



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Last Best Place PAC and David M. Lewis) MURs 8215 & 8216
in his official capacity as treasurer)
)

**STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY AND
COMMISSIONERS ALLEN J. DICKERSON, DARA LINDENBAUM, AND
JAMES E. “TREY” TRAINOR, III**

The Complaints in these matters allege that Last Best Place PAC, an independent-expenditure-only political committee, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by paying for ads that expressly advocated against U.S. Senate candidate Tim Sheehy without disclosing any payments for independent expenditures.¹ We disagreed and voted to dismiss the Complaints.²

Tim Sheehy was a Republican candidate for U.S. Senate in the June 4, 2024 Montana Republican primary election.³ The Complaints identify two ads. The first ad, “Shady Sheehy,” appears to have started running on September 12, 2023, with an unknown end date.⁴ Below are still images of the video and transcription of the voiceover:

¹ Compl. at 1-2, MUR 8215 (Feb. 9, 2024); Compl. at 3, MUR 8216 (Feb. 14, 2024).

² Certification ¶ 2a (July 12, 2024).

³ Tim Sheehy, Amended Statement of Candidacy (Mar. 27, 2024), <https://docquery.fec.gov/pdf/717/202403279627415717/202403279627415717.pdf>.

⁴ See Compl. at 2, MUR 8215 (citing Greg Giroux, *Where Club For Growth’s Sidelining Itself: Ballots And Boundaries*, BLOOMBERG GOVERNMENT (Sept. 15, 2023), <https://about.bgov.com/news/where-club-for-growth-sidelining-itself-ballots-boundaries/>); Compl. at 3-4, MUR 8216 (citing Ally Mutnick, *Nine Months Before the Montana GOP Primary, a Mysterious Super PAC is on the Airwaves Attacking Tim Sheehy*, POLITICO (Sept. 12, 2023), <https://www.politico.com/live-updates/2023/09/12/congress/montana-senate-sheehy-pac-ads-00115276>).

MURs 8215 & 8216 (Last Best Place PAC)

Statement of Reasons

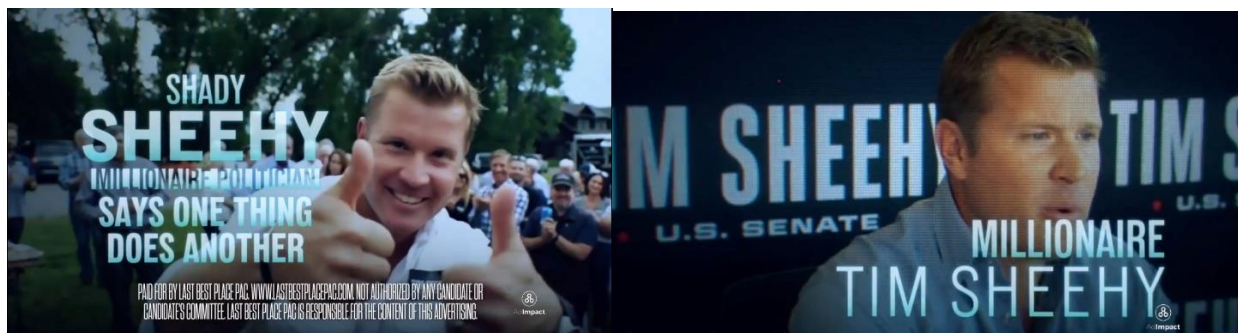
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The voiceover in “Shady Sheehy” says:

They got a home loan and paid it back. She got a car loan and paid it back. But this multimillionaire got an over \$770,000 government loan and never paid it back. But Tim Sheehy doesn’t think he should be held accountable. Sheehy got rich off government contracts, walked away from his loan and now he and his campaign can spend millions trying to buy our Senate seat. Shady Sheehy. He’s just out for himself. Last Best Place PAC is responsible for the content of this ad.⁵

The second ad, “Millionaire Politician,” also appears to have started running in September 2023 with an unknown end date.⁶ Below are still images of the video and transcription of the voiceover:⁷



⁵ Compl. at 2, MUR 8215; Compl. at 4, MUR 8216; Resp. at 1-2, MUR 8215 (Mar. 29, 2024); AdImpact, ADMO Creative Alert, Election Advertisements, Last Best Place PAC, “Shady Sheehy” (last viewed May 3, 2024), <https://host2.adimpact.com/admo/viewer/36ffda2b-a32a-4a7d-84b5-e8363d3a96e6>.

⁶ Resp. at 1, MUR 8215 (Feb. 9, 2024); Compl. at 2, MUR 8215.

⁷ AdImpact, ADMO Creative Alert, Election Advertisements, Last Best Place PAC, “Millionaire Politician” (last viewed May 3, 2024), <https://host2.adimpact.com/admo/viewer/5d906147-3b1a-4f20-9bae-4bac1c960ff5/>.



