

Record

June 2008

Federal Election Commission

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Court Cases

Shays v. FEC (III)

On April 11, 2008, the U.S. District Court for the District of Columbia denied the plaintiff's "motion to enforce" the court's earlier final judgment in the *Shays III* litigation.

Background

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

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Reporting

Maryland Special Election Reporting: 4th District

The Special General Election to fill the U.S. House seat in Maryland's 4th Congressional District being vacated by Representative Albert R. Wynn will be June 17, 2008.

Candidate committees involved in this election must follow the reporting schedule on page 5. Please note that the reporting period for the Post-General report spans two election cycles. For this report only, authorized committees must use the Post-Election Detailed Summary Page rather than the normal Detailed Summary Page.

PACs and party committees that file on a quarterly schedule and participate in this election must also follow this schedule. PACs and party committees that file monthly should continue to file according to their regular filing schedule.

Filing 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 Com-

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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 "fire-wall" (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).

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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."

Court Decision

On November 7, 2007, Representative Christopher Shays (the plaintiff) filed a Motion to Enforce the court's September 12, 2007, judgment that remanded certain regulations to the FEC for further action. In its September 12, 2007, Memorandum Opinion, the court expressly denied the plaintiff's requests that the court enjoin the operation of the regulations, order the Commission to commence expedited rulemaking proceedings and adopt interim regulations, and retain jurisdiction over the matter to ensure the FEC's timely and sufficient compliance with the court's decision. In doing so, the court noted that under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court's inquiry is at an end; the case must be remanded to the agency for further action consistent with corrected legal standards. While the court noted its assumption that "on remand, the Commission would act promptly, in light of the impending 2008 elections," ultimately it is up to the agency to determine how to proceed next, not for the court to decide or monitor. Therefore, the court concluded that it has no authority to grant the relief plaintiff sought in his Motion to Enforce.

The court also found that the record provides no basis for granting plaintiff's relief. The court noted that the FEC's Response to plaintiff's Motion to Enforce indicates that the Commission is currently undertaking the very steps

Federal Register

Federal Register notices are available from the FEC's Public Records Office, on the web site at http://www.fec.gov/law/law_rulemakings.shtml and from the FEC Faxline, 202/501-3413.

Notice 2008-7

Filing Dates for the Maryland Special Election in the 4th Congressional District (73 FR 24983, May 6, 2008)

that the court previously required it to undertake pending the appeal in *Shays I*, and the Commission is aware that it "must take significant steps during the appeal to prepare for possible new regulations." In its Response, the Commission also highlighted competing priorities, including three major rulemakings necessitated by acts of Congress and a Supreme Court case, which preclude it from undertaking the type of immediate action plaintiff seeks. The court held that it "is in no position to grant the relief Plaintiff seeks, i.e., to essentially reorder the FEC's priorities." Given the fact that oral arguments on the FEC's appeal of the September 12th judgment were scheduled for May 5, 2008, the court stated that in "the present posture, ... the Court lacks both a reason for and the authority to order the FEC to comply with any particular timetable in taking 'significant steps' so that it will 'have new, fully compliant regulations ready for immediate implementation after the expiration of its appeals process.'"

—Amy Pike

New Litigation

Democratic National Committee v. FEC

On April 14, 2008, the Democratic National Committee (DNC) and the DNC Services Corporation filed a complaint in the U.S. District Court for the District of Columbia alleging that, since the Commission does not have the four commissioners needed to take certain actions on an administrative complaint filed by the DNC, the court should authorize the plaintiffs to act in the place of the Commission to pursue resolution of the complaint in court. The court dismissed the complaint on May 14, finding that, under the Federal Election Campaign Act (the Act), a party may only file such a complaint after the expiration of the statutorily mandated 120-day period. See 2 U.S.C. §437g(a)(8)(A).

Background

According to the court complaint, the DNC filed an administrative complaint with the Commission on February 25, 2008, alleging that Senator John McCain and his Presidential campaign violated the Presidential Primary Matching Payment Account Act (the Matching Payment Act). The DNC alleged that Senator McCain's campaign entered into a binding agreement with the Commission for the receipt of primary matching funds. Senator McCain subsequently informed the Commission that he was withdrawing from the Matching Payment Act Program, but the DNC alleged that his purported withdrawal violated the Matching Payment Act. The DNC alleged that Senator McCain had pledged the matching funds as collateral for a bank loan and thus may not withdraw from the program.

The Act provides that the Commission has 120 days from receipt

of an administrative complaint before a complainant can file suit against the Commission alleging a failure to act, and 30 days to comply with any subsequent court declaration that the Commission has unlawfully failed to act. However, because the Commission has only two members at this time and four affirmative votes are required to take certain actions in handling an administrative complaint, the DNC's lawsuit claimed that the Commission will not be able to act on its complaint in a timely manner, and thus the court should grant the DNC the right to pursue enforcement of the Act in court against Senator McCain and his committee.

