

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7792**

4 DATE COMPLAINT FILED: September 10, 2020

5 DATE OF NOTIFICATION: September 17, 2020

6 LAST RESPONSE RECEIVED: November 19, 2020

7 DATE ACTIVATED: February 17, 2020

8

9 EARLIEST SOL: September 13, 2024

10 LATEST SOL: September 13, 2024

11 ELECTION CYCLE: 2020

12

13 **COMPLAINANT:**

Rob Secaur, c/o Ohio Republican Party

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15 **RESPONDENTS:**

Ohio Democratic Party

and Patricia Frost-Brooks in her official capacity
as treasurer

Alaina Shearer

Alaina Shearer for Congress

and Scott M. Hubay in his official capacity as
treasurer

Desiree Tims

Gem City Rise PAC (f/k/a Friends of Desiree

Tims)¹ and Scott M. Hubay in his official capacity
as treasurer

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27 **RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(b)(4)

52 U.S.C. § 30114(b)(2)

52 U.S.C. § 30116(a)(2)(A)

52 U.S.C. § 30116(f)

11 C.F.R. § 104.3(b)

11 C.F.R. § 104.9

11 C.F.R. § 113.1(g)(1)(i)(I)

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36 **INTERNAL REPORTS CHECKED:**

Disclosure reports

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38 **FEDERAL AGENCIES CHECKED:**

None

¹ Following the 2020 election, Friends of Desiree Tims has converted to a PAC, and changed its name to Gem City Rise PAC; *see* Amended Statement of Org. (Jan. 12, 2021).

<https://docquery.fec.gov/pdf/378/202101129398406378/202101129398406378.pdf>.

1 **I. INTRODUCTION**

2 This matter involves the failure to report the ultimate payees and the misreporting of
3 \$489,350.89 in salary payments to the employees of principal campaign committees of 2020
4 Ohio congressional candidates Alaina Shearer and Desiree Tims as state party payroll payments
5 by the Ohio Democratic Party (“ODP”). The complaint alleges that what appeared to be ODP
6 salary payments to candidates Shearer and Tims were an impermissible personal use of
7 campaign funds and that ODP misreported its apparent subsidy of the Shearer and Tims
8 campaigns as state party payroll expenses.² The responses explain that Shearer’s and Tims’s
9 campaign committees transferred funds to ODP, which provided a payroll processing service for
10 employees of these two federal candidate campaign committees. The Shearer and Tims
11 Committees acknowledge that their reporting of the disbursements to ODP did not identify any
12 of the specific campaign staff members, including the candidates, who later received the salary
13 payments. ODP’s response does not address its failure to report the disbursements to specific
14 campaign committee employees as being on behalf of the Shearer or Tims campaign committees,
15 rather than as its own payroll to ODP employees.

16 Based on the available information, and for the reasons set forth below, we recommend
17 that the Commission find no reason to believe as to the allegation that ODP, Shearer, Alaina
18 Shearer for Congress and Scott M. Hubay in his official capacity as treasurer (the “Shearer
19 Committee”), Tims, and Gem City Rise PAC (f/k/a Friends of Desiree Tims) and Scott M.

² Compl. at 2 (Sept. 10, 2020). Shearer filed her Statement of Candidacy for the U.S. House of Representatives in Ohio’s 12th District on October 22, 2019, and the Shearer Committee filed its Statement of Organization on the same day; Shearer lost in the general election on November 3, 2020. Tims filed her Statement of Candidacy for the U.S. House of Representatives in Ohio’s 10th District on November 18, 2019, and the Tims Committee filed its Statement of Organization on July 25, 2019; she lost in the general election on November 3, 2020.

1 Hubay in his official capacity as treasurer (the “Tims Committee”) violated 52 U.S.C.
2 § 30114(b)(2), 52 U.S.C. § 30116(a)(2)(A), or 52 U.S.C. § 30116(f) by making or receiving
3 impermissible candidate salary payments.

4 However, we also recommend that the Commission find reason to believe that ODP
5 violated 52 U.S.C. § 30104(b)(4) by improperly reporting the purpose of the disbursements to
6 federal candidate campaign committee employees, including Shearer and Tims, and recommend
7 that the Commission find reason to believe that the Shearer Committee and the Tims Committee
8 violated 52 U.S.C. § 30104(b)(4) by improperly reporting the purpose of their disbursements to
9 ODP and failing to report the resulting salary payments to specific campaign committee
10 employees. We further recommend the Commission authorize pre-probable cause conciliation
11 and approve proposed conciliation agreements with ODP, the Shearer Committee, and the Tims
12 Committee.

