to you in the front row who may not be able to see me over the podium.

Thank you very much for including me as a representative of the secretaries of state around the country. I want to recognize Leslie Reynolds, who's the executive director of our professional association, the National Association of Secretaries of State. She's really our lifeline here in Washington. She keeps us informed, and she tries to represent our really diverse interests. And on that topic, I have to begin with a

disclaimer, okay--I'm from Vermont. How many of you here have been to Vermont?

So you know what I mean.

[Laughter.]

MS. MARKOWITZ: For those of you who haven't been to Vermont, you've all seen car racing, auto racing—I like to use this analogy. You've been to the races and have you ever noticed that, you know, the cars all leave as a pack. And very often there's like one straggler that's so far behind the rest that ultimately it looks like it's leading the pack.

[Laughter.]

MS. MARKOWITZ: Right? So that's Vermont. We've always let felons vote. In fact, they vote in prison. We think that's part of our effort to get them not to be recidivists. If you get them to vote, it's likely that they're going to be part of the community. In fact, we actually even elect some felons from prison, which is--I don't recommend, necessarily, but—

[Laughter.]

MS. MARKOWITZ: But, you know, we vote on paper with a pen or a pencil. And in almost all of our communities, we actually count the paper. And we do it with bipartisan pairs. A Republican and Democrat sit down and agree on every vote.

Is it perfect? No. In a larger community, obviously, it can't work. So, you know, in some ways we're so far behind, we've missed the technological revolution in elections, that now we're kind of leading the pack on some of these issues.

That being said, speaking for my colleagues, who have much, much greater challenges than I do in Vermont, we've had a tremendous amount of change in a very uncertain environment. So as you think about election reform—where we are now, where we're heading—keep that in mind. This is an uncertain environment.

First of all, you know, we can say HAVA was passed in 2002, how come we don't see more accomplished in the states? We have to step back and say the funding was uncertain. Right in the beginning we had to wait an awful long time, the money—actually, a first pot of money was appropriated a whole year later than intended. So even though we in the states knew about the mandates, before we could commit ourselves, we needed to know if we were going to have to go to our state legislatures to ask for the money to support compliance.

Remember, even now, although \$3 billion is a lot of money, \$800 million has still not been appropriated, \$800 million that was promised, that many states need to simply change equipment over from the unreliable punch card and lever machines to more reliable technology. So we're still not fully funded, HAVA, and that funding

obviously continues to be uncertain. And for many states, that's a problem.

The guidance has also been uncertain. This should not be taken as any criticism to our commissioners, who I have the greatest respect for, and, you should know, not only are they incredibly professional and capable, but they're also really enjoyable to have gotten to know over these years. The fact is the EAC commissioners weren't sworn in until January 2004, one year after they were supposed to be. They didn't even receive full funding, appropriate funding until January 2005. So they were sworn in, but they couldn't do anything because they didn't have money for staff and for research and so forth. That's nearly two and a half years after HAVA was passed.

They're required to provide us states with guidance. And for states that are spending millions of dollars on new technology, it is reasonable to expect that a conservative approach would be to wait to hear what the guidance is going to sound like. But unfortunately, because of the deadlines and because of the time it takes to do some of the intensive research that was required, we didn't get guidance on, for example, equipment and some of the technical, the voting systems guidelines until December—let's see, it was in the middle of 2005, less than six months before we were supposed to have our purchases in place. And how many of you know about state purchasing requirements? Can

you get anything in place in six months? Not in Vermont. I mean, the whole contracting process is really time-intensive.

So as a practical matter, the states have had a big struggle because we've had to go ahead with uncertain guidance, not knowing ultimately what the standards were going to be. So we, in all of our states, had to take some gambles. And knowing—I mean, how many of you think that we're going to get \$3 billion ever again to replace voting equipment? You know, it was—sadly, it took a crisis like we saw in Florida to get the attention of Congress and indeed many people in the country to get us that kind of funding for voting. It's unlikely, I believe, to come again. Not that I want to jinx it. I would hope that it would periodically, but—

And for that reason, as fiduciaries, secretaries of state have to walk very carefully. But there's this '06 that's come and gone, January 1st, where we've had to have some major projects completed and, across the country, have gone ahead and by and large completed those projects.

Note also that the technology has been uncertain. During the debate about HAVA, that debate took some bit of time. At that point, the vendors, the people who produce our equipment, all paused. Some of them went out of business because they couldn't really pause that long, because they weren't diversified enough in what they did. But for the rest, they paused to see what was going to come out of HAVA. Was there going to be funding? Was everyone going to be buying stuff all of a

sudden and what was going to be the consensus about what was to be purchased?

There are some states, like Georgia, that said, hey, we've got these bad machines that aren't counting the votes; we're going to go ahead and do the right thing and just buy the best technology available right now—which were the DRE, the touch-screen machines. And they did. And shortly after that—well, not shortly. After another election, those machines, that technology, came under increased scrutiny. And now across the country, states that had begun to invest their money in DRE technology were faced with state legislation requiring paper trail.

And it's not to comment on that debate, particularly, but just in terms of mapping the progress, there were stops and starts. And it's a big enterprise. It's not surprising—I think, you know, I want to talk for a minute about the wonderful parts of HAVA and the wonderful parts of the result of our 2000 election. That's speaking as a Democrat. It's hard to say that, "wonderful parts," but—although you should know that also unique to Vermont, I was elected with the nomination of both the Republican and the Democratic Party. So technically, standing before you is, I think, the only D/R secretary of state in the nation.

I believe strongly that the Help America Vote Act and what happened in 2000 brought public scrutiny that was really needed over our elections. And what was surprising to me, because I live in this naive little Vermont community, you know, I came after the 2000 elections to

our NASS conference, which is always held in February, thinking that my fellow secretaries would be alarmed and kind of appalled about what happened in Florida. Instead, what I found was a lot of praying going on. We don't mix church and state very often, but a lot of "But for the grace of God," it could have been my state.

And I think that's what we saw all around the country. This was not a Florida problem; this was a United States of America problem. And that's because we have under-funded the elections administration for decades, for so many decades, that it became too expensive a problem for the states—actually, the counties, because in most states it's the counties that fund their elections—it was too expensive a problem for those counties to solve. Granted, the wealthier counties were able to solve it. They had the equipment that actually counted the votes.

What was interesting to me, and I think what was interesting to the nation, was that for so long we'd been tolerating machines that didn't count votes. I grew up in New York. I used to go and—I loved to pull that lever, you know, and flip the switches. And to find out that those lever machines don't always actually record anything--sometimes you find out it was calibrated wrong; it doesn't record anything. And that's remarkable. That was the first excellent thing. Because once you start scrutinizing a process, it is bound to get better.

The second piece of the Help America Vote Act that really, I believe, has already made a difference is every state was required to put

in place a statewide plan. And it required us to get many different constituent groups around the table, sometimes for the first time. You had groups representing people of different disabilities around the same table; you had groups representing the interests of different racial minorities around the table. Everybody around the table together to talk about our common purpose of improving our elections administration, making sure that our votes count, making sure that we're administering our elections consistently. That's also got to make a positive change, and I think indeed it did. In the past, secretaries of state would only meet some of these people in court, you know, after an election where something's gone wrong. That's the wrong way to run a system.

Also, because of the public scrutiny that our elections have gone under, we no longer find it acceptable that not every vote counts. You know, we hadn't thought about it before, but we now believe that that is something that is not acceptable anywhere, that a vote should count and it should count the way I intended to cast it. Right? We should have some guarantee that my vote, as I intend to cast it, counts. That's a huge stride alone.

Also, we've—you know, we talk about sort of states rights in this. The truth is, in many states our elections are controlled locally, which has resulted in a tremendous variation within states about how votes are counted. And we've seen this, we've discussed this before. The Help America Vote Act has put some centralized power into the state

elections administration office, and I think that's a good thing. I know in Vermont, you know, when people say but what about voter fraud, I could say, well, we've never seen it in our office. We do occasionally—actually, we get occasionally a fellow who went to vote and while he was there, he voted for his dad because his dad couldn't get to the polls. It was milking time, and he knew how his dad wanted him to vote. That's illegal, but not nefarious, right? We didn't call the Justice Department, we called our attorney general's office. Because we have to. We have to follow through on each of these kinds of cases.

But the—now you've got me off track. I forgot where I was going.

Oh, our voter checklist. People say, well, how do you know people aren't just registering and voting in multiple locations? And I didn't have a good answer, because every town kept their own checklist. Well, now we have a statewide voter registration database, at least when I left the office yesterday—because, you know, it's new technology, the IT guys make a lot of promises. We'll see if it's still operating when I get back.

But we can actually now take a look at purge voters who may have registered in more than one location, and clean up our list. I think that's a tremendous asset, not just for my state but across the country. And you should know that at our meeting this weekend we had very exciting discussions about a regional approach to registration

verification, so that not only, shortly, will we be doing it within our states but will be also working with our neighboring states—in my case, New England, hopefully also New York. We'll be able to share data. Hopefully, also Florida, because that's—and it's interesting, because everyone wanted Florida, whether you were in the Midwest or wherever in the country, because we have so many people who go there for the winter.

HAVA also required states to take a more comprehensive and a fresh look at how we planned for and implemented our elections. And that really resulted in smoother-running elections around the country. We can talk about how far we have to go, but according to a Cal Tech-MIT study released February 2005, the number of votes lost through administrative errors dropped by 42 percent in 2004 compared to the 2000 election. That's progress. That's really good progress. That's only one marker. And I would say some of that is technology, but some of that is just paying attention and having those folks in our counties who are running the elections know that people are really paying attention.

Where are we going now? What are we doing? Those of you who read Electionline will notice that not every state is fully compliant, as we're supposed to be January 1, 2006. And that's another one of those praying moments of "But for the grace of God," you know. I've got some statistics about that, very briefly. We did an informal survey of our members. We received responses from 43 states.

Of the 43, 41 will be fully compliant by the time they hold their next federal election—which for some are in the spring, for primaries. The requirement was January 1, 2006, so that's pushing it forward a little bit. But that is good news. Ultimately we needed to be working for the election.

