

# Record

April 1994

Federal Election Commission

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## Regulations

### Revised "Best Efforts" Rules Now Effective

March 3 was the effective date of revised "best efforts" regulations on the identification of contributors. A committee's reports will be considered to be in compliance with the Federal Election Campaign Act (the Act) when the treasurer can show that "best efforts" were used to obtain, maintain and submit required information. 2 U.S.C. §432(i).

The revised regulations specify what steps must be taken to satisfy the "best efforts" standard for obtaining, maintaining and reporting the identification of individuals whose contributions to the committee aggregate over \$200 in a calendar year. (Identification means name, mailing address, occupation and employer.) The final rules (11 CFR 104.7(b)) and their explanation and justification were published in the Federal Register on October 27, 1993 (58 FR 57725).

Under the revised rules, a committee can demonstrate "best efforts" by following the steps below.

*Request contributor identification in the initial solicitation.* The request for contributor information must appear clearly and conspicu-

ously on the response card enclosed in the solicitation and must include the following statement: "Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of \$200 in a calendar year."

*Make a follow-up request, if necessary.* Within 30 days of receiving a solicited or unsolicited contribution aggregating over \$200 but lacking required contributor information, the committee must make a written or oral request for the missing information. The request may not include an additional solicitation or material on another subject but may thank the contributor for the contribution. A written request must include a pre-addressed card or envelope for the response.

*Report the information.* Note that treasurers are required to report information that is not provided by the contributor but that is available in the committee's records for the two-year cycle, including its contributor and fundraising records as well as its previous reports.

*File amendments to disclose previously missing information.* If contributor information does not become available until after the contributions have been reported, the treasurer must either:

*(continued on page 2)*

## Regulations

(continued from page 1)

- Submit with the next report a memo Schedule A amendment showing the additional information received during that reporting period; or
- File amendments to previous reports that itemized the original contributions. The amendments must be filed on or before the next reporting date.

Under either option, the new information should be cross referenced to the previous report where the contribution was originally itemized. Amended information is required only for contributions received during the current two-year election cycle. ♦

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## Comments Sought on Rules Governing National Voter Registration Form

The Commission seeks comments on proposed rules describing the content and format of a national mail-in voter registration form. The creation of the form is one of the Commission's responsibilities under the National Voter Registration Act (NVRA),<sup>1</sup> which was enacted to increase the number of registered voters. The law will become effective January 2, 1995, in most states.

As an additional duty under the NVRA, the agency must submit to Congress, every two years, a report assessing the impact of the NVRA and suggesting improvements in voter registration forms and procedures. The proposed rulemaking seeks comments on the specific voter registration data that states would have to submit to the FEC in order for the agency to evaluate registration activity for the Congressional report.

The Notice of Proposed Rulemaking on the NVRA was published in the Federal Register on March 10 (59 FR 11211). The deadline for comments (which must be in writing) is April 11. They should be sent to Susan E. Propper, Assistant General Counsel, 999 E Street NW, Washington, DC 20463.

In drafting the proposed rules, the Commission considered responses to an advance rulemaking notice<sup>2</sup> as well as information on state laws and procedures compiled by the FEC's National Clearinghouse on Election Administration. ♦

<sup>1</sup> For a summary of the NVRA, see the June 1993 Record.

<sup>2</sup> See the November 1993 issue.

## Conferences

### Washington, DC, Candidate Conference Rescheduled for April 15

The February 11 candidate conference, cancelled because of a snow storm, has been rescheduled for April 15. It is open to new registrants as well as those who had registered for the cancelled conference.

The one-day conference is designed to help candidates and their campaign staff comply with the federal election law. In addition, participants will be briefed on applicable tax laws and House and Senate rules by staff from the IRS and the Congressional ethics committees. The Hatch Act will be covered by a representative from the Office of Special Counsel.