13 **II. FACTS**

14 ODP is a state committee of the Democratic Party.³ Alaina Shearer was a 2020 candidate
15 for the U.S. House of Representatives in Ohio’s 12th Congressional District. The Shearer
16 Committee was her principal campaign committee. Desiree Tims was a 2020 candidate for the
17 U.S. House of Representatives in Ohio’s 10th Congressional District. The Tims Committee was
18 her principal campaign committee.

19 The complaint alleges that ODP, Shearer, the Shearer Committee, Tims, and the Tims
20 Committee (collectively, “Respondents”) engaged “in an unlawful scheme to violate the federal

³ Patricia Frost-Brooks is the current treasurer of the Ohio Democratic Party, and is named in this matter in her official capacity as treasurer. Fran Alberty was the committee treasurer during the 2020 election cycle.

1 campaign finance laws,” when ODP paid salaries to Shearer and Tims in 2019-2020.⁴ The
2 complaint alleges that because these payroll-related payments came from ODP instead of the
3 Shearer Committee or Tims Committee, respectively, the disbursements constitute a personal use
4 of campaign funds.⁵ Finally, the complaint alleges that ODP improperly and inaccurately
5 reported the Shearer and Tims salary payments as state party “Payroll.”⁶

6 ODP’s Response states that it simply acted as a payroll service in processing the salary
7 payments from the candidates’ campaign committees to the candidates and other campaign
8 committee staff.⁷ The ODP Response states that the Shearer and Tims Committees were the
9 original sources for the funds used to make payments to the candidates and other committee
10 employees, and ODP merely administered the payroll payments.⁸ ODP asserts that it properly
11 disclosed each of the transactions on its reports with the description “Payroll.”⁹ The ODP

⁴ Compl. at 2-5. *See also, e.g.*, Ohio Democratic Party 2020 June Monthly Report (Aug. 24, 2020) at 52, 54, <https://docquery.fec.gov/pdf/245/202008249266982245/202008249266982245.pdf>. The complaint also alleges that the Financial Disclosure Report that Shearer filed with the Clerk of the U.S. House of Representatives on May 15, 2020, states that, as of that date, Shearer had received \$21,527.38 in “Salary” from the “Ohio Democratic Party/Campaign.” Compl. at 3. *See also* Alaina Shearer U.S. House of Representatives Financial Disclosure Report (May 15, 2020), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10036016.pdf. Additionally, the complaint alleges that multiple Financial Disclosure Reports that Tims filed with the Clerk of the U.S. House of Representatives state that Tims received a stipend/salary from a single entity during the campaign, \$17,000 total from the Tims Committee. *Id.*; *see also* Desiree Tims U.S. House of Representatives 2019 Financial Disclosure Report (Dec. 27, 2019), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2019/10032332.pdf, and Desiree Tims U.S. House of Representatives 2020 Financial Disclosure Report (Aug. 13, 2020), https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10035961.pdf.

⁵ Compl. at 6.

⁶ *Id.* at 7.

⁷ ODP Resp. at 1-2 (Nov. 19, 2020). It is unclear whether ODP was compensated for providing a payroll service to the candidate committees. If the service was provided for a fee, the available information does not indicate that ODP reported receipts from the candidate committees for this purpose, nor does the available information indicate that the candidate committees reported disbursements to ODP for this purpose.

⁸ *Id.*

⁹ *Id.* ODP’s Response states that ODP “properly disclosed each of these transactions on Line 12 of its reports with the description ‘Payroll’” — FEC Form 3X Line 12 is categorized as “Transfers From Affiliated/Other Party Committees” — however a review of ODP’s reports indicates that ODP disclosed the receipts from the candidate committees on FEC Form 3X Line 15, which is categorized as “Offsets To Operating Expenditures

1 Response further states that ODP did not make any payments to Shearer, Tims, or other
2 candidate committee employees from ODP funds.¹⁰ ODP's Response offers no explanation for
3 why disbursements to the campaign committee employees appear to have been reported as
4 ODP's own payroll, rather than payroll payments on behalf of the Shearer and Tims committees.

5 The response filed on behalf of the Shearer and Tims Committees (the "Candidate
6 Response"), asserts that the two candidate campaign committees provided the funding for all
7 "payroll" payments made to Shearer and Tims, as reported by ODP, and that ODP was merely an
8 intermediary providing a service as a payroll processor.¹¹ The Candidate Response states that
9 each campaign sent funds for payroll to ODP's federal account and ODP then processed payroll
10 for the Shearer and Tims Committees.¹² The Candidate Response does not address any of the
11 alleged reporting issues.

