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FEDERAL ELECTION COMMISSION
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Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6930
DATE COMPLAINT FILED: April 13, 2015
DATE OF NOTIFICATION: April 22, 2015
DATE OF LAST RESPONSE: June 23, 2015
DATE ACTIVATED: August 21, 2015

EXPIRATION OF SOL:
Earliest: November 12, 2017
Latest: December 31, 2017
ELECTION CYCLE: 2012

COMPLAINANTS: Campaign Legal Center
Democracy 21

RESPONDENTS: Prakazrel "Pras" Michel
SPM Holdings LLC / SPM 2012 Holdings LLC
Black Men Vote and William Kirk, Jr.
in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30101
52 U.S.C. § 30104
52 U.S.C. § 30122
11 C.F.R. § 110.1(g)
11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

During the 2012 election cycle, Black Men Vote, an independent-expenditure-only political committee, received two contributions from Prakazrel "Pras" Michel and two contributions from SPM 2012 Holdings LLC ("SPM"), a single-member limited liability company ("LLC") organized under Delaware law. In an article from the Center for Public

1 Integrity (“CPI”) questioning the provenance of the latter two contributions, Michel publicly
2 confirmed that SPM was his LLC, which he used as “a holding company to do my everyday
3 business through.”¹ The Campaign Legal Center and Democracy 21 then filed this Complaint
4 alleging that Michel, SPM, and Black Men Vote violated the Federal Election Campaign Act of
5 1971, as amended (the “Act”), and Commission regulations.

6 Based on our review of the Complaint and the submissions of the Respondents, it does
7 not appear that Michel sought to elude the reporting provisions of the Act by using SPM as a
8 mere pass through intermediary for the funds that SPM contributed in its name to Black Men
9 Vote. Because the circumstances here do not reasonably suggest that Michel was in fact the true
10 source of the funds that SPM contributed — funds that SPM was otherwise lawfully entitled to
11 contribute — we recommend that the Commission find no reason to believe that the Respondents
12 violated the Act as alleged, dismiss the allegation that the Respondents violated the
13 Commission’s attribution regulations and issue a caution letter, and close the file.

14 II. FACTUAL BACKGROUND

15 A. Respondents

16 Black Men Vote registered with the Commission as an independent-expenditure-only
17 committee on September 5, 2012, and William Kirk, Jr. is its treasurer.² It reported contributions
18 of \$1.325 million from three contributors: SPM Holdings LLC, Earl Stafford, and Prakazrel
19 “Pras” Michel. During the 2012 election cycle, the committee disbursed \$842,760 in
20 independent expenditures and \$444,679 in operating expenditures. After the 2012 election cycle,

¹ Michael Beckel, *Rapper-Backed Group Illustrates Blind Spot in Political Transparency*, CTR. FOR PUB. INTEGRITY (Mar. 31, 2015), <http://www.publicintegrity.org/2015/03/31/16944/rapper-backed-group-illustrates-blind-spot-political-transparency>.

² Statement of Organization at 1–2.

1 Black Men Vote effectively ceased its operations, and it stopped filing reports with the
2 Commission after August 2013.³

3 SPM 2012 Holdings LLC (also called SPM Holdings LLC) is a limited liability company
4 that was organized under Delaware law on July 2, 2012, and lists an address in Palm Beach
5 Gardens, Florida as its place of business.⁴ Michel attests that he established SPM for purely
6 commercial purposes, not to engage in political activity; he sought to consolidate, invest, and
7 protect his assets and to use SPM as a platform to collect and hold the income from his
8 businesses and investments.⁵ He claims that all of his earnings since July 2012 flowed through
9 SPM, and that in the quarter ending September 30, 2012, SPM had \$595,159.17 in net income,
10 \$4,495,739.99 in investments, and \$3,129,481.30 in cash.⁶ He denies making any transfer of
11 funds into SPM from his personal accounts in 2012.⁷ SPM also purchased and holds title to
12 Michel's primary residence in Coconut Creek, Florida.⁸

13 **B. The Alleged Contributions in the Name of Another**

14 Black Men Vote received contributions from Michel of \$250,000 on September 7, 2012,
15 and \$100,000 on October 5, 2012. On October 9, 2012, a spokesman for Black Men Vote
16 publicly announced that the group sought an additional \$500,000 in contributions. Black Men
17 Vote then received contributions from SPM of \$400,000 on October 12, 2012, and \$475,000 on

³ See 2013 Mid-Year Report at 2 (disclosing \$4,318 ending cash on hand).

