

# Record

July 2008

Federal Election Commission

Volume 34, Number 7

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## Court Cases

### Shays v. FEC (III)

On June 13, 2008, a three-judge panel of the U.S. Court of Appeals for the District of Columbia affirmed in part and reversed in part the district court's judgment in the *Shays III* case. Specifically, the appeals court agreed with the district court in finding deficient regulations regarding the content standard for coordination, the 120-day coordination window for common vendors and former campaign employees and the definitions of "GOTV activity" and "voter registration activity." The appeals court reversed the district court's decision to uphold the provision allowing federal candidates to solicit funds without restriction at state and local party events. These regulations were remanded to the FEC to issue "regulations consistent with the Act's text and purpose." The court did not vacate the regulations, so they remain in effect, pending further action. The appeals court upheld the FEC's regulations regarding the firewall safe harbor for coordination by former employees and vendors, which the district court had found deficient.

### Background

In response to the court decisions and judgment in *Shays I*, the

(continued on page 3)

## Reporting

### July Reporting Reminder

The following reports are due in July:

- All principal campaign committees of House and Senate candidates must file a quarterly report by July 15.<sup>1</sup> The report covers financial activity from April 1 (or the day after the closing date of the last report) through June 30<sup>2</sup>;
- Principal campaign committees of Presidential candidates must file a report by July 15, if they are quarterly filers (the report covers financial activity from April 1 through June 30), or by July 20, if they are monthly filers (the report covers activity for the month of June); and

(continued on page 2)

<sup>1</sup> The July Quarterly Report is waived for committees filing the Kansas, Michigan, Missouri and Oklahoma Pre-Primary Reports, the Georgia Pre-Runoff Report, the Michigan Green Party Pre-Convention Report and the Maryland 4th District Post-General Report.

<sup>2</sup> Principal campaign committees of candidates participating in a primary election taking place during the July Quarterly coverage period are also required to file a 12-Day Pre-Primary Report and will need to adjust their July Quarterly report coverage dates accordingly to avoid overlapping coverage periods.

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#### AOR 2008-05

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### Reporting

(continued from page 1)

- National party committees, political action committees (PACs) following a monthly filing schedule and state, district and local party committees that engage in reportable federal election activity must file a monthly report by July 20. This report covers activity for the month of June. Other PACs and party committees must file a quarterly report by July 15, covering April 1 through June 30.

#### Notification of Filing Deadlines

In addition to publishing this article, the Commission notifies committees of filing deadlines on its web site, via its automated Faxline and through reporting reminders called prior notices. Since January 1, 2007, prior notices have been distributed exclusively by electronic mail. They are no longer sent to committees via U.S. mail. See [December 2006 Record](#), page 1. For that reason, it is important that every committee update its Statement of Organization (FEC Form 1) to disclose a current e-mail address. To amend Form 1, electronic filers must submit Form 1 filled out in its entirety. Paper filers should include only the committee's name, address, FEC identification number and the updated or changed portions of the form.

#### Treasurer's Responsibilities

The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

Please note that filing deadlines are not extended in cases where the filing deadline falls on a weekend or federal holiday. Accordingly,

reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received by the Commission's (or the Secretary of the Senate's) close of business on the last business day before the deadline.

#### Filing Electronically

Under the Commission's mandatory electronic filing regulations, individuals and organizations that receive contributions or make expenditures, including independent expenditures,<sup>3</sup> in excess of \$50,000 in a calendar year—or have reason to expect to do so—must file all reports and statements with the FEC electronically. Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the applicable filing deadline. Electronic filers who instead file on paper or submit an electronic report that does not pass the Commission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

Senate committees and other committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules.

The Commission's electronic filing software, FECFile, is free and can be downloaded from the FEC's web site. New FECFile Version 6.2.1.0 is available for download from the FEC web site at <http://www.fec.gov/electfil/updatelist.html>. See page 3. All reports filed after June 9, 2008, must be filed in Format Version 6.2 (the new

<sup>3</sup> The regulation covers individuals and organizations required to file reports of contributions and/or expenditures with the Commission, including any person making an independent expenditure. Disbursements for "electioneering communications" do not count toward the \$50,000 threshold for mandatory electronic filing. 11 CFR 104.18(a).

version). Reports filed in previous formats will not be accepted.

Filers may also use commercial or privately developed software as long as the software meets the Commission's format specifications, which are available on the Commission's web site. Committees using commercial software should contact their vendors for more information about the Commission's latest software release.

