



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

Statement of FEC Chairman David M. Mason on Accomplishments in 2002

2002 has been an extraordinary year for the Federal Election Commission, shaped significantly, but by no means exclusively, by the passage of the Bipartisan Campaign Reform Act with its regulatory deadlines and expedited judicial proceedings.

With the adoption later in this meeting of interim final rules implementing the “millionaire” provisions of the BCRA, the Commission will have met very aggressive 90 and 270-day regulatory deadlines that could well have left far larger agencies gasping amidst unfinished work. Two weeks ago our attorneys stood at the bar with some of the nation’s most prominent courtroom advocates, performing at the highest level in that company and along with top lawyers from the Department of Justice.

Just last week the Commission completed the last but one of the 2000 cycle Presidential audits, in record time, on an accelerated schedule, despite the restoration of an interim audit report which provided an additional opportunity for review even while expediting the process. And for the first time in a Presidential cycle our auditors were able to maintain a full schedule of audits of House, Senate and non-authorized political committees.

This month also the Commission announced the third largest enforcement financial settlement in its history, following the largest-ever settlement earlier this year. Also this year the Commission filed suit in another major case involving hundreds of thousands of dollars in political activity. Cases of similar size and significance are progressing now at various stages in our enforcement process. The Commission made permanent its Alternative Dispute Resolution Program, and continued its relatively new Administrative Fine program, expanding the reach, flexibility and timeliness of its enforcement efforts.

While Congress debated for 18 months how best to spend hundreds of millions of dollars in the important cause of updating state voting equipment, the Commission’s tiny Clearinghouse on Election Administration issued updated standards for voting systems and initiated work on elections management standards that may prove more important to improving elections than upgraded equipment.

Also this year the Commission implemented a new “client-server” data architecture, the successful and on-time culmination of a two-year, \$2.3 million data systems upgrade. This new computer architecture will allow us to collect more efficiently significant new information required to be reported under BCRA, to present information to the public in more robust and flexible ways, and to gain maximum advantage from automated review of electronically-filed reports. And while our existing disclosure efforts have been criticized by some, one need only review the efforts of other and far larger agencies to manage similar disclosure missions to appreciate the FEC’s success.

Either the BCRA regulations or the McConnell litigation alone would have made for a remarkable year for the federal Election Commission. Our audit record, enforcement actions, voting systems guidelines and data upgrades each would have represented signal accomplishments in a “normal” year.

All of this has been achieved by an agency with a small staff, limited resources, and little external political support. Indeed, as we are challenged in one suit by opponents of the BCRA to defend its constitutionality we are opposed in another by the BCRA’s supporters for our actions in implementing that law. The editorial pages of some of the nation’s largest newspapers have called for our abolition or overhaul, as have prominent Members of Congress, and various interest groups, often based on the claim that the Commission is ineffective.

Any objective and dispassionate review would have to conclude that far from being incapable, the Federal Election Commission is the little agency that could: the agency that could manage complex litigation with a small and unheralded staff; the agency that could meet aggressive statutory deadlines for implementing a sweeping new law; the agency that could reach bipartisan consensus on significant enforcement actions; the agency that could act quickly to improve the nation’s voting processes; the agency that could harness new technology to improve its operations and products.

A little over four years ago when I joined the Commission the FEC was under attack from prominent Members of Congress for being biased and out of control. The Chairman of the House Appropriations Committee ordered an outside audit that he believed would reveal our bias and incompetence. Instead the audit found the agency unbiased and reasonably well managed. The critics of 1998 made a fundamental mistake in assuming that enforcement and policy decisions that they vigorously opposed could only have sprung from bias, incompetence, or both.

Today the FEC is under attack from prominent Members of Congress for being biased and out of control. Some of those Members have sought a judicial review of certain of our regulatory decisions charging that they evidence prejudice and incompetence. I believe that the “judicial audit” that will result from this suit will produce the same sort of favorable result as the 1999 financial and management audit: a conclusion that the Commission’s regulatory choices are well-founded and reasonable.

In comparing the critics of 1998 and 2002 I do not mean in either case to belittle the significant policy concerns that gave rise to the divergent criticisms, nor to suggest that the Congressional responses were inappropriate. The 1999 audit was an appropriate exercise of Congressional oversight, just as the pending lawsuit under the Administrative Procedures Act is an appropriate means of resolving whether the Commission’s regulations are appropriate under the law.

