

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL’S REPORT

RAD REFERRAL: 21L-68

DATE REFERRED: 11/18/2021

DATE OF AMENDED REFERRAL: 03/15/2022

DATES OF NOTIFICATIONS: 11/19/2021

and 03/24/2022

DATE OF LAST RESPONSE: 04/08/2022

DATE ACTIVATED: 04/14/2022

EXPIRATION OF SOL: 12/27/2025 – 01/04/2026

ELECTION CYCLE: 2020

SOURCE:

Internally Generated

RESPONDENT:

Black Voters Matter Action PAC and Kamau
Franklin in his official capacity as treasurer

**RELEVANT STATUTE
AND REGULATION:**

52 U.S.C. § 30104(g)(1)

11 C.F.R. § 104.4(c)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a Reports Analysis Division (“RAD”) Referral, as amended, concerning disclosure reports filed by Black Voters Matter Action PAC and Kamau Franklin in his official capacity as treasurer (the “Committee”) during the 2021 Runoff and Special-Runoff Elections held in the state of Georgia on January 5, 2021. The Referral is based on the Committee’s failure to timely file eight 24-hour reports in support of 38 independent expenditures (“IEs”) totaling \$546,751.12.¹ The Committee does not dispute the allegations,

¹ Letter from Roy Lockett, FEC, to Jonathan S. Berkon, Elias Law Group, LLP (Mar. 24, 2022) (“Second

1 asserting that the late-filed reports were due to understaffing during the holidays, but requests
2 that the matter be resolved through alternative dispute resolution.²

3 For the reasons set forth below, we recommend that the Commission open a MUR and
4 find reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1) of the Federal
5 Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 104.4(c) of the
6 Commission regulations by failing to timely report independent expenditures aggregating \$1,000
7 or more made after the 20th day, but more than 24 hours before an election.

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 The Committee is an independent expenditure-only political committee (“IEOPC”) that
12 registered with the Commission on July 29, 2020.³ During the 20 days prior to the 2021 Runoff
13 and Special-Runoff Elections held in the state of Georgia on January 5, 2021, the Committee
14 made multiple IEs supporting U.S. Senate candidates T. Jonathan Ossoff and Raphael Warnock
15 but failed to timely file 24-hour reports disclosing 38 of them.⁴ Specifically, on January 13,
16 2021, eight days after the election, the Committee late filed a 24-hour report disclosing 10 IEs

Notification Letter”); Amended RAD Referral at 1-2, RR 21L-68 (Black Voters Matter Action PAC) (Mar. 15, 2022) (“Amended Referral”); Letter from Roy Luckett, FEC, to Kamau Frank, Treasurer, Black Voters Matter Action PAC (Nov. 19, 2021) (“First Notification Letter”); RAD Referral at 1-2, RR 21L-68 (Black Voters Matter Action PAC) (Nov. 18, 2021) (“Referral”).

² Supp. Resp. at 1 (Apr. 8, 2022); Resp. at 2 (Dec. 2, 2021).

³ Black Voters Matter Action PAC, Statement of Organization (July 29, 2020), <https://docquery.fec.gov/pdf/459/202007299261175459/202007299261175459.pdf>.

⁴ Amended Referral, Attach. 2; *see also* Black Voters Matter Action PAC, Post-Runoff Report (Feb. 4, 2021), <https://docquery.fec.gov/pdf/610/202102049427030610/202102049427030610.pdf>.

totaling \$406,045 that were disseminated between December 31, 2020, and January 2, 2021.⁵ Subsequently, on February 4, 2021, one month after the election, the Committee late filed additional 24-hour reports disclosing 28 IEs totaling \$140,706.12 that were disseminated from December 23, 2020, through January 3, 2021.⁶ Overall, these reports reveal that the Committee failed to timely file eight 24-hour reports disclosing 38 IEs totaling \$546,751.12.⁷

The Act and Commission regulations require political committees to provide an accounting of all disbursements, including independent expenditures, on their regularly-scheduled disclosure reports.⁸ In addition, committees that make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election must file a 24-hour report to disclose such independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated.⁹ Additional

⁵ Referral, Attach. 2; *see also* Black Voters Matter Action PAC, 24-Hour Report (Jan. 13, 2021), <https://docquery.fec.gov/pdf/440/202101139398672440/202101139398672440.pdf>.