Complaint

The DNC asked the court to:

- Declare that the Commission's alleged failure to act on the DNC's administrative complaint is contrary to law; and,
- Enter an order finding that it would be futile to direct the Commission to comply with the law within 30 days and authorizing the plaintiffs to bring a civil action against the McCain campaign to remedy the alleged violations.

Order to Show Cause

The Commission filed a statement with the court suggesting that the court had an independent obligation to determine whether the court had jurisdiction over the case.

On May 2, 2008, the District Court issued an Order to Show Cause, directing the DNC to explain why the court should not dismiss the DNC's complaint for being filed before the 120-day period had expired. In response, the DNC argued that the 120-day rule does not prohibit the filing of a court complaint, but only prohibits the court from acting on a complaint within the first 120 days after an administrative complaint is

Enforcement Query System Available on FEC Web Site

The FEC continues to update and expand its Enforcement Query System (EQS), a web-based search tool that allows users to find and examine public documents regarding closed Commission enforcement matters. Using current scanning, optical character recognition and text search technologies, the system permits intuitive and flexible searches of case documents and other materials.

Users of the system can search for specific words or phrases from the text of all public case documents. They can also identify single matters under review (MURs) or groups of cases by searching additional identifying information about cases prepared as part of the Case Management System. Included among these criteria are case names and numbers, complainants and respondents, timeframes, dispositions, legal issues and penalty amounts. The Enforcement Query System may be accessed on the Commission's web site at <http://www.fec.gov>.

Currently, the EQS contains complete public case files for all MURs closed since January 1, 1999. In addition to adding all cases closed subsequently, staff is working to add cases closed prior to 1999. Within the past year, Alternative Dispute Resolution (ADR) cases were added to the system. All cases closed since the ADR program's October 2000 inception can be accessed through the system.

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Court Cases

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filed. Additionally, the DNC argued that the 120-day jurisdictional limit should not apply because the Commission lacks a quorum to initiate an investigation.

Court Decision

On May 14, 2008, the District Court dismissed the DNC's complaint without prejudice. The court held that it lacked jurisdiction to hear the case because the plain text of the Act allows a party to file a petition with a court only after the expiration of the 120-day period. See 2 U.S.C. §437g(a)(8)(A). The court also observed that the Commission could reach a quorum within the 120-day period.

U.S. District Court for the District of Columbia, 08-cv-00639.

—Meredith Metzler

Commission Calendar Always Up-to-Date

Between issues of the *Record*, you can stay up-to-date on the latest FEC activity by visiting the Commission Calendar on our web site at <http://www.fec.gov/calendar/calendar.shtml>. The Calendar lists Commission meetings, reporting deadlines, conferences and outreach events, advisory opinion and rulemaking comment periods and other useful information. Each calendar entry links directly to the relevant documents, so you can quickly access detailed information on the subjects that interest you.

While you're visiting www.fec.gov, be sure to explore the rest of our site to review the latest campaign finance reports and data, research enforcement actions and litigation, read press releases and get help complying with the law. Visit today and add our site to your favorites.

Reporting

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mission's validation program by the filing deadline will be considered nonfilers and may be subject to enforcement actions, including administrative fines.

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 mail¹ 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). Forms are available for downloading and printing 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).

48-Hour Contribution Notices

Note that 48-hour notices are required of the participating candi-

¹ "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.

date's principal campaign committee if it receives any contribution of \$1,000 or more per source between May 29 and June 14, 2008, for the Special General Election.

24- and 48-Hour Reports of Independent Expenditures

Political committees and other persons must file 24-hour reports of independent expenditures that aggregate at or above \$1,000 between May 29 and June 15, 2008, for the Special General Election. This requirement is in addition to that of filing 48-hour reports of independent expenditures that aggregate \$10,000 or more at other times during a calendar year.

Electioneering Communications

The 60-day electioneering communications period in connection with the Special General Election runs from April 18 through June 17, 2008.

—Elizabeth Kurland

Advisory Opinions

AO 2008-2 Eligibility for Candidate Salary Payments

The Commission released for public comment, but did not approve, a draft advisory opinion concerning a campaign's payment of a candidate salary, when the candidate had no earned income during the year prior to becoming a candidate. The two members of the Commission discussed the draft advisory opinion and voted 2-0 on a motion to approve the draft. The Commission was unable to render an opinion in this matter, as issuance of an advisory opinion requires the affirmative vote of four members of the Commission.

Legislation

House Delegate for Northern Mariana Islands

On May 8, 2008, President Bush signed into law Senate Bill 2739, the Consolidated Natural Resources Act of 2008 (CNRA). Section 711 of the CNRA gives the Commonwealth of the Northern Mariana Islands a “Resident Representative” to serve as a nonvoting Delegate to the U.S. House of Representatives. According to section 712, the first Delegate shall be elected during the 2008 general election and take office on January 3, 2009.

The Delegate from the Commonwealth of the Northern Mariana Islands will join five other nonvoting Delegates in the U.S. House of Representatives, including American Samoa, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands.

—Meredith Metzler

Campaign Guides Available

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.