If space allows, the FEC will accept on-site registrations from 8:00-8:30 the morning of the conference. A \$10 late fee will be added to the \$105 registration fee. (The late fee will be added to all registrations received after April 1.) The conference fee covers materials, a continental breakfast and lunch.

The conference will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW, Washington, DC, 20009 (202/797-5820). To receive the \$125 per night group rate for a single room, notify the hotel that you will be attending the FEC conference.

For more information call the FEC: 800/424-9530 or 202/219-3420. ♦

## FEC to Hold Pittsburgh Regional Conference, April 28-29

The FEC will hold a regional conference at the Pittsburgh Vista Hotel on April 28-29. This is the last regional conference for the 1994 election cycle.

The 1½ day conference will feature workshops for candidates, party committees and corporate and labor PACs. The workshops will be presented by FEC Commissioners and staff and tax experts from the IRS.

The \$115 registration fee for the conference covers three meals (two continental breakfasts and a lunch) and a reception. For more information call the FEC: 800/424-9530 or 202/219-3420. ♦

## Public Funding

### LaRouche Campaign Receives Court-Ordered Public Funding

On February 17 the Commission complied with a court mandate to certify Lyndon LaRouche as eligible to receive federal matching funds. The agency certified a \$100,000 threshold payment on February 22. The campaign may request additional matching funds on April 1, 1994.

The FEC had originally denied Mr. LaRouche's request for matching funds based on his past abuses of the public funding law and his criminal convictions for mail fraud, including fraudulent fundraising.

Ruling that the FEC did not have statutory authority to deny federal funds on that basis, the U.S. Court of Appeals for the District of Columbia Circuit, on July 2, 1993, instructed the agency to certify the candidate as eligible to receive public funds.

Given the appellate court's decision and the Supreme Court's refusal to review that decision,<sup>1</sup> the Commission certified the \$100,000 payment. The agency did not certify any interest payment despite the campaign's claim that it was entitled to interest accruing since the July court decision. The FEC said that the claim was not supported by federal law or court precedent. ♦

## Audits

### FEC Releases Audit Reports on '92 Kerrey Campaign and Houston Host Committee

The Commission recently released final audit reports on two committees active in the 1992 Presidential elections: the Kerrey for President committee and the Houston Host Committee. The reports are summarized below. They are available from the FEC's Public Records Office.

#### Kerrey for President

Kerrey for President, the 1992 Presidential primary campaign of Senator Bob Kerrey, received \$2.2 million in federal matching funds. The final audit report, which was released to the public on March 3, included the Commission's initial determinations that the campaign repay to the U.S. Treasury:

- \$1,175 in outstanding committee checks never cashed by the payees; and
- \$6,762 in profits earned through overcharging the media for transportation and related services. (The committee was also required to

refund \$3,939 to the press organizations.)

The repayment amounts will become final if the campaign does not challenge them within 30 days.

In other findings, the audit report concluded that the campaign:

- Accepted \$5,238 in excessive contributions resulting from its failure to repay a staff member's advances within the required time frame;
- Failed to report required information for numerous transactions but later disclosed the missing information in amended reports; and
- Failed to adequately document about \$24,500 in disbursements but later submitted the required documentation.

#### Houston Host Committee

As the site of the 1992 Republican national convention, Houston established the host committee to encourage commerce and to project a favorable image of the city to convention participants. Unlike convention committees, host committees do not receive public funds but must undergo an FEC audit. The final audit report on the Houston Host Committee was released on January 5.