The voiceover in “Millionaire Politician” says:

Meet Tim Sheehy, the multimillionaire who mocked Montanans struggling to pay their loans saying: “if you take a loan, you pay it back.” But remember this, Sheehy made millions off government contracts, even took an over \$770,000 government loan, and walked away. Never paid a penny back. That’s Shady Sheehy. Just another millionaire politician who says one thing and does another. Last Best Place PAC is responsible for the content of this ad.⁸

In response, Last Best Place PAC asserts that the ads do not expressly advocate Sheehy’s defeat and, therefore, did not have to be reported as independent expenditures. Specifically, the Responses argue that the ads bring awareness to issues of public concern, namely money in politics and the Paycheck Protection Program.⁹ Further, the ads ran months before the relevant election and lacked an express electoral exhortation.¹⁰

The Office of General Counsel (“OGC”) recommended that the Commission find reason to believe that Last Best Place PAC violated 52 U.S.C. § 30104(b) and (g) and 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a), (b)(2) by failing to file 48-hour reports of independent expenditures and by failing to disclose independent expenditures on its regularly scheduled reports.¹¹ OGC concluded that the phrase “shady Sheehy” in the ads had no reasonable meaning other than to expressly advocate the defeat of Sheehy under 11 C.F.R. § 100.22(a).¹² Alternatively, OGC concluded that the ads satisfied the definition of express advocacy under 11 C.F.R. § 100.22(b)

⁸ *Id.*

⁹ Resp. at 1-2, MUR 8215; Resp. at 1-2, MUR 8216 (Mar. 29, 2024).

¹⁰ *Id.*

¹¹ First Gen. Counsel’s Rpt. at 26 (May 17, 2024). OGC recommended that the Commission find reason to believe that Last Best Place PAC similarly failed to properly disclose three additional ads as independent expenditures. Because those ads were not identified in the Complaint, and Respondent did not have notice and an opportunity to respond to any potential violations as to those ads, we do not believe those ads are properly before the Commission for a reason-to-believe vote at this time.

¹² *Id.* at 12-13.

because the electoral portion was clear and reasonable minds could not differ as to whether the ads advocated the defeat of Sheehy.¹³

We disagreed that the ads contained express advocacy and, therefore, voted to dismiss the Complaints.¹⁴

An “independent expenditure” is an expenditure “expressly advocating the election or defeat of a clearly identified candidate; and that is not made in concert or cooperation with or at the request or suggestion of such a candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.”¹⁵

A communication expressly advocates under 11 C.F.R. § 100.22(a) if it:

“[u]ses phrases such as ‘*vote for the President,*’ ‘*re-elect your Congressman,*’ ‘*support the Democratic nominee,*’ ‘*cast your ballot for the Republican challenger for U.S. Senate in Georgia,*’ ‘*Smith for Congress,*’ ‘*Bill McKay in ‘94,*’ ‘*vote Pro-Life*’ or ‘*vote Pro-Choice*’ accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, ‘*vote against Old Hickory,*’ ‘*defeat*’ accompanied by a picture of one or more candidate(s), ‘*reject the incumbent,*’ or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “‘*Nixon’s the One,*’ ‘*Carter ‘76,*’ ‘*Reagan/Bush*’ or ‘*Mondale!*’”¹⁶

A communication expressly advocates under 11 C.F.R. § 100.22(b) if:

“[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

- (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

¹³ *Id.* at 16-17.

¹⁴ Certification ¶ 2a (July 12, 2024).

¹⁵ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.16.

¹⁶ 11 C.F.R. § 100.22(a).

- (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.”¹⁷

All political committees other than authorized committees that make independent expenditures must disclose these expenditures to the Commission as part of their regular reporting.¹⁸ Additionally, political committees and other persons that make independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before, the date of an election, must report the expenditures by filing a 24-hour notice.¹⁹ Political committees and other persons that make independent expenditures aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report the expenditures by filing a 48-hour notice.²⁰

OGC first argues that the phrase “shady Sheehy” constitutes so-called “magic words” under section 100.22(a). The list of phrases in section 100.22(a) contain either express calls for electoral action, such as “vote for the President,” or campaign slogans befitting a bumper sticker, such as “Nixon’s the One.”²¹ By contrast, the ad here does not expressly encourage the listener to vote a certain way or republish a campaign slogan, but rather denigrates Sheehy’s character by calling him “shady,” which we understand to mean untrustworthy in the context of this ad.²² In several recent matters, the Commission has concluded that ads attacking the character of a candidate, including their trustworthiness, do not constitute express advocacy under section 100.22(a) yet may satisfy the standard in section 100.22(b).²³ Indeed, as explained below, the Commission’s Explanation and Justification explicitly addresses character attack ads under section 100.22(b). From the plain reading of section 100.22(a) and Commission precedent on character attack ads, we have little trouble concluding that the phrase “shady Sheehy” does not constitute express advocacy under section 100.22(a).²⁴

¹⁷ *Id.* § 100.22(b).

