

BEFORE THE FEDERAL ELECTION COMMISSION

CAMPAIGN LEGAL CENTER
SOPHIA GONSALVES-BROWN
1101 14th Street NW, Suite 400
Washington, DC 20005

v. MUR No. _____

LAST BEST PLACE PAC and
DAVID M. LEWIS in his official
capacity as treasurer
P.O. Box 947
Helena, MT 59624

COMPLAINT

1. Last Best Place PAC (“LBP PAC”), a super PAC formed in September 2023, has reportedly spent over \$5.8 million on ads attacking Tim Sheehy, a candidate in the Republican primary election for the U.S. Senate in Montana. While LBP PAC appears to have treated its media disbursements as operating expenditures, at least one of those ads qualified as an “independent expenditure” that must be disclosed on a specific “48-hour” pre-election report, yet LBP PAC has not filed any such reports. In fact, LBP PAC’s 2023 year-end disclosure report, which it filed on January 31, 2024 — nearly five months after its ads first began airing — asserts that it has made no independent expenditures.
2. By not reporting its independent expenditures as required under the Federal Election Campaign Act (“FECA”), LBP PAC deprived voters of vital real-time information about electoral communications trying to influence their vote. Indeed, timely access to that information would likely have helped voters evaluate the motivation behind LBP PAC’s ads, as the committee’s year-end report eventually revealed that LBP PAC was wholly financed and produced by groups with clear links to the Democratic Party.

3. LBP PAC’s year-end report showed that all of its “media” disbursements were paid to a hitherto unknown vendor that shares an address with — and may be a corporate alter ego or shell for — an established media vendor known for working with Democratic Party candidates and PACs, and, further, that it received 100% of its funding from Majority Forward, a 501(c)(4) “dark money” corporation closely linked to SMP (formerly “Senate Majority PAC”), one of the primary super PACs supporting Democratic candidates for the U.S. Senate.
4. Accordingly, as set forth herein, there is reason to believe LBP PAC violated its reporting obligations under FECA by failing to report its independent expenditures.
5. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that LBP PAC has violated and continues to violate the Federal Election Campaign Act (“FECA”), 52 U.S.C. § 30101, *et seq.* “If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [FECA] . . . [t]he Commission *shall make an investigation* of such alleged violation.”¹

FACTS

6. LBP PAC registered with the Commission as an independent-expenditure only political committee (“IEOPC”) — commonly known as a “super PAC” — on September 5, 2023. David M. Lewis is LBP PAC’s treasurer.²

¹ 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

² Last Best Place PAC, Statement of Org. at 1 (Sep. 5, 2023).

7. Reports indicate that the super PAC’s name — the “Last Best Place” — invokes a familiar “slogan Montanans use to describe their sparsely populated state.”³
8. LBP PAC reported receiving contributions totaling \$2,135,000 as of December 31, 2023 — all of which was contributed by a single source, Majority Forward⁴ — and total disbursements of \$2,126,843.20, all of which it reported as operating expenditures.⁵ Majority Forward is a corporation that claims federal tax exemption under Section 501(c)(4) of the Internal Revenue Code.⁶ Majority Forward shares an address with, and has contributed over \$136 million to, the super PAC “SMP” (formerly known as “Senate Majority PAC”) — which, since 2020, has spent over \$700 million supporting Democratic candidates for the U.S. Senate.⁷
9. According to news reports, soon after it formed, LBP PAC began running ads attacking Tim Sheehy, a Republican primary candidate for the U.S. Senate in Montana.⁸ LBP PAC’s disclosure reports show that between September 5, 2023, and December 31, 2023, the super PAC disbursed \$2,029,549.32 — nearly all of its reported disbursements — to “Mountain Media,” a vendor that reportedly purchased airtime for LBP PAC’s ads and shares the same address as “Old Town Media,” an Alexandria, Virginia-based media

³ Liz Skalka, *The Shadowy Group Targeting A Montana Republican Is Actually A Major Democratic Super PAC*, Huffington Post (Jan. 26, 2024), https://www.huffpost.com/entry/montana-senate-tim-sheehy-matt-rosendale_n_65b3ca79e4b014b873b0f261.

⁴ Last Best Place PAC, 2023 Year-End Report at 3 (Jan. 31, 2024).

⁵ *Id.* at 4. News reports indicate that LBP PAC has raised and spent as much as \$5.8 million on ads attacking Sheehy, *see* Skalka, *supra* note 3, which likely reflects the committee’s activity since the end of the last reporting period on December 31, 2023.

⁶ *See* Majority Forward 2021 Form 990, Return of Organization Exempt from Income Tax, https://apps.irs.gov/pub/epostcard/cor/833690373_202206_9900_2023060721392480.pdf.