(Refunds, Rebates, etc.).” *See, e.g.*, ODP Amended 2020 August Monthly Report (Nov. 17, 2020) at 101-112, 119-128, 132-142; ODP Amended 2020 September Monthly Report (Mar. 8, 2021) at 138-144, 146-152, 159-170, 176-192. ODP's reports indicate that ODP disclosed the transactions for disbursements to individuals described as "Payroll" on both FEC Form 3X Line 21b, which is categorized as "Operating Expenditures: Other Federal Operating Expenditures" and FEC Form 3X Line 30b, which is categorized as "Federal Election Activity (52 U.S.C. § 30101(20)): Federal Election Activity Paid Entirely With Federal Funds."

¹⁰ ODP Resp. at 2.

¹¹ Candidate Resp. at 1. (Nov. 3, 2020).

¹² *Id.* In reports filed with the Commission, the candidate committees each reported multiple disbursements to ODP identified as "Contribution" and "Contribution — Payroll," but the entries failed to itemize which individuals were the ultimate recipients of the salary payments. Each disbursement lacked any memo item descriptions identifying individuals who would be paid from the "payroll" disbursement. Similarly, ODP appears to have cited specific salary recipient names in its reported disbursements in memo items, including payments made to the candidates, but ODP fails to connect the individuals to specific campaign committees.

1 **III. LEGAL ANALYSIS**

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 3 **A. The Commission Should Find that There is No Reason to Believe the Salary**
 4 **Payments to Shearer and Tims were an Impermissible Personal Use of**
 5 **Campaign Funds**

6
 7 Under The Federal Election Campaign Act of 1971, as amended (the “Act”), and
 8 Commission regulations, personal use means any use of funds in a campaign account of a present
 9 or former candidate to fulfill a commitment, obligation or expense of any person that would exist
 10 irrespective of the candidate’s campaign or duties as a Federal officeholder.¹³ Salary payments
 11 by a candidate’s principal campaign committee to the candidate are permitted under the
 12 regulations with certain conditions.¹⁴ The candidate’s salary must be paid from his or her
 13 principal campaign committee.¹⁵ The salary payments must not exceed the lesser of the
 14 minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks
 15 or the earned income that the candidate received during the year prior to becoming a candidate,

¹³ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

¹⁴ See 11 C.F.R. § 113.1(g)(1)(i)(I); Explanation and Justification, Disclaimer, Solicitation and Personal Use Regulations, 67 Fed. Reg. 76,962, 76,971–76,973 (Dec. 13, 2002) (“Personal Use E&J”). The candidate may receive a salary from his or her campaign committee only under the following conditions: the salary must be paid by the principal campaign committee, the salary must not exceed the lesser of the minimum annual salary for the federal office sought or what the candidate received as earned income in the previous year, individuals who elect to receive a salary from their campaign committees must provide income tax records and additional proof of earnings from relevant years upon request from the Commission, payments of salary from the committee must be made on a pro-rata basis (*i.e.*, a candidate may not receive a whole year’s salary if he or she is not a candidate for an entire twelve-month period), incumbent federal officeholders may not receive a salary payment from campaign funds, and the first payment of salary shall be made no sooner than the filing deadline for access to the primary election ballot in the state in which the candidate is running for office. 11 C.F.R. § 113.1(g)(1)(i)(I). Salary payments may continue until the date when the candidate is no longer considered a candidate for office or until the date of the general election or general election runoff. For special elections, payments may continue from the date that the special election is set until the date of the special election. *Id.* See also FEC CAMPAIGN GUIDE FOR CONGRESSIONAL CANDIDATES AND COMMITTEES at 53-54 (June 2014). <https://www.fec.gov/resources/cms-content/documents/candgui.pdf> (“FEC Candidate Guide”).

¹⁵ Personal Use E&J at 76,971–76,973. A candidate’s salary or wages earned from bona fide employment are considered his or her personal funds. 11 C.F.R. § 100.33(b). However, compensation paid to a candidate in excess of actual hours worked, or in consideration of work not performed, is generally considered a contribution from the employer. 11 C.F.R. § 113.1(g)(6)(iii).