### Timely Filing for Paper Filers

#### *Registered and Certified Mail.*

Reports sent by registered or certified mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by certified or registered mail should keep its mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by certified mail.

*Overnight Mail.* Reports filed via overnight mail<sup>4</sup> will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. A committee sending its reports by Express or Priority Mail, or by an overnight delivery service, should keep its proof of mailing or other means of transmittal of its reports.

*Other Means of Filing.* Reports sent by other means—including first class mail and courier—must be received by the FEC before the Commission's close of business on the filing deadline. 2 U.S.C. §434(a)(5) and 11 CFR 104.5(e).

Paper forms are available at the FEC's web site (<http://www.fec.gov/info/forms.shtml>) and from FEC Faxline, the agency's automated fax system (202/501-3413). The 2008 Reporting Schedule is

<sup>4</sup> "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

also available on the FEC's web site ([http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml)), and from Faxline.

For more information on reporting, call the FEC at 800/424-9530 or 202/694-1100.

### Filing Frequency for Party Committees

National committees of political parties must file on a monthly schedule in all years. 11 CFR 104.5(c)(4).

State, district and local party committees that engage in reportable federal election activity must automatically switch to a monthly filing schedule. Once a committee triggers the monthly filing requirement, a committee must file the next regularly scheduled monthly report and must continue to file monthly for the remainder of the calendar year.

### Political Action Committees

PACs (separate segregated funds and nonconnected committees) may file on either a quarterly or monthly basis in election years. A committee may change its filing frequency only once a year. After giving notice of change in filing frequency to the Commission and receiving the Commission's approval, all future reports must follow the new filing frequency. 11 CFR 104.5(c).

### Additional Information

For more information on 2008 reporting dates:

- See the reporting tables in the [January 2008 Record](#);
- Call and request the reporting tables from the FEC at 800/424-9530 or 202/694-1100;
- Fax the reporting tables to yourself using the FEC's Faxline (202/501-3413, document 586); or
- Visit the FEC's web page at [http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml) to view the reporting tables online.

—Elizabeth Kurland

## Court Cases

(continued from page 1)

FEC held rulemaking proceedings during 2005 and 2006 to revise a number of its Bipartisan Campaign Reform Act (BCRA) regulations. On July 11, 2006, U.S. Representative Christopher Shays and then-Representative Martin Meehan (the plaintiffs) filed another complaint in district court. The complaint challenged the FEC's recent revisions to, or expanded explanations for, regulations governing coordinated communications, federal election activity (FEA) and solicitations by federal candidates and officehold-

(continued on page 4)

## FEC Updates Electronic Format and FECFile Filing Software

The Commission has updated its electronic filing format to Version 6.2. On June 9, 2008, FECFile Version 6.2.1.0, supported by the new format, became available for download from the FEC web site at <http://www.fec.gov/elecfil/updates.html>. The new format reflects the recent updates to the paper versions of FEC Form 1 (Statement of Organization) and Form 9 (24 Hour Notice of Disbursements for Electioneering Communications) and improves functionality. A list of the changes to the software format is available at that link as well. Committees using commercial software should contact their vendors for more information about the latest software release.

Please note that, for electronic filers, any report filed after June 9, 2008, must be filed in Format Version 6.2 (the new version). Reports filed in previous formats will not be accepted. Thus, for example, all electronic filers must file their 2008 July Quarterly reports in Format Version 6.2.

## Court Cases

(continued from page 3)

ers at state party fundraising events. The plaintiffs claimed that the rules did not comply with the court's judgment in *Shays I* or with the BCRA. The complaint also alleged the FEC did not adequately explain and justify its actions.

On September 12, 2007, the district court granted in part and denied in part the parties' motions for summary judgment in this case. The court remanded to the FEC a number of regulations implementing the BCRA, including:

- The revised coordinated communications content standard at 11 CFR 109.21(c)(4);
- The 120-day window for coordination through common vendors and former employees under the conduct standard at 11 CFR 109.21(d)(4) and (d)(5);
- The safe harbor from the definition of "coordinated communication" for a common vendor, former employee, or political committee that establishes a "firewall" (11 CFR 109.21(h)(1) and (h)(2)); and
- The definitions of "voter registration activity" and "get-out-the-vote activity" (GOTV) at 11 CFR 100.24(a)(2)-(a)(3).

