



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

rsecaur@ohiogop.org

Rob Secaur

Ohio Republican Party

211 South Fifth Street

Columbus, OH 43215

December 16, 2022

RE: MUR 7792

Dear Mr. Secaur:

This is in reference to the complaint you filed with the Federal Election Commission on September 10, 2020, concerning Ohio Democratic Party, Alaina Shearer, Alaina Shearer for Congress, Desiree Tims, and Gem City Rise PAC (f/k/a Friends of Desiree Tims). Based on that complaint, on April 26, 2022, the Commission voted to dismiss the allegations as to Ohio Democratic Party, and found that there was reason to believe Alaina Shearer for Congress and Gem City Rise PAC (f/k/a Friends of Desiree Tims) violated U.S.C. § 30104(b)(4), a provision of the Federal Election Campaign Act of 1971, as amended. The Factual and Legal Analyses, which more fully explain the bases for the Commission's reason to believe decisions, are enclosed.

On November 28, 2020, the Commission considered the circumstances in this matter, but there was an insufficient number of votes to accept revised conciliation agreements from either Alaina Shearer for Congress or Gem City Rise PAC (f/k/a Friends of Desiree Tims). The Commission then closed the file. A Statement of Reasons further explaining the basis for the Commission's final decision will follow.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in blue ink that reads "Don Campbell".

Don Campbell
Attorney

Enclosures

Factual and Legal Analyses

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.¹ 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

¹ 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.² 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 2019-2020.³ 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

² 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.

³ 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.

1 campaign funds.⁴ Finally, the complaint alleges that ODP improperly and inaccurately reported
2 the Shearer and Tims salary payments as state party “Payroll.”⁵
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.⁶ 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.⁷ ODP asserts that it properly
8 disclosed each of the transactions on its reports with the description “Payroll.”⁸ 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.⁹ ODP’s Response offers no explanation for
11 why disbursements to the campaign committee employees were reported simply as “payroll,”

⁴ Compl. at 6.

⁵ *Id.* at 7.

⁶ 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.

⁷ *Id.*

⁸ *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.”

⁹ ODP Resp. at 2.

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

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**

7
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.¹¹ Salary payments
12 by a candidate’s principal campaign committee to the candidate are permitted under the
13 regulations with certain conditions.¹²

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

¹⁰ 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.

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

¹² 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.¹³ 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).¹⁴ 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 \$5,000.¹⁵

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."¹⁶

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

¹³ 11 C.F.R. § 113.1(g)(6).

¹⁴ 11 C.F.R. § 113.1(g)(6)(iii).

¹⁵ See 52 U.S.C. § 30116(a)(2)(A).

¹⁶ 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.¹⁷ 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.¹⁸
16 Committees are encouraged to also provide the committee ID number of the contributor, if
17 appropriate.¹⁹

18
19 Political party committees must also itemize disbursements for federal operating
20 expenditures if the disbursement exceeds \$200 when aggregated with other disbursements made

¹⁷ 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).

¹⁸ 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”).

¹⁹ FEC Party Guide at 81.

1 to the same payee during the calendar year.²⁰ 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.²¹ The term “purpose” means a brief statement or description of
 4 why the disbursement was made.²² Examples of adequate descriptions include “dinner expenses,
 5 media, salary, polling, travel, party fees, phone banks, travel expenses and catering costs.”²³
 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.²⁴ Moreover, ODP
 10 cited specific salary recipient names in its reported disbursements in memo items, including
 11 payments made to the candidates.²⁵

²⁰ 11 C.F.R. § 104.3(b)(1)(i), (3)(i).

²¹ 11 C.F.R. § 104.3(b)(3)(i).

²² 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.

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

²⁴ *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).

²⁵ *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 discretion²⁶ 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.

²⁶ *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Alaina Shearer for Congress, and **MUR 7792**
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 \$236,986.21 in salary payments to employees of the principal campaign committee of 2020 Ohio congressional candidate Alaina Shearer as state party payroll payments by the Ohio Democratic Party (“ODP”). The complaint alleges that what appeared to be ODP salary payments to candidate Shearer were an impermissible personal use of campaign funds and that ODP misreported its apparent subsidy of the Shearer campaign as state party payroll expenses.¹ The Shearer Committee Response explains that Shearer’s campaign committee transferred funds to ODP, which provided a payroll processing service for employees of this federal candidate campaign committee. The Shearer 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 Shearer, and Alaina Shearer for Congress and Scott M. Hubay, in his official capacity as treasurer (the “Shearer Committee”) violated 52 U.S.C. § 30114(b)(2) by making impermissible candidate salary payments or 52 U.S.C. § 30116(f) by accepting excessive contributions in the form of salary payments to Shearer.