Twenty-four of those states were fully compliant by the January 1st deadline. As I spoke to my peers this weekend to find out why some of them weren't fully compliant, the reasons varied. Sometimes it was because the state purchasing process delayed their start dates. In some cases, they had vendors who failed to deliver. In some cases, they had counties that failed to comply. You should know, in Vermont it's towns. We've got 246 towns that we need to get on our checklist. And there are some who have just said no, and we're going to have to take some real action. Now, we have their data in our database. Luckily, this is a slow time; it's likely that they don't have a lot to do with that data right now anyway. But between now and the time there's real action, when they're supposed to be getting new registrations in, they have to be compliant and involved. Some states have large counties that have just said no, that for whatever reason said, you know, we're not playing. And that's complicated for the secretaries of state.

You know, there is also compliance with bringing in technology to permit blind and visually impaired and people with disabilities to vote privately and independently in every polling place. In

some cases, we have vendors who haven't delivered yet; in some states, where the secretary of state, upon delivery, has discovered that the equipment is not up to the standards they require. So it's complicated. I think we're getting there. I think we've made a lot of strides. I think we have an awful lot to be proud of and an awful lot to be hopeful about as well.

Issues of voter intimidation, that's deep and complicated. And I personally believe—and I'm not speaking for the secretaries of states at the moment, although I would assume they'd agree with me—I think that's about enforcing the laws we have on the books and taking a very active stance that voter intimidation won't be countenanced. I think the idea of highlighting existing laws, maybe strengthening the laws we have, would really be a benefit.

So I want to thank you for inviting the secretaries of states to be up here on this panel and I'm happy to take questions as well when the time comes.

[Applause.]

MR. ORNSTEIN: Thanks, Deb, and we'll be sure to be finished in time for you to get back to the milking.

[Laughter.]

MR. ORNSTEIN: Doug.

MR. CHAPIN: Good morning, everyone. Thank you very much for the invitation. I feel guilty that I didn't pay to be here, given

the advertising that we have gotten already. I do want to thank Norm and Tom and John Fortier from AEI for the invitation to be here. Norm and Tom have really been with Electionline from the beginning. They were saying good things about us when nobody knew who we were. And so it really an honor to be here.

Also it's an honor to be on a panel with Chairman DeGregorio and Secretary Markowitz, two of really the best that we have in the field of election reform.

It's always tough to be the third person on a panel like this. I guess the bad news for me is that both the chairman and the secretary have said a lot of what I'm going to say. The good news for you is that I'm probably not going to talk as long.

What I wanted to do today, just very briefly, is talk a little bit about the report, which you may have heard something about already today. It's our latest report, "Election Reform: What's Changed, What Hasn't, and Why, 2000-2006." The title, What's Changed, What Hasn't, and Why, is something that we've used ever since the inception of electionline.org in 2001, after a grant from our friends at the Pew Charitable Trusts at Philadelphia.

What's changed, what hasn't, and why has always been sort of our rubric, but I felt like this year it was especially apt, given passage of two really key milestones in the area of election reform. The first was the five-year anniversary of the November 2000 presidential election. If

the current wave of election reform can be said to have a birthday, it is November 7, 2000, when voters in Florida and elsewhere woke up to discover that something was rotten in Florida, that there were problems with the way that we conduct our elections around the country. And so what we wanted to do is we wanted to take a look back at what had changed in those five years.

The other big milestone, as both the secretary and the chairman have noted, is the January 1, 2006, deadline of the Help America Vote Act. That is really the final deadline contained in HAVA, and it represents, to a certain extent, the finish line for the effort that began on November 7, 2000.

So very briefly, I want to talk about what's changed, what hasn't, and why, and then make some observations about what it means, and what it means from not only elections, but election reforms, going forward.

What's changed? In truth, a lot has changed. I think in the current environment, we tend to focus on states that didn't make deadlines or things that aren't going well. And yet, when you look back in the five-year context, a tremendous amount has changed in the way that we conduct elections around the country.

For example, in 2000 only 11 states had something called a provisional ballot. Provisional balloting, or something like it, only

existed in some form in about two-thirds of the states. It's now the law of the land.

Voting technology has changed tremendously. As we found in a very general sense, but thanks to Kim Brace and his crew at Election Data Services, we now have statistics. We now know that in the period between 2000 and 2006, jurisdictions containing over 80 million registered voters saw or will see new voting technology by the 2006 election. Just to put that into context, that's roughly two-thirds of the total number of people who went to vote in the presidential election of 2004. So we've seen a tremendous amount of change.

The issues themselves have changed as well. Immediately post-2000, we saw a wave of revulsion, if that word can be used, for a paper-based voting technology. The national visual image of that Florida judge peering almost cross-eyed through a punch card led to a push across the country to de-emphasize, if not eliminate, paper from the voting process. And we saw a push toward, and indeed an enshrining in HAVA, new what's called direct recording electronic, or touch-screen, technology. Over time, however, people began to re-think the wisdom of paperlessness and there started to be calls for reintroducing paper into the process. Thus was born what I call the verifiability lobby, the lobby that pushed for state and/or federal laws requiring a voter verifiable paper audit trail, or VVPATs. And as we've now seen, by 2006 half the

states have either a paper ballot requirement, as Vermont does, or have a VVPAT requirement in their state law.

That's a huge change. But we're not done yet. The most recent change on that issue has been whether or not to use those VVPATs, whether or not to consider those VVPATs as a ballot of record in a given recount. California, for example, has just enacted a law that would require that any VVPAT be used as the ballot of record in a recount. So whereas in 2000 we had many visual images of an election judge looking up at a punch card to decide a disputed election, in 2006 and beyond we may have the same picture, except they'll be looking at a voter verified paper trail. So the issue has changed, and yet, to a certain extent, it really hasn't.

What hasn't changed? I think what hasn't changed is the diversity of practice among the states. I think that there was the sense following the disputed 2000 election and with the passage of HAVA that somehow we would even out the differences between states and localities on the way they conducted elections. And while, as I noted, there have been lots of changes in the way states do their elections, the diversity between states hasn't changed. We saw fights before the 2004 election about the different ways states interpret provisional voting. We have seen, are seeing, and will continue to see vehement fights in state legislatures and maybe on Capitol Hill about the issue of voter identification. In 2000 there were very few states that had a universal ID

requirement. Now we're seeing more and more states going to requiring all voters to show ID. And once again, we're starting to see states-- Georgia's disputed law being one, Indiana's ,and some others'--that are requiring photo identification. And so what hasn't changed is the diversity between states.

Something else that hasn't changed that we thought might have changed after passage of HAVA are money worries. I think people thought when the Help America Vote Act passed in 2002, really, if you're not aware of it, it was a watershed event and that it represented the first ever federal infusion of funds into supporting election administration in the United States. And I think people thought that this would be now the down payment on an ongoing federal involvement in improving state and local election administration across the country. That hasn't really come true. As Secretary Markowitz pointed out, the money came late, if at all. The budget that was just released this weekend contains no new money for state grants under the Help America Vote Act, as did the FY 2006 budget. So this question of money, which very often impeded whether or not states can do their jobs, continues.

What does this mean going forward? I think the most important thing that it means going forward is that the tumult that we've seen in changing the way we do elections means that the specter of disputed elections is probably not likely to fade for the foreseeable future. Actually, I'm grateful to Secretary Markowitz for using her auto

racing reference, because that means I will not use the first analogy of the day. But let me make the second, and that is, you've all heard the phrase "a loose cannon on a rolling deck." I would say that the current electoral environment is very much like that.

The loose cannon is the evenly divided and fiercely partisan nature of our politics. We had a gubernatorial race in Washington State that was decided by hundreds of votes out of millions cast. We had an attorney general's race in 2005 decided by 300 or so votes out of 2 million cast. That environment, where a tiny number of votes can make a big difference, makes people very interested in every single detail of the process. That's the loose cannon.

The rolling deck is the amount of change we have, or haven't had, in given states. As Kim and his crew pointed out, something like two-thirds of voters are seeing new equipment for the first time. States have new voter ID laws, new statewide databases, new pollworkers, new requirements unrelated to HAVA. And so while change, depending on your point of view, can be good, change almost always breeds uncertainty. And uncertainty almost always is fertile ground for error. And error, in the electoral context, almost always means controversy, if for no other reason than there is no shortage of losing candidates, parties, lawyers, and other groups who are willing to pick apart the electoral process.

So given the amount of change we've had in some states, or the lack of change we've had in others—we can use the mythical state New York, for example, as a state that has accomplished next to nothing, if anything, on HAVA. But given the amount of change or lack thereof in states, the specter of electoral controversy is something that we are likely to see in 2006 in a fiercely divided fight for Congress and in several key states, and maybe even more likely in 2008 for what's likely to be a wide-open presidential race.

What else does this mean sort of for the insider--this is a Brookings crowd, so I can get a little wonky here--what does this mean--

MR. ORNSTEIN: You can get a lot wonky.

MR. CHAPIN: Okay. I'll let my wonk flag fly, then.

I think the other thing that this means is that we need to take a very good look at the federal role in election reform and election administration. In 2002, immediately following passage of the Help America Vote Act, lots of people said I don't understand why the federal government didn't get involved sooner in election administration reform. To a certain extent, the three years following passage of HAVA kind of give you an answer. I think the federal response to what we saw on November 7, 2000, has been uncertain and, to a certain extent, incomplete. I've got to join Secretary Markowitz: I don't think you can lay that at the feet of the Election Assistance Commission. I think the problem with the federal response is that it's been halting, at best.

Congress has passed a law and has kind of funded its requirements, but beyond that has paid very little attention to the issue.

So as a result, states and localities have really become the center of gravity. And in many cases, the EAC is catching up to developments in the states—again, not through their lack of effort but because they don't have the resources to make the kind of steps that they need to make. And so to a certain extent, I think the federal government needs to listen to the words of Tom Paine, who once said you need to lead, follow, or get out of the way.

I think one of the things that we're going to have to work out in the next several years is whether or not this federal involvement in elections, which many thought was going to be a down payment on a long-term involvement, is instead sort of a one-shot deal, an echo of the boom that went off on November 7, 2000. And until we get that worked out, people like Chairman DeGregorio and his colleagues, people like Secretary Markowitz and her colleagues can't work out the very difficult matters of how to improve election administration in an increasingly difficult fiscal and political and partisan world.

