



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

August 16, 2024

VIA EMAIL

Ezra W. Reese
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RE: MURs 8215 & 8216
(Last Best Place PAC)

Dear Mr. Reese and Ms. Mahmood:

On February 14, 2024 and February 16, 2024, the Federal Election Commission (the "Commission") notified your client, Last Best Place PAC and David M. Lewis in his official capacity as treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of each complaint was forwarded to your client on those dates.

Upon further review of the allegations contained in the complaints, and information supplied by you on your client's behalf, the Commission, on July 11, 2024, voted to dismiss the complaints. Also on July 11, 2024, the Commission voted to close the file effective 30 days after the date the certification of this vote is signed (or on the next business day after the 30th day, if the 30th day falls on a weekend or holiday). Any applicable Statements of Reasons available at the time of this letter's transmittal are enclosed.

Documents related to the case will be placed on the public record today. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

If you have any questions, please contact Christopher Curran, the attorney assigned to this matter, at (202) 694-1362.

Sincerely,

A handwritten signature in dark ink, appearing to read "Aaron Rabinowitz".

Aaron Rabinowitz
Assistant General Counsel



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>).



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.

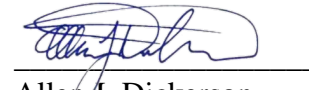
³¹ *Fed. Election Comm’n v. Furgatch*, 807 F.2d 857, 864 (9th Cir. 1987).

We therefore voted to dismiss the Complaints.

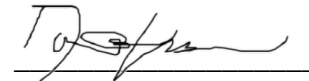
8/6/24
Date


Sean J. Cooksey
Chairman

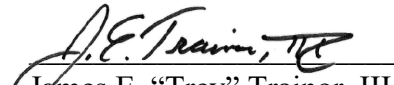
8/6/24
Date


Allen J. Dickerson
Commissioner

8/6/24
Date


Dara Lindenbaum
Commissioner

8/6/24
Date


James E. "Trey" Trainor, III
Commissioner



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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and Commissioner Shana M. Broussard
MURs 8215 and 8216 (Last Best Place PAC)
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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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September 6, 2024

Date



Ellen L. Weintraub
Vice Chair

September 6, 2024

Date



Shana M. Broussard
Commissioner