

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
)
The John Tierney for Congress Committee)
(FEC ID #C00283283) and)
Roy F. Gelineau, Jr., as treasurer)
)
Tierney for Congress)
(FEC ID #C00318196) and)
Roy F. Gelineau, Jr., as treasurer)

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CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Marc DeCoursey, executive director of the Massachusetts Republican Party. The Commission found reason to believe that the John Tierney for Congress Committee (FEC ID #C00283283), Tierney for Congress (FEC ID #C00318196), and Roy F. Gelineau, Jr., as treasurer of both committees, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 116.2(c). The Commission also found reason to believe that the John Tierney for Congress Committee (FEC ID #C00283283) violated 2 U.S.C. § 434(b).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. John Tierney for Congress (FEC ID #C00283283, referred to herein as "the first committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and 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") is a political committee within the meaning of 2 U.S.C. § 431(4) and is Representative Tierney's current principal campaign committee.

2. Roy F. Gelineau, Jr. is the treasurer of both the first committee and the second committee.

3. a. The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that each candidate for Federal office, including a candidate for the office of United States Representative, shall designate in writing a political committee to serve as his or her principal campaign committee. A candidate may designate additional committees to serve as authorized committees of the candidate. Such designation must be in writing and filed with the principal campaign committee. 2 U.S.C. § 432(e)(1).

b. An individual who is a candidate for the same Federal office in successive election cycles has two options with respect to the principal campaign committee for his or her subsequent campaign. Under one option, the candidate may continue the operations of an authorized committee from the previous campaign, and simply redesignate the committee as the principal campaign committee of the current campaign. Advisory Opinion 1977-24. Under the other option, the candidate may create a new, or "current," political committee,

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and designate it as the principal campaign committee for the current campaign. *See* 11 C.F.R. §§ 110.3(c)(4)(ii) (definition of “current Federal campaign committee”), 101.1(a) (requirement for designation of principal campaign committee). In general, a candidate choosing this option may make unlimited transfers of funds from the previous campaign committee to the current one. 11 C.F.R. § 110.3(c)(4). However, no transfer of funds may be made from a candidate’s authorized committee to another authorized committee of the same candidate if the transferor committee has any net debts outstanding at the time of the transfer, as calculated by the formula described in 11 C.F.R. § 110.1(b)(3)(ii). 11 C.F.R. § 116.2(c).

c. As set forth in 11 C.F.R. § 110.1(b)(3)(ii), “net debts outstanding” means, in pertinent part:

the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election . . . less the sum of:

(A) The total cash on hand available to pay those obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler’s checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value; and

(B) The total amounts owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns or receivables.

d. The Act provides that each candidate for Federal office who receives a loan for use in connection with his or her campaign shall be considered, for purposes of the Act, as having received the loan as an agent of his or her authorized committee or committees.

2 U.S.C. § 432 (e)(2).

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e. Each treasurer of a political committee is required to file with the Commission periodic reports of receipts and disbursements in accordance with 2 U.S.C. § 434. Each report shall disclose the identification of, *inter alia*: each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period whose contributions have an aggregate amount or value in excess of \$200 within the calendar year, together with the date or amount of any such contribution, 2 U.S.C. § 434 (b)(3)(A); each person who makes a loan to the reporting committee (or to the candidate acting as an agent of the committee) within the reporting period, together with the identification of any endorser or guarantor of such loan, the date the loan was made and the amount or value of the loan, 2 U.S.C. § 434(b)(3)(E) and 11 C.F.R. § 104.3(a)(4)(iv); and the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount and purpose of such operating expenditure. Committees must also report the amount and nature of outstanding debts and obligations owed by or to them, 2 U.S.C. § 434 (b)(8) and 11 C.F.R. § 104.3(d), and such debts and obligations must be continuously reported until extinguished. 11 C.F.R. § 104.11(a).

4. On March 31, 1996, two days after the second committee was formed, the first committee transferred to it \$90,976.63, which was the entirety of the first committee's cash on hand. As of March 31, 1996, the first committee had outstanding debts to Tierney and others totaling not less than \$83,060.

