



FEDERAL ELECTION COMMISSION
Washington, DC

VIA ELECTRONIC MAIL

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December 23, 2024

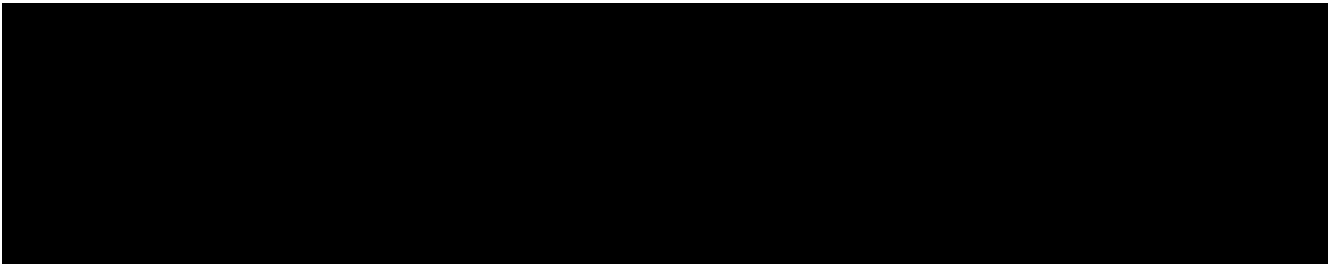
RE: MUR 8353
Black Voters Matter Action PAC

Dear Mr. Berkon:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (“Commission”) became aware of information suggesting that your client, Black Voters Matter Action PAC and Kamau Franklin in his official capacity as treasurer (the “Committee”), may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). On June 27, 2024, the Commission notified the Committee of a Referral by the Commission’s Reports Analysis Division (RR 24L-21) to the Commission’s Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109, for failing to timely report independent expenditures. A copy of the Referral was provided to the Committee with the June 27, 2024, notification.

Upon review of the referred matter, the Commission, on December 10, 2024, found reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c) by failing to timely report independent expenditures. The Factual and Legal Analysis, which forms the basis of the Commission’s determination, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of 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 the Commission should find probable cause to believe that your client violated the law.



MUR 8353 (Black Voters Matter Action PAC)

Jonathan Berkon, Esq.

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Please note that your client has 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

If you are interested in engaging in pre-probable cause conciliation, please contact Pam Keller, the attorney assigned to this matter, at (202) 694-4563 or pkeller@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.

We look forward to your response.

On behalf of the Commission,



Sean J. Cooksey
Chairman

Enclosures

Factual and Legal Analysis
[REDACTED]

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 8353**

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 general runoff election for U.S. Senate in Georgia on December 6, 2022. The Referral is based on the Committee’s failure to timely file two 24-Hour Reports in support of three independent expenditures (“IEs”) totaling \$158,018.¹ The Committee acknowledges its failure to timely disclose the IEs at issue, asserting that the late-filed reports were due to “inadvertent lapses in its internal compliance procedures.”²

As discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30104(g)(1) and 11 C.F.R. § 104.4(c) by failing to report IEs 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, 2020.³ During the 20 days prior to the 2022 runoff election for the U.S. Senate in Georgia on December 6, 2022, the Committee made multiple IEs

¹ RAD Referral at 1-2 (Black Voters Matter Action PAC) (June 27, 2024). The Committee was the subject of another RAD Referral for the same violation in connection with the 2021 runoff election. *See* Conciliation Agreement, MUR 8012 (Black Voters Matter); Certification (“Cert.”) (June 9, 2022), MUR 8012 (Black Voters Matter).

² Resp. at 1 (Aug. 2, 2024).

