



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1984-63

of

COMMISSIONERS THOMAS E. HARRIS and DANNY L. McDONALD

We agree with the conclusion that persons who have deposits with Amerifirst, i.e., holders of savings, or demand notes, satisfy the legal qualifications for being treated as "members." Such persons are analogous to stockholders in a corporation in that they have committed a minimum amount of funds to the organization (here \$100), and they have significant participatory rights that correspond to the relative size of that commitment (one vote for every \$100 deposited).

We do not agree, however, that persons who have loans from Amerifirst are "members" within the meaning of the Act and regulations. These persons may exercise but one vote, regardless of the size of their borrowing (or interest payments). Thus, their voting power is greatly diminished when compared to that of depositors of \$200 or more.

In addition, the financial commitment by these persons, i.e., the principal and interest paid to Amerifirst, is merely a reimbursement for valuable consideration received. It is nothing more than a commercial transaction, a payment for a debt owed. The financial attachment of a borrower is thus analogous to that of a person to whom a corporation extends credit. Certainly, the latter does not qualify as a member or stockholder of the corporation.

There are yet other indications that Amerifirst borrowers do not have participatory rights comparable to depositors. First, only members who hold the capital of Amerifirst may call a special meeting of the association, 2 of the Bylaws, and this obviously does not apply to borrowers. Second, and contrary to the implication of the opinion drafted by the General Counsel, borrowers do not receive any share of the assets of the association upon dissolution; only holders of accounts do. 8 of the Charter. Third, it appears that borrowers are not entitled to distributions of net earnings, unlike depositors. */

In sum, we believe that persons who borrow from Amerifirst do not have the "relatively enduring and independently significant financial or organizational attachment" that is required under the law. *FEC v. National Right to Work Committee*, 459 U.S. 197,

204 (1982). Accordingly, absent qualification as a member in some other way, such persons would not be solicitable by Amerifirst.

*/ The draft opinion prepared by the General Counsel was totally devoid of any reference to the differences between depositors and borrowers, aside from the difference in voting strength. These distinctions plainly have legal significance and, should have been set forth and analyzed, rather than obscured.