⁷ *See* PAC Profile: Senate Majority PAC, OpenSecrets, <https://www.opensecrets.org/political-action-committees-pacs/senate-majority-pac/C00484642/summary/2022> (last visited Feb. 5, 2024).

⁸ Skalka, *supra* note 3 (“Last Best Place PAC . . . has already spent nearly \$5.8 million on its ad campaign since September.”).

buyer that “works with many Democratic campaigns.”⁹ No other federal candidate or committee appears to have disbursed any funds to the same “Mountain Media” vendor.¹⁰

10. One LBP PAC ad not only attacked Sheehy but specifically referred to his campaign for the U.S. Senate and clearly advocated against his election:

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.*¹¹

11. LBP PAC has filed no 48-hour independent expenditure reports and correspondingly reported no independent expenditures on its 2023 Year-End Report; indeed, that report explicitly stated, “The committee’s media and advertising disbursements were not for independent expenditures.”¹²

⁹ Ally Mutnick, *Nine Months Before the Montana GOP Primary, a Mysterious Super PAC is On the Airwaves Attacking Tim Sheehy*, Politico (Sep. 12, 2023), <https://www.politico.com/live-updates/2023/09/12/congress/montana-senate-sheehy-pac-ads-00115276>. LBP PAC also disbursed \$92,643.89 to “Waterfront Strategies,” a firm that has received millions of dollars from, among others, FF PAC, SMP (formerly Senate Majority PAC), and House Majority PAC — each of which are super PACs that have exclusively supported Democratic candidates. *See, e.g.*, Disbursements to “Waterfront Strategies,” 2021–2022, https://www.fec.gov/data/disbursements/?data_type=processed&recipient_name=Waterfront+Strategies&two_year_transaction_period=2022.

¹⁰ A review of FEC disclosure records indicates that one or more entities using the name “Mountain Media” received disbursements aggregating \$9,000 in March 2010, a \$692 disbursement in 2018, and a \$462 disbursement in 2020. There is no indication that the vendor(s) receiving those small, ad hoc disbursements were the same entity as the vendor at issue in this matter, which has received over \$2 million from LBP PAC this election cycle. Notably, those prior disbursements were tied to addresses in New Jersey and West Virginia.

¹¹ “Shady Sheehy,” <https://host2.adimpact.com/admo/#/viewer/36ffda2b-a32a-4a7d-84b5-e8363d3a96e6/> (hereinafter, “LBP PAC Ad”).

¹² Last Best Place PAC, 2023 Year-End Report at 6.

SUMMARY OF THE LAW

Independent Expenditures and “Express Advocacy”

12. Under FECA, an expenditure includes “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.”¹³
13. An “independent expenditure” is “an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate” that “is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.”¹⁴
14. Under Commission regulations, a communication is “expressly advocating” if it meets one of two standards.
 - a. Under subsection (a) of the regulation, a communication is “expressly advocating” if it uses so-called “magic words” such as “vote for,” “re-elect,” or “defeat,” or includes “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).”¹⁵

¹³ 52 U.S.C. § 30101(9)(A).

¹⁴ *Id.* § 30101(17); *see* 11 C.F.R. § 100.16.

¹⁵ 11 C.F.R. § 100.22(a).

- b. Under subsection (b) of the regulation, a communication is “expressly advocating” if:

when taken as a whole and with limited reference to external events, such as the proximity to the election, [it] 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 (a) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (b) 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.¹⁶

15. The Commission has explained that “[c]ommunications discussing or commenting on a candidate’s character, qualifications, or accomplishments are considered express advocacy under . . . 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.”¹⁷
16. Federal courts have consistently reaffirmed the constitutionality of the “express advocacy” standard in section 100.22(b). In *Free Speech v. FEC*, a federal appeals court underscored that Supreme Court jurisprudence explicitly forecloses the position that “express advocacy” must be limited to the “magic words” standard in section 100.22(a), noting that recent decisions “have upheld the FEC’s approach to defining express advocacy not only in terms of *Buckley*’s ‘magic words’ as recognized in subsection (a), but also their ‘functional equivalent,’ as provided in subsection (b).”¹⁸ That decision

¹⁶ *Id.* § 100.22(b).

¹⁷ Factual and Legal Analysis at 6, MUR 7527 (News for Democracy) (“News for Democracy F&LA”) (quoting Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures, 60 Fed. Reg. 35,292, 35,294 (Jul. 6, 1995) (“Express Advocacy E&J”).

