



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Last Best Place PAC) MURs 8215 and 8216
)

**STATEMENT OF REASONS OF VICE CHAIR ELLEN L. WEINTRAUB
AND COMMISSIONER SHANA M. BROUSSARD**

In these matters, Last Best Place PAC, a super PAC, allegedly violated the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations by paying for millions of dollars’ worth of independent expenditures against Senate candidate Tim Sheehy without properly reporting any of the money spent on the ads. Our nonpartisan Office of General Counsel (“OGC”) recommended finding reason to believe violations occurred and to open an investigation.¹ On July 11, 2024, we voted to find reason to believe Respondent failed to disclose independent expenditures on its regularly scheduled reports and failed to file the required 48-hour reports with respect to the ads specifically referenced in the Complaint.² A majority of our colleagues voted instead to dismiss these matters.³

I. FACTUAL BACKGROUND

The Complaints identified two ads — “Shady Sheehy” and “Millionaire Politician” — as examples of ads that should have been reported as independent expenditures.⁴

“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

¹ First. Gen. Counsel’s Rpt. at 2 (May 17, 2024).

² Amend. Cert. ¶ 1 (July 11, 2024).

³ *Id.* at ¶ 2.

⁴ Compl. ¶¶ 9-10 (MUR 8215) (referencing “Shady Sheehy” and “Millionaire Politician”); Compl ¶ 10 (MUR 8216) (referencing “Shady Sheehy”). The First General Counsel’s Report (“First Gen. Counsel’s Rpt.”) relied on the ad-tracking company cited in the Complaints to identify three additional “ads that appear to be part of Last Best Place PAC’s ad campaign against Tim Sheehy but were not reported as independent expenditures.” First. Gen. Counsel’s Rpt. at 7, MURs 8215 and 8216 (Last Best PAC) (May 17, 2024). However, our analysis focuses only on the “Shady Sheehy” and “Millionaire Politician” titled communications.

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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 ad also includes images of Sheehy campaigning and the U.S. Capitol.⁶



Figure 1

“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.⁷

This ad likewise includes images of Sheehy campaigning and speaking in front of a campaign banner.⁸



Figure 2

⁵ First. Gen. Counsel’s Rpt. at 5.

⁶ *Id.*

⁷ *Id.* at 6.

⁸ *Id.*

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Despite allegedly spending millions of dollars on ads in Montana that attacked Sheehy, Last Best Place PAC did not report these ads as independent expenditures.⁹

II. LEGAL BACKGROUND AND ANALYSIS

The Act and Commission regulations require political committees, like Last Best Place PAC, to file periodic reports disclosing their receipts and disbursements, including independent expenditures.¹⁰ Further, 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.¹¹ An “independent expenditure” is an expenditure for a communication that expressly advocates for the election or defeat of a clearly identified candidate and is not coordinated with a candidate, party committee, or one of their agents.¹²

Expressly advocating means any communication that—

(a) Uses 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!”; or

(b) When 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

(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.¹³

⁹ First Gen. Counsel’s Rpt. at 2.

¹⁰ 52 U.S.C. § 30104(a).

¹¹ *Id.* § 30104(g); 11 C.F.R. § 104.4(b)(2).

¹² 52 U.S.C. § 30101(17); 11 C.F.R. § 100.16; 11 C.F.R. § 100.22(a)-(b).

¹³ 11 C.F.R. § 100.22.

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In the Explanation and Justification describing section 100.22(b), the Commission provided that, “[c]ommunications discussing or 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.”¹⁴

Applying this standard, “Shady Sheehy” and “Millionaire Politician,” expressly advocated under 11 C.F.R. § 100.22(b). The electoral portion of each ad is clear. “Shady Sheehy” accuses Sheehy of spending “millions trying to buy our Senate seat” and depicts him campaigning.¹⁵ “Millionaire Politician” identifies Sheehy as a “politician,” which can only refer to his candidacy because he is not an elected official.¹⁶ The ad also shows Sheehy in front of a campaign banner and depicts his campaign Twitter handle.¹⁷

Further, reasonable minds cannot differ as to whether “Shady Sheehy” or “Millionaire Politician” encourage Sheehy’s defeat, and not some other action. These are political attack ads with one goal: defeating Sheehy. The denigrating modifier, “shady,” to describe Sheehy, as used in each ad, is critical of his character and maligns him as untrustworthy.¹⁸ The criticism continues in “Shady Sheehy” stating that he is “just out for himself” and in Millionaire Politician” that he “says one thing and does another.”¹⁹ There is no call to action, and no attempt to influence policy or legislation because Sheehy is not a public official. However, the ads do draw a direct connection between Sheehy’s character and his candidacy, and can “only be interpreted by a reasonable person as containing advocacy” of his defeat in the election for which he had just declared his candidacy.²⁰

Respondent and our colleagues focus on the fact that the ads ran a number of months before the election to argue that the ads do not contain express advocacy.²¹ Our colleagues acknowledge that “there is no bright line rule on timing,”²² but nevertheless impose a temporal limit based on

¹⁴ Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35292, 35295 (July 6, 1995) (emphasis added) (“Express Advocacy E&J”).