I will close like I always close. I'm electionline.org. It's not just our name, it's our Web address. Please do feel free to take a look at the report. We'd love to hear your feedback. If you've got news to share, good, bad, or ugly—and we see all of it—do let us know at [feedback at electionline.org](mailto:feedback@electionline.org).

But I appreciate the invitation to be here. I appreciate the interest of all of you in coming to hear this very important issue. And I welcome you all to the club of election geeks everywhere.

Thank you.

[Applause.]

MR. ORNSTEIN: Thanks, Doug.

We're going to try and keep close to schedule, so we've got about 10 minutes. I'm going to just ask a question of a couple of the panelists.

Paul, I want to ask you, you have been very much underfunded and saddled with a series of problems. In an ideal world, given the challenges that you see out there, what kinds of resources would you need? And at the same time, talk a little bit about what it means to lack enforcement authority. How much difference would it make for you as you communicate with the election community out there if you had it?

MR. DeGREGORIO: Well, let me address the enforcement first. I don't think that we at the EAC look to be the enforcers of HAVA. In my view, the Congress appropriately put it at the table of the Justice Department to do.

But at the same time, I think that we work to try to help the states be in compliance, and we have worked with the Justice Department and had tremendous communications with them about making sure that the states were moving towards compliance.

In terms of funding, we have been short-changed, and certainly at the beginning we were. The administration and the Congress has been kinder to us in the last two years. But I think that one thing that, at least what I'd like to see more of in the country is more research conducted in this area of technology, to help improve it. Vendors of election equipment operate on a pretty tight margin. In fact, most of them have lost money in the last few years. But now that the states and local governments are really spending HAVA money to buy new equipment, they'll probably start to make some. But they themselves have not really invested in this area of improving technology in elections. So I think that one area that hasn't really been funded very well is this area of research into what we can do more in technology, improving the process of elections.

I think that in the not too distant future that my four daughters, who range from 18 to 26, will want to vote by the Internet. And I think that's an area that's a longer-term issue, but I think that's an area that people are looking into now. But I do think that in time people will get there.

But I'm hopeful that continued attention will be focused in this area. Venues like this help to bring together people to discuss it, and to talk to people in the Congress about the need for continuing funding of election assistance to the states and to provide a federal focus in this area.

MR. ORNSTEIN: Thanks. And I hope if Internet voting does get there in time, "in time" means a thousand years. But that's another issue for another day.

Just before I get to questions, just one question for Deb. As we move toward these statewide registration bases haltingly—but in some cases on time, as you have—one of the real criticisms that has been made is that we don't have interoperability. And you can cooperate with Florida, as other states will try to do, but we have enormous population shifts in this country across and between states. What are the prospects for getting interoperability? Is this something discussed by the secretaries of state? Is it anywhere on the table?

MS. MARKOWITZ: Well, this was one of the issues that we talked about informally—not in this session, but in our meetings. There are a couple of vendors who have developed software that allows this kind of interoperability. Of course, it's expensive, and the question is who can afford it, who's going to foot the bill for it? I know the New England states have started to have a conversation about bringing some folks to tell us what exactly—you know, what's the money that--you know, what's required to make it happen. I know in Vermont people move within the region—and Florida—more than they do to other parts of the country. And so as a starting point, having some sort of regional cooperative agreement is the way to go.

Indeed, in the Midwest they have entered into a four-state regional agreement. Missouri, Kentucky—no, Missouri—okay.

MR. CHAPIN: Missouri, Kansas, Iowa—

MR. DeGREGORIO: Nebraska.

MS. MARKOWITZ: Nebraska. Iowa and Nebraska. See, we've all heard about it.

—which part of their cooperative agreement is to go forward with having an interoperable system. You know, the way technology works right now is we can export the data from our checklist in a delimited file; it can be picked up and put into another structure. And so the technology is there for it. It's not that hard. The question is, it will be costly to do and where's the money going to come from.

MR. ORNSTEIN: Okay. And with that, Doug, just one quick question to you. We don't see any more federal funding coming. And frankly, given the nature of the budget dilemmas Congress faces, the practical reality is we're not going to see significant sums of money coming down the road. Does this lead, in your view, to the strong possibility of another train wreck, another election, because the states and the localities are not awash in money for these things either? How much of a problem is it that we're not going to get another infusion of federal funds?

MR. CHAPIN: I think it's hard to say, and I don't want to predict that we'll have another controversy. I do think that the conditions

exist for another controversy. But again, you need both the loose cannon and the rolling deck. You need to have that close election that tips it. And if we do, I think we'll see Congress spring into action again. I mean, Senator Obama talked about from shock into trance. I once heard somebody say that the two things that Congress does best are nothing and overreact. And I think HAVA, to a certain extent you can make the case, fits very nicely in that.

But I think until then, I remember the words of Ken Gross, who I used to work with, who used to say when all is said and done, more will have been said than will have been done. I think it will take another controversy to move this forward, at least at the federal level. I do think what we're seeing at the state level is very hopeful and I'm hoping that states will use the increased authority that they've been given under HAVA to fill the vacuum that Congress has created on election reform.

MR. ORNSTEIN: Thanks.

Do we have a mike here? Let me start with Rick.

QUESTION: Rick Hasen, Loyola Law School.

A question for the secretary. I was very pleased to hear you say nice things about the EAC. I think the EAC is a very important model because it is bipartisan and it's operating on consensus, as opposed to many secretaries of state who are single officers elected in partisan elections. So it's nice to see that there's some cooperation.

But I'm troubled by the fact that the association has come out with a resolution asking for the EAC to be disbanded. I'm wondering if you personally support that, and if you don't, do you think that there might be movement in the association to back off from that? Because I think that this is an experiment that is just starting, and it would be really a shame for it to be cut off because of political pressure before it gets a chance to thrive a little bit.

MS. MARKOWITZ: I can't speak for all my fellow secretaries. I know that the context of that resolution, as that resolution was passed, it sort of came up fairly quickly with not a lot of conversation. So I think the association has already backed off some from it.

The fact, though, is that it articulates a real concern among my colleagues around the country about federalizing elections. We have a long history and a strong history of state control over the electoral process. And some of the concerns that I heard from peers is that once you federalize something, you end up going to the lowest common denominator, and that would be a shame for states who feel like, you know, we're out front on some of these issues.

So I think we've already seen a backing off. On the other hand, that underlying tension between, you know, wanting the EAC to be there to provide some well-needed resources, particularly in research and guidance, with the reticence to commit to something that could grow into

state control. There's a very strong feeling that we didn't want the EAC to be given rulemaking authority because that completely changes the game. I would say that there's no backing off from that feeling.

QUESTION: Scott Rafferty, a private attorney. I do some election law work.

Could the secretary provide some level of detail about this unique—I guess it's unique—telephone voting system and how it produces a paper trail, how it works with absentee ballots, and whether it's something that could be adopted by large jurisdictions?

MS. MARKOWITZ: I'm very happy to talk about telephone voting. What Mr. Rafferty is referring to is the way, in our paper-based system in Vermont-- You have to understand the challenge of meeting the HAVA requirements, is that there weren't a lot of technological options. We had a short time frame and we had to make decisions to bring some technology into every polling place that provided accessibility to people with disabilities, with the specific requirement that it permit folks to vote privately and independently even if they're blind and visually impaired, which is something that we haven't done as a nation before this.

When we started, it was really the touch-screen machines. That was about it. That would fundamentally change how we voted in Vermont and, besides that, be extremely costly for us. It would be a--you know, to put a machine in every polling place. It also has to be

maintained and programmed and so forth. It was really a disproportionate cost-to-benefit in Vermont.

So we researched and came up with another solution, which is a telephone voting system. It is at the polling place. It is not from your home, so it doesn't interact with absentee ballot voting at this time, although in the future we may do that. The way it works is a person will come into the polling place, ask to use the assistive technology. Then a poll worker will take them to one of the voting booths that are equipped with the telephone and will dial in to our central server, which picks up the phone.

Now, only phone numbers that have been programmed into this server will be accepted by the system. That's the first security layer. Also, these are phone lines that are only in operation during the election. So they come into existence with sort of a secret number, we know it, and then they go out of existence after the election.

The poll worker puts in an ID number and as well a poll number, so the right ballot comes up. The person will be able to listen to the choices. Using the telephone keypad mark—it's a ballot-marking device. It is not a voting machine, it's a ballot marking device. They'll use the telephone keypad to indicate their choices. The system will produce a paper ballot that, as it's printing out, will be scanned back in and the system will read it back to the voter, who will then verify that that's what they intended to do. And at that point, the vote is cast.

There is great possibility for this technology, particularly with our military and overseas voters, who have a hard time, in some cases, getting their ballots on time. We're very hopeful in the future. Our disability community is very interested in this technology and its possibility for expansion to voting from home, the absentee voting that you're asking about. But at this point, there's a lot of security issues involved in absentee voting that we're not prepared to address yet. First we want to see how it works in the polling place.

QUESTION: And it prints verification? Can you verify it?

MS. MARKOWITZ: It prints—this is a ballot-marking device. It's scanned in and read back to the voter, who verifies it.

MR. ORNSTEIN: And prints a paper ballot.

MS. MARKOWITZ: It's all printed out. The paper is printed, and it's the printed paper that's verified.

MR. ORNSTEIN: And the NSA has said that all the phones that have been used so far are just fine.

[Laughter.]

QUESTION: I'm Geri Mannion with Carnegie Corporation.

I was just wondering if you could actually talk a little bit about how do you restore the public's confidence in the election systems, because they seem to be increasingly more cynical, especially the lower-income communities and minority communities, and especially now as you have to put in place all these voter ID, real ID requirements across

the country, where people feel that they're not going to have their vote, even be allowed to vote, frankly.

MR. DeGREGORIO: Well, I would just say that we have encouraged at the EAC, when we speak to state and local election officials, to reach out to the voter advocacy community within their states or within their locales to educate them on the system that they have in their state or their local jurisdiction, to make sure, first of all, they understand that they can trust the system, that--make it transparent, make them able to see it, but at the same time, on voter registration issues, to make sure that they understand how they can get their people registered to vote in their community, and how it works.