1 but any earned income that a candidate receives from salaries or wages from any other source
2 shall count against the minimum salary paid to a Federal officeholder holding the seat sought by
3 the candidate.¹⁶ Salary payments made to candidates that do not meet this criteria, *inter alia*, are
4 considered *per se* personal use of campaign funds.¹⁷

5 Both of the responses explain that ODP acted as a payroll processing agent for the
6 candidate committees and state that the sources of all funds for the reported salary payments paid
7 to Shearer and Tims derive from their respective principal campaign committees. A review of
8 disclosure reports confirms that the candidate committees were disbursing funds to ODP for
9 what appear to be employee salary payments, and the timing and amounts correspond with the
10 later payments by ODP. There is no available information that contradicts the responses'
11 characterization that the salary processed by ODP originally came from the candidate
12 committees and that the amounts paid were appropriate. Absent information suggesting that the
13 salary payments to Shearer and Tims were funded by any source other than their respective
14 principal campaign committees, there is not a sufficient basis to conclude that these transactions
15 resulted in the personal use of campaign funds.

16 We therefore recommend that the Commission find no reason to believe as to the
17 allegation that ODP, Shearer, the Shearer Committee, Tims, and the Tims Committee violated

¹⁶ 11 C.F.R. § 113.1(g)(1)(i)(I)

¹⁷ *See id.* Additionally, no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000. *See* 52 U.S.C. § 30116(a)(2)(A). *See also* FEC Candidate Guide at 33. Also, no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of 52 U.S.C. § 30116. *See* 52 U.S.C. § 30116(f). Thus, while the complaint posits that the payments reported by ODP resulted in a personal use violation, if ODP had actually funded the candidate salaries, this could result in an excessive contribution from ODP to the candidate committees.

1 52 U.S.C. §§ 30114(b)(2), 30116(a)(2)(A), or 30116(f) by making or accepting impermissible or
2 excessive candidate salary payments.

3 **B. The Commission Should Find that There is Reason to Believe that ODP, the**
4 **Shearer Committee, and the Tims Committee Violated 52 U.S.C.**
5 **§ 30104(b)(4) by Improperly Reporting Receipts and Disbursements**
6

7 Political committees must disclose the total amount of all receipts and disbursements to
8 the Commission as part of their regular reporting, and shall report the category of the receipt and
9 purpose of each expenditure.¹⁸ A candidate's authorized committee must also itemize all
10 disbursements, including operating expenditures that exceed \$200, or aggregate to over \$200
11 when added to other disbursements in the same category, made to the same payee during an
12 election cycle.¹⁹ Political party committees must itemize contributions from political
13 committees, and for each itemized receipt, the committee must provide the full name and mailing
14 address of the contributor or other source, the date of receipt, the amount, and the aggregate
15 year-to-date total of all receipts within the same category from the same source.²⁰ Committees
16 are encouraged to also provide the committee ID number of the contributor, if appropriate.²¹

17 The Commission has provided guidance that reporting disbursements for salary payments
18 to employees are to be disclosed in the same manner as credit card payments and ultimate
19 payees.²² Although neither the Act nor Commission regulations expressly address the reporting

¹⁸ 52 U.S.C. § 30104(b)(4); 11 C.F.R. §§ 104.3(a)(2)(iii), (vii), (a)(4)(ii), (iii), (b)(1)(ix)(A), (b)(3)(i).

¹⁹ 52 U.S.C. § 30104(b)(5); 11 C.F.R. §§ 104.3(b)(4)(i), (vi), 104.9.

²⁰ 11 C.F.R. §§ 104.3(a)(4), 104.8. *See also* FEC CAMPAIGN GUIDE FOR POLITICAL PARTY COMMITTEES (Aug. 2013), <https://www.fec.gov/resources/cms-content/documents/partygui.pdf>.

²¹ FEC CAMPAIGN GUIDE FOR POLITICAL PARTY COMMITTEES at 81 (Aug. 2013), <https://www.fec.gov/resources/cms-content/documents/partygui.pdf>.

²² *See RAD FAQs for Political Action Committees*, https://www.fec.gov/resources/cms-content/documents/RAD_FAQs-PACs_last_visited_september_21_2020.pdf ("RAD FAQs").

