

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL’S REPORT**

4
5 **RAD REFERRAL: 21L-68**
6 DATE REFERRED: 11/18/2021
7 DATE OF AMENDED REFERRAL: 03/15/2022
8 DATES OF NOTIFICATIONS: 11/19/2021
9 and 03/24/2022
10 DATE OF LAST RESPONSE: 04/08/2022
11 DATE ACTIVATED: 04/14/2022
12
13 EXPIRATION OF SOL: 12/27/2025 – 01/04/2026
14 ELECTION CYCLE: 2020

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16 **SOURCE:** Internally Generated

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18 **RESPONDENT:** Black Voters Matter Action PAC and Kamau
19 Franklin in his official capacity as treasurer
20

21 **RELEVANT STATUTE**
22 **AND REGULATION:** 52 U.S.C. § 30104(g)(1)
23 11 C.F.R. § 104.4(c)
24

25 **INTERNAL REPORTS CHECKED:** Disclosure Reports

26
27 **FEDERAL AGENCIES CHECKED:** None
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29 **I. INTRODUCTION**

30 This matter was generated by a Reports Analysis Division (“RAD”) Referral, as
31 amended, concerning disclosure reports filed by Black Voters Matter Action PAC and Kamau
32 Franklin in his official capacity as treasurer (the “Committee”) during the 2021 Runoff and
33 Special-Runoff Elections held in the state of Georgia on January 5, 2021. The Referral is based
34 on the Committee’s failure to timely file eight 24-hour reports in support of 38 independent
35 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. In addition, we
8 recommend that the Commission authorize pre-probable cause conciliation and approve a
9 proposed conciliation agreement for the Committee with an opening settlement offer of \$70,000.

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>.

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

6 The Act and Commission regulations require political committees to provide an
7 accounting of all disbursements, including independent expenditures, on their regularly-
8 scheduled disclosure reports.⁸ In addition, committees that make independent expenditures
9 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
10 hours before the date of that election must file a 24-hour report to disclose such independent
11 expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on
12 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

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

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

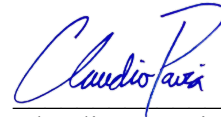
13 5. Approve the attached proposed Conciliation Agreement; and

1 6. Approve the appropriate letter.

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Lisa J. Stevenson
Acting General Counsel


Charles Kitcher
Acting Deputy General Counsel for
Enforcement




Claudio J. Pavia
Deputy Associate General Counsel
for Enforcement

April 27, 2022

Date



Mark Shonkwiler
Assistant General Counsel



Crystal Liu
Attorney

- Attachments:
1. Factual and Legal Analysis
2. Conciliation Agreement

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Black Voters Matter Action PAC and Kamau **MUR:** _____
4 Franklin in his official capacity as treasurer

5 **I. INTRODUCTION**

6 This matter was generated by a Reports Analysis Division (“RAD”) Referral concerning
7 disclosure reports filed by Black Voters Matter Action PAC and Kamau Franklin in his official
8 capacity as treasurer (the “Committee”) during the 2020 election cycle. The Referral is based on
9 the Committee’s failure to file 24-hour reports in support of 38 independent expenditures totaling
10 546,751.12.¹

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

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 The Committee is an independent expenditure-only political committee (“IEOPC”) that
18 registered with the Commission on July 29, 2020, with Kamau Franklin listed as treasurer from
19 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>.

1 accounting of all disbursements, including independent expenditures, on their regularly-
2 scheduled disclosure reports.³ In addition, committees that make independent expenditures
3 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
4 hours before the date of that election must file a 24-hour report to disclose such independent
5 expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on
6 which a communication is publicly distributed or otherwise publicly disseminated.⁴ Additional
7 24-hour reports must be filed by 11:59 p.m. the following day each time a committee makes or
8 contracts to make independent expenditures aggregating an additional \$1,000.⁵

9 The Committee made 38 independent expenditures totaling \$546,751.12 between
10 December 23, 2021, and January 3, 2021, in support of two candidates in connection with the
11 2021 Run-Off and Special Run-Off Elections for U.S. Senate, which occurred on January 5,
12 2021.⁶ Although the independent expenditures were made after the 20th day, but more than 24
13 hours before the election, and the aggregate amounts with respect to each of the candidates were
14 \$1,000 or more, the Committee did not file any associated 24-hour reports until after the
15 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>.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Black Voters Matter Action PAC and Kamau) MUR _____
Franklin in his official capacity as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (the “Commission”) pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Black Voters Matter Action PAC and Kamau Franklin in his official capacity as treasurer (“Respondent” or 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.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this Agreement has the effect of an agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i).
- II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondent enters voluntarily into this Agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

1. Black Voters Matter Action PAC is an independent expenditure-only committee that registered with the Commission on July 29, 2020. It is a political committee within the meaning of 52 U.S.C. § 30101(4).

2. Kamau Franklin is the Treasurer of Black Voters Matter Action PAC.

3. The Act and Commission regulations require political 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 to 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. 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

4. On January 13, 2021, the Committee filed a late 24-hour report disclosing 10 independent expenditures totaling \$406,045 between December 31, 2020, and January 2, 2021, in support of two candidates in connection with the 2021 Runoff and Special-Runoff Elections held in the state of Georgia on January 5, 2021.

5. On February 4, 2021, the Committee filed nine late 24-hour reports disclosing 28 independent expenditures totaling \$140,706.12 between December 23, 2020, through January 3, 2021, in support of two candidates in connection with the 2021 Runoff and Special-Runoff Elections held in the state of Georgia on January 5, 2021.

6. 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.

7. The Committee did not file 24-hour reports for these expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the communications were publicly distributed or otherwise publicly disseminated.

V. Respondent violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c) by failing to file the required 24-hour reports for independent expenditures totaling \$546,751.12.

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Commission in the amount of Seventy Thousand Dollars (\$70,000), pursuant to 52 U.S.C. § 30109(a)(5)(A).

2. Respondent will cease and desist from violating 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c).

VII. The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this Agreement. If the Commission believes that this Agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This Agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this Agreement becomes effective to comply with and implement the requirements contained in this Agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

oral, made by either party or by agents of either party, that is not contained in this written Agreement shall be enforceable.

FOR THE COMMISSION:

Lisa J. Stevenson
Acting General Counsel

BY: _____
Charles Kitcher
Associate General Counsel
for Enforcement

Date

FOR THE RESPONDENT:

Jonathan S. Berkon
Counsel for Black Voters Matter Action PAC

Date