BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of

The John Tierney for Congress Committee
(FEC ID #C00283283) and
Roy F. Gelineau, Jr., as treasurer

SENSITIVE

Tierney for Congress
(FEC ID #C00318196) and
Roy F. Gelineau, Jr., as treasurer

MUR 4803

Michael Goldman d/b/a
Goldman Associates

H & C Service Corp. d/b/a
Hawthorne Hotel

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

This Office recommends the Commission grant requests to enter pre-probable cause conciliation with the John Tierney for Congress Committee (FED ID #C00283283), Tierney for Congress (FEC ID #C00318196), and Roy F. Gelineau, as treasurer of both committees, and take no further action and close the file with respect to respondents Michael Goldman and H & C Services Corp. d/b/a Hawthorne Hotel.

II. BACKGROUND

John Tierney for Congress (FEC ID #C00283283, referred to herein as "the first committee") was U.S. Representative John Tierney's principal campaign committee in his unsuccessful 1994 campaign for U.S. Representative from the Sixth Congressional District of Massachusetts. Tierney for Congress (FEC ID #C00318196, referred to herein as "the second committee") was Representative Tierney's principal campaign committee in his successful 1996

and 1998 campaigns for election to the same office; Representative Tierney has also designated it as his principal campaign committee in his 2000 reelection campaign.

This matter was generated by a complaint filed by Marc DeCourcey, executive director of the Massachusetts Republican Party. The complaint alleged that in 1996 the first committee transferred all of its funds to the second committee while the first committee still had net debts outstanding, in violation of 11 C.F.R. § 116.2(c)(2).

On October 7, 1999, the Commission found reason to believe that this violation occurred. Additionally, based on information discerned from both committees' reports in the course of evaluating the complaint, the Commission found reason to believe that both Tierney committees violated 2 U.S.C. §§ 441a(f) and 441b(a); that the first committee violated 2 U.S.C.§ 434(b); that Michael Goldman d/b/a Goldman Associates ("Goldman") violated 2 U.S.C.§ 441a(a)(1)(A); and that H & C Service Corp. d/b/a Hawthorne Hotel violated 2 U.S.C.§ 441b(a). Goldman Associates and Hawthorne Hotel ("the hotel") were vendors to the committees, and it appeared that both vendors may have made excessive (in the case of Goldman) or prohibited (in the case of the hotel) contributions by failing to make commercially reasonable attempts to collect debts that had been outstanding since Representative Tierney's 1994 campaign. In addition, it appeared that the first committee had consistently misreported a loan from Eastern Bank obtained by Tierney for campaign purposes in September, 1994. *See generally* First General Counsel's Report dated September 30, 1999.

Because two of the respondents were internally generated, and because the Tierney committees had not had an opportunity to respond to the issues regarding the potential excessive or prohibited contributions, this Office did not recommend, and the Commission did not

approve, any formal discovery concurrent with the reason to believe findings. In the First General Counsel's Report, this Office noted that it intended to await responses to the reason to believe findings before proceeding.

Goldman and the Hotel designated counsel for the Tierney committees as their counsel, as well. Counsel responded to the reason to believe findings by requesting extensions of time to respond, and indicated that once she had conferred with all of her clients she expected to request pre-probable cause conciliation. This Office responded by letter dated November 8, 1999, noting that its ability to recommend that the Commission enter into pre-probable cause conciliation would depend on the amount of information it had concerning the transactions at issue. This Office also encouraged the respondents to provide as much information as possible concerning seven specific topics related to the extensions of credit and the Eastern Bank loan. Attachment 1.

After further extensions, counsel submitted a substantive response in which she also renewed her request for pre-probable cause conciliation on behalf of all respondents. Attachment 2. An analysis of the substantive response follows.