1 of ultimate payees such as subvendors, subcontractors, or vendor employees, in a 2013
2 interpretive rule, the Commission clarified the itemization requirement and specifically
3 addressed the proper disclosure of ultimate payees where a committee pays a credit card bill that
4 includes charges exceeding \$200 from a single vendor.²³ It explained that a committee itemizing
5 a disbursement to a credit card company “must itemize as a memo entry any transaction with a
6 single vendor charged on the credit card that exceeds the \$200 itemization threshold” in order to
7 itemize the “ultimate payee, as the provider of the goods or services to the political committee”
8 and to reflect that the credit card company was not the provider of those goods and services.²⁴

9 The Commission’s guide for candidates also includes instructions for interpreting the
10 regulatory requirement for itemizing operating expenditures under 11 C.F.R. § 104.3(b)(4)(i),
11 and provides specific guidance for properly itemizing operating expenditures charged on a credit
12 card using memo entries that disclose the ultimate recipient of the payment.²⁵ Specific guidance
13 concerning the proper reporting of disbursements *when using payroll companies* likewise

²³ In the rule, the Commission describes a committee’s obligation to report “ultimate payees” in three specific circumstances: (1) reimbursements to individuals who advance personal funds to pay committee expenses; (2) payments to credit card companies; and (3) payments by candidates who use personal funds to pay committee expenses without reimbursement. *See* Interpretive Rule on Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (July 8, 2013) (“Ultimate Payee Interpretive Rule”). In this matter, ODP’s payments to the federal campaign employees were salary payments being made by the Shearer and Tims Committees through ODP as a conduit. *See* ODP Resp. at 1-2; Candidate Resp. at 1. The Commission has determined that reporting the immediate recipient of a disbursement will not satisfy the Act’s reporting requirements when the facts indicate that the recipient is “merely a conduit for the intended recipient of the funds.” Factual & Legal Analysis at 9, MUR 6724 (Bachmann for President, *et al.*).

²⁴ Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626. In explaining the rule, “the Commission makes clear that this interpretation is based on long-standing Commission practice and is not making any fundamental changes to its rules or processes.” *Id.*

²⁵ FEC Candidate Guide at 104-105. *See, e.g.*, MUR 6818 (Allen Weh) F&LA at 5-6 (dismissing committee’s failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject); MUR 6576 (McLeod) F&LA at 12-13 (dismissing committee’s failure to itemize payroll expenditures where committee corrected reports shortly after receiving RFAs on the subject and before the election); MUR 4822 (Friends for Harry Reid) F&LA at 1-3 (finding reason to believe the committee violated the Act by failing to itemize payroll expenditures).

1 appears on the Commission's website, which explains that "[t]he payroll disbursement will be
2 itemized . . . once payments to the payroll company aggregate more than \$200 in an election
3 cycle," and that the reporting committee "will also itemize the ultimate recipients of the salary
4 payments as memo entries . . . once aggregate payments made to the individual are more than
5 \$200 in an election cycle."²⁶

6 Here, reports filed by the candidate committees failed to identify the ultimate recipients
7 of salary payments. For example, the candidate committees each reported multiple
8 disbursements to ODP identified as "Contribution" and "Contribution — Payroll" on Line 17 of
9 their FEC Form 3 reports under the categorization of "operating expenditures," but the entries
10 failed to itemize which individuals were the ultimate recipients of the salary payments. ODP
11 reported each of these transactions on its own reports as receipts from the candidate committees,
12 with the notation "Payroll." During the 2020 election cycle, the Shearer Committee reported two
13 disbursements to ODP identified as "Contribution," totaling \$5,331.32, and 24 disbursements to
14 ODP identified as "Contribution — Payroll," totaling \$236,986.21, for a combined total of
15 \$242,317.53. Each disbursement lacked any memo item descriptions identifying individuals
16 who would be paid from the "payroll" disbursement.²⁷ Thus, anyone seeking to determine the
17 employees of the Shearer Committee and their respective salaries would not be able to find that

²⁶ See *HOW TO REPORT/Using a payroll company/Reporting on candidate forms*, <https://www.fec.gov/help-candidates-and-committees/filing-reports/using-payroll-company/>. ODP is a state party committee, not a payroll company, however if it acted as a payroll service provider as described in the Responses, then the Commission's guidance for reporting payroll company transactions would be applicable here.

²⁷ See Shearer Comm. 2020 Pre-Primary Report (Mar. 5, 2020) at 78, 86, 87; Shearer Comm. 2020 April Quarterly Report (Apr. 15, 2020) at 62, 67, 68; Shearer Comm. 2020 Pre-Primary Report (Apr. 16, 2020) at 14; Shearer Comm. 2020 July Quarterly Report (July 15, 2020) at 296, 300, 303, 306, 317; Shearer Comm. 2020 October Quarterly Report (Oct. 15, 2020) at 579, 587, 594, 600, 615, 631; Shearer Comm. 2020 Pre-General Report (Oct. 22, 2020) at 131; Shearer Comm. 2020 Post-General Report (Dec. 3, 2020) at 268, 309; Shearer Comm. 2020 Year-End Report (Jan. 31, 2021) at 8,14.