¹⁵ See First Gen. Counsel’s Rpt. at 16. See also *supra* Figure 1.

¹⁶ See First Gen. Counsel’s Rpt. at 16. See also *supra* Figure 2.

¹⁷ See First Gen. Counsel’s Rpt. at 16. See also *supra* Figure 2.

¹⁸ See Merriam-Webster Online Dictionary (2024) (defining “shady” as “of questionable merit”), available at <https://www.merriam-webster.com/dictionary/shady>.

¹⁹ See *supra* Part I (quoting “Shady Sheehy” and “Millionaire Politician”).

²⁰ See 11 CFR § 100.22(b).

²¹ See Resp. at 3-4 (MUR 8215); Resp. at 3-4 (MUR 8216); Stmt. of Reasons (“SOR”), Chairman Sean J. Cooksey & Comm’rs Allen J. Dickerson, Dara Lindenbaum, & James E. “Trey” Trainor, III at 6, MURs 8215 and 8216 (Last Best Place PAC) (Aug. 6, 2024). The Response raised other arguments to dispute the express advocacy determination. For example, the Response mistakenly relies upon a three-commissioner, non-precedential, Statement of Reasons in MUR 7513 (Community Issues Project) requires an ad to include an “unambiguous call to [electoral] action” to find express advocacy under 100.22(b). See Resp. at 4 (MUR 8215); Resp. at 4 (MUR 8216). That proposition conflicts with a plain reading of 100.22(b), the relevant *Explanation and Justification*, and years of Commission precedent. See First Gen. Counsel’s Rpt. at 18, n. 65.

²² SOR, Chairman Cooksey & Comm’rs Dickerson, Lindenbaum, & Trainor at 6, MURs 8215 and 8216 (Last Best Place PAC).

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the length of time that an ad runs from a given election.²³ This ignores the Commission’s conclusion that the “rules do not establish a time frame in which these communications are treated as express advocacy.”²⁴ A plain reading of the regulation, however, shows that while proximity to the election may be considered, there is no time limit on express advocacy. Further, under the regulation, the Commission is required to view the ads in context²⁵—*i.e.*, “when taken as a whole and with limited reference to external events.” This is a case-by-case determination. “Proximity to the election” is included as an example of such an external event. This is clear from the use of “*such as*,” a phrase that is “used to introduce an example or series of examples.”²⁶ But an example is not a requirement.

Congress and the Commission are well aware of how to incorporate timing as a required element of a definition. Consider the definition of “electioneering communication” in the Act and Commission regulations, which is “any broadcast, cable, or satellite communication” that refers to a clearly identified federal candidate, “is targeted to the relevant electorate,” and “is made within . . . 60 days before a general, special, or runoff election” or “30 days before a primary”²⁷ A communication cannot be an “electioneering communication” unless it is made within those specified time periods. The definition of express advocacy in contrast, contains no such time limitation.²⁸

“Shady Sheehy” and “Millionaire Politician” were disseminated in close proximity to when Sheehy announced his candidacy. The ads exemplified a common political tactic, as OGC noted, used to “frame the election and/or define opponents in the minds of voters as early as possible.”²⁹

III. CONCLUSION

These ads contained express advocacy. Last Best Place PAC should have reported them as independent expenditures. The Commission should have found reason to believe a violation occurred and opened an investigation to determine how much money was spent on these ads that were plainly intended to influence an election. Montana voters are entitled to know this information, which the law requires be disclosed.

²³ *See id.*

²⁴ Express Advocacy E&J at 35,295.

²⁵ 11 C.F.R. § 100.22(b). *See also* First Gen. Counsel’s Rpt. at 21 (citing *Free Speech v. Fed. Election Comm’n*, 720 F.3d 788, 794 (10th Cir. 2013) (section 100.22(b) defines expressly advocating “‘more contextually’”).

²⁶ Merriam-Webster Online Dictionary (2024) (defining “such as” as “used to introduce an example or series of examples”), available at <https://www.merriam-webster.com/dictionary/such%20as#:~:text=1,such%20as%20a%20driver%27s%20license>.

²⁷ 52 U.S.C. § 30104(f)(3); accord 11 C.F.R. § 100.29(a).

²⁸ *See* 11 C.F.R. § 100.22.

²⁹ First Gen. Counsel’s Rpt. at 21.

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Date



Ellen L. Weintraub
Ellen L. Weintraub
Vice Chair

September 6, 2024

Date



Shana M. Broussard
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Commissioner