⁶ *See* Amended Referral, Attach. 2; *see also* Black Voters Matter Action PAC, 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/867/202102049425039867/202102049425039867.pdf>; <https://docquery.fec.gov/pdf/885/202102049425039885/202102049425039885.pdf>; <https://docquery.fec.gov/pdf/868/202102049425039868/202102049425039868.pdf>; <https://docquery.fec.gov/pdf/909/202102049425039909/202102049425039909.pdf>; <https://docquery.fec.gov/pdf/866/202102049425039866/202102049425039866.pdf>; <https://docquery.fec.gov/pdf/865/202102049425039865/202102049425039865.pdf>; Black Voters Matter Action PAC, Amended 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/658/202102049425073658/202102049425073658.pdf>; <https://docquery.fec.gov/pdf/899/202102049425039899/202102049425039899.pdf>; <https://docquery.fec.gov/pdf/918/202102049425039918/202102049425039918.pdf>.

⁷ Amended Referral at 1.

⁸ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b). Committees shall report the name and address of any person who receives a disbursement for an independent expenditure from the committee during the reporting period in an aggregate amount in excess of \$200 within the calendar year (or election cycle for an authorized committee), as well as the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. 52 U.S.C. § 30104(b)(6)(B)(iii); 11 C.F.R. § 104.3(b)(3)(vii). Committees must also report the total of all independent expenditures. 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

⁹ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c). The Act and Commission regulations include a separate requirement to file 48-hour reports for independent expenditures aggregating \$10,000 or more at any time up to and

24-hour reports must be filed by 11:59 p.m. the following day each time a committee makes or contracts to make independent expenditures aggregating an additional \$1,000.¹⁰ Thus, IEs aggregating \$1,000 or more made on December 16, 2020, through January 3, 2021, needed to be disclosed in a 24-hour report.

Here, the Committee does not dispute that it failed to timely file eight 24-hour reports disclosing 38 IEs totaling \$546,751.12 that were disseminated between December 23, 2020, and January 3, 2021.¹¹ While the Committee did ultimately file 24-hour reports with the Commission, the IEs were not disclosed until after the election was held:¹² 10 IEs were disclosed at least 10 days late,¹³ on January 13, 2021, and 28 IEs were disclosed at least 30 days late, on February 4, 2021.¹⁴ The Committee asserts that it “was understaffed during the 2020 holiday season, resulting in inadvertent lapses in the Committee’s procedures for reporting independent expenditures.”¹⁵ Further, the Committee requests that the Commission handle this matter

including the 20th day before the date of an election. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

¹⁰ 11 C.F.R. § 104.4(c).

¹¹ *See* Resp. at 2; Supp. Resp. at 1.

¹² Amended Referral, Attach. 2.

¹³ Referral, Attach. 2; *see also* Black Voters Matter Action PAC, 24-Hour Report (Jan. 13, 2021), <https://docquery.fec.gov/pdf/440/202101139398672440/202101139398672440.pdf>.

¹⁴ Amended Referral, Attach. 2; *see also* Black Voters Matter Action PAC, 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/867/202102049425039867/202102049425039867.pdf>; <https://docquery.fec.gov/pdf/885/202102049425039885/202102049425039885.pdf>; <https://docquery.fec.gov/pdf/868/202102049425039868/202102049425039868.pdf>; <https://docquery.fec.gov/pdf/909/202102049425039909/202102049425039909.pdf>; <https://docquery.fec.gov/pdf/866/202102049425039866/202102049425039866.pdf>; <https://docquery.fec.gov/pdf/865/202102049425039865/202102049425039865.pdf>; Black Voters Matter Action PAC, Amended 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/658/202102049425073658/202102049425073658.pdf>; <https://docquery.fec.gov/pdf/899/202102049425039899/202102049425039899.pdf>; <https://docquery.fec.gov/pdf/918/202102049425039918/202102049425039918.pdf>.

