



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Ohio Democratic Party ) MUR 7792  
Alaina Shearer for Congress )  
Gem City Rise PAC (f/k/a Friends of )  
Desiree Tims) )

**STATEMENT OF REASONS OF COMMISSIONERS  
SHANA M. BROUSSARD AND ELLEN L. WEINTRAUB**

This matter concerned the failure to report the ultimate payees and the misreporting of \$489,350.89 in salary payments to employees of the principal campaign committees of 2020 Ohio congressional candidates Alaina Shearer and Desiree Tims (“Shearer and Tims Committees”) as state party payroll payments by the Ohio Democratic Party (“ODP”). The Complaint alleged, among other things, that ODP misreported its apparent subsidy of the Shearer and Tims Committees as state party payroll expenses.<sup>1</sup> In its Response, ODP asserted that it was acting as a payroll service in processing payments from the candidates’ campaign committees to the candidates and other campaign committee staff and that the Shearer and Tims Committees were the original sources of the funds used make the salary payments.<sup>2</sup> However, on disclosure reports, ODP disclosed each of the salary payments as “Payroll,” with the name of the individual recipient; there was no indication that the payments were made on behalf of another committee.<sup>3</sup> On their reports, the Shearer and Tims Committees disclosed multiple disbursements to ODP as “Contribution” and “Contribution – Payroll,” but the entries failed to itemize which individuals were the ultimate recipients of the salary payments.<sup>4</sup>

The Office of General Counsel (“OGC”) recommended finding reason to believe that the Shearer and Tims Committees violated 52 U.S.C. § 30104(b)(4) by improperly reporting the purpose of disbursements to ODP and failing to report the resulting salary payments to specific campaign committee employees. OGC further recommended finding reason to believe that ODP violated 52

<sup>1</sup> Compl. at 7. (Sept. 10, 2020). The Complaint also alleged that the salary payments to candidates Shearer and Tims were an impermissible personal use of campaign funds. Compl. at 6. For the reasons explained in the Factual and Legal Analyses, we voted to approve the Office of General Counsel’s recommendation to find no reason to believe that such a violation had occurred. Factual and Legal Analysis (Ohio Democratic Party) at 4-6 (“ODP F&LA”); Factual and Legal Analysis (Alaina Shearer for Congress) at 3-5 (“Shearer F&LA”); Factual and Legal Analysis (Gem City Rise PAC (f/k/a Friends of Desiree Tims)) at 3-5 (“Tims F&LA”); *see also* Certification, MUR 7792 (April 28, 2022).

<sup>2</sup> ODP Resp. at 1-2 (Nov. 19, 2020).

<sup>3</sup> *See* ODP F&LA at 3-4.

<sup>4</sup> *See* Shearer F&LA at 7; Tims F&LA at 7-8.

U.S.C. § 30104(b)(4) by improperly reporting the purpose of the disbursements to federal candidate campaign committee employees, including Shearer and Tims.

While we agreed with OGC’s recommendations with respect to the Shearer and Tims Committees’ misreporting, we voted to dismiss as a matter of prosecutorial discretion the allegation that ODP violated 52 U.S.C. § 30104(b)(4) by improperly reporting the purpose of the disbursements to the campaign committee employees.<sup>5</sup> We agreed with OGC that by failing to indicate that the salary payments were made on behalf of another committee, ODP deprived the public of meaningful disclosure information.<sup>6</sup> However, in our view, ODP was not on sufficient notice that the regulations required it to connect the individuals to the specific campaign committees which provided the funds for those payments. As explained in the ODP Factual and Legal Analysis, Commission regulations require a political party committee to itemize disbursements aggregating in excess of \$200 to the same payee in a calendar year.<sup>7</sup> For each itemized disbursement, a political party committee must provide the identification of the payee, the date and amount of the payment, and the purpose of the disbursement.<sup>8</sup> The term “purpose” means a brief statement or description of why the disbursement was made – Commission regulations and guidance provide examples of adequate purpose descriptions, including “dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses and catering costs.”<sup>9</sup>

Currently, neither the Act nor Commission regulations directly address the reporting of ultimate payees such as subvendors, subcontractors, or vendor employees. However, in a 2013 interpretive rule, the Commission clarified the itemization requirement and specifically addressed the proper disclosure of ultimate payees where a committee pays a credit card bill that includes charges exceeding \$200 from a single vendor.<sup>10</sup> It explained that a committee itemizing a disbursement to a credit card company “must itemize as a memo entry any transaction with a single vendor charged on the credit card that exceeds the \$200 itemization threshold” in order to itemize the “ultimate payee, as the provider of the goods and services to the political committee” and to reflect that the credit card company was not the provider of those goods and services.<sup>11</sup>

<sup>5</sup> See Certification, MUR 7792 (April 28, 2022). Following a finding of reason to believe that the candidate committees violated 52 U.S.C. § 30104(b)(4), OGC entered into pre-probable cause conciliation with the candidate committees and subsequently recommended that the Commission accept a signed conciliation agreement. Memorandum to the Commission: Recommendation to Accept Signed Conciliation Agreement (Oct. 6, 2022). We supported that recommendation. However, in the interim, the composition of the Commission had changed and there were an insufficient number of votes to approve the signed conciliation agreement. Certification, MUR 7792 (Nov. 15, 2022). On November 29, 2022, the Commission voted to close the file in this matter. Certification, MUR 7792 (Nov. 30, 2022).