I can't address these other issues that the states are putting in place that some people have concerns about, but I think that we always encourage a dialogue and I know that the secretaries of state have also encouraged local election officials in their jurisdictions to have dialogues with voter advocacy groups within their communities.

Deborah, I don't know if you want to add to that.

MS. MARKOWITZ: Well, that's a real challenge for folks like us in the business of democracy. The more we shine the light on the problems, the more cynical people may get and stay home.

We had a very interesting panel this weekend with some news reporters. And we talked about this last election, where there were vastly more successes than failures across the country. And yet,

naturally, what's newsworthy are the failures. So the impression of the public was a general failure of election reform, when really it was a general success with some specific exceptions.

And, you know, I think we need to work with the media to give a full picture. It's not in their nature, right, it's not in their job description, really. And I would say that there's an opportunity, because we've had so much change, along with change comes an obligation to do voter outreach and talk about what the new rules and laws are. So, you know, when we look at the numbers of how many people in this next election will be voting on new technology or voting with new rules that apply to them, there is an imperative that we as elections administrators feel to educate the public about those changes.

That being said, our resources vary from state to state. Our personal inclinations vary from state to state. So I don't think you'll find a uniform approach.

MR. CHAPIN: Just very briefly, two responses to that. I mean, first of all, we need to do a better job of creating sort of a feedback loop for voters. I think for many Americans, other than maybe a trip to DMV, voting is the only face-to-face interaction they have with their state and local governments. So if we can get more of a feedback loop--we're learning about data on voter confidence; the more we can learn about what does and doesn't help voter confidence would be good.

The other is I think the word "transparency" is vital. And I think that more and more you're seeing election officials understanding that they need to open up their processes to people from the outside. That's not uniform. I do know that in some parts of California there was less access to sort of election night operations than there had been in the past. But in my home state of Virginia, which I'll brag on just a minute, the State Board of Elections actually allowed members of the parties to sit in their office on Election Day and field calls from the field about problems that were either occurring or alleged to be occurring in the field. And the fact that that happened went a long way toward how bloodless a potentially divisive recount for the attorney general's race was.

Now, I'm not saying that that will work for everybody or that it's absolutely a model for other states, but I think, all other things being equal, more transparency is better. Will that highlight problems from time to time? Yes. But at least the public and the media and the organized public will understand that the election officials—they will see the effort that we see every day in making the process work as best as they possibly can.

MR. ORNSTEIN: Thanks. I think we're going to have to end it there so we can keep on time.

We're not going to take a break. You can stand up and stretch if you want just as the other panelists come up. But please thank these three extraordinary people.

[Applause.]

Panel 2: Election Reform - Looking Ahead.

MR. MANN: Thank you all for remaining with us for this second panel.

I first want to acknowledge the extraordinary talent that's in the audience here, the individuals and organizations that have been deeply involved in election reform over the years. Any reasonable conference would have many if not most of you appearing on the dais and making presentations. But alas, that isn't possible. But of course this is simply the beginning of our Election Reform Project, whose goal is to better link the communities--the scholarly research communities, the other advocacy groups, and the policy makers--to try to engage in some medium- and longer-term deliberations, a word not often heard these days in Washington, to try to move the issue forward. And we will have ample opportunities to follow up on our Web site and in other public events.

Now, the title of this second panel is Election Reform - Looking Ahead. You can think of this at two levels, really. One is HAVA implementation and the particular issues that have already arisen from it. But the second is longer-term possibilities—if you will, some

blue-skying about what the system might look like some years down the road.

We have decided that the best way to initiate that discussion and conversation is to bring together three academics who have devoted a good deal of their professional lives to thinking about elections and election law, and then to introduce a little reality from Capitol Hill. Paul Vinovich has been staff director and now counsel of the Committee on House Administration. We've had occasion to work with him and to talk about these matters with him. He's going to bat cleanup.

We will begin with Mike Alvarez, who is a professor and director of the Cal Tech-MIT Voting Technology Project; then turn to Rick Hasen, who is the William H. Hannon Distinguished Professor of Law at Loyola Law School in Los Angeles. Rick is known for many things, but one is as the impresario of a very important listserv on election law. He keeps us up to date on almost everything important dealing with elections. And then Bob Pastor, a vice president at American University, a political scientist who was deeply involved in the initial Carter-Ford Commission that had an important impact on the writing of HAVA and has also worked as executive director of a follow-up Carter-Baker Commission.

Each of my colleagues will take about 10 minutes. The first two will come with bells and whistles and colors, and after that we will turn to a broader discussion. Let's begin with Mike Alvarez.

MR. ALVAREZ: Well, thank you. I'm really happy to be here to be part of this event, and to be part of the kickoff of this project is particularly exciting because as I think my academic colleagues and a number of you in the audience will all agree, this is an exciting and important area to work in, but from an academic perspective it's a very difficult area to work in.

We were chatting, I think I was chatting with Eric Fisher beforehand about whether or not you'd recommend someone who is not a tenured professor to work in this area, and my answer is no procedure it's very difficult for those of us who work in this area to try and publish the materials that we produce in the typical academic journals and peer-reviewed outlets. One of the things that I think is exciting about projects like this is that I hope it's going to be able to help us as academics speak to the policy community, but also provide us with the sort of outlets we need for publishing our work.

I also wanted to thank two other people who are in the audience here who many of you may or may not know but who are fundamental to our efforts and I think fundamental to many of the efforts of some of you in the room, and that's Jerry Manion and Julie Kohler, Carnegie Corporation of New York and the Knight Foundation, who have actually provided most of the financial resources for a lot of the work that we've done, and I wouldn't be here without their efforts. Some of you may say that's a good thing, but hopefully not.

Blue sky? That's what Tom wants us to talk about, so I've got blue slides. Even though I am capable of blue sky kind of thinking given that I'm a professor at CalTech, I'm going to keep my feet sort of firmly planted on the ground for a few minutes. I wanted to reemphasize some of the points that have been made, but make some new ones.

The thing I wanted to talk about quickly is a point that I've been trying to make repeatedly over the last year or two, and that is as we were talking about voting systems, we have to be very careful to be talking about two important things. One is change, and change has been discussed in the previous panel. Things are rapidly, rapidly changing throughout the country, and that change itself I think introduces new opportunities, but I think it does introduce the potential for some significant problems as were discussed in the previous panel.

I also do think that though that while a lot of the energy and activity and, again, part of our research has been focused very heavily on the devices that people use to vote in precincts. A lot of the change and a lot of the important problems now exist in other aspects of the voting system, namely, the use of statewide voter registration files, and in particular, early and absentee voting, something we haven't heard any discussion of yet today and maybe we'll talk about it more in this panel. Issues associated with vote tabulations, in particular, rules and procedures and technologies for counting and recounting ballots. I think

these are areas that we will hear more about in coming hotly contested elections.

I think that one of the biggest issues with HAVA implementation is simply for election managers and election officials to manage the changes that are ongoing. Election administrators aren't I think used to managing change. Before 2000, election administration largely was, no offense, but a backwater. It was not very well funded, it was not an area where there was a lot of attention placed, and we have a lot of good people working in these areas, but they've traditionally been underfunded and underappreciated, and now they're in a position where they have to manage some of the most significant change that's going on in the administrative or governmental sectors of our society.

In 2006, we as voters and the media and candidates and everyone who's part of the election process in the United States are going to be exposed to yet another massive experiment. We keep changing the rules, we keep changing the technology, we keep changing the process, and as has been pointed out, there are going to be huge numbers of voters, millions of voters, 30 million according to Kim Brazer's [ph] most recent study, who are going to be exposed to new precinct voting technology. Every state is going to be using their statewide voter file, or almost every state, for the first time. And in a lot of states we're going to see continual efforts to push the voting process outside of the traditional polling place into the by mail or other types of early voting

procedures. So we're all going to be exposed to this change and I think, again, one of the biggest challenges here is actually going to be for our administrators as to how they manage this in the short-term.

I'm going to talk about some other problems in the near- and long-term, and I think one of the biggest issues that we're starting to come to grips with now, and I'm going to start talking like a techie because I'm from CalTech, is this issue that NISTA [?] has identified and some of the folks in the research community have started to work on which I'll call threat identification. We're seeing a lot of discussion today about the security of the electoral process, about threats to the integrity of the process, and in the near-term we do need to devote research energies towards better identifying these threats and towards dealing with them through technology or through better procedures and processes.

We really need to work with our election administrators to help them deal with security threats and understanding security problems and to developing contingency plans to deal with them. There are a lot of areas where election officials I think need assistance here, and I think a lot of our election officials have actually taken some significant steps in these directions towards better understanding the threats to their voting systems, towards beefing up their physical security of their facilities and their processes, and towards developing better hardware and software protection procedures.

But again, we really need to have a significant aspect of the research agenda focused on these kinds of problems, in particular, detection of particular threats, understanding better how we can model election anomalies and potential for election fraud and, again, how do we prevent these. As a sort of voting technology project advertisement, as some of you know, these are both areas we're developing some significant research agendas and putting a lot of our focus in the near-term. In particular, in the fall we're right now planning to have events, conferences associated with studying election fraud and voter identification.

In the near-term, how we test our voting systems I think is going to be a very significant challenge. I personally and I think a number of us in our project and those who've studied this issue over the last few years really do think that the current system for testing and certifying voting technologies is broken, and it just simply is not functional. We really need to develop a more dynamic and more thorough process for testing voting systems, and again, I'm not talking about just precinct voting devices. I want to remind everyone in this audience that the statewide voter files, these electronic voter registries that we're going to be using in every state, have not undergone any type of testing and certification. They are not held to the same standards, even voluntary voting system standards, that the precinct voting devices

are held to, and that is something that we really ought to be focusing energies on and trying to address in the near-term.

So these statewide voter registration files really do need to be tested and certified, and we really do need to work towards developing a more open and transparent process for testing all of these systems and for retesting them. It shouldn't just be a first pass the post, you just do it once and then it's tested and certified and it's usable forever. These voting systems ought to undergo periodic reexamination for all the different aspects of their functionality.