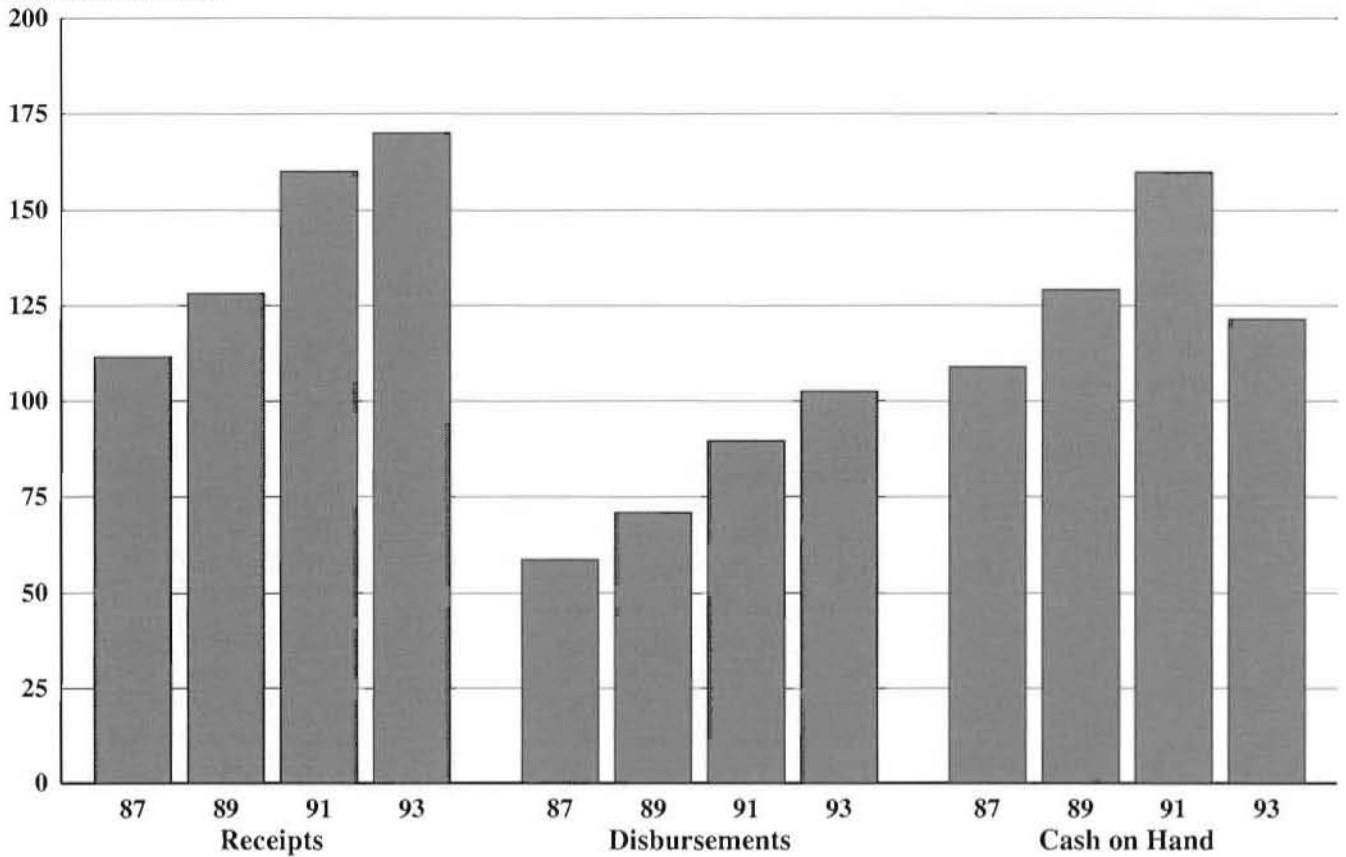
The report consisted of the following findings:

- The committee accepted apparently prohibited donations totaling \$42,680 from businesses located outside the Houston metropolitan area.
- The committee insufficiently documented in-kind donations but later demonstrated that the donations were used for permissible host committee activities.
- The committee failed to disclose about \$930,200 in debts and obligations. In February 1993, the committee filed amended reports disclosing the debts. ♦

<sup>1</sup> *LaRouche v. FEC*, 996 F.2d 1263 (D.C. Cir. 1993), cert. denied, \_\_\_ U.S. \_\_\_, 114 S.Ct. 550 (1993). See the September 1993 Record for a summary of the appellate court ruling.