On October 16, 2007, the Commission filed a Notice of Appeal seeking appellate review of all of the adverse rulings issued by the district court. On October 23, 2007, Representative Shays cross-appealed the district court's judgment insofar as it denied the plaintiff's "claims or requested relief."

### Appeals Court Decision

The appellate court upheld the majority of the district court's decision, including the remand of the content standard for coordination, the 120-day common vendor coordination time period and the definitions of GOTV activity and voter registration activity. While the

district court had held the firewall safe harbor for coordination by former employees and vendors invalid, the court of appeals reversed the district court and upheld the safe harbor provision. The court of appeals reversed the district court's decision to uphold the provision permitting federal candidates to solicit funds without restriction at state or local party events.

*Coordination Content Standard.* The court of appeals held that, while the Commission's decision to regulate ads more strictly within the 90- and 120-day periods was "perfectly reasonable," the decision to regulate ads outside of the time period only if they republish campaign material or contain express advocacy was unacceptable. Although the vast majority of communications are run within the time periods and are thus subject to regulation as coordinated communications, the court held that the current regulation allows "soft money" to be used to make election-influencing communications outside of the time periods, thus frustrating the purpose of the BCRA. The appellate court remanded the regulations to the Commission to draft new regulations concerning the content standard.

*Coordination by Common Vendors and Former Employees.* The appellate court affirmed the district court's decision concerning the 120-day prohibition on the use of material information about "campaign plans, projects, activities and needs" by vendors or former employees of a campaign. The court held that some material could retain its usefulness for more than 120 days and also that the Commission did not sufficiently support its decision to use 120 days as the acceptable time period after which coordination would not occur.

*Firewall Safe Harbor.* Contrary to the decision of the district court, the court of appeals approved the firewall safe harbor regulation to

stand as written. The safe harbor is designed to protect vendors and organizations in which some employees are working on a candidate's campaign and others are working for outside organizations making independent expenditures. The appellate court held that, although the firewall provision states generally as to what the firewall should actually look like, the court deferred to the Commission's decision to allow organizations to create functional firewalls that are best adapted to the particular organizations' unique structures.

*Definitions of GOTV and Voter Registration Activity.* The court of appeals upheld the district court's decision to remand the definitions of "GOTV" and "voter registration activity." The court held that the definitions impermissibly required "individualized" assistance directed towards voters and thus continued to allow the use of soft money to influence federal elections, contrary to Congress' intent.

*Solicitations by federal candidates at state party fundraisers.* While the district court had upheld the regulation permitting federal candidates and officeholders to speak without restriction at state party fundraisers, the court of appeals disagreed. The court stated that Congress did not explicitly state that federal candidates could raise soft money at state party fundraisers; rather, Congress permitted the federal candidates to "appear, speak, or be a featured guest." Congress set forth several exceptions to the ban on federal candidates raising soft money, and state party events were not included in the exceptions. Thus, the court found the regulation impermissible.

U.S. District Court of Appeals for the District of Columbia Circuit, 07-5360.

—Meredith Metzler

## Statistics

### Party Activity Summary through April 2008

From January 1, 2007, through April 30, 2008, receipts of the national committees of the Democratic party increased significantly while receipts of Republican national committees declined over the same period, when compared with earlier election cycles. Republican committees still raised more overall than their Democratic counterparts, though the gap is smaller now than in previous years.

The three national committees of the Democratic party (the Democratic National Committee (DNC), the Democratic Senatorial Campaign Committee (DSCC) and the Democratic Congressional Campaign Committee (DCCC)) reported raising a total of \$247 million during this period, an increase of 24 percent over a similar period in 2006, and 45 percent more than during the first 16 months of the 2004 election cycle. The three Republican national party committees (the Republican National Committee (RNC), the National Republican

Senatorial Committee (NRSC) and the National Republican Congressional Committee (NRCC)) reported raising \$260.4 million during the same period. This represents decreases of 11 percent from 2006 and 19 percent from 2004 totals.

The DSCC and DCCC reported substantial gains, while total receipts declined slightly for the DNC. The highest growth came from the DCCC, whose \$92.9 million in receipts through April 30, 2008, represented a 53 percent increase over 2006 levels. This total was \$23.6 million more than the NRCC raised during the same period.

Each of the Republican party's national committees reported revenue declines when compared to prior cycles. The RNC raised \$143.3 million from January 2007 through April 2008, down 5 percent from 2006. The \$47.9 million raised by the NRSC represented a decline of 11 percent, while the NRCC raised \$69.3 million, down 21 percent from 2006.