In the longer-term, I think one of the biggest issues that I would highlight is to remind us all that elections are fundamentally about people and it's a people process. Again, I can talk about technology until I'm blue in the face and I can do all sorts of pie-in-the-sky, blue sky thinking about where technology is going to go, but in the end, elections are going to be about people. I think we have a lot of serious questions that we need to ask about people and their involvement in the elections process and, again, we need to just be firmly grounded in the ideas and concerns about assuring that voting technologies and voting systems, generally speaking, are secure and reliable, but also accessible and usable. We need to keep focusing on the accessibility and usability side of the debate as well.

We need to really be concerned about these polling place workers. That I think is one of the biggest threats to the system in this

particular election cycle and probably the new few election cycles because, again, the massive changes that we're putting these people through are I think really going to impose some stresses on that aspect of our voting process.

This goes actually back to, I think, Jerry's question and some of the discussion about voter confidence. I'd phrase it slightly differently. Let's think about it in terms of customer satisfaction. Voters are customers, candidates are customers, those running for political office, political parties, they're customers of this process, and the media is another customer of it. We really don't know a lot about customer satisfaction here. We really do need to develop a better set of metrics and better measurement devices for understanding how satisfied voters are with the process, how confident they are in the system, and working towards improvement of it.

And again, I'll just reemphasize polling place workers again. We really, really need to focus some serious energies. There is some research ongoing sponsored by the EAC now into how we recruit and train polling place workers because at least for the time being, most of our people are going to be voting in precincts and they're going to be interacting with these underpaid and in some cases undertrained but really diligent and hard-working people. We really do need to focus a lot of energy in the short-term on how those folks are recruited and trained. Thanks.

[Applause.]

MR. MANN: Thanks, Mike.

MR. HASEN: I want to thank John, Norm and Tom for inviting me to this very important project. I took a red eye last night and at about 7:15 this morning I arrived to use the Brookings shower which is in the basement, and for the first 5 minutes only cold water came out, and so I've decided that it's a good metaphor for what I want to do which is throw a little cold water on the thinking that we've come far enough to avoid the possibility of another election meltdown.

In 2000 we came very close to a meltdown in Florida, some would say we actually had a meltdown, and in Florida in 2004 we came very close again. It would have taken just a 2 percent shift in the votes in Ohio to cause the whole sets of armies of lawyers that have been positioned on their planes ready to go to get the apparatus going. So the question is what can be done to move elections beyond what John Fund originally called the margin of litigation? How close does the election have to be before the lawyers can come in and try and change the election outcome?

What we're seeing right now post-2004 is a very disturbing pattern of public confidence eroding in the electoral process. It has both a partisan and racial dimension. So a Wall Street Journal-NBC poll found that one-third of African Americans called the vote in 2004 accurate and fair, but 91 percent of Republicans did. These are national

election studies figures on percentage of voters who think that the presidential election was very unfair or somewhat unfair. Fortunately, this question was asked before 2000, so we get a little data across time. But look at the last figures, 21-1/2 percent of Democrats compared to 2.9 percent of Republicans think the election is unfair.

Contrast that with what happened in Washington State where unlike in the national election where the Republican turned out to be the winner of the top contest, in Washington State, the gubernatorial race started off with a Republican win and after a couple of recounts it went to a Democratic win. So in the process when this was in court, you saw 68 percent of Republicans thinking the process was unfair, compared to 27 percent of Democrats. It shows that figures are volatile, losers tend to have less faith than winners, and things could shift very quickly. And you see a real partisan aspects with Democrats making claims about voter intimidation, Republicans making claims about vote fraud, many claims are made, some are substantiated, some are not substantiated, but it tends to undermine the public's faith in the process and when you're the loser you look for a reason as to why besides the fact that your person got fewer votes that it might have been that your person lost. So we have to think about steps to take so that the election process itself doesn't become the main focus for people's unhappiness about election outcomes.

Here's why I think things are not likely to get good enough for 2008. Even though as other panelists have said, we've had great

improvement in voter technology, we've had an infusion of cash, so here are three reasons why the problems are likely not to get much better. The first, as one economist put it, in elections we're measuring bacteria with a yardstick. Our system of election administration is nowhere perfect, but needs to be if we're going to have election results where there's a few hundred votes separating.

So Florida 2004, the Florida Secretary of State puts out a great press release and reports showing how much better things are in Florida than 2004 compared to 2000, and they were, but I've just listed here some of the problems that appeared in Electionline.us, Electionline.org, report of what happened in Florida.

MR. : I'm never going to live this down.

MR. : It's going to be a running joke.

[Laughter.]

MR. HASEN: So you had a ballot tabulator in Broward County started counting backwards, you had voting officials finding 270 votes in a box and then finding 12 more votes later. You can imagine that now in the era of the blog how each one of these would have been picked apart by partisans and it would have been the focus of intense public scrutiny. Unless the system is perfect, and it's not perfect, this remains a major problem.

Razor-thin elections are likely to continue, so another way is don't have small margins of victory. There's not much we can do to

control that. This is a chart that Gary Jacobson [ph] put together. This shows Democrats' versus Republicans' approval of the President and the difference between. So if Republicans say 16, Democrats say 40, the gap is 20. As you see in Eisenhower it's around 20 to 30, by the time it gets to the last January 2005 figures I have here, it's upwards of 80 percent differences, a couple of dips for some wars, but otherwise the line is going upwards. So we have an increasingly polarized electorate, lots of money coming in, and lots of reasons to think close elections are going to continue.

The third reason to be worried, and this is the one I focused on the most as someone who specializes in election law, is what's happened in the litigation environment. *Bush v. Gore*, the case that ended the 2000 election, has had both a direct and indirect effect in terms of encouraging election litigation. The direct effect is it created this protection standard; we don't know exactly what it is, we don't know how precedential the case is, the Supreme Court hasn't touched it since 2000 for some pretty obvious reasons.

But more important is the indirect effect. People seem to be less worried about bringing suits. Here is some data I collected. The average number of cases involving election challenges in the 1996 to 1999 period was 96 per year, from 2001 to 2004, it was 254 cases, and look what it was in 2004, 361 cases brought. This chart doesn't show it, but the bulk, almost all of the increase, is in state courts rather than

federal courts which creates all kinds of Florida, U.S. Supreme Court nightmare scenarios that we don't think about.

What can be done? I told Tom I'd stick to my 10 minutes, so I'm just going to tell you what my proposals are and we can talk about them more in the Q and A or you can read it in full. I've given you the citation on these slides for the full article.

Since we can't minimize the risk of close elections and we can't have election perfection, I have three areas for reform. First, registration reform. Registration reform would have to be something that would take into account both this Democratic-Republican access versus integrity debate, that fact that we have a hyperfederalized system, and what I propose for registration reform is that we'd have universal voter registration conducted by the government combined with a biometric voter I.D. That is, you wouldn't need the I.D. to show up at the polls, you'd just need your thumbprint. So you have your integrity taken care of, the government takes care of registering everyone, you don't have all those problems with bounty hunters going out and collecting voter registrations. This is the blue sky portion of the program. There are the objections which I'll skip over in the interest of time. Bruce will ask the questions.

[Laughter.]

MR. HASEN: The second proposal would be to move to nonpartisan election administration. My argument here is to the extent

possible, the people running our elections should not have a vested interest in the outcome, not just Florida in 2000 and Katherine Harris, you have Kevin Shelly [ph], a Democrat in California taking HAVA funds and allegedly using them for Democratic partisan purposes. You have all kinds of mistrust of the system in Ohio because the Ohio Secretary of State is someone who's also the Honorary Chair of President Bush's Reelection Committee. If you look around the world, you look at Australia, you look at Canada, and you see that most developed democracies have nonpartisan election administration, and it seems to me that that would go a long way towards restoring public confidence when there will be less litigation when people trust the election officials who are making decisions that they are neither biased nor perceived as being biased.

Then the way I would do this is I would have the Secretary of State or the chief elections officer be nominated by the Governor subject to a supermajority, 75 approval of the legislature which means in just about every state, maybe not Utah, but I think every other state you'd have a bipartisan approval. This would be someone who would be above the fray who would be seen as a professional and using the model that we have in Australia and Canada which is very successful. Again skipping the arguments against, although noting that bipartisan administration is the point that Bruce made when I presented this paper earlier. Bipartisan administration is at least an improvement over partisan administration

and may be a more doable proposal than nonpartisanship at least in the short-term.

The final thing is to change the timing of court challenges. Courts should be more willing to entertain challenges before the election and less willing after the election which is kind of the reverse of what courts actually do. Think about if someone went to court to try and have the butterfly ballot not used before it was used in Florida. That would have saved a lot of people's mistaken votes. Now courts say let's wait, let's see if there's a problem on election day and then we'll go back and try and unring the bell, which is something that doesn't happen. And also, if you allow people to sue later, they can sit on their rights. It gives them an option. If things go my way I won't bring up the problem with the election and that creates some unfairness. So those are three steps that we might take that would require courts to change some of their doctrines to get to that.

I don't think any of these proposals are happening anytime soon, but they're kind of a goal to look to as an idea that we might try and achieve and then see what is politically feasible on top of that.

Thank you.

[Applause.]

MR. MANN: Rick, thank you. We're going to lift the screen someone back there, and Bob Pastor will come next. Thank you.

MR. PASTOR: Also perhaps you can put the lights back on up here as well. That would be great.

First I want to thank of course Norm and Tom very much for hosting this. As you know, I direct the Center for Democracy and Election Management at American University which has organized the Carter-Baker Commission on Federal Election Reform, and our report that came out last September with 87 recommendations on where we should go should be out there, and if it's not, please come see me afterwards, or Dr. Calingaert who is the Associate Director of the Commission and the Center as well. I also want to thank Jerry and Julie as well for both the support that Carnegie and Knight has given to the Carter-Baker Commission and the continued support for the Carter-Baker Commission to bring these recommendations to the attention of everybody. And recognize Rita DiMartino in the back who is one of the members of the Carter-Baker Commission.

