BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR: 4803
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	)	

RESPONDENTS' LETTER ON CONCILIATION
(to be Filed Simultaneously with Agreement)

Respondents enter into this conciliation agreement only as a practical way of terminating this matter, which otherwise promises to become a long drawn out process with little to gain. Respondents assert that the subject of this entire proceeding is clearly a matter of putting form over substance, in so far as it addresses the F.E.C.'s pursuit of filing technicalities or corrections which would have been made instantly at any prior time, had the request been made. It should be noted clearly, and is set forth adamantly, that there was at all times full disclosure by the Committee (and in fact, at some times over disclosure) and at absolutely no detriment to any person, nor any apparent harm, to the disclosure intent of the law was involved in this matter. This situation amounts essentially to an insistence by the F.E.C. on formal processing of the matter seeking correction of the manner in which information was filed. Respondent believes

strongly that there was ample evidence that the F.E.C. was able to discern all the required facts from the reports as originally filed, form errors notwithstanding.

ISSUE I

In 1994, "the first committee" -- John Tierney for Congress -- completed the election with some debt and some cash. The debt was essentially owed to the candidate, John Tierney, who had made several smaller loans totaling the whole sum then due him.

As preparation was made for the 1996 campaign, "the second committee" -- Tierney for Congress -- was filed. Professional advice was sought as to whether the first committee should repay the candidate, who in turn would re-loan the funds to the second committee (the candidate desired to commence the second campaign with funds on hand and was willing to defer receipt of repayment until some later date).

The alternative was to file the second committee, transfer to it the cash on hand, but continue to carry the debt in the first committee and keep reporting so as to reflect the facts. The committee, acting on professional advice, opted for the latter alternative.

The F.E.C. now determines that the only procedure acceptable to it would have been to either have the first committee repay candidate so he could re-loan to the second committee, or transfer both debt and cash on hand to the second committee. The respondent believes the situation to

have essentially the same result, with the F.E.C. having all the same information available to it whether executed as the committee did, or as the F.E.C. now requires.

ISSUE 2

On September 2, 1994, the candidate loaned the first committee $25,000.00 interest free, payable on demand. This sum was part of the total amount constituting the whole sum due the candidate at the end of the 1994 campaign -- and was essentially that committee's debt noted above. It is noted that candidates are lawfully entitled to make unlimited loans and/or contributions to their campaigns.

F.E.C. reports contain a box marked: "full name, mailing address and zip code of loan source." On that line, in the 1994 October Quarterly Report, the committee reported the candidate's name and "(see details attached)". It then attached a Schedule C-1 (schedule Cs being the form used to inform of loans made to committees) that indicated that candidate had obtained the funds he loaned to the committee from Eastern Bank of Lynn, Massachusetts.

Shortly after that, the committee filed an amended October 1994 Quarterly Report to expand even further on the details of the loan. In fact, it's amended Schedule C attached the loan agreement in its entirety. The committee continued to report the candidate's name and address at the box marked: "full name, address and zip code of loan source." It also added there: "Loan Source: Eastern Bank (see Schedule C-1)" whereat it identified the bank and attached the loan agreement!

The candidate maintained and serviced in timely manner the loan obligation to the bank throughout its existence, as known to the F.E.C. and verified by bank records.

For every report from the end of 1994 through the 1998 Year End Report (a bit beyond the time when the loan was actually paid in full to the bank), the first committee continued to list the candidate as lender to the committee, together with the notation "John F. Tierney (see details at C-1)" and the Schedule C-1 that unfailingly appeared on each such report reflected consistently that the source of the funds was Eastern Bank.

In summer 1997, Eastern Bank had been paid by candidate upon transfer of his home which had served as collateral on the loan. Thus, the 1999 Year End Report attached an Exhibit "A" stating the Eastern Bank loan had been paid in full in 1997 and that the committee, through oversight, had neglected to report that debt's satisfaction sooner. The 1999 report also continued to reflect the Committee's debt of $25,000 to the candidate, and has done so to date (subsequent reports reflected in Schedule C the same $25,000 debt owed with the notation "from personal funds" and payable on demand and interest free).

Thus, once Eastern Bank had been repaid, the committee no longer was obligated to note it as the source of funds -- the candidate having repaid the note was the sole person to whom a debt was owed.

The F.E.C. asserts that the committee was required to list Eastern Bank at the box marked "full name, mailing address and zip code of loan source", and that it was not enough for the

committee to put the candidate's personal information with a reference to the attached schedule which schedule identified the Bank as the source of funds.

The F.E.C. says a strict interpretation of its Act is construed to dictate that the candidate, when taking a loan from a lender for the purposes of then lending the same sum to the campaign committee is deemed to be an agent of the committee for purposes of taking the loan. It insists the committee erred in then not putting the bank's name in the box where the committee put the candidate's personal information with reference to the bank's information and the full loan agreement! (In other words, presumably, the candidate's and Bank's information should have been switched or reversed in order?)