III. ANALYSIS OF SUBSTANTIVE RESPONSE

A. Extensions of Credit

1. Goldman Associates

a. Facts and Assertions

As described in the First General Counsel's Report, by June 30, 1995 the first committee had reported reducing its outstanding debt to Goldman to $15,000, all of which had by that time apparently been outstanding for between five and 15 months. The first committee continued to

report this debt as outstanding through the 2000 July Quarterly Report, which was the last report the first committee filed.[1] There was no indication that the second committee had ever made any payment on the debt, or that either committee had ever attempted to raise funds to pay the debt, and Goldman continued to provide services to the second committee through two election campaigns despite the outstanding debt it was reportedly owed by the first committee. Thus, it appeared possible that the reported extension of credit ripened into a contribution over time due to a lack of any commercially reasonable attempt by the creditor to collect what it was owed by the first committee.

Although the first committee now reports the debt as "disputed," the responses of both Tierney committees and Goldman essentially assert that the first committee never owed Goldman the $15,000. They base this assertion on the following narrative, as reflected in declarations under penalty of perjury submitted by Goldman and Tierney.

Goldman avers that "the vast majority of my political clients are incumbents or individuals who have held office before." Attachment 2 at 5. However, according to Goldman, Tierney had never run for elective office before 1994. *Id.* Goldman states that he "encouraged [Tierney] to run because I (accurately) predicted that he would make a good candidate during a political cycle when the public was seeking out fresh faces to support." *Id.* Goldman also states that not only did he encourage Tierney's candidacy, but also "sought him out as a client." *Id.* Goldman admits that it was "unusual" for him to work for a first-time candidate. *Id.*

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[1] The first committee has not terminated, but did not file a 1999 Mid-Year Report. The Commission should be advised that, in both its 1999 Year End Report, filed on February 7, 2000, and its 2000 April Quarterly Report, filed on April 18, 2000, the first committee has categorized its $15,000 debt to Goldman Associates as disputed debt. This debt had not been reported as disputed debt in any of the first committee's previous reports.

"At the outset," Goldman avers, Tierney

> told me that, as an unknown candidate with no track record, he was concerned that he would not be able to afford the cost of my services. I reassured him that we could come to a financial arrangement with which we would both be comfortable. Subsequently, he agreed to run and I agreed to help him, even though the specifics of cost were left vague.

Id. at 6.

Tierney's recollection, as set forth in his declaration, is slightly different. Tierney avers that Goldman "proposed a fee arrangement," implying that Goldman proposed a specific amount, although Tierney does not state what that amount was. *Id.* at 12. "I was concerned about my campaign's ability to pay his fees, but I considered it an opening bid in a business negotiation. Our discussion was wide-ranging and informal. I told him what I was willing to pay, and believed when he agreed to work for me, that it was on my terms." *Id.*

Neither Goldman nor Tierney describe with any precision the nature of Goldman's assistance to the Tierney campaign in 1994, but Goldman's role apparently included both media consulting and the purchase of time for broadcast advertisements. According to Goldman, there were two components to his bills to the first committee: "my services and . . . the media time I was purchasing on behalf of the campaign," *id.* at 6, and the first committee's reports likewise differentiate between payments to Goldman for "communications consulting" and payments for purchase of air time. Goldman avers that the first committee paid in full for all of the media time the first committee purchased through him. However, both declarations appear to assert that Goldman billed the first committee for his own services at a certain rate that was "higher" than what Tierney had previously said he was willing to pay. *Id.* at 12. Neither Goldman nor Tierney state what the rate billed was, whether it was the same as Goldman's usual charge, or

what rate Tierney believed he had agreed to pay. Tierney states that his committee did not pay what it had been billed, but instead paid Goldman "at the rate I had agreed to pay." *Id.* Goldman avers that "to the extent that I concerned myself with the discrepancy between my bills and the campaign's payments during the 1994 campaign, I anticipated that any difference would be made up with a 'win bonus' after the general election." *Id.* at 6. However, it is entirely unclear from the declarations whether Goldman and Tierney had agreed on a "win bonus," whether they had ever discussed one, or whether Goldman was merely making an assumption. At any rate, Tierney lost the election.