What we tried to do, which is what Washington hasn't quite tried to do yet, is craft a genuinely bipartisan and nonpartisan approach to where we should go from here in election reform. When I was coming in here, I overheard a conversation between two people. One said, How do I get from here to Capitol Hill? And second person said, Well, I wouldn't start from here. I would say, actually, this is a good place to start to get to Capitol Hill, and this is a good time because when we were first starting the Carter-Baker Commission, there were many in Congress

who said wait until January 2006, wait for HAVA to be fully implemented before you evaluate. The truth is we suspected then and our suspicions have been confirmed that HAVA, while a very important step forward, is clearly inadequate to the magnitude of the task that we have in our country to assure that elections will count in the way that Americans want them to be counted.

Let me say a word about the state of election reform. I believe it's characterized in three ways. One is federal and congressional somnolence. That is to say, there is partisan heat, but both Congress and the federal government are sleeping right now on these issues. Secondly, there is functional focus. We have moved away from some vague idea that elections are conducted magically to a recognition that it is the composite of very separate, specific tasks that need to be mastered on a continuing basis. Thirdly, there is state-based creative chaos right now. That is to say, many of our states have joined in with funding that's coming from the federal government and are searching and exploring in statewide laboratories for some of the best ways to do that.

At the congressional and federal level, the reaction to the Carter-Baker Commission report was not surprising; it was actually the same as the reaction initially to the Carter-Ford Report which was either negative or nothing. Congress will need a Jack Abramoff on election issues in order to move forward as it's moving forward on lobbying reform right now. It's going to need another crisis. So I think Rick

Hasen and Doug Chapin are right that this issue is in fact ripe for another crisis in the 2006 elections. Hopefully that will prepare the way for moving forward. There are a lot of good bills there, but nothing is moving forward right now. Partisanship continues to define that issue.

On the functional dimension, there is a lot that's going on and we have learned so much from the days of chads or the days when Dan Quayle's first analysis of voting participation being so low he said that, voting participation is low because few people vote.

[Laughter.]

MR. PASTOR: I think our level of analysis has advanced significantly since that evaluation.

At the level of voting technology as you've heard, we've seen movement from roughly 12 percent of people voting by electronic machines in 2000, to 38 percent today. The Carter-Baker Commission recommended voter verified paper audit trails, and a ballot of record. In fact, 25 states have already moved in this direction, although as studies at the University of Maryland have shown, there is some question as to whether there is progress yet. We will need some more experimentation.

With regard to voter registration, we recommended top-down, statewide lists, and about 38 states have done it like that. We recommended interoperability, but that will require the EAC to have authority which it does not have, and which Congress needs to give it authority to impose a template on all of the states, because while it's very

nice to have several regions in the country to begin conversations, you cannot get a national conversation without having a unified template, and you can't have a unified template until the EAC has some authority to enforce such a template and that's what we recommend. Even to this day, the EAC does not have authority to really evaluate the statewide registration lists that have come in and to say these lists are no good. So we to this day don't really know how many of those statewide lists are actually very good. We do know that some of them are, but probably most of them are not.

With regard to voter identification, the Carter-Baker Commission came out with what probably was its most controversial recommendation, proven even more controversial because it was mischaracterized for partisan and other reasons. What we tried to do as a commission was to transcend this debate between ballot integrity and access by saying that we should use the real I.D. card that had already been mandated by Congress last May which actually provides proof of legal residence as the basis for a uniform identification card. Our fears were that in the absence of a national card of some kind that many states would continue to come forward, indeed, already 25 states have. This would be more likely to lead to discriminatory practices by individual states than if there were one uniform approach. We sharply condemned the Georgian law, and in fact insisted that the states play a very different role than they've ever played historically in the U.S. but they play

routinely abroad, and that is they play an affirmative role to go out and register people. The real I.D. takes care of 88 percent of American voters because they have driver's licenses and so, therefore, we can focus on the final 12 percent.

Of that final 12 percent, many are already registered, so we can find them, give them the card free, and those who are not registered or do not drive should be the focus of an affirmative role by the states to go out and register them and to give them free photo I.D.s. Therefore, we will transcend both the ballot integrity and the access issue by registering and giving more I.D.s to more people. Andy Young pointed out that in fact the lack of I.D.s actually discriminate and harm African American and other voters and, therefore, this very process would have spill-over dividends.

Beyond that issue, there was the question of election administration. Rick has spoken about that. We recommend going beyond bipartisan to nonpartisanship at the state and also at the federal level. I think Deb Markowitz said there is concern at the state level about federalizing elections and our history is of the states having control over elections, but we acknowledged afterwards that that is a myth. States do not have control over elections even though HAVA was designed in part to help them to get greater control. Even in the State of Vermont, it's the towns that have had control over the elections. And the problems are less between the states, although that is still a problem, as

within the states. HAVA was originally designed through this body of funds that should have gone out and elicit a statewide plan to allow the states to have greater control. That is happening some places in the country, but not enough. It would happen much further if EAC could be given greater authority. There is a lot of creativity at the state level. There are conversations that are going on. There is experimentation, but we need to do a lot more.

To conclude, there are three areas that I think we move in much more vigorously. First, we need federal direction. It's not going to happen soon for reasons that everyone understands, but it needs to happen. We need for the Election Assistance Commission to have authority. I think we can look to other election commissions in Canada or Mexico, for our two neighbors, or wider than that to understand what a better EAC would look like structurally.

In Canada, for example, they move their campaign finance system within Elections Canada, and they have prosecutorial authority. They also have an independent judicial system, for example, that deals with the complexity of election law, as do many other countries. Costa Rica has probably one of the best independent judicial systems on election law. We'll need that to do interoperability, we'll need that to really encourage that the standards that were written in HAVA are in fact enforced. I think we are fortunate that we have such good Election Assistance Commissioners, three of whom are here right now. All four of

them I think have done a superb job. They need more support, they need more authority.

Also at the federal level there are a lot of good bills that are waiting for some attention including Rush Holt's bill on voter verified paper audit trails. What we do need is what we had to make HAVA work which was we had two congressmen move forward, Bob Ney and Steny Hoyer, and craft a genuine bipartisan compromise. We don't have that right now, and we will need it, and hopefully after the 2006 election will wake people up to it.

The second area is election administration at the statewide level. Here we're very fortunate to be joining with Common Cause where we want to try to define what a model election commission should look like at the statewide level. We're fortunate to have Secretaries of State like Deb Markowitz, but we have other problems, particularly in disputed elections. The truth is, an aspiring politician running for statewide office which is often the case for secretaries of state, should not be in charge of our elections, even though there are many who are very good. We should have nonpartisan election officials, and you can do that if you have a confirming process as the Carter-Baker Commission recommended of a supermajority of two-thirds. Then you will put people forward like Deb was put forward by the two parties that are respected by both parties and that can function as a chief election officer for that. At the minimum, we

need to have conflict-of-interest statutes that ban election officials from participating in the campaigns.

We also need to have the system open for election observation. America has gone all over the world insisting other countries guarantee unrestricted access to election observers, and yet there's only one state in the U.S. that permits election observers. So this is a time for that double-standard to come home as well.

Finally, we need some more training and more education for both our poll workers and for the citizens, particularly given new technology. Again, at the American University we will be having a summer institute for 10 days for election officials from all over the world because I think Americans can learn a lot from the rest of the world, and I think the rest of the world like to know more about what's happening in the United States creatively, and for journalists and others. For more information on that, we'll be glad to give it or we have some of the brochures out there as well.

Let me conclude with Will Rogers's wonderful comment. He said once, even if you are sitting on the right road pointed in the right direction, as long as you sit down you could be run over. And that's where we are as a country. I think HAVA has put us on the right road, but are sitting down and we are about to be hit by a car. The question is whether we're going to get up in time and move towards election reform. Conferences like this will hopefully encourage us to do that. Thank you.

[Applause.]

MR. MANN: Thank you, Bob. Paul, tell us whether there are any signs of life on Capitol Hill.

MR. VINOVICH: I think I'll now defend congressional inaction in this regard and explain to you why you should all be grateful that the Congress does not rewrite our election laws every 2 or 4 years.

Norm mentioned in speaking about some of the HAVA principles, they'd used the analogy of putting the HAVA agreement together was like giving birth without medication. I used that analogy one time in a forum like this and all the women in the audience scowled at me as if to say you have no idea what you're talking about. I won't compare the two. I think it's a good analogy, they both took 9 months and it got more painful as it went along, and when it was over we were all glad to have it behind us.

As Doug well explained in his presentation, 2006 is a very important year. It's the first year that the elections will be conducted under the requirement of full implementation of HAVA. Many states are obviously still struggling to meet that deadline, not surprisingly. Human nature is such that even though people will recognize a deadline is coming upon them, they often will not focus on it until it's right there, and many states, New York I guess being the most glaring example, are now suddenly realizing that they're obligated to apply this and that realization unfortunately in their case in particular I guess has come

through contacts with the Justice Department who has advised them of the need to get in shape.

But the HAVA was obviously a product of a bipartisan process. At the time we put the bill together, the Republicans were in control of the House, the Democrats were in control of the Senate, Bob Ney was the Chairman of the Committee on House Administration, and Chris Dodd was the Chairman of the Senate Committee on Rules. As Bob Pastor mentioned, Ney and Hoyer really had a great relationship and we were able to get the process started by passage of the House Bill. And Ney and Dodd and Hoyer and McConnell with also a lot of contributions by Kit Bond really worked very hard in the conference to that that bill agreed to and passed.

It is fair to say I think, I'd know if I'd really say fatigue with the issue in Congress, but certainly a desire to see how HAVA works and then make a decision about whether or not additional changes are necessary. HAVA itself, while some may regard it as not going far enough, is imposing very significant changes in many state processes which many states obviously are having difficulty meeting. So I think the notion we should at this juncture even advance of full implementation of HAVA commence a new process of additional changes to the federal election law is one that is resisted and not really embraced in the membership most of whom by and large I think want to see how things go before they consider additional changes to the law.

While some may criticize that as inaction, some of the things I think that have been introduced demonstrate why we may not benefit from regular or routine amendments to the election law. For example, half the states currently have a paper trail requirement and many of them will be using an electronic system that prints a paper trail. A bill that would have made that a national requirement has been pending in the Congress for some time. Interestingly, that bill was introduced to make this a national requirement; no system that had that capability had ever been successfully deployed in the United States of America. I frankly regarded it as insane to even consider nationwide implementation of a system that had never been successfully deployed.