<sup>6</sup> See First Gen. Counsel’s Rep. at 11, MUR 7792 (Ohio Democratic Party, *et al.*).

<sup>7</sup> 11 C.F.R. § 104.3(b)(1)(i), (3)(i); see ODP F&LA at 6-7.

<sup>8</sup> 11 C.F.R. § 104.3(b)(3)(i).

<sup>9</sup> 11 C.F.R. § 104.3(b)(3)(i)(A), (B); see also Instructions for FEC Form 3X and Related Schedules at 7, 13 (Revised 5/2016), <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf> (“FEC Form 3X Instructions”); FEC CAMPAIGN GUIDE FOR POLITICAL PARTY COMMITTEES at 86 (Aug. 2013), <https://www.fec.gov/resources/cms-content/documents/partygui.pdf> (“FEC Party Guide”).

<sup>10</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 (July 8, 2013) (“Ultimate Payee Interpretive Rule”).

<sup>11</sup> Ultimate Payee Interpretive Rule, 78 Fed. Reg. at 40,626.

While the Commission has provided guidance that reporting disbursements for salary payments to employees are to be disclosed in the same manner as credit card payments and ultimate payees,<sup>12</sup> this guidance appears to apply to the initial payor, not to an entity serving as a payment processor. For example, specific guidance concerning the proper reporting of disbursements when using payroll companies states that “[t]he payroll disbursement will be itemized . . . once payments to the payroll company aggregate more than \$200 in an election cycle,” and that the reporting committee “will also itemize the ultimate recipients of the salary payments as memo entries . . . once aggregate payments to the individual are more than \$200 in an election cycle.”<sup>13</sup> By contrast, the only guidance for how *the payroll processor* must report itemized disbursements<sup>14</sup> for salary on behalf of another entity were the requirements to provide the name of the recipient, the date and amount, and an adequate purpose description – a list of which specifically included “salary.” Because it may not have been entirely clear before that reporting committees serving as payroll processors must indicate where a payment is being made on behalf of another committee as part of the purpose description, we voted to dismiss this allegation as a matter of prosecutorial discretion.<sup>15</sup> Going forward, however, we will apply this interpretation of our disclosure regulations in enforcement matters, requiring disclosure where a payment is being made on behalf of another committee.

The reporting issues raised in this matter also highlight the need for the Commission to revise its regulations for the disclosure of ultimate payees. Although the Commission has issued guidance on the reporting of ultimate payees through the 2013 interpretive rule, described above, as well as through publications such as the FEC Form 3X Instructions and the FEC Party Guide, there are still gaps in the disclosure requirements as they apply to payments to intermediaries who in turn pay subvendors, subcontractors, and the like. In 2021, the Commission received a Petition for Rulemaking asking the Commission to revise its regulations to require that persons who report independent expenditures and electioneering communications itemize all expenditures or disbursements made on behalf of or for the benefit of the political committee or other reporting person, including those made by an agent, independent contractor, vendor, or subvendor.<sup>16</sup> In response to the Petition, the Commission received a number of comments, many of which supported a rulemaking. We believe that the Commission should open a rulemaking to evaluate how our regulations can be updated to ensure adequate disclosure of the ultimate purpose for which disbursements are made.

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<sup>12</sup> See *HOW TO REPORT/Using a payroll company/Reporting on candidate forms*, FEC WEBSITE, <https://www.fec.gov/help-candidates-and-committees/filing-reports/using-payroll-company/>. Additional guidance concerning the proper reporting of disbursements to payroll companies appears in another location on the Commission’s website, explaining that “[t]he lump sum paid to the payroll company must be followed MEMO entries that include the individuals that were the ultimate recipients of the salary payments,” and that such payments “are disclosed in the same manner as credit card payments and ultimate recipients.” See *RAD FAQs for Political Action Committees*, FEC WEBSITE, [https://www.fec.gov/resources/cms-content/documents/RAD\\_FAQs-PACs\\_last\\_visited\\_september\\_21\\_2020.pdf](https://www.fec.gov/resources/cms-content/documents/RAD_FAQs-PACs_last_visited_september_21_2020.pdf) (“RAD FAQs”).

<sup>13</sup> *HOW TO REPORT/Using a payroll company/Reporting on candidate forms*, FEC WEBSITE, <https://www.fec.gov/help-candidates-and-committees/filing-reports/using-payroll-company/>.

<sup>14</sup> There is no obligation for payroll processing vendors to file regular disclosure reports merely by virtue of their status as payroll processors. See 11 C.F.R. § 104.1(a). In this case, ODP had reporting obligations due to its status as a state party committee.

<sup>15</sup> *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

<sup>16</sup> Rulemaking Petition: Subvendor Reporting, 86 Fed. Reg. 42,753 (Aug. 5, 2021).

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January 4, 2023

Date



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Commissioner

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Commissioner