For reasons that are still unknown to the Commission, the first committee apparently reported the difference between what Goldman had billed it and what it paid not as disputed debt, but merely as debt until its 1999 Year-End Report.[2]

"Eventually," Tierney avers, "Mr. Goldman told me to ignore his earlier bills, that they had been calculated on a basis other than that to which I had agreed." *Id.* at 12. Neither declaration gives any indication beyond the vague word "eventually" when this occurred. The respondents do not include an affidavit from treasurer Gelineau, but counsel's narrative states that "Mr. Gelineau, not being privy to the agreement, misunderstood its terms, and scrupulously

[2] In fact, on its first disclosure report – the 1993 Year-End report – the first committee reported receiving $8,500 in "loan proceeds" from Goldman Associates, and making $12,500 in disbursements to Goldman Associates. Not until mid-1994 did it file amendments indicating that the $8,500 was actually a debt owed to Goldman Associates, and that it had only paid $4,000 to Goldman over the 1993 Year-End reporting period. Moreover, once the committee began filing Schedule D reports, it consistently reported "$8,500" in the box marked "Beginning Balance", and apparently reported a running aggregate of the year-to-date debt incurred to Goldman in the box marked "Incurred This Period," resulting in a mismatch of the ending balance of the debt it reported as owed to Goldman with the beginning balance on the next report. This problem was not cured until after the first committee received an RFAI from RAD in November, 1994. Thus, it may be that the difference between what Goldman billed the first committee and what the first committee paid was not reported as a disputed debt because, for 1993 and much of 1994, the treasurer of the first committee or the persons assisting him had no firm grasp of how to report any debt.

reported what he believed to be a debt." *Id.* at 3. Thus, respondents essentially argue, the debt owed by the first committee to Goldman could never have ripened into an excessive contribution because it never existed at all.

The first committee's reports may support some of the assertions in the Goldman and Tierney declarations. The first committee originally reported paying $2,500 a month to Goldman for the months of August through December, 1993, and later amended its 1993 Year End Report to report that it paid Goldman $1,000 a month, with the difference reported as an $8,500 debt. This may indicate that Goldman billed the committee $2,500 a month at the beginning of the 1994 campaign, and that the committee paid him $1,000 a month. Moreover, the first committee's April and July quarterly reports for 1994 indicate that the first committee's payments to Goldman increased to $1,500 a month for the months of January through June, 1994; however, the reported debt for these quarters grew by $1,000 a month, plus an extra $1,000 in the July quarterly reporting period. The payments of $1,500 a month, in addition to the growth of the reported debt at a rate of $1,000 a month, may indicate that Goldman continued to bill the first committee $2,500 a month for the first six months of 1994.

However, the appearance that Goldman was billing a regular monthly fee and that the first committee was paying a portion of that fee breaks down to some degree after July, 1994. The first committee's reported debt to Goldman grew by another $1,000 during the 1994 Pre-Primary (July 1-August 31) reporting period, and by another $3,500 during the 1994 October Quarterly (September 1-September 30) reporting period, but Tierney made no payments to Goldman during these periods other than payments for broadcast time, and those payments were

not reported as applied to the outstanding debt. The reported debt grew by another $4,300 during the 1994 Pre-General (October 1-October 15) reporting period, and the first committee made payments totaling $3,800, again not counting payments apparently made for broadcast time. Finally, the first committee reported paying $4,500 to Goldman on June 29, 1995.

b. Analysis

The assertions in the Goldman and Tierney declarations, combined with the information in the first committee's disclosure reports, may support any number of conclusions, but it appears most likely that Goldman never intended to charge Tierney the usual and normal charge for Goldman's services. Goldman himself admits that not only did he seek Tierney's business, but that he urged Tierney to become a candidate in the first place; that it was "unusual" for him to work for a first-time candidate; and that he responded to Tierney's concerns about cost by reassuring Tierney that the two of them could "come to a financial arrangement with which we would both be comfortable." Although he may well have billed the first committee at a higher rate than the first committee was paying – albeit, at a rate that may well have been within the range of usual and normal charges for political consulting in the Boston market, although we do not know that at this point – he did not raise the issue of the discrepancies between the bills and the payments during the election campaign, even after the first committee apparently stopped paying him a monthly fee altogether beginning in July, 1994.