The F.E.C. also insists that the committee should have listed on reports every payment the candidate made to the bank, assigning principal payments as small loans (presumably eventually adding up to the $25,000 total) and interest payments as in-kind contributions or loans from the candidate to the committee.

It is interesting to note that, despite regular contact with the campaign treasurer -- sometimes over minuscule matters such as questions of addition -- never once did F.E.C. personnel ever draw attention to or ask questions about the need to make the reporting changes now sought and complained about.

Respondent recognizes that the F.E.C. might have a technical point, but believes strongly that F.E.C. personnel certainly knew or should have known -- clearly and without any exertion or

strained construction -- the obvious fact that Eastern Bank was the source of funds loaned to the candidate (whether individually or as "agent for the committee"), and that the funds, as reported, were put to the committee's use, which then was obligated to repay. The reports had clear references and attachments (loan agreement) showing that the candidate was obligated to pay all principal and interest payments to the bank as due. Any sensible reading of the reports established from the information and materials provided in the reports that the principle of the loan ($25,000) was in fact a loan to the committee!

If the reader senses from this letter a clear frustration, it is a sense well founded. From a situation where there was full disclosure (in fact for a brief time of summer 1997 until 1999 an over-reporting due to the committee's late realization that the bank had been repaid in full by the candidate) and absolutely no detriment to any person or apparent harm to the disclosure intent of the law, the F.E.C. staff insists on formal processing of the matter as a complaint instead of simply seeking correction of the forms upon request.

The committee, again, asserts that this is a clear example of "form over substance." It is frustrated by the treatment of a -- at best (or worst) -- technical, de minimis reporting form error as requiring or deserving anything more than simple amendments to bring the forms into technical compliance. The committee is troubled that over two (2) years appears to have been devoted to this matter when a simple request for amended filing would have accomplished the F.E.C.'s now desired result. Essentially no facts are changed -- only the filing order.

Nevertheless, here is the choice the Commission now presents: enter the conciliation agreement and pay the fine thus terminating the matter, or proceed on with the matter for who knows how long (again -- it has been about two years already) and at no one knows how much legal expense (quoted fees are estimated in the thousands).

Proceeding would move the matter to yet another phase where the parties would ostensibly try to negotiate a settlement different from this one. As the same F.E.C. personnel continue on, it is hard to see how this would amount to much more than a delay and further legal costs.

Assuming common sense does not strike the F.E.C. staff in the interim, the lack of a conciliation agreement would then catapult the case to a full federal law suit with its attendant filings, motions, interrogatives, depositions, etc. and more -- many more -- fees, and much time.

At the end of that "rainbow" would be the prospect of a federal judge, acknowledging the de minimis nature of the matter, at most suggesting a reformatting of the material. While any payment from the committee might thus be avoided, its legal fees would surpass any such sum and time and effort invested in this questionable enterprise would be further wasted.

The respondent believes it must meet the F.E.C.'s "form over substance" with a "need for practicality". The conciliation agreement is signed and the fine paid (although respondent asserts, and it would seem any reasonable person would conclude, that the agreement is not written in direct, understandable language).

Pursuant to the agreement, the second committee will transfer money to the first committee, which will repay the monies owed to the candidate. Again, respondent feels compelled to state that the candidate may then decide whether to re-loan the funds to the second committee and defer re-payment (as is perfectly allowable). Thus, neither the facts consistently reported nor the end result are effectively altered by this action!

Similarly, the Committees will amend the reports to put the Bank's name in the box where the candidate's was originally placed, and the candidates name where that of the Bank's appeared. Instead of reporting the full $25,000.00 as loaned at the outset, it seems that the smaller principal payments made monthly will be reported as loans (and the interest payments as loans or in-kind contributions) as they add up to the last payment totaling $25,000.00. Thus, again, the facts reported remain the same, but the order or form in which they are set forth will be adjusted as requested by the F.E.C. Neither the amount of the loan nor the parties obligated to it change. The F.E.C. essentially gets the same information in restated form.

The respondents assert that this effect does not reflect time well spent by the F.E.C., nor does the choice of process honor the intent of the statutory process. If the F.E.C. had simply requested the amendments at any time -- as it had done with other filing technicalities -- corrections would have been made instantly (not two years later). The fact that reviewing F.E.C. personnel did not apparently feel correction warranted or necessary prior to a third-party complaint is, respondent

believes, ample evidence that the F.E.C. was able to discern the required facts from the reports as originally filed -- form errors notwithstanding.

FOR THE RESPONDENTS:

Roy F. Nelson, Jr. 1/17/01

(Name) Date

(Position) Treasurer