¹⁸ *Free Speech v. FEC*, 720 F.3d 788, 794–795 (10th Cir. 2013) (concluding that “[i]n *FEC v. Wisconsin Right to Life, Inc. (WRTL)*, 551 U.S. 449 (2007), the Supreme Court adopted a test for the ‘functional equivalent of express advocacy’ which is consistent with the language set forth in [section 100.22(b), and] . . . closely correlates to the test set forth in subsection [100.22](b)”).

echoed the federal appeals court in *Real Truth About Abortion v. FEC*, which likewise concluded that section 100.22(b)'s functional test for express advocacy was neither unconstitutionally overbroad nor vague, and indeed is consistent with and supported by the Supreme Court's decisions in *Wisconsin Right to Life* and *Citizens United*.¹⁹

Independent Expenditure Reporting

17. FECA requires each treasurer of a political committee to file reports of receipts and disbursements with the Commission.²⁰
18. Any political committee other than a candidate-authorized committee must periodically report, among other things, the total amount of all disbursements, as well as all disbursements that constitute independent expenditures, for the reporting period and the calendar year.²¹
19. Moreover, FECA requires political committees other than candidate-authorized committees to itemize all independent expenditures aggregating in excess of \$200 with certain information, including the name and address of each person who receives disbursements in connection with an independent expenditure, as well as the date, amount, purpose, and identity of the candidate the independent expenditure is supporting or opposing.²²

¹⁹ *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 550–553 (4th Cir. 2012) (discussing *Citizens United v. FEC*, 558 U.S. 310 (2010), *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007)); see also *FEC v. Furgatch*, 807 F.2d 857, 863 (9th Cir. 1987) (“A test *requiring* magic words . . . would . . . eviscerat[e] the Federal Election Campaign Act. ‘Independent’ campaign spenders working on behalf of candidates could remain just beyond the reach of the Act by avoiding certain key words while conveying a message that is unmistakably directed to the election or defeat of a named candidate” (emphasis added)).

²⁰ 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

²¹ 52 U.S.C. § 30104(b)(4)(h)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

²² 52 U.S.C. § 30104(b)(6)(B)(iii); 11 C.F.R. § 104.3(b)(3)(vii).

20. When any person makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day preceding, but more than 24 hours before, the date of an election, FECA requires that person to file an additional report describing those expenditures within 24 hours.²³ Further, any person that makes or contracts to make independent expenditures aggregating \$10,000 or more outside of that 20-day period, up to and including the 20th day, must file a report describing those expenditures within 48 hours.²⁴ These 24/48-hour reports must contain the same information that committees are required to include on their periodic reports, including the identity of any person that receives more than \$200 in connection with an independent expenditure.²⁵

CAUSES OF ACTION

COUNT I:

LBP PAC VIOLATED 52 U.S.C. § 30104 BY FAILING TO REPORT INDEPENDENT EXPENDITURES

21. The available information indicates that LBP PAC violated its reporting obligations by failing to file a 48-hour report for each of its independent expenditures, and by failing to disclose and itemize its independent expenditures on its 2023 year-end report.
22. LBP PAC ran an ad that explicitly referred to Tim Sheehy as a candidate for the U.S. Senate and criticized Sheehy's character and fitness to hold public office. Specifically, the ad states that Sheehy "doesn't think he should be held accountable" and "got rich off government contracts, walked away from his loan, and now, he and his campaign can

²³ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d).

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

²⁵ 52 U.S.C. § 30104(g)(3)(B), *cross-referencing id.* § 30104(b)(6)(B)(iii); 11 C.F.R. § 104.4(b)-(c), *cross-referencing id.* § 104.3(b)(3)(vii).

spend millions trying to buy our Senate seat.”²⁶ The ad refers to him as “Shady Sheehy” and ends by declaring that Sheehy is “just out for himself.”²⁷

23. This LBP PAC ad expressly advocates against Sheehy under FECA and FEC regulations. Specifically, it meets the express advocacy standard set forth at 11 C.F.R. § 100.22(b), because the ad’s “electoral portion . . . is unmistakable, unambiguous, and suggestive of only one meaning” and “[r]easonable 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.”²⁸
24. The LBP PAC ad explicitly refers to Sheehy as a federal candidate: The ad comments, in reference to Sheehy, that “he and his campaign can spend millions trying to buy our Senate seat.”²⁹ This reference to the 2024 election and to Sheehy’s federal candidacy in that election is “unmistakable, unambiguous, and suggestive of only one meaning.”³⁰
25. Moreover, the ad’s attack that Sheehy “and his campaign” are “trying to buy our Senate seat” leaves no question — “[r]easonable minds could not differ as to whether — the ad is encouraging Sheehy’s defeat of in the 2024 election, rather than “some other kind of action.”³¹ LBP PAC’s ad is clearly “discussing or commenting on” Sheehy’s “character, qualifications, or accomplishments”³² when it calls Sheehy “shady” and claims that he

²⁶ LBP PAC Ad, *supra* note 11.

²⁷ *Id.*

²⁸ 11 C.F.R. § 100.22(b).

²⁹ LBP PAC Ad, *supra* note 11.