Finally, Goldman states that "it is true that Mr. Tierney never agreed to pay the rate that the campaign was reporting as debt to my firm," and that Goldman "retroactively" adjusted his bills for the 1994 election "*to better reflect our actual understanding.*" Attachment 2 at 6, 7. (emphasis added). If Goldman and Tierney had an "actual understanding" that Goldman would

charge the Tierney committee less than the usual and normal charge for Goldman's services (defined as the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered), then the difference between the usual and normal charge and the actual charge was a contribution from Goldman to the first committee *ab initio*. 11 C.F.R.§ 100.7(a)(1)(3).

In turn, if Goldman's extension of credit amounted to an excessive contribution ab initio, the five-year statute of limitations at 28 U.S.C.§ 2462 began to run on the contribution as early as August, 1998, or before the complaint in this matter was filed on August 31, 1998.[3] The First General Counsel's report recommended proceeding on this violation for purposes of determining whether the violation occurred within or outside of the limitations period. Accordingly, it appears the statute began to run on the violation prior even to filing of the complaint. As such, this Office would be time barred in bringing suit to obtain a civil penalty from either the first committee or Goldman for this violation. Based on this consideration, this Office recommends that the Commission take no further action with respect to Michael Goldman in this regard, close the file as to this respondent and send an admonishment letter. However, given that this Office will be recommending that the Commission enter into pre-probable cause conciliation with respect to the Tierney Committees on other issues further discussed infra, we recommend that the Commission approve a Conciliation Agreement

[3] As noted, Goldman was internally generated in this matter, and the circumstances surrounding the debt from the first committee to Goldman were discerned by this Office in the course of examining the first committee's outstanding debt for purposes of analyzing the transfer from the first to the second committee that was the subject of the complaint.

2. Hawthorne Hotel

a. Facts and Assertions

As described in the First General Counsel's Report, late in the course of the 1994 campaign the first committee incurred debts to H & C Service Corp. d/b/a Hawthorne Hotel totaling $1,060.31. The first committee has never reported making any payment on this debt, and the debt was still reported as outstanding on the first committee's 2000 April Quarterly Report.[4]

Respondents have submitted a declaration under penalty of perjury from Ivy Lenihan, who identifies herself as controller of the Hawthorne Hotel and avers that she has held that position since August, 1996. Attachment 2 at 8. Lenihan states that "payments totaling $3,782.39 at the end of 1996 effectively cleared the accounts" of both the first committee and the second committee; "with those payments, the balance owed by both committees was reduced to $53.75 (an amount that matches a particular 1996 hotel charge)." *Id.* at 9. Lenihan further states that she only became aware that Tierney had two authorized political committees when she was "so informed in connection with this FEC matter[,]" and that the hotel "did not and does not maintain separate accounts for each of these two entities." *Id.* at 8. Thus, Lenihan implies, the second committee's payments to the hotel of $3,166.79 on November 4, 1996 and $615.39 on December 31, 1996 included the $1,060.31 owed by the first committee, even if the Tierney committees failed to realize it.

Although Lenihan was not controller of the hotel during the period between the fall of 1994, when the first committee incurred its debt to the hotel, and August, 1996, she offers some

[4] The Commission should be advised that, in both its 1999 Year End Report, filed on February 7, 2000, and its 2000 April Quarterly Report, filed on April 18, 2000, the first committee has categorized its $1,060.31 debt to H & C Service Corp. d/b/a Hawthorne Hotel as disputed debt. This debt had not been reported as disputed debt in any of the first committee's previous reports.