¹⁸ 52 U.S.C. § 30104(b)(4)(G), (H)(iii).

¹⁹ *See id.* § 30104(g)(1)(A); 11 C.F.R. § 104.4(b)(1).

²⁰ 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

²¹ 11 C.F.R. § 100.22(a).

²² OGC also argues that “the label ‘Shady Sheehy’ serves, in essence, as a negative counter to section 100.22(a)’s ‘Mondale!’ example.” FGCR at 13. We disagree. The negative counterpart of “Mondale!” is “Defeat Mondale!”. OGC’s approach would bypass the Commission’s decision to address discussions of “character and fitness” under § 100.22(b). Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294 (Jul. 6, 1995).

²³ *See, e.g.*, F&LA at 8, MUR 7543 (Jefferson United, Inc.) (finding reason to believe that the phrase “shouldn’t character and honesty matter” preceded by statements such as “bad business deals,” “problem personal finances,” and “conflicts with law enforcement & courts” satisfied 100.22(b), but did not satisfy 100.22(a)); F&LA at 12-13, MUR 7930 (Minocqua Brewing Company SuperPAC, *et al.*) (dismissing for prosecutorial discretion but analyzing the phrase “no unity until these guys stop lying” under 100.22(b)).

²⁴ The Commission unanimously rejected OGC’s 100.22(a) argument. Certification ¶¶ 1c, 2a (July 12, 2024).

Whether the ads satisfy section 100.22(b) is a closer call. While images and words that unmistakably depict Sheehy as a Senate candidate constitute the electoral portion of 100.22(b)(1),²⁵ we conclude that the ads do not satisfy 100.22(b)(2). In its 1995 Explanation and Justification accompanying section 100.22(b), the Commission stated that “commenting on a candidate’s character, qualifications, or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question.”²⁶ In prior express advocacy matters involving attacks on a candidate’s character, the Commission has relied on the proximity of the ad to the election, in part, to provide this critical context. For example, the Commission has found reason to believe when the ad was disseminated 4 days before the election,²⁷ 8 days before the election,²⁸ and within 2 months of the election.²⁹ By contrast, both ads here began running in September, approximately 9 months prior to the June 4 primary election.³⁰ We are unaware of Commission precedent finding express advocacy for a character attack ad this long before the relevant election. While there is no bright line rule on timing, it is axiomatic that the further an ad is run from a given election, the more likely that reasonable minds could differ about whether the ad constitutes an “exhortation to vote for or against a specific candidate.”³¹

Given the high standard for finding express advocacy in a character attack ad – that it can “have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question” – we conclude that the ads here do not reach this high bar.

²⁵ “Shady Sheehy” includes a depiction of Tim Sheehy on the campaign trail and accuses Sheehy and “his campaign” of “trying to buy our Senate seat.” AdImpact, ADMO Creative Alert, Election Advertisements, Last Best Place PAC, “Shady Sheehy” (last viewed May 3, 2024), <https://host2.adimpact.com/admo/viewer/36ffda2b-a32a-4a7d-84b5-e8363d3a96e6>. “Millionaire Politician” identifies Sheehy as a “politician,” which is clearly referencing Sheehy’s status as a candidate because he has never held public office. AdImpact, ADMO Creative Alert, Election Advertisements, Last Best Place PAC, “Millionaire Politician” (last viewed May 3, 2024), host2.adimpact.com/admo/viewer/5d906147-3b1a-4f20-9bae-4bac1c960ff5/. In addition, the ad depicts Sheehy on the campaign trail, speaking in front of a “Tim Sheehy U.S. Senate” campaign banner. *Id.*

²⁶ Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,295 (July 6, 1995).

²⁷ F&LA at 8, MUR 7543 (Jefferson United, Inc.).

²⁸ F&LA at 3-4, MUR 5819 (U.S. Chamber of Commerce).


²⁹ Conciliation Agreement at IV.27-28, MUR 5487 (Progress for America Voter Fund); F&LA at 8-9, MUR 5831 (Softer Voices) (“bulk” of activity occurring between September and November of the election year).

³⁰ There is no information in the available record that the ads continued to run.

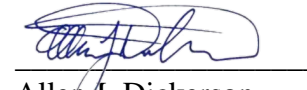
³¹ *Fed. Election Comm'n v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987).

We therefore voted to dismiss the Complaints.

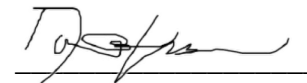
8/6/24
Date


Sean J. Cooksey
Chairman

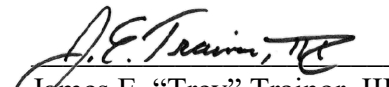
8/6/24
Date


Allen J. Dickerson
Commissioner

8/6/24
Date


Dara Lindenbaum
Commissioner

8/6/24
Date


James E. "Trey" Trainor, III
Commissioner