I do, however, mean to suggest that the critics of both periods unhelpfully conflated policy concerns with structural and managerial issues, perhaps because they made incorrect assumptions about the origins of significant policy differences. Those policy differences will continue to be debated in Congress, in the courts, and on the Commission itself. What I hope this year has proven is, despite and amidst those debates, the Commission works. The Commission works hard, the Commission works well.

I remain open to discussion of structural reforms in the administration and enforcement of federal election laws: there is no more magic in six Commissioners than in eight words (of

Buckley's footnote 52). It is certainly the case that structural arrangements can affect enforcement and policy decisions. However, it is my fervent hope that in those discussions we can put aside the demonstrably inaccurate characterizations of the existing Commission as inactive, ineffective and inattentive. Our vigorous judicial advocacy, our aggressive regulatory schedule, our active enforcement and audit programs, and our effective use of technology show otherwise.

It has been my great privilege to have served as Chairman of the Federal Election Commission in this remarkable year, and to have helped facilitate these significant accomplishments. I'd like to thank my colleagues, including former Commissioners Wold and Sandstrom as well as their successors, for their unfailing support and assistance. This July and August marked for my family the culmination of a long-sought and fervently hoped-for gift that required my absence from the Commission for some weeks. My colleagues accommodated my schedule and stepped up capably to fill any gaps that my absence might have caused. For this I offer my sincere thanks personally and professionally.

The accomplishments of the Commission are not mine, nor even principally those of other Commissioners, but of a capable and dedicated staff to whom I would like to offer sincere thanks on my own behalf, on behalf of my colleagues on the Commission, and on behalf of the American people for whom we work.

As the father of ten I recognize that all God's children are of infinite worth and make unique and valuable contributions. I would like nothing better than to recognize by name each and every Commission employee and to mention his or her contribution to our efforts. But that would likely take the remainder of the day, so with sincere thanks to every employee I do want to recognize a few notable contributions, beginning with those responsible for the accomplishments I outlined a moment ago:

- The litigation and policy staffs who put in countless hours of late night and weekend work to complete the BCRA litigation and rulemakings. These are once-a-career challenges and every member of these staffs, and those who assisted and supported them rose to the occasion with dedicated and outstanding performance;
- The enforcement staff for completing two of the three largest MURs in the Commission's history while contributing significantly to policy and litigation efforts;
- Larry Norton, Jim Kahl and their managers in OGC who in the midst of this crisis environment reorganized every division in OGC to meet our litigation and policy challenges and to prepare for the enforcement tests we face beginning next year;
- The Audit Division for their timely completion of Presidential audits while maintaining the title 2 program and developing a new audit format;
- The Data Division for successful completion of the client-server transition;
- The Mailroom and Disclosure Divisions late last year and early this year faced personal safety concerns with the anthrax threat yet remained dedicated to receiving and processing reports in a timely and efficient manner;
- Our support offices, especially the Administration Division which handled forests of paperwork related to our policy and litigation tasks, but also Personnel and Finance and the Commission Secretariat who did their utmost to make things go smoothly in this eventful year;

- The Clearinghouse for its low-dollar high-leverage contributions to American elections;
- ADR for developing a successful, permanent program;
- Press and Information for serving as the first responders to many unanswerable questions;
- RAD for managing yet another record election cycle while planting the seeds for a re-engineered review process;
- Jim Pehrkon and his managers and staff who kept these and other functions, including acquisition of new space, moving smoothly.

As the old song goes, "I've got plenty to be thankful for," and I hope I have expressed that adequately today. I wish my successor as eventful and successful a year as the one in which I happened to preside.

December 18, 2002



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COMMISSION ACCOMPLISHMENTS IN CY 2002

BCRA

In a short nine months from the signing of this landmark (and controversial) campaign finance legislation in March, the FEC drafted, discussed, held public hearings, and passed rules implementing provisions of the Bipartisan Campaign Reform Act (BCRA) related to:

- national, state, and local party activities (soft money),
- electioneering communications,
- Federal Communications Commission requirements related to electioneering communications,
- contribution limitations and prohibitions,
- a reorganization of rules on contributions and expenditures,
- provisions of BCRA relating to disclaimers required on public communications,
- personal use of campaign funds
- coordinated and independent expenditures,
- the “millionaires’ amendment,”
- and other miscellaneous provisions.

This was accomplished while maintaining and enhancing the FEC’s diligent day-to-day overall responsibility of enforcement and disclosure, plus the task of preparing, presenting and arguing the legality/constitutionality of BCRA before the District Court, and preparing and presenting a number of other, unrelated litigation cases.

