



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**Via Electronic Mail Only**

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N. Zachary West  
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May 4, 2022

RE: MUR 7792  
Ohio Democratic Party

Dear Mr. West:

On September 17, 2020, the Federal Election Commission notified your client of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the Complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 26, 2022, voted to dismiss the allegations as they pertain to your client. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

You are advised that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

*Mark Shonkwiler*

Mark Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Ohio Democratic Party and **MUR 7792**  
Patricia Frost-Brooks in her official  
capacity as treasurer

**I. INTRODUCTION**

This matter involves the misreporting of \$489,350.89 in salary payments to the employees of principal campaign committees of 2020 Ohio congressional candidates Alaina Shearer and Desiree Tims as state party payroll payments by the Ohio Democratic Party (“ODP”). The complaint alleges that what appeared to be ODP salary payments to candidates Shearer and Tims were an impermissible personal use of campaign funds and that ODP misreported its apparent subsidy of the Shearer and Tims campaigns as state party payroll expenses.<sup>1</sup> ODP’s Response explains that Shearer’s and Tims’s campaign committees transferred funds to ODP, which provided a payroll processing service for employees of these two federal candidate campaign committees. ODP’s Response does not address its failure to report the disbursements to specific campaign committee employees as being on behalf of the Shearer or Tims campaign committees, rather than as its own payroll to ODP employees.

Based on the available information, and for the reasons set forth below, the Commission finds no reason to believe that ODP violated 52 U.S.C. § 30114(b)(2) or § 30116(a)(2)(A) by making impermissible candidate salary payments or excessive contributions. Further, the Commission dismisses as a matter of prosecutorial discretion the allegation that ODP violated 52

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<sup>1</sup> Compl. at 2 (Sept. 10, 2020). Shearer filed her Statement of Candidacy for the U.S. House of Representatives in Ohio’s twelfth 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 tenth 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 U.S.C. § 30104(b)(4) by improperly reporting the purpose of the disbursements to federal  
2 candidate campaign committee employees, including Shearer and Tims.

## 3 **II. FACTUAL AND LEGAL ANALYSIS**

### 4 **A. Background**

5 ODP is a state committee of the Democratic Party.<sup>2</sup> Alaina Shearer was a 2020 candidate  
6 for the U.S. House of Representatives in Ohio’s Twelfth Congressional District. The Shearer  
7 Committee was her principal campaign committee. Desiree Tims was a 2020 candidate for the  
8 U.S. House of Representatives in Ohio’s Tenth Congressional District. The Tims Committee  
9 was her principal campaign committee.

10 The complaint alleges that ODP, Shearer, the Shearer Committee, Tims, and the Tims  
11 Committee (collectively, “Respondents”) engaged “in an unlawful scheme to violate the federal  
12 campaign finance laws,” when ODP paid salaries to Shearer and Tims in 2019-2020.<sup>3</sup> The  
13 complaint alleges that because these payroll payments came from ODP instead of the Shearer  
14 Committee or Tims Committee, respectively, the disbursements constitute a personal use of

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<sup>2</sup> 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 2019-2020 election cycle.

<sup>3</sup> 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](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](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](https://disclosures-clerk.house.gov/public_disc/financial-pdfs/2020/10035961.pdf).

1 campaign funds.<sup>4</sup> Finally, the complaint alleges that ODP improperly and inaccurately reported  
2 the Shearer and Tims salary payments as state party “Payroll.”<sup>5</sup>  
3 ODP’s Response states that it simply acted as a payroll service in processing the salary  
4 payments from the candidates’ campaign committees to the candidates and other campaign  
5 committee staff.<sup>6</sup> The ODP Response states that the Shearer and Tims Committees were the  
6 original sources for the funds used to make payments to the candidates and other committee  
7 employees, and ODP merely administered the payroll payments.<sup>7</sup> ODP asserts that it properly  
8 disclosed each of the transactions on its reports with the description “Payroll.”<sup>8</sup> The ODP  
9 Response further states that ODP did not make any payments to Shearer, Tims, or other  
10 candidate committee employees from ODP funds.<sup>9</sup> ODP’s Response offers no explanation for  
11 why disbursements to the campaign committee employees were reported simply as “payroll,”

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<sup>4</sup> Compl. at 6.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> 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.

<sup>7</sup> *Id.*

<sup>8</sup> *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 (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.”

<sup>9</sup> ODP Resp. at 2.

1 rather than specifying that the payroll payments were made on behalf of the Shearer and Tims  
2 committees.<sup>10</sup>

### 3 **B. Legal Analysis**

#### 4 **1. There is No Reason to Believe the Salary Payments to Shearer and** 5 **Tims were an Impermissible Personal Use of Campaign Funds or** 6 **Constituted Excessive Contributions to Their Committees**

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8 Under the Federal Election Campaign Act of 1971, as amended (the “Act”), and  
9 Commission regulations, personal use means any use of funds in a campaign account of a present  
10 or former candidate to fulfill a commitment, obligation or expense of any person that would exist  
11 irrespective of the candidate’s campaign or duties as a Federal officeholder.<sup>11</sup> Salary payments  
12 by a candidate’s principal campaign committee to the candidate are permitted under the  
13 regulations with certain conditions.<sup>12</sup>

14 Commission regulations state that notwithstanding that the use of campaign funds for a  
15 particular expense would be personal use under the regulations, the payment of that expense by

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<sup>10</sup> In reports filed with the Commission, ODP cited specific salary recipient names in its reported disbursements in memo items, including payments made to the candidates, but did not connect the individuals to specific campaign committees.

<sup>11</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>12</sup> 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”).