explanation as to why the hotel did not seek payment of the debt for nearly two years. Lenihan describes the hotel's billing of all its clients in the mid-1990s as "a bit erratic," and avers that charges billed by the hotel's banquet department (which, she states, constituted the majority of the Tierney charges) were the subject of "widespread problems." *Id.* at 9. Due to these problems, Lenihan states, banquet department bills were "not sent out regularly, or in some cases, at all." *Id.* As a result, she avers, there were "many outstanding balances . . . run by hotel clients," and that "my review of Congressman Tierney's account history indicates that his situation was not unusual, when compared to other clients." *Id.*[5]

b. Analysis

This Office recommends that the Commission exercise its prosecutorial discretion and take no further action against the first committee, or H & C Service Corp. with respect to this violation in light of two factors. First, it appears that the Hotel failed to pursue collection of the debt from the first committee due to the Hotel's own internal administrative difficulties. The account of Ms. Lenihan appears to indicate that the Hotel banquet department was experiencing systematic problems involving all of its billing throughout the mid-1990s. The problems were so extensive that the accounting department took over the billing function from the banquet department in 1997. Most importantly, Lenihan notes that these billing problems applied to all customers that relied upon the Hotel's banquet service, and were not limited solely to political debtors. An extension of credit to a committee by an incorporated commercial vendor is not a contribution provided that the credit is extended in the ordinary course of the corporation's

[5] Lenihan further states that the hotel's general billing problems were resolved in 1997, when "the accounting department took over the billing function from the banquet department."

business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. 11 C.F.R.§ 116.3(b). Assuming the truth of Lenihan's statements, the Hotel did not avoid collecting payment because of a desire to make a contribution to the first committee. Although it may be stretching matters to characterize these billing difficulties as "in the ordinary course of the commercial vendor's business," it would appear most likely that they extended to political and nonpolitical debtors alike.

Moreover, the amount of the debt in question may be another basis upon which the Commission should take no further action. Even if the extension of credit technically amounted to a prohibited contribution, the small amount ($1,060.31) of the contribution by H & C Service Corp. weighs against pursuing the respondent.

Accordingly, this Office recommends that in the proper consideration of its priorities and limited resources, *see Heckler v. Chaney,* 470 U.S. 821, 831 (1985), the Commission take no further action with respect to the violations of 2 U.S.C.§ 441a(f) by the John Tierney for Congress Committee (FED ID #C00283283), Tierney for Congress (FEC ID #C00318196), and Roy F. Gelineau, as treasurer of both committees in connection with the activities of H & C Service Corp. d/b/a Hawthorne Hotel. This Office also recommends that the Commission take no further action concerning the apparent violation of 2 U.S.C.§§ 441a(a)(1)(A) by of H & C Service Corp. d/b/a Hawthorne Hotel, and close the file with respect to this respondent.

B. Incorrect Reporting of Eastern Bank Loan

a. Facts and Assertions

The First General Counsel's Report noted that the first committee reported receiving a $25,000 interest-free loan from Tierney on September 2, 1994, that was described as payable on demand. It also noted that the first committee filed an accompanying Schedule C-1 for the loan indicating that Tierney obtained the funds the same day from Eastern Bank by taking out a $25,000 loan, payable over 15 years at 7.75 percent interest and secured by a mortgage on a condominium owned by Tierney. Except in one instance after receiving a Request for Additional Information from the Commission's Reports Analysis Division ("RAD"), the first committee consistently identified Tierney, rather than the bank, as the source of the loan on Schedule C between 1994 and 1998. It also had not reported any servicing of principal or interest on the loan. It appeared that Tierney had obtained the loan from Eastern Bank personally; thus, by operation of law and for purposes of the Act only, he obtained the loan as an agent of the committee, and the loan was reportable as a committee obligation to the Bank rather than to Tierney. 2 U.S.C. §§ 432(e)(2), 434(b)(3)(E). Because the first committee consistently identified the Bank instead of Tierney as the loan source on Schedule C, and, far more importantly, because it had never reported any servicing of principal or interest on the loan, the Commission found reason to believe it had violated 2 U.S.C. § 434(b).

