FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OPENING STATEMENT OF
COMMISSIONER MICHAEL E. TONER
PUBLIC HEARING ON ENFORCEMENT PROCEDURES
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To my knowledge, the Commission has never systematically and publicly examined its enforcement policies as it is doing today. I welcome this critical self-examination, and look forward to considering how the Commission can provide greater due process rights to respondents without undercutting its strict enforcement of the law.

In an early case involving the FEC, the Second Circuit Court of Appeals observed that the Commission has "the weighty, if not impossible, obligation to exercise its powers in a manner harmonious within a system of free expression." Federal Election Commission v. Central Long Island Tax Reform, 616 F.2d 45, 55 (2d Cir. 1980) (Kaufman, C.J., concurring). The court's comment reflects the fact that the FEC, unlike virtually any other federal agency, regulates core political speech that is protected by the Bill of Rights.

Concerns about the Commission's enforcement policies are not new. As early as 1982, an American Bar Association Task Force published a report that detailed a litany of procedural deficiencies and urged the Commission to make major changes to its enforcement procedures. The ABA Task Force, which was bipartisan and was advised by a former chairman of the FEC, recommended that respondents be given access to all of the information from the agency's investigation – including any exculpatory information that may exonerate the respondent -- before the Commission decides whether the law has been broken. The Task Force concluded that such access "will afford the Respondent notice of the evidence upon which the staff is relying, and will allow the Respondent an opportunity to rebut certain factual allegations that are erroneous or incomplete." The Task Force further concluded that such access would "guarantee that the Commission has more information available to it at the time it has to make a decision" on whether a person has violated the law.

The 1982 ABA Task Force also recommended that respondents be given access to all General Counsel's reports that are submitted to the Commission, and that respondents be given a right to oral argument before the Commission as the General Counsel is allowed to do. Common Cause strongly concurred with the latter recommendation,

concluding that "the FEC should make greater use of oral arguments." See Stalled from the Start, Recommendation No. 20, at 55.

Now, twenty years later, many of these enforcement concerns have yet to be addressed. I approach our examination of the Commission's enforcement procedures with two basic premises.

First, I do not believe that providing respondents with due process rights in any way compromises the Commission's effectiveness in enforcing the law. People charged with breaking the federal election laws should not have to go to court to get due process, particularly when First Amendment rights of free expression are at stake. I believe the FEC can and should do everything in its power to ensure that respondents are given due process, and that doing so will enhance, not reduce, the Commission's effectiveness.

Second, I strongly believe that the General Counsel's Office today has a much greater sensitivity and commitment than ever before to treating respondents fairly and providing fundamental due process. I believe the current Commission shares that view, which has made today's hearing possible. I look forward to receiving testimony on these issues and working towards making the Commission's enforcement procedures as fair and effective as possible.