Nevada used the system in the last election, and many other states will be doing so this time. I actually went to Reno for the primary in Nevada to see how that would work, and I'm going to be watching closely to see how these systems work in the other states that have adopted them, and that's the best evidence for the virtues and utilities of these systems, the experience that states will have in their utilization.

One of the key components of the Help America Vote Act is the requirement for a statewide voter registration system, and this was one of the core recommendations of the Ford-Carter Report, and it was a recommendation based on their study and review of the statewide system that was in place in Michigan, and I think that's how these things should work. You had a system there that had been successfully deployed in a

state, the benefits of it were known and demonstrable and the Congress felt fairly safe in concluding that this was a useful system that we could safely say should be deployed nationwide. I don't think we're yet at a point with these paper trail VRE systems that we're prepared to say that. Maybe at some point in the future we will be, but certainly not at this juncture.

The real crux of the ongoing debate on election reform is the nature of the federal role, whether or not there should be additional federal powers, federal requirements, or whether or not states should be able to retain their role as the primary authority responsible for election administration. HAVA, of course, while setting a number of federal requirements that states had to meet, nevertheless left the core responsibility for the actual administration with the states. So at this juncture I think the Congress has spoken on that issue. I expect that this debate will be a constant debate as to the extent of the proper federal role and we'll see how that goes. I'll just leave it at that.

[Applause.]

MR. MANN: Paul, thank you very much. Our colleagues here have raised a number of in my mind really important issues and questions. We have 10 or 15 minutes to follow-up on a couple of those. The ones I've pulled out, one the tension between federal and state authority, this is a big, big issue that surfaces on specific matters but in a broader philosophical sense. A second is the feasibility of nonpartisan

administration within states and localities, and I want to return that in a minute and invite Deb back into this discussion.

The third is the whole connection between registration and voter I.D.s. I think almost no one would object to Rick's final status, that is, of universal voter registration having been achieved through the efforts in part of the government, combined then with a government-provided I.D. The universality of it, the onus on the government, would probably remove the objections to voter I.D., but, of course, in the real world you can't have that. You have to move sequentially, and in time--

[End Tape 2-B. Begin Tape 3-A.]

MR. MANN: And this is about who wins and who loses, as well as questions about fairness and democratic performance.

The final one that Mike mentioned, but we didn't really get into, is all of the issues thrown up by early absentee and remote voting and the implications of that for the administration of elections. I'd love to have us follow up on that, if some of you want to frame a particular question on that.

But let me begin with a non-partisan administration. And if could have a mike up here, and Deb, you and subsequent people who ask questions, please stand for our videotaping for the Web.

Deb, what's the trade-off as you see it here?

MS. MARKOWITZ: Well, I'd just say this is an issue the secretaries of states have been talking about since before the 2000

election, my first conference. It was a conversation we had in 1999. So this is an issue that we're aware of.

I think--I can't speak for all of the secretaries. Some feel very strongly that it's simply a states' rights issue and would leave it at that. My own feeling is that our election--democracy runs best if there's transparency and accountability in the system. And I think the chance of finding a non-partisan election official is similar to the chance of finding a juror for O.J. Simpson's trial. Remember that, how somebody who had never heard of O.J.--you know, that there will be a perception that rather than having non-partisanship, you'd have a lack of transparency.

In Vermont, you might have noticed when I was introduced, I'm in my fourth term, but I've only been in office eight years. We've got a two-year term. So there's transparency. People know I'm a Democrat, because that's what I am, although I've had both nominations. And there is accountability in that if they think I'm not performing in an adequate way, I'd be out really quick. And in fact, the two secretaries before me were out pretty quick, one because he was overly political in the office.

Having provided this sort of other perspective, I do think that there are steps that we should be taking, as we look at elections administration, to minimize the opportunity for politics to enter into decision-making.

For example, you know, in Vermont, all of our elections are open to observers, any observers. We've got some rules that require them

to stand behind a line, but when our votes are counted both political parties are--in fact, in Vermont, we've got four major parties, so all four major parties can be present and observe the vote-counting.

I think transparency and accountability, that's my own personal mantra. That's part of it.

When the votes are counted, again, we're counting marks on paper. We have a bipartisan pair who are agreeing. There are people around who keep that accountable and transparent.

So I think there's lots of other ways to get at what we're looking to get at.

I would like to observe that the states that are having the hardest time meeting the mandates are states with elections commissions, because there is nobody at the top who is ultimately accountable to an electorate who will respond if they're unhappy.

MR. MANN: I invite my colleagues here to respond. Rick?

MR. HASEN: A couple of points. One is I think you need to look cross-nationally. So if you look at places like Australia and Canada, which have a strong non-partisan--in Australia, it's a three-member commission; in Canada it's a single person who is the head of Elections Canada--the public's confidence in the election process tends to be much higher.

You talked about transparency. I think there are other steps that can be taken, short of moving to non-partisanship, which would be

easy. For example, NASS could pass a resolution doing something that I suggested and the Carter-Baker Commission endorsed, which is adopting the IFES code of conduct, which says election officials shall not endorse other candidates for political office, shall not be active in their political parties.

That would be a step towards restoring public confidence short of what I'd really like to see, which is a move to non-partisanship. I think the only way that's going to happen is in states that have the initiative process, because then it's going to be an end run around-- because election officials--I can't remember, someone said on the earlier panel--election officials are a political lobby like everyone else. And they have their own interests. And we can't think of moving to a change without upsetting already existing power relationships.

So it's going to be a very hard transition. But at the very least, I don't see why we can't have this movement towards adopting codes of conduct towards non-partisan action, even if the person is elected as a Democrat or a Republican.

MR. MANN: It was Senator Obama who made that point, by the way, this morning.

Bob?

MR. PASTOR: I agree with Rick. Transparency and accountability are wonderful, but as we've seen in the state of

Washington, a very close election will inevitably lead one party or the other party to suspect the partisan motives of one of the others.

So we get to the question that you pose, which is how do you find somebody who is non-partisan? All you have to do is look all over the world and see this question has been posed in many places and in much more polarized societies than the United States. They figure out a way to do it.

It's really not very hard. First thing is the person shouldn't be running for office under a partisan ticket. That's the--that's part of that. And you can do it--and I think you're right about election commissions if they disperse power. But I think a chief election officer is a good way of doing that.

You need to define the goal, right. The goal is a person who is non-partisan. And therefore, the person who nominates it should look beyond the parties for somebody who is respected by all of the parties, by both of the parties. And then you put a two-thirds super majority confirmation and you'll have something similar to what Canada does. When the name of the chief election officer of Canada is put forward, they have succeeded in getting 100 percent endorsement by all members of parliament.

And so I think it's doable in the United States. Other countries have done it. In fact, in each of the areas that you've talked

about, whether it's registration and ID, there is a lot to be learned from other countries in the world as well.

MR. MANN: Bob, it is interesting that our whole tradition, though, is partisan administration and virtually every aspect of election law--certainly redistricting, certainly campaign finance, for the most part, and election administration. So this is a rather abrupt change with traditional practice.

MR. PASTOR: That's right, but there are--all we need is to look to Canada. They came up with the redistricting commissions, which have proven much more and lent themselves more to competitive elections than in the case of the United States.

You're right. It does represent a break, but it represents an opportunity to learn, too, and to improve.

MR. MANN: Mike?

MR. ALVAREZ: Yes, you're very--I'll be quick--it's very rare to find three academics who will agree on anything. But I have to agree. In fact, I mean--

MR. PASTOR: I'm changing my mind.

[Laughter.]

MR. ALVAREZ: You have to remember, Rick and I live in the state where we have the poster child, okay--Kevin Shelley--for why we should not have statewide partisan election officials. And you know, I was on the HAVA implementation committee there. And it was--you

know, watching it happen, watching it unfold I think demonstrates exactly why we need it.

But two other quick points. I would though think that when we think about this analytically, we ought to be careful to talk about different models of partisanship. Should it be non-partisan? Should it be bi-partisan? Should it be partisan?

We should talk about executives versus commissions. And we should also talk about the method by which they're selected, elected or appointed.

So I think breaking these different dimensions out is going to be part of the analytic debate that's going to move forward.

But we don't have to look towards Canada because we're moving towards these models in the United States as far as the redistricting goes. It's been on the ballot. There are a number of states who do it. And again, I think this is going to come up again in California in the very near future. So we're gaining experience with it.

MR. MANN: The one issue that we ought to keep on the table that Deb has suggested is accountability, to make sure a system of accountability remains along with the move toward non-partisan administration.

Okay, question? Please. Right here, our own colleague, John Fortier.

QUESTION: I'm going to address this question to Paul, the question of federal funding of elections, is HAVA a one-shot deal with a future shot coming again down the pike with a small stream that might come? Or is it likely that the whole faucet is likely to be shut off?

MR. VINOVICH: Well, the funding of HAVA was kind of conceived as a one-time appropriation, you know mainly in recognition of the previous--the long history of no federal contribution to election administration.

The bulk of that funding obviously going to what you could describe as capital improvements, i.e. new equipment purchase. You know, states obviously have a number of things competing for their dollars. And many of them are things that impact the votes on a daily basis, either roads or schools and election funding. Since people only vote once every two years is often why it's at the bottom of the list of funding priorities.

So I guess I'll put it this way. HAVA was envisioned--the funding authorized in HAVA was envisioned as a one-time thing, not the commencement of what would be a perpetual flow of federal assistance to the states in this regard.

And I think, you know, there's an ongoing debate I think even in the election community and home state election administrators over where or not there should be kind of a continuing stream of funding.

The only thing I'd say on that is the history of congressional funding is that it often comes with strings attached. So you have to be kind of cognizant of the fact that if there were to be a continuing stream of funding, it would likely be used as a vehicle for imposition of additional requirements on the states that accept that funding. You know, whether or not you regard that as a good or bad thing obviously depends on your view of the virtue of a continued federal role in this regard.

MR. MANN: Paul, the one part of it on which there is a consensus in the states is it sure would be nice if the last piece of the original commitment were honored, the \$800 million. Is there any movement outside the President's budget to do anything on that this year?