Tierney's declaration describes the transaction. Attachment 2 at 11. He states that he obtained a "revolving equity credit line" from Eastern Bank in the amount of $25,000 on September 2, 1994, and that the "line of credit was secured by my personal residence." *Id.* He asserts that he "was personally and solely liable" for the line of credit, and that the line "was

available to me to use as I saw fit." *Id.* He "chose to make a no-interest loan" to his campaign, and his campaign reported his loan to it and that his source of the funds was Eastern Bank. *Id.* at 11-12. He asserts that he paid off the line of credit in 1997, and that he has since sold the property that secured the line, but that "my campaign committee remains indebted to me." *Id.* In earlier correspondence counsel asserted that Tierney was the sole source of funds for the repayment of the loan, but neither counsel nor Tierney offer any documentation in support of this assertion. Respondents have submitted a letter from the Bank to Tierney enclosing the paid note on the line of credit, but this shows only that the line was paid, not who paid it or in what increments and when the increments, if any, were paid.

b. Analysis

Respondents argue that because "it is clear to anyone reviewing the campaign's reports that the source of the funds [for the original loan] was a loan from Eastern Bank to John Tierney . . . [t]he alleged violations of 2 U.S.C. § 434(b)(8) simply do not exist." Attachment 2 at 2. Of course, this argument completely ignores the effect of 2 U.S.C. § 432(e)(2), which provides that by operation of law Tierney obtained the loan from the bank as an agent of the first committee. Such loans are reportable by the committee and itemizable as loans from the lender to the committee, rather than as loans from the candidate to the committee. 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv) (requring itemization of "each person who makes a loan to the reporting committee *or to the candidate acting as an agent of the committee* . . . (emphasis added)). If the candidate subsequently repays the loan personally, the candidate's committee "must report [the candidate's] payments to the bank as in-kind contributions to the committee.

This would entail disclosing a contribution from [the candidate] on Schedule A, an expenditure to the lender on Schedule B, and the reduction of the amount owed on Schedule C." Advisory Opinion 1994-26; *see also Campaign Guide for Congressional Candidates and Committees* (1993 ed.) at 11, 44, 51, 54 (same, including examples of properly completed forms).

In this case, the first committee consistently did not report the loan as a loan from Eastern Bank to the Committee. Moreover, the first committee did not itemize any direct or in-kind contributions from Tierney or anyone else reflecting payment of the line of credit; it did not itemize any expenditures to Eastern Bank reflecting payment of the line of credit; and it did not report on Schedule C any reduction of the principal amount owed. Therefore, it violated 2 U.S.C.§ 434(b). It makes no difference to the analysis that Tierney obtained a line of credit, rather than a conventional loan; "[l]ines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions." Explanation and Justification of Regulations on Loans from Lending Institutions to Candidates and Political Committees, 56 Fed. Reg. 67,118, 67,119 (December 27, 1991). Moreover, once Tierney obtained the line of credit, he apparently drew down the entire line and provided the proceeds to the first committee.

At any rate, the draw on the line of credit was apparently paid, and the line closed, on some date prior to September 16, 1997. Attachment 2 at 14 (letter from Dorothy Bockus, Operations Supervisor, Eastern Bank, to Tierney, enclosing paid note). However, respondents otherwise fail to address the first committee's failure to report payments of interest or principal on the line of credit as in-kind contributions.

Accordingly, respondents have submitted no information that rebuts the appearance that the first committee violated 2 U.S.C.§ 434(b)(8).

C. Transfer of Funds Between Committees

a. Facts and Analysis

The Commission found reason to believe that both committees violated 11 C.F.R. § 116.2(c) because on March 31, 1996, immediately prior to the first committee's transfer of all its cash on hand to the second committee, it had reported net debts outstanding of $7,083.68, plus an indeterminate amount of costs to raise money to liquidate the debt.[6] The response does not address the transfer issue, other than to assert that "[w]e now know that the only real debt of the 1994 committee is a debt to the candidate himself." Attachment 2 at 4. Respondents reiterate their argument, which was fully addressed in the First General Counsel's Report, that under such circumstances 11 C.F.R. § 116.2(c) should not be enforced.