The RNC has reported improved fundraising recently with receipts totaling \$57.6 million during just the first four months of this year,

### New Campaign Guide Available

The 2008 *Campaign Guide for Congressional Candidates and Committees* is now available on the Commission web site at <http://www.fec.gov/info/publications.shtml>. Paper copies will be available by August 2008.

For each type of committee, a *Campaign Guide* explains, in clear English, the complex regulations regarding the activity of political committees. It shows readers, for example, how to fill out FEC reports and illustrates how the law applies to practical situations.

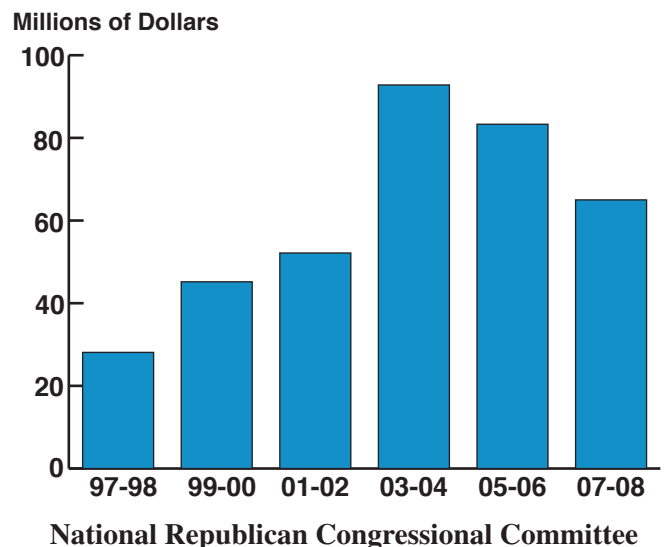
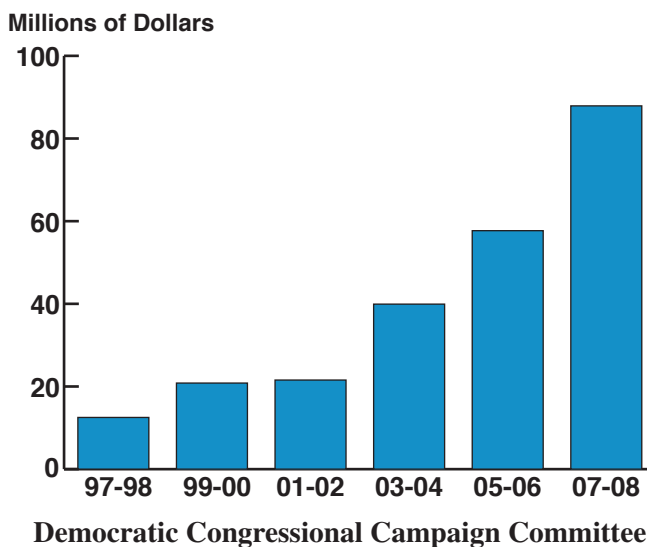
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\$11.8 million more than it raised from January through April of 2006. DNC receipts in the first four months of 2008 totaled \$22.8 million, \$700,000 less than its tally in the same months of 2006.

Additional information for state and local party committees that file

*(continued on page 6)*

### National Congressional Committee Fundraising from January 1 of Non-Election Year Through March 31 of Election Year



**Statistics**

(continued from page 5)

with the Commission is available through March 31, 2008.<sup>1</sup> Democratic party committees at all levels reported significant increases in receipts during this period, while overall Republican party receipts declined from 2006. Democratic party committees reported receipts of \$274.9 million from January 1, 2007, through March 31, 2008. This represented an increase of 24 percent over a similar period in 2004 and was 52 percent higher than the total raised through March of 2004, the most recent Presidential campaign cycle. Contributions to Republican committees totaled \$287.6 million in the same period, a decline of 14 percent compared with 2006 and 17 percent lower than Republican party fundraising in the first 15 months of the 2004 Presidential campaign.

Individuals are by far the largest source of federal funds for party committees. Republican committees

<sup>1</sup> Some state and local party committees are permitted to file reports on a quarterly basis, so the most current information for them covers only through March 31, 2008.

reported receiving \$246.3 million from individuals (86 percent of their receipts), while Democrats received \$210.5 million (77 percent of their total).