1 any person other than the candidate or the campaign committee is a contribution to the candidate,  
2 unless that person would have made that payment irrespective of the candidacy.<sup>13</sup> Payments for  
3 compensation in particular are considered contributions unless those payments are for *bona fide*  
4 employment that is genuinely independent of the candidacy (and meet other criteria).<sup>14</sup> The Act  
5 prohibits multicandidate political committees from making contributions to any candidate and  
6 her authorized political committee with respect to any election for Federal office which, in the  
7 aggregate, exceed \$5,000.<sup>15</sup>

8 Although the Complaint posits that the payments reported by ODP resulted in a personal  
9 use violation, the personal use prohibition does not apply to the ODP's funds, as they are not (a)  
10 funds accepted by a candidate, (b) donations received by an individual as support for activities of  
11 the individual as a holder of Federal office, nor (c) funds "in a campaign account of a present or  
12 former candidate."<sup>16</sup>

13 Respondent ODP explains that ODP acted as a payroll processing agent for the candidate  
14 committees and states that the sources of all funds for the reported salary payments paid to  
15 Shearer and Tims derive from their respective principal campaign committees. A review of  
16 disclosure reports confirms that the candidate committees were disbursing funds to ODP for  
17 what appear to be employee salary payments, and the timing and amounts correspond with the

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<sup>13</sup> 11 C.F.R. § 113.1(g)(6).

<sup>14</sup> 11 C.F.R. § 113.1(g)(6)(iii).

<sup>15</sup> *See* 52 U.S.C. § 30116(a)(2)(A).

<sup>16</sup> *See* 52 U.S.C. § 30114(a), (b)(1); 11 C.F.R. § 113.1(g).

1 later payments by ODP. There is no available information that contradicts the Response's  
2 characterization that the salary processed by ODP originally came from the candidate  
3 committees. Accordingly, there is not a sufficient basis to conclude that these transactions  
4 resulted in excessive contributions from ODP to the candidate committees.

5 Therefore, the Commission finds no reason to believe as to the allegation that ODP  
6 violated 52 U.S.C. § 30114(b)(2) by converting its funds to personal use or § 30116(f) by  
7 making excessive contributions to the Shearer and Tims Committees.

8 **B. The Commission Dismisses the Allegation that the Ohio Democratic Party**  
9 **Violated 52 U.S.C. § 30104(b)(4) by Improperly Reporting Disbursements**

10 Political committees must disclose the total amount of all receipts and disbursements to  
11 the Commission as part of their regular reporting, and shall report the category of the receipt and  
12 purpose of each expenditure.<sup>17</sup> Political party committees must itemize contributions from  
13 political committees, and for each itemized receipt, the committee must provide the full name  
14 and mailing address of the contributor or other source, the date of receipt, the amount, and the  
15 aggregate year-to-date total of all receipts within the same category from the same source.<sup>18</sup>  
16 Committees are encouraged to also provide the committee ID number of the contributor, if  
17 appropriate.<sup>19</sup>

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19 Political party committees must also itemize disbursements for federal operating  
20 expenditures if the disbursement exceeds \$200 when aggregated with other disbursements made

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<sup>17</sup> 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).

<sup>18</sup> 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> (“FEC Party Guide”).

<sup>19</sup> FEC Party Guide at 81.

1 to the same payee during the calendar year.<sup>20</sup> For each itemized disbursement, a political party  
2 committee must provide the identification of the payee, the date and amount of the payment, and  
3 the purpose of the disbursement.<sup>21</sup> The term “purpose” means a brief statement or description of  
4 why the disbursement was made.<sup>22</sup> Examples of adequate descriptions include “dinner expenses,  
5 media, salary, polling, travel, party fees, phone banks, travel expenses and catering costs.”<sup>23</sup>  
6 Although, ODP’s reporting of the salary payments to the campaign committee employees  
7 did not indicate that the payments were made on behalf of another committee, by disclosing the  
8 purpose as “payroll” ODP substantially complied with the requirement to disclose the purpose of  
9 the disbursement as set out in the Commission’s regulations and guidance.<sup>24</sup> Moreover, ODP  
10 cited specific salary recipient names in its reported disbursements in memo items, including  
11 payments made to the candidates.<sup>25</sup>

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<sup>20</sup> 11 C.F.R. § 104.3(b)(1)(i), (3)(i).

<sup>21</sup> 11 C.F.R. § 104.3(b)(3)(i).

<sup>22</sup> 11 C.F.R. § 104.3(b)(3)(i)(A); *see also* Instructions for FEC Form 3X and Related Schedules at 8, 13 (Revised 5/2016), <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf> (“FEC Form 3X Instructions”); FEC Party Guide at 86.

<sup>23</sup> 11 C.F.R. § 104.3(b)(3)(i)(B); FEC Form 3X Instructions at 13; FEC Party Guide at 86.

<sup>24</sup> *See* 11 C.F.R. § 104.3(b)(3)(i)(B) (including “salary” as an example of a description which meets the requirements of 11 C.F.R. § 104.3(b)(3)); FEC Form 3X Instructions at 13 (same); FEC Party Guide at 86 (same).

<sup>25</sup> *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.”).



MUR 7792 (Ohio Democratic Party)

Factual and Legal Analysis

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1           Accordingly, the Commission dismisses as a matter of prosecutorial discretion<sup>26</sup> the  
2   allegation that that Ohio Democratic Party and Patricia Frost-Brooks, in her official capacity as  
3   treasurer, violated 52 U.S.C. § 30104(b)(4) by improperly reporting disbursements.

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<sup>26</sup> *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).