If one gives the first committee the benefit of the doubt based on the evidence that the "debt" reported as owed to Goldman was in fact an in-kind contribution from Goldman rather than a debt, the first committee's actual "debt" on March 31, 1996 was no less than $83,060.31. The first committee's cash on hand immediately prior to the transfer was $90,976.63. Thus, under this scenario the first committee's cash on hand at the time of the transfer exceeded its outstanding debt by $7,916.32, and it could therefore transfer that amount to the second committee without triggering the prohibition of 11 C.F.R. § 116.2(c). However, any transfer of more than that amount would leave the committee with net debts outstanding, and the regulation prohibits transfers when the transferring committee has net debts outstanding. Therefore, at least $83,060.31 of the transfer violated 11 C.F.R. § 116.2(c).

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[6] The first committee reported total debt of $98,060.31 and cash on hand of $90,976.63.

As discussed in the First General Counsel's Report, 11 C.F.R. § 116.2(c) has full force and effect even if the candidate is the committee's only creditor, which he was not on March 31, 1996. Thus, respondents have submitted nothing that leads this Office to recommend that the Commission change its conclusion that both Tierney committees violated 11 C.F.R. § 116.2(c).

IV. REQUEST FOR PRE-PROBABLE CAUSE CONCILIATION

Attached for the Commission's approval is a proposed conciliation agreement addressing violations of 11 C.F.R. § 116.2(c) by the John Tierney for Congress Committee (FED ID #C00283283), Tierney for Congress (FEC ID #C00318196), and Roy F. Gelineau, as treasurer of both committees, and 2 U.S.C.§§ 434 (b) and 441a(f) with respect to the John Tierney for Congress Committee (FED ID #C00283283), and Roy F. Gelineau, as treasurer

However, inasmuch as the statute of limitations runs on the 11 C.F.R. § 116.2(c)(2) violation on March 31, 2000, this Office will not hesitate to move to the next stage of the enforcement process should conciliation not show substantial progress after 30 days.

Accordingly, this Office recommends that the Commission grant the requests of the Tierney committees to enter into pre-probable cause conciliation.

IV. RECOMMENDATIONS

1. Grant the requests of the John Tierney for Congress Committee (FED ID #C00283283), Tierney for Congress (FEC ID #C00318196), and Roy F. Gelineau, as treasurer of both committees to enter into pre-probable cause conciliation.

2. Approve the attached proposed conciliation agreement.

3. Take no further action with respect to Michael Goldman, close the file as to this respondent, and send an admonishment letter.

4. Take no further action with respect to H & C Services Corp. d/b/a Hawthorne Hotel, close the file as to these respondents, and send an admonishment letter.

5. Take no further action with respect to apparent violations of 2 U.S.C. § 441b(a) by the John Tierney for Congress Committee (FED ID #C00283283), Tierney for Congress (FEC ID #C00318196), and Roy F. Gelineau, as treasurer of both committees.

6. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

8/28/00
Date

BY: _____
Lois G. Lerner
Associate General Counsel

Attachments:

1. Letter from staff to counsel for respondents, November 8, 1999.
2. Response to RTB findings and request for pre-probable cause conciliation
3. Conciliation Agreement

Staff Assigned: Lawrence Calvert
Roy Q. Luckett

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel SJM

DATE: August 29, 2000

SUBJECT: MUR 4803 - General Counsel's Report (#2)

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____ Closed Session _____

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: September 6, 2000

SUBJECT: MUR 4803 - General Counsel's Report
dated August 28, 2000.

The above-captioned document was circulated to the Commission on **Tuesday, August 20, 2000.**

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Mason	**XXX**
Commissioner McDonald	_
Commissioner Sandstrom	**XXX**
Commissioner Smith	**XXX**
Commissioner Thomas	_
Commissioner Wold	_

This matter will be placed on the meeting agenda for **Tuesday, September 12, 2000.**

Please notify us who will represent your Division before the Commission on this matter.