5. Schedule C of the first committee's 1994 October Quarterly Report reported a loan received from Tierney on September 2, 1994 in the amount of \$25,000, interest-free and

payable on demand. However, in the box marked "Full name, Mailing Address and ZIP Code of Loan Source," the first committee included, along with Tierney's name and address, the notation "(see details attached)." Attached was a Schedule C-1 for the loan indicating that Tierney obtained the funds for the loan from Eastern Bank of Lynn, Massachusetts. Eastern Bank in turn provided Tierney with a line of credit in the principal amount of \$25,000 at a 7.75 percent rate of interest, with a maturity date of September 2, 2009, secured by a mortgage on real property at 25 Beach Avenue, Unit #3, Salem, Massachusetts. Tierney drew the entire amount of the line of credit and provided the funds to the first committee.

6. Tierney obtained the line of credit from Eastern Bank for use in his campaign. Therefore, by operation of the provisions of 2 U.S.C. 432(e)(2), Tierney obtained the line of credit as an agent of his committee and the line of credit was, for purposes of the Act, reportable as made directly from Eastern Bank to the first committee.

7. On December 1, 1994, the first committee filed an amended October Quarterly Report, to which it attached the loan agreement along with an amended Schedule C. However, on the amended Schedule C the committee continued to list Tierney's name and address under "Full name, Mailing Address and ZIP Code of Loan Source," with the additional notion, "Loan Source: Eastern Bank, (See Schedule C-1)."

8. From December 1, 1994, through the 1998 Year End Report, the first committee filed a Schedule C that continued to reflect a \$25,000 debt owed to Tierney, payable on demand and interest-free, and omitted the notation "Loan Source: Eastern Bank." Instead, these reports had the notation "John F. Tierney (see details at C-1)." The Schedule

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C-1, which appeared in each subsequent report and was last filed with the 1998 Year End Report, however, reflected that the source of the funds was Eastern Bank.

9. In the first committee's next report, which was the 1999 Year End Report, the first committee filed a Schedule C continuing to identify the loan source as Mr. Tierney and continuing to show a \$25,000 debt to Tierney payable on demand and interest free. The Schedule C contains a notation which replaces the reference to the Schedule C-1 with "See attached Exhibit A." The attached Exhibit A states that the loan to Eastern Bank had been paid in full in 1997, and that the committee did not report the satisfaction of this debt sooner. Each subsequent report filed through the 12th day Report preceding the 2000 General Election, which was the most recent report filed, reflects in the Schedule C the same \$25,000 debt owed to Tierney with the notation "from personal funds" and payable on demand and interest-free.

10. The first committee has never reported the servicing of either principal or interest on this loan by John Tierney as either an in-kind contribution or a loan.

11. Respondents contend that the transfer of monies from the first committee to the second committee while there were net debts outstanding resulted from a misunderstanding. Respondents further contend that the nature of the loan and Eastern Bank's role in it was at all times clearly explained on the committee's reports.

V. 1. Respondents John Tierney for Congress Committee (FEC ID #C00283283), Tierney for Congress (FEC ID #C00318196) and Roy F. Gelineau, Jr. as treasurer of both committees, violated 11 C.F.R. § 116.2(c) by transferring monies from the first committee to the second committee when the first committee had net debts outstanding.

2. Respondents John Tierney for Congress Committee (FEC ID #C00283283) and Roy F. Gelineau, as treasurer, violated 2 U.S.C. § 434(b) by identifying John Tierney, rather than Eastern Bank, as the source of the loan it received on September 2, 1994; by failing to continuously report the amount of its obligation to Eastern Bank on Schedule C; and failing to disclose payments of interest or principal on the loan as either an in-kind contribution or a loan, or to identify John Tierney as the person who made them.

VI. 1. Respondents will pay a civil penalty in the amount of four thousand, five hundred dollars (\$4,500) pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. The second committee will transfer back to the first committee the amount of eighty-three thousand sixty dollars (\$83,060).

3. The first committee will amend its 1994 October Quarterly Report and all subsequent reports to identify Eastern Bank, on Schedule C in addition to Schedule C-1, as the source of the loan proceeds received September 2, 1994, and to reflect all payments of interest and principal on the loan as either an in-kind contribution or a loan received from John Tierney.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

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IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lois G. Lerner
Acting General Counsel

BY:

Angela A. Shain

Acting Associate General Counsel

1/30/01
Date

FOR THE RESPONDENTS:

Ellen L. Weintraub

Ellen L. Weintraub
Counsel for Respondents

1/9/01
Date

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