



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**Via Electronic Mail Only**

[scott@hubayllc.com](mailto:scott@hubayllc.com)

Gem City Rise PAC  
Scott M. Hubay, Treasurer  
4323 W. 3rd Street  
Dayton, OH 45417

May 13, 2022

RE: MUR 7792  
Gem City Rise PAC  
and Scott M. Hubay, as treasurer,  
f/k/a Friends of Desiree Tims

Dear Mr. Hubay:

On September 17, 2020, the Federal Election Commission (the "Commission") notified you and your client, Gem City Rise PAC f/k/a Friends of Desiree Tims, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided you and your client with a copy of the complaint.

After reviewing the allegations contained in the complaint, your response, and publicly available information, the Commission on April 26, 2022, found reason to believe that Gem City Rise PAC and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(b)(4), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you and your client as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you and your client violated the law. Enclosed is a conciliation agreement for your consideration

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you and your client are interested in engaging in pre-probable cause conciliation, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you and your client are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [https://www.fec.gov/documents/2100/respondent\\_guide.pdf](https://www.fec.gov/documents/2100/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

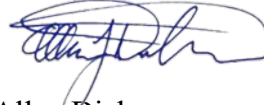
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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", written over a horizontal line.

Allen Dickerson  
Chairman

Enclosures  
Factual and Legal Analysis

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

**RESPONDENTS:** Gem City Rise PAC **MUR 7792**  
(f/k/a Friends of Desiree Tims)<sup>1</sup> and  
Scott M. Hubay in his official  
capacity as treasurer

**I. INTRODUCTION**

This matter involves the failure to report the ultimate payees and the misreporting of \$247,033.36 in salary payments to employees of the principal campaign committee of 2020 Ohio congressional candidate 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 candidate Tims were an impermissible personal use of campaign funds and that ODP misreported its apparent subsidy of the Tims campaign as state party payroll expenses.<sup>2</sup> The Tims Committee Response explains that Tims’s campaign committee transferred funds to ODP, which provided a payroll processing service for employees of this federal candidate campaign committee. The Tims Committee acknowledges that its reporting of the disbursements to ODP did not identify any of the specific campaign staff members, including the candidate, who later received the salary payments.

Based on the available information, and for the reasons set forth below, the Commission finds no reason to believe as to the allegation that Tims, and Gem City Rise PAC (f/k/a Friends of Desiree Tims) and Scott M. Hubay in his official capacity as treasurer (the “Tims

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<sup>1</sup> 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>.

<sup>2</sup> Compl. at 2 (Sept. 10, 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 Committee”) violated 52 U.S.C. § 30114(b)(2) by making impermissible candidate salary  
2 payments or 52 U.S.C. § 30116(f) by accepting excessive contributions in the form of salary  
3 payments to Tims. However, the Commission finds reason to believe that the Tims Committee  
4 violated 52 U.S.C. § 30104(b)(4) by improperly reporting the purpose of its disbursements to  
5 ODP and failing to report the resulting salary payments to specific campaign committee  
6 employees.

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

### 8 **A. Background**

9 ODP is a state committee of the Democratic Party.<sup>3</sup> Desiree Tims was a 2020 candidate  
10 for the U.S. House of Representatives in Ohio’s 10th Congressional District. The Tims  
11 Committee was her principal campaign committee.

12 The complaint alleges that ODP, Tims, and the Tims Committee (collectively,  
13 “Respondents”) engaged “in an unlawful scheme to violate the federal campaign finance laws,”  
14 when ODP paid a salary to Tims in 2019-2020.<sup>4</sup> The complaint alleges that because these  
15 payroll-related payments came from ODP instead of the Tims Committee, the disbursements  
16 constitute a personal use of campaign funds.<sup>5</sup>

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<sup>3</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 2020 election cycle.

<sup>4</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 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).

<sup>5</sup> Compl. at 6.