1 information, which is especially problematic with respect to a candidate salary paid by his or her
2 campaign committee.²⁸ Similarly, during the 2020 election cycle, the Tims Committee reported
3 22 disbursements to ODP identified as “Contribution,” totaling \$94,662.09, and 12
4 disbursements to ODP identified as “Contribution — Payroll,” totaling \$152,371.27, for a
5 combined total of \$247,033.36. As with the Shearer Committee reports, each of the above
6 disbursements lacked any memo item description identifying individuals who would be paid
7 from the “payroll” disbursement.²⁹

8 ODP’s deficient reporting of the salary payments to the campaign committee employees
9 also deprived the public of required disclosure information. ODP reported the receipts from the
10 Shearer and Tims committees as contributions with the general notation of “Payroll,” under FEC
11 Form 3X Line 15, categorized as “Offsets to Operating Expenditures (Refunds, Rebates, etc.),”
12 when they were receipts intended to be used for the specific purpose of making payroll payments
13 to specific campaign committee employees.³⁰ Moreover, while ODP cited specific salary

²⁸ Regarding the transparency of candidate salaries, the Commission has stated: “In making this decision, the Commission is satisfied that, because all candidate and family members’ salaries will be fully disclosed to the public, those who contribute to the campaign and who support the candidate will be able to voice their approval, or disapproval, of this use of campaign funds.” Personal Use E&J at 76,972–76,973 (Dec. 13, 2002).

²⁹ See Tims Comm. 2020 July Quarterly (July 15, 2020) at 393, 397, 402, 406, 415; Tims Comm. Second Amended 2020 October Quarterly (Mar. 11, 2021) at 1079, 1091, 1101, 1110, 1124, 1126, 1130, 1135; Tims Comm. 2020 Year-End (Jan. 31, 2021) at 9, 12. In addition to its disbursements to ODP marked ‘Contribution’ and ‘Contribution - Payroll,’ the Tims Committee’s reports indicate that it engaged a second payroll processor in 2020, and properly reported those transactions. Specifically, the Tims Committee reported 104 disbursements made to “Gusto” for the purpose of “Payroll” between October 20, 2020, and December 16, 2020, totaling \$19,348.75. See Tims Comm. Amended 2020 Post-General (Jan. 31, 2021) at 599-613, 623-637, 654-675; Tims Comm. 2020 Year-End at 8, 10, 11, 15. Gusto is an online service that facilitates payroll and benefits for small businesses. See <https://gusto.com/product/payroll/online>. The Tims Committee disbursements to Gusto corresponded to Memo Items for 58 disbursements totaling \$15,011.25 to 25 separate individuals with the description of “Payroll,” made on Oct. 20, 2020, Oct. 23, 2020, Oct. 28, 2020, and Nov. 18, 2020.

³⁰ See ODP Amended 2019 September Monthly Report (Oct. 20, 2019) at 52; ODP Amended 2019 October Monthly Report (Dec. 20, 2019) at 82; ODP Amended 2019 November Monthly Report (May. 16, 2020) at 99; ODP 2019 December Monthly Report (Dec. 20, 2019) at 76; ODP 2019 Year-End Monthly Report (Jan. 31, 2020) at 82; ODP Amended 2020 February Monthly Report (July 9, 2020) at 27-29; ODP Amended 2020 March Monthly Report (July 9, 2020) at 25-28; ODP Amended 2020 April Monthly Report (July 9, 2020) at 30-32; ODP 2020 May Monthly Report (May 20, 2020) at 29, 31; ODP Amended 2020 June Monthly Report (Aug. 24, 2020) at 35-36;

1 recipient names in its reported disbursements in memo items, including payments made to the
 2 candidates, it failed to connect the individuals to the specific campaign committees which
 3 provided the funds for those payments, making it appear that the individuals were ODP
 4 employees rather than Shearer and Tims committee employees.³¹

5 Reports filed by ODP during the 2020 election cycle indicate that ODP reported
 6 disbursements to Alaina Shearer totaling \$48,236.75,³² and disbursements to Desiree Tims
 7 totaling \$16,921.42, but it is not clear that these are salary payments funded by their respective
 8 authorized committees, rather than ODP. Respondents indicate only that each campaign
 9 committee sent funds for payroll to ODP's federal account and that ODP then processed payroll
 10 for the Shearer and Tims Committees. Reports filed by the Shearer and Tims Committees
 11 indicate that the Shearer Committee reported 26 disbursements to ODP identified as
 12 "Contribution" and "Contribution — Payroll," for a total of \$242,317.53, and the Tims

