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NEWSLETTER

FEC Issues Interim Rule and NPRM after *Emily's List* Case: Does This Portend the Return of the 527?

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On December 29, 2009, the Federal Election Commission (FEC) published a Notice of Proposed Rulemaking and an Interim Final Rule in order to implement the September 18, 2009, decision of the United States Court of Appeals for the D.C. Circuit in *Emily's List v. FEC*. That decision invalidated regulatory provisions promulgated by the FEC in a previous attempt to rein in the fundraising and spending of so-called 527 political organizations (*e.g.*, Swift Boat Veterans for Truth) that operated beyond the regulatory reach of the FEC during the 2004 election cycle.

The regulations that were struck down in the case included 11 C.F.R. § 100.57, which brought within the FEC's regulatory framework any organization that received funds in response to a solicitation indicating that the funds would be used to support or oppose a federal candidate. Portions of 11 C.F.R. § 106.6 dealing with the allocation of funds between federal political committees and related 527 organizations also were struck down.

The FEC's Notice of Proposed Rulemaking is, for the most part, a ministerial prerequisite to permanently removing these regulatory provisions from the Code of Federal Regulations. Accordingly, the proceedings themselves will not likely result in any significant developments. Rather, the removal of the regulations, coupled with recent FEC decisions not to take action in enforcement proceedings against various 527 organizations, could provide the legal foundation for a reemergence of 527 organizations in the 2010 election cycle.

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The FEC's Interim Final Rule and Notice of Proposed Rulemaking are available at http://www.fec.gov/law/ law_rulemakings.shtml#emilyslistrepeal. Comments to the Notice of Proposed Rulemaking are due by January 28, 2010.