³⁰ 11 C.F.R. § 100.22(b). In a recent Statement of Reasons, three Commissioners stated that, in their (non-precedential) view, the “electoral portion” requirement can be satisfied by “a reference to a particular person as a candidate; or a reference to an election.” Statement of Reasons of Chairman Dickerson and Comm’rs Cooksey and Trainor at 7, MUR 7674 (Iowa Values, Inc.) (May 13, 2022). Even in the view of these Commissioners — who articulated a narrow view of the regulation in their Statement of Reasons — the “Shady Sheehy” ad contains an unmistakable electoral portion.

³¹ 11 C.F.R. § 100.22(b).

³² News for Democracy F&LA at 6 (quoting Express Advocacy E&J).

“got an over-\$770,000 government loan and never paid it back,” “doesn’t think he should be held accountable,” and is “just out for himself.”³³ When viewed “in context” — particularly in light of the ad’s allegation that Sheehy and his campaign are “trying to buy our Senate seat”³⁴ — the ad has “no other reasonable meaning than to encourage actions to . . . defeat” Sheehy in the 2024 election, rather than “some other kind of action.”³⁵

26. As such, because this LBP PAC communication expressly advocates for the election or defeat of a clearly identified candidate, Sheehy, it constitutes an “independent expenditure” under FECA.³⁶
27. FECA requires any unauthorized political committee, like LBP PAC, to periodically report any independent expenditures, and to itemize all independent expenditures aggregating in excess of \$200 with the name and address of each “person who receives disbursements in connection with an independent expenditure, as well as the date, amount, purpose, and identity of the candidate the independent expenditure is supporting or opposing.”³⁷ FECA also requires that any independent expenditure of \$10,000 or more made outside of the 20-day window immediately before an election be disclosed within 48 hours on a report filed with the Commission.³⁸
28. LBP PAC has not filed a 48-hour independent expenditure report in connection with its spending on the ad expressly advocating against Sheehy, nor has it disclosed any

³³ LBP PAC Ad, *supra* note 11.

³⁴ *Id.*

³⁵ News for Democracy F&LA at 6 (quoting Express Advocacy E&J).

³⁶ 52 U.S.C. § 30101(17).

³⁷ *Id.* §§ 30104(b)(4)(h)(iii), (b)(6)(B)(iii); 11 C.F.R. §§ 104.3(b)(1)(vii), (b)(3)(vii).

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

independent expenditures on its 2023 year-end disclosure report; indeed, LBP PAC states, in its year-end report, that it has made no independent expenditures.³⁹

29. LBP PAC's failure to accurately and timely report its independent expenditures ensured that for roughly five months — from around the time of its formation on September 5, 2023, through January 31, 2024, when LBP PAC filed its 2023 year-end report — voters were largely denied information about how the super PAC was spending its money, *i.e.*, that it had paid over \$2 million to a media vendor linked to Democratic candidates and PACs. That information would likely have been exceptionally helpful for voters to consider and evaluate LBP PAC's independent expenditures, since those ads — exclusively paid for with money that LBP PAC received from Majority Forward, a 501(c)(4) dark money corporation that supports Democratic candidates — expressly advocated against Sheehy, a Republican primary candidate.⁴⁰
30. Accordingly, there is reason to believe that LBP PAC violated its independent expenditure reporting obligations under 52 U.S.C. § 30104.

³⁹ See Year-End Report, *supra* note 12.

⁴⁰ See Skalka, *supra* note 3.

PRAYER FOR RELIEF

31. Wherefore, the Commission should find reason to believe that LBP PAC violated 52 U.S.C. § 30101 *et seq.*, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2).
32. Further, the Commission should seek appropriate sanctions for any and all violations, including civil penalties sufficient to deter future violations and an injunction prohibiting the respondents from any and all violations in the future, and should seek such additional remedies as are necessary and appropriate to ensure compliance with FECA.

Respectfully submitted,

/s/ Saurav Ghosh
Campaign Legal Center, by
Saurav Ghosh, Esq.
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200

/s/ Sophia Gonsalves-Brown
Sophia Gonsalves-Brown
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200

Saurav Ghosh, Esq.
Campaign Legal Center
1101 14th Street NW, Suite 400
Washington, DC 20005
Counsel to the Campaign Legal Center,
Sophia Gonsalves-Brown

February 14, 2024

VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Sophia Gonsalves-Brown



Sophia Gonsalves-Brown

Sworn to and subscribed before me this 14 day of February 2024.



Notary Public



VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

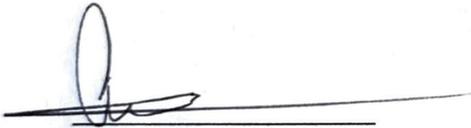
Sworn pursuant to 18 U.S.C. § 1001.

For Complainant Campaign Legal Center



Saurav Ghosh, Esq.

Sworn to and subscribed before me this 14th day of February 2024.



Notary Public