The Bipartisan Campaign Reform Act (BCRA) changed contribution limits, increasing the limit for individuals giving to national parties to \$25,000, adjusted for inflation. The inflation-adjusted limit for the 2007-2008 election cycle is \$28,500. All national committees, except the DSCC, continue to receive more dollars from contributions in amounts less than \$200 than from contributions in any other category.

Political action committees (PACs) and other committees contributed \$30.2 million to Republican party committees and \$49.4 million to Democratic party committees in 2007-2008. Much of this total comes from House Democrats who contributed \$22.5 million from their campaign accounts to the DCCC. House Republicans contributed \$11.6 million to the NRCC.

Additional information is available in a Press Release dated June 9, 2008. The release, which is available on the FEC web site at <http://www.fec.gov/press/press2008/200>

[80609party/20080609party.shtml](http://80609party/20080609party.shtml), provides summary data tables for the financial activities of the two major political parties from January 1, 2007, to April 30, 2008, and comparisons for the same period in previous election cycles. National committees of the major parties are required to submit financial reports on a monthly basis.

—Meredith Metzler

**Nonfilers**

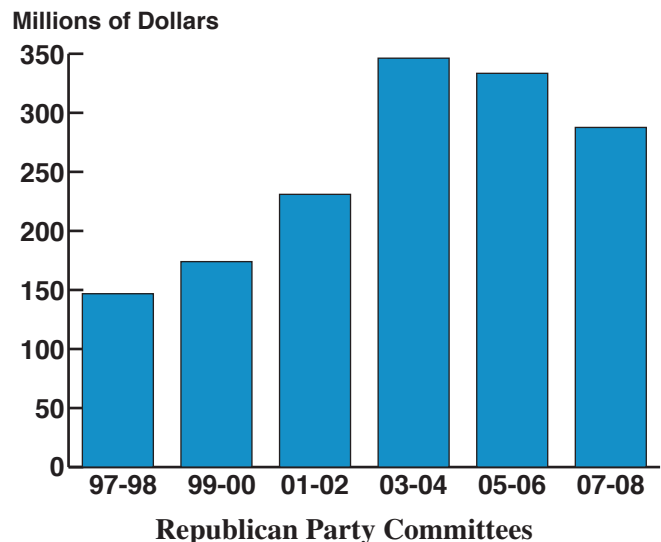
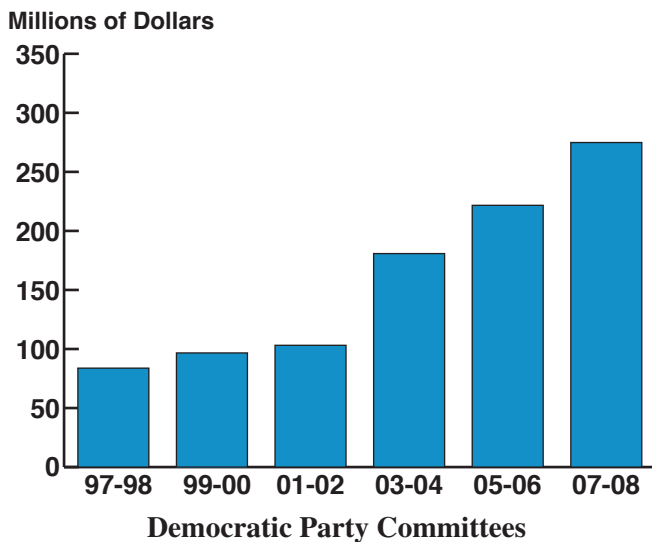
**Congressional Committees Fail to File Reports**

The following principal campaign committees failed to file required 12 Day Pre-Primary reports:

- Swanson for U.S. Senate Committee (AL);
- Pat Meagher for Congress (CA/41); and
- McMurry for Congress (CA/12).

The 12 Day Pre-Primary reports for the June 3, 2008, Alabama and California primary elections were due on May 22, 2008. The Commission notified committees of their filing obligations prior to the reporting

**Total Federal Receipts by Party Committees (National, State and Local) from January 1 of Non-Election Year through March 31 of Election Year**



deadline. Committees that failed to file the required reports were subsequently notified that their reports had not been received and that their names would be published if they did not respond within four business days.

The Federal Election Campaign Act requires the Commission to publish the names of principal campaign committees if they fail to file election-sensitive reports. 2 U.S.C. §437g(b). The agency may also pursue enforcement actions against nonfilers and late filers on a case-by-case basis.

—*Meredith Metzler*

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