MR. VINOVICH: When people ask me that, I advise them that they should make their plans as if they had received their last dollar. If they get anything else, then they can regard that as a bonus.

I mean, frankly the controversy over the security of electronic machines has made it more difficult, I think, to argue for additional funding. The reaction is kind of, well, why should be appropriate additional millions of dollars for the purchase of machines that are of questionable value.

MR. MANN: I hear you. Doug, yes, please.

MR. CHAPIN: Yes, just briefly as a follow up.

Doug Chapin from Electionline.info.

[Laughter.]

MR. CHAPIN: A follow up. Paul, you talk about the relationship of federal money to federal strings. Do I think hear you saying that if the federal government gets out of the state and local election administration business that the strings that are contained in HAVA would also sunset over time?

I mean, does it work?

[Laughter.]

MR. CHAPIN: We're not advocates, so I'm not suggesting. I'm just--I know that there are some people, including and not named Markowitz, who would like to know the answer to that.

If the federal government withdraws from the field fiscally, would it also call off the dogs at DOJ?

MR. : Dogs at DOJ?

MR. VINOVICH: No.

[Laughter.]

MR. VINOVICH: I expect--I understand your point. The requirements in HAVA are ongoing, and there will be ongoing expenses related to the compliance with those requirements that will be necessary. People can make that argument as a need for a continuing stream.

There has to be--I caution election officials in particular that seek that just so that they understand that, you know, they may get additional funding, but they might also expect they will get additional mandates along with such funding.

MR. MANN: Miles and then over here. Yes.

MR. RAPPAPORT: Miles Rappaport from Demos (ph) in New York. And I just want to make a quick comment that it does seem-- Paul, I was happy to hear you say that the original notion of Congress was a one-shot deal on this. I also think that it is crucially important that that not be the case. I think we ought to reconceptualize--one of the things the election reform project can help to do is reconceptualize the issue from there was a problem in 2000 and we put money in and now it's fixed and now we can go back to business as usual. Because I think it's much more like health care where there's a major area of our national life that needs ongoing federal funding and attention and collaboration.

I think otherwise, it is as Doug said, a train wreck waiting to happen. And I think I was troubled by the resignation that I heard from Senator Obama and everybody else about--well Congress is not really going to--there is not stomach for this.

There has to be stomach for it as an issue that concerns the heart of our democracy.

Second, here's a quick question though. I'm also concerned a little bit that it seems like all of the issues that have been discussed today have post-dated the election of 2000.

I was secretary of the state in Connecticut in the 1990s and there was a whole range of discussion and debate about why is it that so few people are voting? Why is it that our registration figures are so low

compared to other countries, et cetera? And I guess that--I don't want the project or the people to lose sight of the fact that there is an historic imperative to get more people involved and engaged in our democracy that should--so it's not only about election administration reform. It is also about reforming the process to really get people in and make our democracy as vibrant and inclusive as possible.

I guess I'd like people to comment on that and hope that the project will also look at these ongoing structural issues, not just the administration issues.

MR. MANN: I invite my colleagues to respond. Mike, this may be a chance to say whether something about early absentee remote voting, whether this is relevant at all to the issue of turnout.

MR. ALVAREZ: Well, I think it is in the sense that I think many people point to those kinds of reforms as being the way to solve a lot of those barriers.

At this point in time though, the research is, I think, a bit agnostic on that. Certainly, we need to do more work, but that's one area where I do think we're hoping to make more progress. And of course you know that a lot of people are researching many issues associated with the registration process, in particular, ways to further reduce the barriers to registration, including the one issue I know DEMOS (ph) has worked a lot on which is same-day voter registration.

I do think as far as our work is concerned, and I hope their work as well, a lot of those issues are still on the table, although I think structural issues are much harder to deal with than a lot of these administrative and procedural issues.

MR. : I would just say universal voter registration would solve one piece of the turnout problem, which is if people aren't voting because they're moving, which for a long time that's what we've been saying, and we have good system that's tracking people's registration, you could deal with other problems, alienation or whatever it is that might be driving the low turn out.

MR. MANN: Bob?

MR. PASTOR: Yes, I couldn't agree more. If you had a universal voter registration system at the age of 18 and for naturalized Americans and you got an ID card, which you could swipe each time you moved at the post office or wherever else which deleted you from the previous one--we have the technology for that--and added you to the new one, that would make things far easier, that by swiping it you could spit out a little receipt that says, here is your new polling site for you to go, you would eliminate 90 percent of the problems that we've had with voter registration and I think increase the chances of a much higher voter turnout as well. Because that has been a formidable problem.

And we're in sight, technologically of that. Politically we're still very distant from it.

MR. MANN: Thank you.

Yes, this gentleman on the aisle here.

QUESTION: Thank you. I'm not here representing any group. My name is Doug Hess (ph). I'm a student at GW policy school, but I've done some consulting for ACORN Project to Vote in the past on the welfare office voter registration.

I'm glad people are ending this with a discussion of registration, because as Senator Ford said back when they passed motor voter, that if elections are a ball game, registration is your ticket. And we need to sell tickets.

So it doesn't matter how well the machines do or do not work, if we don't do registration well, we've got a really large problem. And I think one thing that gets left out in discussions a lot is sort of the step child of HAVA and the VRA is the NVRA, which hasn't been mentioned at all today. And probably because many parts of it have been very, very successful. But there are parts that aren't so successful, and they need a lot of attention still, including welfare office voter registration where I visited the states where staff had no idea what we were talking about when we asked them how they do that. They have no idea where the numbers come from, like reports, the FEC, now the EAC. Just a real failure in many states to implement it. And states that care about it made some changes and had a really explosive growth in

registering people--who are disabled, elderly, low-income women, minorities, people who don't drive-- through welfare offices.

So I hope there is some attention paid to the NVRA and it's not sort of forgotten.

Thank you.

MR. : It shows what Senator Obama said, which is half of the problem is enforcement. If the existing laws were enforced aggressively, you would solve a good deal of these problems.

MR. : I think it's a very good comment.

The National Voter Registration Act really did help to increase the numbers, but there were some serious flaws in implementation which should be cautioned, for as we advance on a lot of these elections reforms, part of it may be dealt with. Part of it was the motor vehicle agency did not have good connections with other agencies, including with the election registration. And so sometimes the names would go off and sometimes they wouldn't.

The second problem is that the counties, which had control over the registration list wouldn't listen to what was coming on statewide. So you had inflated lists at the state and often at the county list, it wouldn't change very much.

So I think all of the kinds of reforms we're talking about-- and the third is--people weren't really well trained to deal with that. And if we're going to move to a universal voter registration system and the

kind of ideas that we're talking about, we should pay attention to what went right and what went wrong with that.

MR. MANN: Listen, one last question. Right here. Yes, sir.

QUESTION: I'm David Becker. I'm a veteran/escapee of the DOJ's voting section and currently a private election lawyer.

My question is specifically with regard to the voter ID laws that are presently being enacted state by state and specifically to Bob.

What are your thoughts about the use of the Carter-Baker Commission's report by those who advocate the state-by-state piecemeal voter ID laws to justify the enactment of those laws?

MR. PASTOR: Well, you know, it poses some difficulties because the issue has become so partisan. President Carter himself obviously feels very strongly about this. I think the problem is that there are very few states in which they're enacting it that they're trying to use the Carter-Baker Commission report—that are using both sides of our recommendation. And you know, you need to have both sides if you're going to transcend the debate.

On the one hand, I think those that--the Republicans that are putting it forward are not really serious about making sure that voter ID is free for those who can't afford it and more importantly, are not playing the affirmative role, are not putting money into the process to make sure that you go out and register more people than you did in the first place.

On the other hand, the Democrats are just taking very contrary positions to any ID--there is no problem there at all, where you don't have evidence of the problem. And so they're not getting enough engaged where they could ensure what we did on our commission, which is that the affirmative role is placed into these things and then it's done on a uniform basis.

And so that's where we do need some charismatic leaders that are prepared to step across the aisle and put the two pieces together in the way that Carter-Baker did and encourage it.

The truth is for it to work well, it's really got to be done nationally for all of the reasons we talked about in universal registration. And we really sifted through and we had our hardest debates on this issue, a whole series of big options. And in the end for a variety of reasons, mostly budgetary, we recommended using the real ID recognizing that it had some of the problems of the National Voter Registration Act, which is not enough money for implementation et cetera, et cetera. But we suggested ways to try to do that better.

You know, the truth is with the ID issue, as we all know, it's very controversial. America, however, is moving in that direction from three different sides. I'm involved in the immigration debate as well, where people are beginning to realize you can't make a new law work on temporary workers or anything unless you have verified documents, better than what we have right now. And you have the security issue as

well, which is the dominating issue by which we--some, many people have concluded--9/11 Lee Hamilton, for example--that you need a secure document as well.

So we're moving from three different directions, 50 different states, haphazardly. Our concern from the beginning was in the absence of some clear direction. The fact that we're moving in so many different ways on this will actually lead to more discrimination rather than less, which is why we put this proposal forward.

MR. MANN: We've had time to only touch the surface of these issues. But I hope and think we've done so in a constructive and very promising way.

Norm and I would like to join others in thanking Julie Kohler (ph) of Knight (ph), Jerry Magnon (ph) of the Carnegie Corporation and to add Michael Codell Fagan (ph) of Pew. These are three individuals and three foundations that are really pushing in a constructive way serious consideration of this broad set of issues surrounding election, the conduct of elections in America.

We'd also like to thank our colleague John Fortier at AEI, who is a key part of the project team and instrumental in putting the conference together, ably assisted by Matt Wyle (ph). I would like to thank Mark Hiller (ph) at Brookings, who has worked with me and has been at the center of the development of our new Website. And I know this one is a dot.org. It's Election Reform Project.org.

I hope you all will sign up for the newsletter. I hope you will send us material. The whole point of this is not to be in any way a competing project, but to be one that shares, disseminates the fruits of all of your work to bring people together in ways that we can make some real progress on this issue over time.

Thanks to our panelists and thanks to our audience.

We are adjourned.

[Applause.]

[END OF TAPED RECORDING.]

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