Enforcement:

FEC Enforcement and Compliance division:

- Completed investigations and made public the largest monetary conciliation agreement (\$719,500) and the third largest (\$477,000) in the Commission’s history.
- Closed 90 cases in 2002 and opened 117, marking the third consecutive calendar year of decreasing the monthly average of total cases pending (207 in CY00 and 151 as of 11/30/02), for a cumulative \$1, 319,600 in assessed civil penalties for 2002.

Audits

FEC Audit Division in 2002:

- Completed 17 Presidential (Title 26) and 19 authorized (Title 2) audits and commenced 19 non-authorized audits, a record number for a Presidential election cycle.
- Assisted in drafting reattribution/redesignation rulemaking.

Reports Analysis Division (RAD)

- Reviewed approximately 45,000 reports with over 2.5 million pages filed by over 7,000 committees.
- Responded to over 16,000 telephone queries from candidates, committee treasurers and officials.
- In first full election year of Administrative Fine Program, made Reason to Believe (RTB) recommendations on over 170 committees with civil money penalties totaling over \$440,000.

Administrative Fine Program

- In 2002, the Commission publicly released 171 administrative fine cases, with penalties totaling \$249,000.
- There have been 471 cases publicly released since inception of Program in September of 2000, with penalties totaling \$660,000.

Alternative Dispute Resolution

- The ADR Office was made a permanent program of the FEC following a review by the Commission of an independent evaluation of the ADR Pilot Program; that evaluation determining that the program had achieved its goals and enabled the Commission to increase the number of cases processed.
- The program, initiated in September, 2000, processed (i.e. determining appropriateness of a case for ADR) its 100th case in December, 2002, resolved its 47th case and negotiated its 69th agreement.
- The ADR process was added to the procedure for resolving the handling of non-compliance cases from the Audit and RAD divisions.

DSDD

FEC's Data division in 2002:

- Implemented the client/server disclosure system that provides more sophisticated query access to the FEC disclosure databases.
- Initiated BCRA modifications and enhancements to the client server system.
- Developed and implemented on-line, 24-hour report filing capability.
- Developed and released version 4 of FECFile, with a feature to check for contribution limits.

Information Division

- Created and maintained BCRA portion of FEC Web page.
- Conducted roundtables on soft money and electioneering communications regulations.
- Mailed Federal Register notices and Record summaries of new regulations to affected committees.
- In cooperation with OGC and RAD, drafted policy statement on Interim Reporting Procedures.
- As part of the Forms Committee, developed new reporting forms and instructions.
- Published new campaign guides for candidates and non-connected committees.
- Conducted series of conferences for candidates, parties and PACs.

Public Disclosure

- First election cycle under the mandatory electronic filing rules -- provides immediate access to disclosure reports and ability to search and sort data according to needs of users.
- Continued increase in inquiries for tutorials on navigating the disclosure pages of the web site -- provided over the telephone and in person -- and ways to download and search electronic filings.
- Additional three states (AK, IA, MA) joined the State Filing Waiver Program bringing total participants to 51 (out of a total 54) -- with an increase in calls from the state offices for answers to research questions and explanations of data.
- Increase in requests for the office's fax and email service each week of Commission documents (meeting agendas and agenda documents, rulemakings, AORs and AOs, etc.).
- Liaison with state election and campaign finance agencies -- obtaining from them state ballot lists and election vote results -- and providing to them Commission documents of note (BCRA rulemakings, for example) in addition to standard mailings of statistical press releases and Commission publications.
- Increase in requests from state and federal law enforcement agencies for campaign finance disclosure documents.

OEA

- Voting System Standards -- 3-year overhaul of the 1990 standards completed and issued on schedule, after two public comment periods, hundreds of comments and a public hearing before the Commission.
- Implementation Plan--Advisory document setting forth the current roles of the primary participants and anticipated start dates for the independent validation of voting systems. (This plan was developed prior to the passage of

- the Help America Vote Act and does not purport to address future responsibilities.)
- Completed research paper that addresses various aspects of state practices in provisional balloting.
 - Converted and updated 8,000-member mail list of state & local election officials and created preliminary database of voting systems used by jurisdiction.
 - Briefed hundreds of foreign delegates on the American electoral process and electronic voting.

Congressional Affairs/Policy

- Interpretive rule on travel expenses.

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