¹⁵ Supp. Resp. at 1; *see also* Resp. at 2 (“The independent expenditures that were not timely disclosed were all disseminated between December 23, 2020 and January 3, 2021, when the Committee was understaffed due to the holidays.”)

1 through the Alternative Dispute Resolution (“ADR”) program.¹⁶

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4 Accordingly, we recommend that the Commission open a matter under review and find
5 reason to believe Black Voters Matter Action PAC and Kamau Franklin in his official capacity
6 as treasurer violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c) by failing to timely file
7 24-hour reports.

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¹⁶ Supp. Resp. at 1; *see also* Resp. at 2.

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4 **IV. RECOMMENDATIONS**

5 1. Open a MUR;

6 2. Find reason to believe that Black Voters Matter Action PAC and Kamau Franklin
7 in his official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and
8 11 C.F.R. § 104.4(c) by failing to timely report independent expenditures
9 aggregating \$1,000 or more made after the 20th day, but more than 24 hours
10 before an election;

11 3. Approve the attached Factual and Legal Analysis;

12 4. Authorize pre-probable cause conciliation;

13 5. Approve the attached proposed Conciliation Agreement; and

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6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Deputy General Counsel for
Enforcement

April 27, 2022

Date



Claudio J. Pavia
Deputy Associate General Counsel
for Enforcement



Mark Shonkwiler
Assistant General Counsel



Crystal Liu
Attorney

Attachments:

1. Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Black Voters Matter Action PAC and Kamau Franklin in his official capacity as treasurer

MUR: _____

I. INTRODUCTION

This matter was generated by a Reports Analysis Division (“RAD”) Referral concerning disclosure reports filed by Black Voters Matter Action PAC and Kamau Franklin in his official capacity as treasurer (the “Committee”) during the 2020 election cycle. The Referral is based on the Committee’s failure to file 24-hour reports in support of 38 independent expenditures totaling 546,751.12.¹

As discussed below, the Commission opens a matter under review and finds reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1) of the Federal Election Campaign Act of 1971, as amended (the “Act”), and 11 C.F.R. § 104.4(c) of the Commission regulations by failing to timely report independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours before an election.

II. FACTUAL AND LEGAL ANALYSIS

The Committee is an independent expenditure-only political committee (“IEOPC”) that registered with the Commission on July 29, 2020, with Kamau Franklin listed as treasurer from its inception.² The Act and Commission regulations require political committees to provide an

¹ Letter from Roy Luckett, FEC, to Jonathan S. Berkon, Elias Law Group, LLP (Mar. 24, 2022) (“Second Notification Letter”); Amended RAD Referral at 1-2, RR 21L-68 (Black Voters Matter Action PAC) (Mar. 15, 2022) (“Amended Referral”); Letter from Roy Luckett, FEC, to Kamau Frank, Treasurer, Black Voters Matter Action PAC (Nov. 19, 2021) (“First Notification Letter”); RAD Referral at 1-2, RR 21L-68 (Black Voters Matter Action PAC) (Nov. 18, 2021) (“Referral”).