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

1 supporting U.S. Senate candidate Raphael Warnock but failed to timely file 24-Hour Reports
2 disclosing three of them.⁴ Two days after the election, the Committee filed the 2022 30-Day
3 Post-General Report disclosing IEs totaling \$392,175.23 supporting five federal candidates
4 including the \$158,018 at issue.⁵ After receiving a Request for Additional Information (“RFAI”)
5 from RAD referencing the 30-Day Post-General Report, stating that the Committee may have
6 failed to timely file at least one 24-Hour Report of independent expenditures,⁶ the Committee
7 filed an Amended 2022 30-Day Post-General Report disclosing twelve IEs totaling \$309,557.23
8 supporting five federal candidates including the \$158,018 at issue.⁷ In that amended report, the
9 Committee stated in memo text that it did not timely disclose the IEs due to an inadvertent lapse
10 in its compliance procedures and that it had put in place procedures to reduce the chance of
11 future lapses in independent expenditure disclosure.⁸ On January 26, 2024, the Committee filed
12 a 24-Hour Report to support three IEs totaling \$158,018 that had been disclosed in the 2022 30-
13 Day Post General Report, but had not been previously disclosed on 24-Hour Reports.

14 The Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission
15 regulations require political committees to provide an accounting of all disbursements, including
16 IEs, on their regularly-scheduled disclosure reports.⁹ In addition, committees that make IEs

⁴ Referral at 1-2.

⁵ Referral at 1; *see also* Black Voters Matter Action PAC, 30 Day Post-General Report (Dec. 8, 2022), <https://docquery.fec.gov/pdf/776/202212089557369776/202212089557369776.pdf#navpanes=0>.

⁶ Black Voters Matter Action PAC, Request for Additional Information (Mar. 30, 2023), https://docquery.fec.gov/cgi-bin/fecimg/?_202303300300177323+0

⁷ *See* Referral at 1; *see also* Black Voters Matter Action PAC, Amended 30 Day Post-General Report (May 4, 2023), <https://docquery.fec.gov/cgi-bin/forms/C00753277/1703179/>.

⁸ Referral at 2; *see also* Black Voters Matter Action PAC, Amended 30 Day Post-General Report (May 4, 2023), <https://docquery.fec.gov/cgi-bin/forms/C00753277/1703179/>.

⁹ 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

1 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
2 hours before the date of that election must file a 24-Hour Report to disclose IEs by 11:59 p.m.
3 Eastern Standard/Daylight Time on the day following the date on which a communication is
4 publicly distributed or otherwise publicly disseminated.¹⁰ Additional 24-Hour Reports must be
5 filed by 11:59 p.m. the following day each time a committee makes or contracts to make IEs
6 aggregating an additional \$1,000.¹¹ Thus, IEs aggregating \$1,000 or more that were made on
7 November 16, 2022, through December 4, 2022, needed to be disclosed in a 24-Hour Report.
8 Specifically, the Committee disseminated IEs of amounts greater than \$1,000 on both
9 November 24, 2022, and November 28, 2022, but did not timely file the corresponding 24-Hour
10 Reports that were due on November 25 and 29, 2022.

11 In response to the Referral, the Committee admits that it failed to report the \$158,018 in
12 IEs on the requisite 24-Hour Reports.¹² While the Committee did later disclose the IEs to the
13 Commission on its original 30-Day Post General Report, the IEs were not disclosed until after
14 the general runoff election was held.¹³ The Committee states these two 24-Hour Reports were
15 not timely filed due to “inadvertent lapses in its internal compliance procedures,” and that the
16 Committee has “put in place procedures to reduce the chance of future lapses that affect

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).

¹⁰ 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).

¹¹ 11 C.F.R. § 104.4(c).

¹² *See Resp.* at 1.

¹³ Referral at 1; *see also* Black Voters Matter Action PAC, 30 Day Post-General Report (Dec. 8, 2022), <https://docquery.fec.gov/pdf/776/202212089557369776/202212089557369776.pdf#navpanes=0>.

1 independent expenditure disclosure.”¹⁴

2 Accordingly, consistent with the Commission’s determinations in prior MURs with
3 similar violations,¹⁵ the Commission finds reason to believe Black Voters Matter Action PAC
4 and Kamau Franklin in his official capacity as treasurer violated 52 U.S.C. § 30104(g)(1) and 11
5 C.F.R. § 104.4(c) by failing to timely file 24-Hour Reports.

¹⁴ Resp. at 1.

¹⁵ See Factual & Legal Analysis (“F&LA”) at 1-2, MUR 8201 (PA Lawyer Fund); F&LA at 1-2, MUR 8200 (Big Sky Voters PAC).