ODP 2020 July Monthly Report (July 20, 2020) at 50-52; ODP Amended 2020 August Monthly Report (Nov. 17, 2020) at 96, 98; ODP Amended 2020 September Monthly Report (Mar. 8, 2021) at 132-134; ODP Amended 2020 October Monthly Report (Mar. 8, 2021) at 227-229; ODP Amended 2020 12-Day Pre-General Election Report (Jan. 18, 2021) at 124; ODP Amended 2020 30-Day Post-General Election Report (May 11, 2021) at 1078, 1080; ODP Amended 2020 Year-End Report (May 11, 2021) at 158-160. We also note that it appears ODP misreported two transactions as receipts from the Tims Committee: \$725.26 on November 30, 2020, and \$4,402.95 on December 29, 2020. *See* ODP Amended 2020 Year End Report (May 11, 2021) at 158, 160. The Tims Committee did not report these disbursements; however, the Shearer Committee did report two corresponding disbursements to ODP: \$725.26 on November 27, 2020, and \$4,402.95 on December 28, 2020. *See* Shearer Comm. 2020 Year-End Report (Jan. 31, 2021) at 8,14.

³¹ *See, e.g.*, ODP Amended 2020 August Monthly Report (Nov. 17, 2020) at 101, 107 (report entries disclose disbursements to "Paychex" on July 14, 2020, for \$25,162.25, and July 30, 2020, for \$32,366.03, identifying them as "Payroll — See Memo Entries"), 105 (report entry discloses a disbursement to "Alaina Shearer" on July 14, 2020, for \$ 2,635.92, identifying it as "Payroll,"), 111 (report entry discloses a disbursement to "Alaina Shearer" on July 30, 2020, for \$2,601.11, identifying it as "Payroll,"); *see also, e.g.*, ODP 2020 June Monthly Report (June 20, 2020) at 48 (report entry discloses disbursement to "Paychex" on May 15, 2020, for \$24,828.12, identifying it as "Payroll — See Memo Entries"), 52 (report entry discloses disbursements to "Alaina Shearer" on May 15, 2020, for \$2,635.90, identifying it as "Payroll," and "Desiree Tims" on May 15, 2020, for \$831.51, identifying it as "Payroll.").

³² The complaint states that ODP reported \$34,602.54 in disbursements to Shearer between January 30, 2020, and July 30, 2020. Compl. at 3-4. Subsequent ODP filings indicate ODP reported an additional \$13,634.21 in disbursements to Shearer between August 14, 2020, and November 30, 2020, for a total of \$48,236.75.

1 Committee reported 34 disbursements to ODP identified as “Contribution” and “Contribution —
2 Payroll,” for a total of \$247,033.36.³³ Thus, the available information indicates that ODP did not
3 sufficiently identify or accurately itemize payroll disbursements made on behalf of the Shearer
4 and Tims Committees totaling \$489,350.89.

5 ODP was obligated to identify disbursements to individuals more specifically, such as
6 “payroll on behalf of [candidate’s campaign committee],” and the candidate committees were
7 obligated to identify disbursements to ODP for payroll processing to individuals with greater
8 clarity, by including memo entries for each ultimate payee.³⁴ Based on the current record, there
9 is no way to discern which names listed on ODP reports are employees of the Shearer or Tims
10 Committees; the existing disclosure record only indicates that overall, during the 2020 election
11 cycle, ODP made 996 disbursements identified as “Payroll” or “Payroll – See memo
12 entries/entry” to multiple recipients, totaling \$3,412,988.36.³⁵

13 When ODP identified payments to Shearer, Tims, and other employees simply as
14 “Payroll,” ODP did not sufficiently itemize and report the purpose of the expenditures as salary

³³ ODP reported 24 receipts from the Shearer Committee identified as “Payroll” for a total of \$237,189.32, and 37 receipts from the Tims Committee identified as “Payroll” for a total of \$252,161.57. The discrepancy between the total amounts reported by ODP and the total amounts reported by the Shearer and Tims Committees can be attributed to the misidentification of two transactions totaling \$5,155.21. *Supra* note 30.

³⁴ Proper itemization of a disbursement on requires a payee’s name, address, the date, amount, and an adequate purpose of disbursement. *See* REPORTS ANALYSIS DIVISION REVIEW AND REFERRAL PROCEDURES FOR THE 2019-2020 ELECTION CYCLE at 102. https://www.fec.gov/resources/cms-content/documents/2019-2020_RAD_review_and_referral_procedures.pdf. In determining the adequacy of a purpose, the name of the vendor and purpose always need to be reviewed together in order to evaluate its adequacy. *Id.* at 104.