1           The response filed on behalf of the Tims Committee (the “Candidate Response”), asserts  
2 that the candidate campaign committee provided the funding for all “payroll” payments made to  
3 Tims, as reported by ODP, and that ODP was merely an intermediary providing a service as a  
4 payroll processor.<sup>6</sup> The Candidate Response states that the campaign sent funds for payroll to  
5 ODP’s federal account and ODP then processed payroll for the Tims Committee.<sup>7</sup> The  
6 Candidate Response does not address any of the alleged reporting issues.

## 7           **B.     Legal Analysis**

### 8                   **1.     There is No Reason to Believe the Salary Payments to Tims were an** 9                   **Impermissible Personal Use of Campaign Funds or Constituted** 10                  **Excessive Contributions to the Tims Committee**

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

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<sup>6</sup> Candidate Resp. at 1. (Nov. 3, 2020).

<sup>7</sup> *Id.* In reports filed with the Commission, the Tims committee 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.

<sup>8</sup> 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

<sup>9</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”); 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”).

<sup>10</sup> 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

1 minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks  
2 or the earned income that the candidate received during the year prior to becoming a candidate,  
3 but any earned income that a candidate receives from salaries or wages from any other source  
4 shall count against the minimum salary paid to a Federal officeholder holding the seat sought by  
5 the candidate.<sup>11</sup> Salary payments made to candidates that do not meet this criteria, *inter alia*, are  
6 considered *per se* personal use of campaign funds.<sup>12</sup>

7 Notwithstanding that the use of campaign funds for a particular expense would be  
8 personal use under the regulations, the payment of that expense by any person other than the  
9 candidate or the campaign committee is a contribution to the candidate, unless the payment  
10 would have been made irrespective of the candidacy.<sup>13</sup> The Act prohibits multicandidate  
11 political committees from making contributions to any candidate and her authorized political  
12 committee with respect to any election for Federal office which, in the aggregate, exceed  
13 \$5,000.<sup>14</sup> Candidates and political committees are prohibited from knowingly accepting any  
14 contribution in violation of the provisions of 52 U.S.C. § 30116.<sup>15</sup>

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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).

<sup>11</sup> 11 C.F.R. § 113.1(g)(1)(i)(I).

<sup>12</sup> *See id.* Additionally, the regulations state that 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. *Id.* 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.*

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

<sup>14</sup> *See* 52 U.S.C. § 30116(a)(2)(A).

<sup>15</sup> 52 U.S.C. § 30116(f).

1            Respondents explain that ODP acted as a payroll processing agent for the Tims  
2 Committee and state that the source of all funds for the reported salary payments paid to Tims  
3 derive from her principal campaign committee. The Complaint does not allege that the timing or  
4 the amount of the payments are impermissible. Absent information suggesting that the Tims  
5 Committee used its funds to make salary payments to Tims that were made outside of the period  
6 during which a candidate may receive a salary from her campaign, were in excess of the salary  
7 amount that a candidate may receive from her campaign, or in some other way did not comply  
8 with the limitations on candidate salaries,<sup>16</sup> there is not a sufficient basis to conclude that these  
9 transactions resulted in the personal use of campaign funds.

10           Further, a review of disclosure reports confirms that the Tims Committee was disbursing  
11 funds to ODP for what appears to be employee salary payments and the timing and amounts  
12 correspond with the later payments by ODP. There is no available information that contradicts  
13 the Respondents' characterization that the salary processed by ODP originally came from the  
14 Tims Committee. Accordingly, there is no reason to believe that Tims and the Tims Committee  
15 accepted an excessive contribution from ODP.

16           Therefore, the Commission finds no reason to believe as to the allegation that Tims and  
17 the Tims Committee violated 52 U.S.C. § 30114(b)(2) by making impermissible or excessive  
18 salary payments to Tims that resulted in personal use of campaign funds or 52 U.S.C. § 30116(f)  
19 by accepting excessive contributions in the form of salary payments to Tims.

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<sup>16</sup> 11 C.F.R. § 113.1(g)(1)(i)(I).