² Black Voters Matter Action PAC, Statement of Organization (July 29, 2020), <https://docquery.fec.gov/pdf/459/202007299261175459/202007299261175459.pdf>.

accounting of all disbursements, including independent expenditures, on their regularly-scheduled disclosure reports.³ In addition, committees that make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election must file a 24-hour report to disclose such independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated.⁴ Additional 24-hour reports must be filed by 11:59 p.m. the following day each time a committee makes or contracts to make independent expenditures aggregating an additional \$1,000.⁵

The Committee made 38 independent expenditures totaling \$546,751.12 between December 23, 2021, and January 3, 2021, in support of two candidates in connection with the 2021 Run-Off and Special Run-Off Elections for U.S. Senate, which occurred on January 5, 2021.⁶ Although the independent expenditures were made after the 20th day, but more than 24 hours before the election, and the aggregate amounts with respect to each of the candidates were \$1,000 or more, the Committee did not file any associated 24-hour reports until after the election.⁷ While the Committee did ultimately file late 24-hour reports with the Commission,

³ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3(b). Committees shall report the name and address of any person who receives a disbursement for an independent expenditure from the committee during the reporting period in an aggregate amount in excess of \$200 within the calendar year (or election cycle for an authorized committee), as well as the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. 52 U.S.C. § 30104(b)(6)(B)(iii); 11 C.F.R. § 104.3(b)(3)(vii). Committees must also report the total of all independent expenditures. 52 U.S.C. § 30104(b)(4)(H)(iii); 11 C.F.R. § 104.3(b)(1)(vii).

⁴ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c). The Act and Commission regulations include a separate requirement to file 48-hour reports for independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of an election. 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b).

⁵ 11 C.F.R. § 104.4(c).

⁶ Amended Referral, Attach. 2.

⁷ Black Voters Matter Action PAC, 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/867/202102049425039867/202102049425039867.pdf>; <https://docquery.fec.gov/pdf/885/202102049425039885/>

1 10 independent expenditures were disclosed at least 10 days late,⁸ on January 13, 2021, and 28
 2 independent expenditures were disclosed at least 30 days late, on February 4, 2021.⁹

3 Therefore, the Commission finds reason to believe that the Committee violated 52 U.S.C.
 4 § 30104(g)(1) and 11 C.F.R. § 104.4(c) by failing to timely file 24-hour reports.

<https://docquery.fec.gov/pdf/868/202102049425039868/202102049425039868.pdf>; <https://docquery.fec.gov/pdf/909/202102049425039909/202102049425039909.pdf>; <https://docquery.fec.gov/pdf/866/202102049425039866/202102049425039866.pdf>; <https://docquery.fec.gov/pdf/865/202102049425039865/202102049425039865.pdf>; Black Voters Matter Action PAC, Amended 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/658/202102049425073658/202102049425073658.pdf>; <https://docquery.fec.gov/pdf/899/202102049425039899/202102049425039899.pdf>; <https://docquery.fec.gov/pdf/918/202102049425039918/202102049425039918.pdf>; Black Voters Matter Action PAC, 24-Hour Report (Jan. 13, 2021), <https://docquery.fec.gov/pdf/440/202101139398672440/202101139398672440.pdf>.

⁸ Referral, Attach. 2; *see also* Black Voters Matter Action PAC, 24-Hour Report (Jan. 13, 2021), <https://docquery.fec.gov/pdf/440/202101139398672440/202101139398672440.pdf>.

⁹ Amended Referral, Attach. 2; *see also* Black Voters Matter Action PAC, 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/867/202102049425039867/202102049425039867.pdf>; <https://docquery.fec.gov/pdf/885/202102049425039885/202102049425039885.pdf>; <https://docquery.fec.gov/pdf/868/202102049425039868/202102049425039868.pdf>; <https://docquery.fec.gov/pdf/909/202102049425039909/202102049425039909.pdf>; <https://docquery.fec.gov/pdf/866/202102049425039866/202102049425039866.pdf>; <https://docquery.fec.gov/pdf/865/202102049425039865/202102049425039865.pdf>; Black Voters Matter Action PAC, Amended 24-Hour Reports (Feb. 4, 2021), <https://docquery.fec.gov/pdf/658/202102049425073658/202102049425073658.pdf>; <https://docquery.fec.gov/pdf/899/202102049425039899/202102049425039899.pdf>; <https://docquery.fec.gov/pdf/918/202102049425039918/202102049425039918.pdf>.