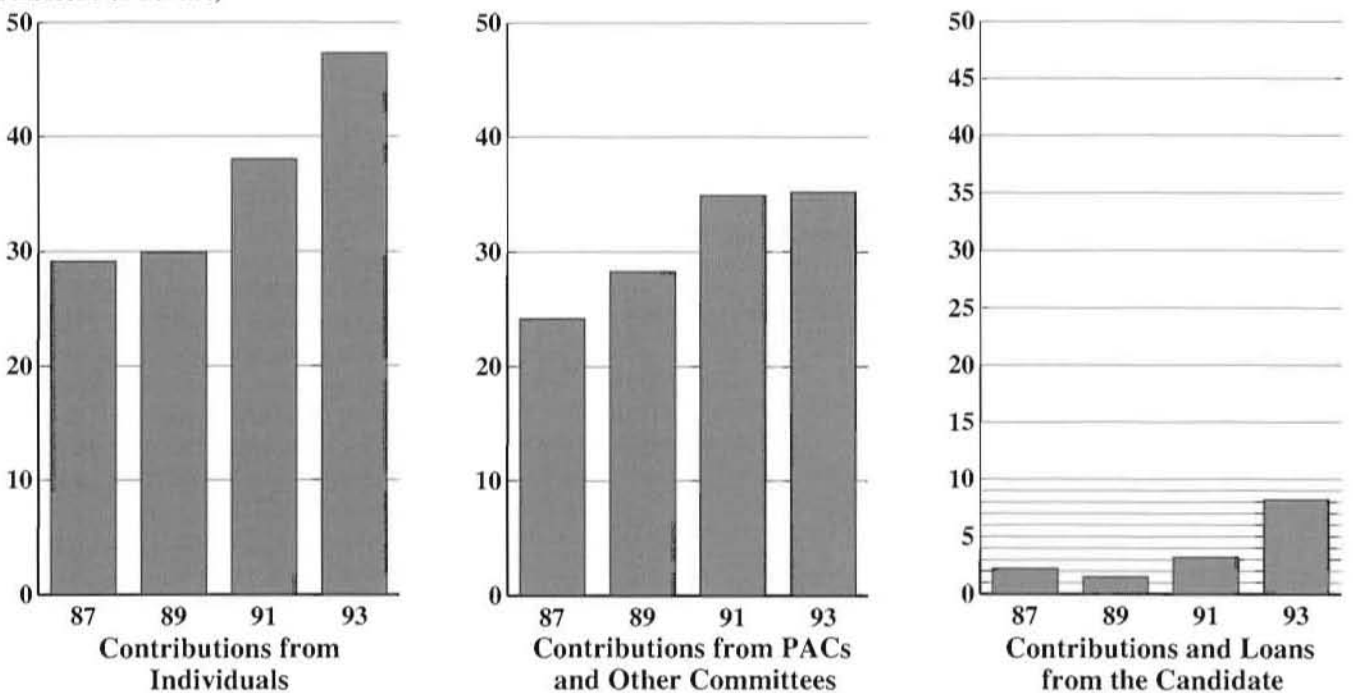
### House and Senate Campaign Activity in Year Before Election

(in millions of dollars)



### Democratic and Republican House Campaigns: Fundraising in Year Before Election

(in millions of dollars)



## Statistics

### Off-Year Election Activity Continues to Grow

During 1993, an off-election year, 1994 House and Senate campaigns raised 7 percent more and spent 15 percent more than candidates did in 1991. While these increases in early campaign finance activity have recurred in the past four cycles (see first graph), they do not necessarily mean that the growth will continue over the entire cycle.

The boost in 1993 activity follows a 40 percent growth in Congressional spending during election cycle 1992, when Congressional redistricting and incumbent departures resulted in considerably more House challengers and open-seat candidates than in previous cycles.