³⁵ This figure is drawn from the table of all disbursements by ODP, available on the Commission’s website, <https://www.fec.gov/data/committee/C00016899/?tab=spending&cycle=2020>. ODP reports indicate at least four additional 2020 Ohio candidate committees were reported as the sources of receipts noted as “payroll” by ODP: Beatty for Congress, Friends of Mike Larsen, Kate for Congress, and Shannon 4 Congress. *See, e.g.,* ODP Amended 2020 March Monthly Report (July 9, 2020) at 25-27; ODP Amended 2020 April Monthly Report (July 9, 2020) at 30-31; ODP 2020 July Monthly Report (July 20, 2020) at 50-52. Because these Committees were not addressed or named in either the Complaint or the Responses, we do not make any recommendations regarding these transactions.

1 payments to the candidates and other employees from their principal campaign committees.
2 Additionally, when the candidate committees identified payments to ODP as “Contribution” and
3 “Contribution — Payroll,” the candidate committees did not sufficiently itemize and report the
4 purpose of the expenditures as salary payments from the candidates’ principal campaign
5 committees through ODP to the campaign committee’s employees. By failing to sufficiently
6 identify the salary and payroll disbursements, each committee failed to accurately report its
7 expenditures. Accordingly, we recommend that the Commission find reason to believe that the
8 Ohio Democratic Party and Patricia Frost-Brooks in her official capacity as treasurer, Alaina
9 Shearer for Congress and Scott M. Hubay in his official capacity as treasurer, and Gem City Rise
10 PAC (f/k/a Friends of Desiree Tims) and Scott M. Hubay in his official capacity as treasurer
11 violated 52 U.S.C. § 30104(b)(4) by improperly reporting disbursements.

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MURs 7792 (Ohio Democratic Party, *et al.*)
First General Counsel's Report
Page 15 of 17

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2 V. RECOMMENDATIONS

- 3 1. Find no reason to believe that the Ohio Democratic Party and Patricia Frost-
4 Brooks in her official capacity as treasurer violated 52 U.S.C. § 30114(b)(2) or 52
5 U.S.C. § 30116(a)(2)(A);
- 6 2. Find no reason to believe that Alaina Shearer and Alaina Shearer for Congress
7 and Scott M. Hubay in his official capacity as treasurer violated 52 U.S.C.
8 § 30114(b)(2), 52 U.S.C. § 30116(a)(2)(A), or 52 U.S.C. § 30116(f);
- 9 3. Find no reason to believe that Desiree Tims and Gem City Rise PAC (f/k/a
10 Friends of Desiree Tims) and Scott M. Hubay in his official capacity as treasurer
11 violated 52 U.S.C. § 30114(b)(2), 52 U.S.C. § 30116(a)(2)(A), or 52 U.S.C.
12 § 30116(f);
- 13 4. Find reason to believe that the Ohio Democratic Party and Patricia Frost-Brooks
14 in her official capacity as treasurer violated 52 U.S.C. § 30104(b)(4);
- 15 5. Find reason to believe that Alaina Shearer for Congress and Scott M. Hubay in his
16 official capacity as treasurer violated 52 U.S.C. § 30104(b)(4);
- 17 6. Find reason to believe that Gem City Rise PAC (f/k/a Friends of Desiree Tims)
18 and Scott M. Hubay in his official capacity as treasurer violated 52 U.S.C.
19 § 30104(b)(4);
- 20 7. Approve the attached Factual and Legal Analyses;
- 21 8. Authorize conciliation prior to a finding of probable cause to believe with the
22 Ohio Democratic Party and Patricia Frost-Brooks in her official capacity as
23 treasurer, Alaina Shearer for Congress and Scott M. Hubay in his official capacity
24 as treasurer, and Gem City Rise PAC (f/k/a Friends of Desiree Tims) and Scott M.
25 Hubay in his official capacity as treasurer;
- 26 9. Approve the attached proposed Conciliation Agreements; and

1 10. Approve the appropriate letters.

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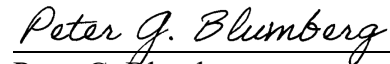
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Lisa J. Stevenson
Acting General Counsel

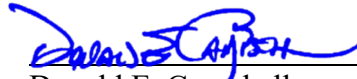
Charles Kitcher
Associate General Counsel for Enforcement

Jan. 26, 2022

DATE


Peter G. Blumberg
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Mark Shonkwiler
Assistant General Counsel


Donald E. Campbell
Attorney