

Review of 2004 Accomplishments
Federal Election Commission
Chairman Bradley A. Smith
December 16, 2004

As we close out the year, I want to ask for a bit of indulgence to consider the Commission's accomplishments this year. Although a few choice election-year issues captured most of the attention in the public eye this year, there are many other developments worth remembering.

The Commission successfully implemented the BCRA rulemaking as well as addressed several highly publicized rulemakings during the past year. The Commission dealt admirably with the many thousands of comments it received and the close scrutiny from the press under a compressed timeframe.

The Commission's enforcement program had a noteworthy year. Total civil penalties in FY 2004 were \$3,463,050, which is a record for the Commission. Penalties for the calendar year exceeded \$2 million for the second consecutive year, another first. The median civil penalty per case rose to \$45,000, which is a 43% increase over last year. As recently as 2000, the median civil penalty was just over \$5,000. Two cases, or as we call them, Matters Under Review ("MURs") resulted in civil penalties exceeding \$500,000 (MURs 4818 and 5279) and ten others included civil penalties over \$50,000.

Not only are penalties significantly higher, but more cases are being completed with a substantive finding. In the traditional enforcement system, the Commission reduced to zero the number of cases dismissed without substantive analysis, for the first time since the Enforcement Priorities System was introduced over a decade ago. Eighty-five percent were closed with a substantive action. Overall (including the traditional

enforcement track, alternative dispute resolution, and the administrative fine program) only 11% of cases were dismissed without a substantive finding, in contrast to the period from 1995-2000, when fully 55% of cases were dismissed without a substantive finding.

Our processing of these cases is taking fewer days than before. Continuing a trend, this year the Commission's Office of General Counsel (OGC) reduced by 16% the average number of days it took from the date the complaint was received to the date the case was closed with a substantive analysis. The median number of days it took this year to close a case with a substantive analysis was lower than it has been in any of the past nine years.

This improved efficiency comes even as the Commission's workload has increased. The Office of General Counsel processed almost four times the number of cases in 2004 as it did in 2003. The 238 cases processed by OGC in 2004 is the largest number of incoming cases since 1996.

Moreover, the Commission is pursuing these cases while applying additional procedural protections for respondents that the Commission began to implement in the latter part of 2003. These added due process protections have not been an impediment to enforcement. Instead, we have more rapid resolution of cases, and higher penalties than ever in the Commission's history. Commentators used to say that at the Commission, "the punishment is the process." Today, I think we can say very proudly that the process is fair, and the punishment is the punishment.

On the Staff Director's side, the Commission is processing auditing more committees than ever before, an increase by 45%, not including the audits done on presidential campaigns that accept public funding, which are mandated by Title 26. The

Commission's Administrative Fines program, established in 2000 to process late and non-filer violations, continues to encourage timely filing of reports, as 98% of monthly reports were timely filed in 2004 as compared with 72% in 1996. Even though more reports are now required under the Bipartisan Campaign Reform Act (BCRA), our Reports Analysis Division reviews more of these reports and does so in less time. This year we reviewed over 80%, as opposed to 60% in 2000. We processed 95% of reports within 20 days of the filing deadline, as compared to 51 days during the 2002 cycle.

The volume of advisory opinion requests this year was also considerable. We received 44 AORs in 2004, four more than the last presidential election year (2000) and the highest number of any calendar year since 1996 (when we received 52). Of the 44 AORs, we received, over half (23 AOs) pertained in the main or in part to BCRA. Of the 40 that were issued over half (23), pertained in the main or in part to BCRA.

The Commission continues is providing better and more complete information to the public. Since late last year, enforcement matters, including Counsel's reports, Commission Statements of Reasons, resolutions, and other documents, have been available to the general public on the World Wide Web, through our Enforcement Query System. All newly closed cases are added to the system, and we continue to work backwards adding on historic cases as well. We now have all cases on the system back through the year 2000. The Commission's website was redesigned to be more useful to the public. Apparently the redesign has been popular, as the Commission's site has seen a 50% increase in hits from 2002. This year over 1.5 million transactions were processed and placed on the public record.

All of this was done, of course, while continuing with our usual series of educational seminars around the country and again maintaining a very busy rulemaking calendar. So I wish to compliment the Staff Director, the General Counsel, and their staffs for these accomplishments, and for making my year as Chairman look good.

Finally, on a personal note I want to say that it has been a pleasure to serve as Chairman this past year. I have particularly appreciated the opportunity to represent the Commission and the American ideals of freedom and democracy at conferences at home and overseas. A few years back, before I joined the Commission, I began an article in the *Pennsylvania Law Review* this way:

If one were trying to identify the world's healthiest democracy, the United States – with its long history of peaceful transitions of power, independent judiciary, sound record in human rights, expansive personal liberties, low inflation and unemployment, high standard of living, and relatively low taxes – would seem as good a candidate as any.

I certainly stand by that statement today. Americans have a remarkable – indeed almost unique – tendency to engage in self criticism and introspection, and that tendency is applied to our political system as much as anything else. It has become common, of course, to complain about the political and electoral systems here, and it may be this drive for perfection that keeps us going. But when all is said and done, it's pretty hard to see anyone who does it better. The recent election was marked by harsh rhetoric and in some cases ill feeling, but in the end it should serve to remind us that there is far more

that we have in common than there is that divides us. I thank my colleagues on the Commission for their support and counsel over the year.

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