The departure of several Members of Congress in the 1994 election cycle has similarly created a large number of open-seat races, although the total for the cycle is expected to fall short of the 1992 total.

The small graphs compare the sources of funds raised by Democratic and Republican House and Senate candidates in off-election years. The graphs show that, in 1993, campaigns relied more heavily on contributions from individuals and from the candidate than campaigns had in previous cycles.

All the graphs are based on the February 15 FEC press release, which lists the 1993 campaign finance data of 1994 House and Senate candidates and compares that activity with past off-election years. To order the press release, call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

### 1993 Year-End PAC Count

At the end of 1993, the number of federally registered PACs had grown to 4,210, an increase of 185 PACs since the last count was taken six months ago. However, when comparing year-end 1992 and 1993 PAC counts, 1993 showed an increase of only 15 PACs.

The table below listing year-end PAC counts shows that the total number of PACs has remained relatively stable over the last 10 years, with the greatest fluctuation in 1986, when the PAC total grew by 165.

The number of PACs does not necessarily correspond with financial activity, since many registered PACs have little or no activity.

For statistics on semiannual PAC counts taken since 1975, order the FEC press release of February 11, 1994. Call 800/424-9530 (ask for Public Records) or 202/219-4140. ♦

### Year-End PAC Counts, 1984-1993

Year	Corporate	Labor	Trade/ Member/ Health	Coop- erative	Corp. w/o Capital Stock	Non- connected <sup>1</sup>	Total
1984	1,682	394	698	52	130	1,053	4,009
1985	1,710	388	695	54	142	1,003	3,992
1986	1,744	384	745	56	151	1,077	4,157
1987	1,775	364	865	59	145	957	4,165
1988	1,816	354	786	59	138	1,115	4,268
1989	1,796	349	777	59	137	1,060	4,178
1990	1,795	346	774	59	136	1,062	4,172
1991	1,738	338	742	57	136	1,083	4,094
1992	1,735	347	770	56	142	1,145	4,195
1993	1,789	337	761	56	146	1,121	4,210

<sup>1</sup> Nonconnected PACs must use their own funds to pay fundraising and administrative expenses, while the other categories of PACs have corporate or labor "connected organizations" that are permitted to pay those expenses for their PACs. On the other hand, nonconnected PACs may solicit contributions from the general public, while solicitations by corporate and labor PACs are restricted.

## Compliance

### FEC Publishes Nonfilers

The candidate committees listed below failed to file required campaign finance reports. The list is based on the FEC press releases of March 4 and March 11. The Commission is required by law to publicize the names of nonfiling authorized committees. 2 U.S.C. §438(a)(7). The agency pursues enforcement actions against nonfilers on a case-by-case basis. ♦

Candidate Committee	Office Sought	Report Not Filed
Geraldine A. Sam for U.S. Congress	House, TX/09	Pre-primary
Win Committee for Bonnie Abbott	House, TX/15	Pre-primary
Eddie Bernice Johnson for Congress	House, TX/30	Pre-primary
Citizens for Huff in Congress	House, IL/08	Pre-primary

## Reports

### Election Dates Changed in South Carolina and Florida

South Carolina and Florida recently rescheduled their elections as follows:

- *South Carolina primary*: August 9 (previously June 14);
- *South Carolina runoff*: August 23 (previously June 21);
- *Florida primary*: September 8 (previously September 6, Rosh Hashanah);
- *Florida runoff*: October 4 (no change).

The ballot access filing deadline for the South Carolina primary has been changed to June 15 (noon); there is no change to the Florida ballot access deadline (May 13, noon).