¹ 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.

1 However, the Commission finds reason to believe that the Shearer Committee violated 52 U.S.C.
2 § 30104(b)(4) by improperly reporting the purpose of its disbursements to ODP and failing to
3 report the resulting salary payments to specific campaign committee employees.

4 **II. FACTUAL AND LEGAL ANALYSIS**

5 **A. Background**

6 ODP is a state committee of the Democratic Party.² Alaina Shearer was a 2020 candidate
7 for the U.S. House of Representatives in Ohio’s 12th Congressional District. Alaina Shearer for
8 Congress was her principal campaign committee.

9 This Complaint alleges that ODP, Shearer, and the Shearer Committee (collectively,
10 “Respondents”) engaged “in an unlawful scheme to violate the federal campaign finance laws,”
11 when ODP paid a salary to Shearer in 2019-2020.³ The complaint alleges that because these
12 payroll-related payments came from ODP instead of the Shearer Committee, the disbursements
13 constitute a personal use of campaign funds.⁴

14 The response filed on behalf of the Shearer Committee (the “Candidate Response”),
15 asserts that the candidate campaign committee provided the funding for all “payroll” payments
16 made to Shearer, as reported by ODP, and that ODP was merely an intermediary providing a

² 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.

³ 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.

⁴ Compl. at 6.

1 service as a payroll processor.⁵ The Candidate Response states that the campaign sent funds for
2 payroll to ODP's Federal Account and ODP then processed payroll for the Shearer Committee.⁶
3 The Candidate Response does not address any of the alleged reporting issues.

4 **B. Legal Analysis**

5 **1. There is No Reason to Believe the Salary Payments to Shearer were** 6 **an Impermissible Personal Use of Campaign Funds or Constituted** 7 **Excessive Contributions to the Shearer Committee**

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

⁵ Candidate Resp. at 1. (Nov. 3, 2020).

⁶ *Id.* In reports filed with the Commission, the Shearer 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.

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

⁸ 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").

⁹ 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 or the earned income that the candidate received during the year prior to becoming a candidate,
2 but any earned income that a candidate receives from salaries or wages from any other source
3 shall count against the minimum salary paid to a Federal officeholder holding the seat sought by
4 the candidate.¹⁰ Salary payments made to candidates that do not meet this criteria, *inter alia*, are
5 considered *per se* personal use of campaign funds.¹¹

6 Notwithstanding that the use of campaign funds for a particular expense would be
7 personal use under the regulations, the payment of that expense by any person other than the
8 candidate or the campaign committee is a contribution to the candidate, unless the payment
9 would have been made irrespective of the candidacy.¹² The Act prohibits multicandidate
10 political committees from making contributions to any candidate and her authorized political
11 committee with respect to any election for Federal office which, in the aggregate, exceed
12 \$5,000.¹³ Candidates and political committees are prohibited from knowingly accepting any
13 contribution in violation of the provisions of 52 U.S.C. § 30116.¹⁴

14 Respondents explain that ODP acted as a payroll processing agent for the Shearer
15 Committee and state that the source of all funds for the reported salary payments paid to Shearer

¹⁰ 11 C.F.R. § 113.1(g)(1)(i)(I).

¹¹ *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.*

¹² 11 C.F.R. § 113.1(g)(6).

¹³ *See* 52 U.S.C. § 30116(a)(2)(A).

¹⁴ *See* 52 U.S.C. § 30116(f).

1 derive from her principal campaign committee. The Complaint does not allege that the timing or
2 the amount of the payments are impermissible. Absent information suggesting that the Shearer
3 Committee used its funds to make salary payments to Shearer that were made outside of the
4 period during which a candidate may receive a salary from her campaign, were in excess of the
5 salary amount that a candidate may receive from her campaign, or in some other way did not
6 comply with the limitations on candidate salaries,¹⁵ there is not a sufficient basis to conclude that
7 these transactions resulted in the personal use of campaign funds.

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

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

19 **B. There is Reason to Believe that the Shearer Committee Violated**
20 **52 U.S.C. § 30104(b)(4) by Improperly Reporting Disbursements**
21

22 Political committees must disclose the total amount of all receipts and disbursements to
23 the Commission as part of their regular reporting, and shall report the category of the receipt and

¹⁵ 11 C.F.R. § 113.1(g)(1)(i)(I).

1 purpose of each expenditure.¹⁶ A candidate’s authorized committee must also itemize all
2 disbursements, including operating expenditures that exceed \$200, or aggregate to over \$200
3 when added to other disbursements in the same category, made to the same payee during an
4 election cycle.¹⁷

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

15 When a committee (or any other entity) applies for a credit card, it must sign the issuer’s
16 cardholder agreement, which outlines the terms for the extension of credit. When the committee

¹⁶ 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).