1           **B.       There is Reason to Believe that the Tims Committee Violated**  
2                   **52 U.S.C. § 30104(b)(4) by Improperly Reporting Disbursements**

3  
4           Political committees must disclose the total amount of all receipts and disbursements to  
5 the Commission as part of their regular reporting, and shall report the category of the receipt and  
6 purpose of each expenditure.<sup>17</sup> A candidate’s authorized committee must also itemize all  
7 disbursements, including operating expenditures that exceed \$200, or aggregate to over \$200  
8 when added to other disbursements in the same category, made to the same payee during an  
9 election cycle.<sup>18</sup>

10           Commission regulations require that payments made “to meet the committee’s operating  
11 expenses” must include the name and address of the payee.<sup>19</sup> In other words, if a committee has  
12 itself incurred an operating expense with a payee, the transactional relationship between the  
13 committee and that payee must be disclosed. In a 2013 interpretive rule expressly applying this  
14 regulation to the reporting of payments to credit card companies, the Commission explained that  
15 a committee itemizing a disbursement to a credit card company “must itemize as a memo entry  
16 any transaction with a single vendor charged on the credit card that exceeds the \$200 itemization  
17 threshold” in order to itemize the “ultimate payee, as the provider of the goods or services to the  
18 political committee” and to reflect that the credit card company was not the provider of those  
19 goods and services.<sup>20</sup>

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

<sup>19</sup> 11 C.F.R. § 104.3(b)(3)(i).

<sup>20</sup> 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 (Jul. 8, 2013) (“Ultimate Payee Interpretive Rule”). In explaining the

1           When a committee (or any other entity) applies for a credit card, it must sign the issuer’s  
2 cardholder agreement, which outlines the terms for the extension of credit. When the committee  
3 makes a purchase from a merchant or vendor using that credit card, it explicitly consents to a  
4 financial transaction with that merchant or vendor. In other words, the committee has privity  
5 with both the credit card company and the merchant or vendor with which it transacted. As such,  
6 it is required to disclose both obligations on Schedule B.

7           Similarly, when a committee disburses a salary payment to its own employee through an  
8 entity acting as a payroll processor, it is fulfilling its *own* obligation to pay that employee, which  
9 would have existed irrespective of the payroll processor. Here, reports filed by the Tims  
10 Committee failed to identify the ultimate recipients of salary payments made through ODP  
11 acting as a payroll processor. For example, the Tims committee reported multiple disbursements  
12 to ODP identified as “Contribution” and “Contribution — Payroll” on Line 17 of its FEC Form 3  
13 reports under the categorization of “operating expenditures,” but the entries failed to itemize  
14 which individuals were the ultimate recipients of the salary payments. During the 2020 election  
15 cycle, the Tims Committee reported 22 disbursements to ODP identified as “Contribution,”  
16 totaling \$94,662.09, and 12 disbursements to ODP identified as “Contribution — Payroll,”  
17 totaling \$152,371.27, for a combined total of \$247,033.36. Each disbursement lacked any memo  
18 item description identifying individuals who would be paid from the payroll disbursement.<sup>21</sup>

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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.*

<sup>21</sup> 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

1 Thus, anyone seeking to determine the employees of the Tims Committee and their respective  
2 salaries would not be able to find that information, which is especially problematic with respect  
3 to a candidate salary paid by his or her campaign committee.<sup>22</sup>

4 When the Tims Committee identified payments to ODP as “Contribution” and  
5 “Contribution — Payroll,” the Tims Committee did not sufficiently itemize and report the  
6 purpose of the expenditures as salary payments from the candidate’s principal campaign  
7 committee through ODP to the campaign committee’s employees. By failing to sufficiently  
8 identify the salary and payroll disbursements, the Tims Committee failed to accurately report its  
9 expenditures. Accordingly, the Commission finds reason to believe that Gem City Rise PAC  
10 (f/k/a Friends of Desiree Tims) and Scott M. Hubay in his official capacity as treasurer violated  
11 52 U.S.C. § 30104(b)(4) by improperly reporting disbursements.

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<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.

<sup>22</sup> 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).