The pre-election reporting deadlines for these elections are shown in the table. For more information on 1994 reporting requirements, see the January issue or order the 1994 reporting handout (call 800/424-9530 or 202/219-3420). ♦

### Revised Reporting Dates for Florida and South Carolina Pre-Primary and Pre-Runoff Reports

	Election Day	Close of Books <sup>1</sup>	Reg./Cert. Mailing Date <sup>2</sup>	Filing Date <sup>2</sup>
South Carolina	Aug. 9 Primary	July 20	July 25	July 28
	Aug. 23 Runoff	Aug. 3	Aug. 8	Aug. 11
Florida	Sept. 8 Primary	Aug. 19	Aug. 24	Aug. 27 <sup>3</sup>
	Oct. 4 Runoff	Sept. 14	Sept. 19	Sept. 22

<sup>1</sup> The date indicates the end of the reporting period.

<sup>2</sup> Reports sent by registered or certified mail must be postmarked by the mailing date. Otherwise they must be received by the filing date.

<sup>3</sup> August 27 is a Saturday, when filing offices are closed. Florida pre-primary reports must therefore reach the federal and Florida State filing offices by Friday, August 26, unless they are sent registered or certified, in which case they must be postmarked no later than August 24.

### FEC Announces New Form for 48-Hour Notices

The Commission recently sent each registered candidate committee a copy of FEC Form 6, a new form to be used for 48-hour notices.

Candidate committees must file these special notices to disclose contributions of \$1,000 or more (including contributions and loans from the candidate) received less than 20 days, but more than 48-hours, before election day. 11 CFR 104.5.

Forty-eight hour notices must be received by the federal and state filing offices within 48-hours of the committee's receipt of the contribution. Because the treasurer's signature is not required, 48-hour notices may be faxed. (Other reports and statements, however, may not be.)

Committees are free to use Form 6 or to disclose the information in a letter. Form 6, like all FEC forms, may be photocopied to make additional blank forms. ♦

## Advisory Opinions

### AO 1993-24

#### Definition of Member

The National Rifle Association of America (NRA), an incorporated membership group, has several classes of membership, but only individuals belonging to two of those classes are considered "members" under recently revised regulations at 11 CFR 114.1(e). Only those two groups, therefore, are eligible to receive PAC solicitations and partisan communications from NRA.

#### NRA as "Membership Association"

Under the new "member" regulations, NRA qualifies as a "membership association" because it: (1) provides for members in its articles and bylaws; (2) seeks members (it distributes promotional membership materials that include an application form); and (3) acknowledges the acceptance of membership (it sends new members a membership card or certificate). 11 CFR 114.1(e)(1).

#### Definition of Member

The new regulations list the requirements necessary for persons to qualify as "members" of a membership association. Under 11 CFR 114.2(e)(2), members must affirmatively respond to the invitation to join (all NRA members appear to meet this requirement) and must satisfy one of the following three requirements:

1. Members must have some significant financial attachment to the association beyond the payment of dues (voting rights not required); or
2. They must pay regular dues and have the right to vote for at least one member of the highest governing body of the association

or for those who select at least one member of that body; or

3. They must have the right to vote for all of those on the highest governing body. 11 CFR 114.1(e)(2)(i)-(iii).

### NRA's Nonvoting Membership

Annual members<sup>1</sup> pay dues of \$20 and \$25 a year, depending on the membership class, but they lack voting rights and therefore fail to satisfy requirements 2 and 3. Nor do they meet requirement 1, since an annual membership fee does not, by itself, represent a "significant financial attachment." Consequently, they are not "members" for purposes of receiving NRA PAC solicitations and partisan communications.<sup>2</sup>

### NRA's Voting Membership

NRA's voting classes consist of two major groups: Individuals who have remained annual members more than five consecutive years; and various types of lifetime members (i.e., those who make a onetime dues payment of \$500 or more). These members have the power to vote for NRA's highest governing body, the board of directors. Because of their dues obligation and extensive voting rights, these individuals meet the definition of "member" under both requirements 2 and 3. Honorary

members, who are elected by the board to receive free lifetime memberships with full voting rights, qualify as members under requirement 3.