The FEC publishes four *Campaign Guides*, each for a different type of committee, and we are happy to mail your committee as many copies as you need, free of charge. We encourage you to view them on our web site <http://www.fec.gov>.

If you would like to place an order for paper copies of the *Campaign Guides*, please call the Information Division at 800/424-9530.

Maryland 4th District Special Election Reporting

Committees Involved in the Special General Must File:

	Close of Books ¹	Reg./Cert./Overnight Mailing Deadline	Filing Deadline
Pre-General	May 28	June 2	June 5
July Quarterly		—waived—	
Post-General	July 7	July 17	July 17
October Quarterly	September 30	October 15	October 15

¹ This date indicates the end of a reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

Nonfilers

Congressional Committees Fail to File Reports

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

- Michael J Kelley for Congress (KY/4);
- Andrew Horne for US Senate (KY); and
- Joe Walsh for Congress (OR/3).

The 12 Day Pre-Primary reports for the May 20, 2008, Kentucky and Oregon primary elections were due on May 8, 2008. The Commission notified committees of their filing obligations prior to the reporting 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

Web Site

Enhanced Presidential Campaign Finance Map

The Commission has introduced a new and improved version of its Presidential Campaign Finance map on the FEC web site (<http://www.fec.gov>). The map now includes detailed information on each candidate’s campaign expenditures. It also provides a number of enhanced viewing and searching options for information about campaign contributors. The upgraded map is an easy-to-use online tool for obtaining detailed information about the Presidential campaigns and how they spend their money, including the payee name, purpose, date and amount of each campaign expenditure. These improved features were included on similar maps for U.S.

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Web Site

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House and Senate campaigns that were added to the FEC web site late last year.

Introduced in June 2007, the FEC's Presidential Campaign Finance map has provided information about each candidate's state-by-state contribution totals, along with a list of contributors sorted by the first three digits of the donor's zip code. The latest changes make it easier to view contributions from individual states and to download this information into a spreadsheet.

Additional map features include graphs and charts that summarize each candidate's campaign finance information. These displays can be used to compare each candidate's cash-on-hand totals, receipts, disbursements and debt balance.

The Presidential Campaign Finance Map is updated within one day of the FEC's receipt of the monthly electronically filed Presidential campaign financial disclosure reports.

For more information about the interactive map, contact the FEC Press Office at 202-694-1220 or press@fec.gov.

—Meredith Metzler

Need FEC Material in a Hurry?

Use [FEC Faxline](#) to obtain FEC material fast. It operates 24 hours a day, 7 days a week. Hundreds of FEC documents—reporting forms, brochures, FEC regulations—can be faxed almost immediately.

Use a touch tone phone to dial 202/501-3413 and follow the instructions. To order a complete menu of Faxline documents, enter document number 411 at the prompt.

Outreach

June 23-24 Conference for Trade Associations, Membership Organizations and Labor Organizations

The Commission will hold a conference for trade associations, membership organizations and labor organizations on June 23-24, 2008, at the Embassy Suites Convention Center hotel in Washington, DC. At the conferences, Commissioners and staff conduct a variety of technical workshops on federal campaign finance law designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law.

Attendees are responsible for making their own hotel reservations. Call 202-739-2001 or 1-800-EMBASSY and identify yourself as attending the Federal Election Commission conference. To make hotel reservations online, visit <http://embassysuites.hilton.com/en/es/groups/personalized/WASCCES-FEC-20080622/index.jhtml>. The hotel will also charge the prevailing sales tax, currently 14.5%. Valet parking is available for \$32.50 per night. The hotel is walking distance from Metro subway (Metro Center station); public transportation is recommended. (Note: Please do not finalize your travel reservations until you have received confirmation of your registration for the conference from our contractor, Sylvester Management Corporation.)

For additional information, please visit the conference web site at <http://www.fec.gov/info/conferences/2008/tradememberlabor08.shtml>.

For More Information

Please direct all questions about the June conference registration and fees to Sylvester Management Corporation at 1-800/246-7277 or by e-mail to tonis@sylvestermanagement.com. For all questions

about the conference program, or to receive e-mail notification of upcoming conferences and workshops, call the FEC's Information Division at 1-800/424-9530 (press 6) or locally at 202/694-1100, or send an e-mail to Conferences@fec.gov.

—Dorothy Yeager

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FEC Web Site Offers Podcasts

In an effort to provide more information to the regulated community and the public, the Commission is making its open meetings and public hearings available as audio recordings through the FEC web site, as well as by podcasts. The audio files, and directions on how to subscribe to the podcasts are available under *Audio Recordings* through the *Commission Meetings* tab at <http://www.fec.gov>.

The audio files are divided into tracks corresponding to each portion of the agenda for ease of use. To listen to the open meeting without subscribing to the podcasts, click the icon next to each agenda item. Although the service is free, anyone interested in listening to podcasts must download the appropriate software listed on the web site. Podcast subscribers will automatically receive the files as soon as they become available—typically a day or two after the meeting.

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