



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 13, 2022

Via Electronic Mail

JBerkon@elias.law

SMahmood@elias.law

Jonathan S. Berkon, Esq.
Sarah N. Mahmood, Esq.
Elias Law Group
10 G Street NE, Suite 600
Washington, DC 20002

RE: MUR 8012
Black Voters Matter Action PAC

Dear Mr. Berkon and Ms. Mahmood:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that your client, Black Voters Matter Action PAC and Kamau Franklin, in his official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 7, 2022, the Commission found reason to believe that your client violated 52 U.S.C. § 30104(g)(1), a provision of the Act, and 11 C.F.R. § 104.4(c), a provision of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law.

MUR (Black Voters Matter Action PAC)

Jason S. Berkon, Esq.

Sarah N. Mahmood, Esq.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

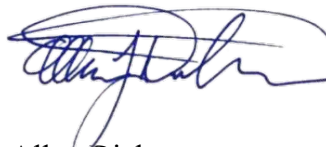
If your client is interested in engaging in pre-probable cause conciliation, please contact Crystal Liu, the attorney assigned to this matter, at (202) 694-1273 or cliu@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

We look forward to your response.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Allen Dickerson", enclosed within a blue rectangular box.

Allen Dickerson
Chairman

Enclosures:

1. Factual and Legal Analysis

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Black Voters Matter Action PAC and Kamau Franklin in his official capacity as treasurer **MUR 8012**

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 Franklin, 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>.