Date Issued: February 3, 1994; Length: 9 pages plus 4-page concurring opinion filed by Commissioner Joan D. Aikens and 22-page dissenting opinion filed by Commissioner Lee Ann Elliott. ♦

### Advisory Opinion Requests

The advisory opinion requests (AORs) listed below are available for review and comment in the FEC's Public Records Office.

#### AOR 1994-3

Company's plan to match PAC contributions with charitable donations in twice-yearly solicitation of expanded class. (Enviro-Source, Inc.; March 1, 1994; 2 pages plus 12-page attachment)

#### AOR 1994-4

Definition of member applied to organization's various membership classes. (U.S. Chamber of Commerce; March 14, 1994; 10 pages plus 43-page attachment) ♦

## Court Cases

### FEC v. NRSC (93-1612)

On February 8, 1994, the U.S. District Court for the District of Columbia ordered this case reopened. The court had dismissed the suit in November 1993, based on a recent appellate court holding that the FEC's composition was unconstitutional and that the agency therefore lacked authority to bring an enforcement action. *FEC v. NRA Political Victory Fund (NRA)*, 6 F.3d 821 (D.C. Cir. 1993).

In *NRA*, the court of appeals held that the presence of the two Con-

gressionally appointed, nonvoting Commissioners (the Secretary of the Senate and the Clerk of the House) in an independent agency violated the Constitution's separation of powers. However, based on a severability clause in the Federal Election Campaign Act (2 U.S.C. §454), the court concluded that "the unconstitutional *ex officio* membership provision can be severed" from the statute, permitting a reconstituted Commission to continue to operate.

Immediately following the *NRA* ruling, the FEC reconstituted itself as a six-member body entirely composed of Commissioners appointed by the President. To ensure uninterrupted enforcement of the law, the newly constituted agency ratified its earlier findings in enforcement cases and authorized ongoing litigation,<sup>1</sup> including *FEC v. NRSC*. (The FEC's complaint, which alleged that the National Republican Senatorial Committee exceeded the contribution limits, is summarized in the June 1993 *Record*.)

Due to the FEC's remedial actions, the district court reversed its earlier decision that *NRA* was a basis for dismissal. The remaining assertions in NRSC's motion to dismiss are now pending before the court. ♦

### New Litigation

#### FEC v. Michigan Republican State Committee

The FEC claims that the Michigan Republican State Committee, the federal account of the Michigan Republican Party, and its treasurer:

- Knowingly accepted contributions that exceeded the limits by a total
- (continued on page 8)*

<sup>1</sup> The following membership classes are annual members (about two-thirds of NRA's total membership): adult members, associate members (spouses of other members), junior members (under 21) and senior members (over 65).

<sup>2</sup> In a 1984 enforcement case (*MUR 1765*), the Commission had determined that NRA's solicitation of its nonvoting members was permissible. However, several advisory opinions issued after that decision, but years before the new regulations became law, limited solicitations to voting members only. See, for example, *Advisory Opinions 1988-38, 1987-13 and 1984-33*.

<sup>1</sup> For summary of the *NRA* decision and the FEC's response, see the December 1993 issue.

**Court Cases***(continued from page 7)*

of \$5,550, a violation of 2 U.S.C. §441a(f);

- Deposited \$35,655 in nonfederal funds transferred by the Republican National Committee, a violation of 11 CFR 102.5; and
- Spent \$8,298 in excess of the §441a(d) party expenditure limit for the party's nominee in the 1984 U.S. Senate race in Michigan, a violation of 2 U.S.C. §441a(f).

The FEC asks the court to assess a civil penalty against defendants and order them to transfer the misdeposited funds to the nonfederal account of the Michigan Republican Party. The agency also asks that the court permanently enjoin defendants from committing similar violations again.

U.S. District Court for the Western District of Michigan, Civil Action No. 5:94-CV-27, February 17, 1994. ♦

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