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

¹⁸ 11 C.F.R. § 104.3(b)(3)(i).

¹⁹ 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 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.*

1 makes a purchase from a merchant or vendor using that credit card, it explicitly consents to a
2 financial transaction with that merchant or vendor. In other words, the committee has privity
3 with both the credit card company and the merchant or vendor with which it transacted. As such,
4 it is required to disclose both obligations on Schedule B.

5 Similarly, when a committee disburses a salary payment to its own employee through an
6 entity acting as a payroll processor, it is fulfilling its *own* obligation to pay that employee, which
7 would have existed irrespective of the payroll processor. Here, reports filed by the Shearer
8 Committee failed to identify the ultimate recipients of salary payments made through ODP
9 acting as a payroll processor. For example, the Shearer committee reported multiple
10 disbursements to ODP identified as “Contribution” and “Contribution — Payroll” on Line 17 of
11 its FEC Form 3 reports under the categorization of “operating expenditures,” but the entries
12 failed to itemize which individuals were the ultimate recipients of the salary payments. During
13 the 2020 election cycle, the Shearer Committee reported two disbursements to ODP identified as
14 “Contribution,” totaling \$5,331.32, and 24 disbursements to ODP identified as “Contribution —
15 Payroll,” totaling \$236,986.21, for a combined total of \$242,317.53. Each disbursement lacked
16 any memo item description identifying individuals who would be paid from the payroll
17 disbursement.²⁰ Thus, anyone seeking to determine the employees of the Shearer Committee

²⁰ See Shearer Comm. 2020 Pre-Primary Report (Mar. 5, 2020) at 78, 86, 87; Shearer Comm. 2020 April Quarterly Report at 62, 67, 68; Shearer Comm. 2020 Pre-Primary Report (April 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 and their respective salaries would not be able to find that information, which is especially
2 problematic with respect to a candidate salary paid by his or her campaign committee.²¹

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

²¹ 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).

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Gem City Rise PAC **MUR 7792**
6 (f/k/a Friends of Desiree Tims)¹ and
7 Scott M. Hubay in his official
8 capacity as treasurer
9

10 **I. INTRODUCTION**

11 This matter involves the failure to report the ultimate payees and the misreporting of
12 \$247,033.36 in salary payments to employees of the principal campaign committee of 2020 Ohio
13 congressional candidate Desiree Tims as state party payroll payments by the Ohio Democratic
14 Party (“ODP”). The complaint alleges that what appeared to be ODP salary payments to
15 candidate Tims were an impermissible personal use of campaign funds and that ODP
16 misreported its apparent subsidy of the Tims campaign as state party payroll expenses.² The
17 Tims Committee Response explains that Tims’s campaign committee transferred funds to ODP,
18 which provided a payroll processing service for employees of this federal candidate campaign
19 committee. The Tims Committee acknowledges that its reporting of the disbursements to ODP
20 did not identify any of the specific campaign staff members, including the candidate, who later
21 received the salary payments.

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

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>.

² 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.³ 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 2019-2020.⁴ 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.⁵

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.

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 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.

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.⁶ 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.⁷ 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.⁸ Salary payments
 15 by a candidate’s principal campaign committee to the candidate are permitted under the
 16 regulations with certain conditions.⁹ The candidate’s salary must be paid from his or her
 17 principal campaign committee.¹⁰ The salary payments must not exceed the lesser of the

⁶ Candidate Resp. at 1. (Nov. 3, 2020).

⁷ *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.

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

⁹ 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”).

¹⁰ 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.¹¹ Salary payments made to candidates that do not meet this criteria, *inter alia*, are
6 considered *per se* personal use of campaign funds.¹²

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.¹³ 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 \$5,000.¹⁴ Candidates and political committees are prohibited from knowingly accepting any
14 contribution in violation of the provisions of 52 U.S.C. § 30116.¹⁵

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).

¹¹ 11 C.F.R. § 113.1(g)(1)(i)(I).

¹² *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.*

¹³ 11 C.F.R. § 113.1(g)(6).

¹⁴ *See* 52 U.S.C. § 30116(a)(2)(A).

¹⁵ 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,¹⁶ 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.

¹⁶ 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.¹⁷ 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.¹⁸

10 Commission regulations require that payments made “to meet the committee’s operating
 11 expenses” must include the name and address of the payee.¹⁹ 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.²⁰

¹⁷ 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).

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

¹⁹ 11 C.F.R. § 104.3(b)(3)(i).

²⁰ 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.²¹

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.*

²¹ 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.²²

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.

<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.

²² 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).