⁴ Resp. at 2.

⁵ Michel Decl. ¶ 2.

⁶ *Id.* ¶ 3.

⁷ *Id.*

⁸ *Id.*; Resp. at 2.

1 October 24, 2012.⁹ SPM's contributions "represented two-thirds of the \$1.3 million Black Men
2 Vote raised in 2012," while Michel and SPM's combined contributions totaled over \$1.2 million,
3 or over 90% of Black Men Vote's receipts.¹⁰ In this matter, Michel has represented that "[i]n
4 September and October of 2012, I made four contributions" to Black Men Vote, two from
5 personal accounts, and two from the LLC.¹¹

6 C. The Complaint and Response

7 The Complaint alleges that Michel violated the Act by making two contributions totaling
8 \$875,000 in the name of SPM, his single-member LLC. It also alleges that SPM knowingly
9 allowed its name to be used for those contributions and that Black Men Vote knowingly accepted
10 them.¹² The Complaint further contends that Black Men Vote violated the Act's reporting
11 requirements by disclosing SPM, not Michel, as the source of the contributions at issue,¹³ that
12 Michel and Black Men Vote violated Commission regulations governing the proper attribution of
13 LLC contributions,¹⁴ and that Black Men Vote failed to file required periodic disclosure
14 reports.¹⁵

15 Respondents filed a joint response denying all of these allegations. They note that SPM
16 is a legal "person" under the Act that is permitted to make unlimited contributions to

⁹ See 2012 October Quarterly Report at 6; 2012 Pre-General Election Report at 6; 2012 Post-General Election Report at 6.

¹⁰ Beckel, *supra*.

¹¹ Decl. ¶ 1.

¹² See 52 U.S.C. § 30122.

¹³ See *id.* § 30104.

¹⁴ See 11 C.F.R. § 110.1(g).

¹⁵ Compl. at 7-8; see 52 U.S.C. § 30104.

1 independent-expenditure-only committees like Black Men Vote.¹⁶ Respondents argue that
2 SPM's two contributions do not violate Section 30122 of the Act because they were not "straw
3 man" contributions: the funds were not transferred from one person to another for the latter to
4 make a contribution. They claim that SPM was created in July 2012 for commercial purposes
5 and serves as a platform for Michel's business and investments, and that SPM's only income
6 derives from those operations — not from any transfer of funds from Michel's personal
7 accounts. Respondents therefore assert that since SPM properly made the latter two
8 contributions, Michel did not make, and Black Men Vote did not knowingly receive,
9 contributions in the name of another. They also note that Michel "had no reason or intent to
10 conceal that his company was the source" of the contributions and that Michel's "sole
11 consideration" in directing SPM to make the contributions was "cash flow and business
12 convenience."¹⁷

13 Respondents also deny violating the Act's reporting requirements or Commission
14 regulations regarding the proper attribution of some LLC contributions. They note that the LLC
15 rules were implemented to clarify the treatment of LLCs as either corporations or tax-
16 disregarded entities because, at the time, the Act prohibited corporate contributions — and thus
17 only non-corporate LLCs could make contributions. Respondents argue that these attribution
18 rules should not apply to contributions from an LLC that are made to independent-expenditure-
19 only political committees because an LLC can now make unlimited contributions to such
20 committees, regardless of its corporate character under the tax code.¹⁸

¹⁶ Resp. at 1–2.

¹⁷ *Id.* at 2–4.

¹⁸ *Id.* at 5.

1 **III. FACTUAL AND LEGAL ANALYSIS**

2 **A. Legal Standard**

3 The Act provides that a contribution includes "any gift, subscription, loan, advance, or
4 deposit of money or anything of value made by any person for the purpose of influencing any
5 election for Federal office."¹⁹ The term "person" for purposes of the Act and Commission
6 regulations includes partnerships, corporations, and "any other organization or group of
7 persons."²⁰ The law prohibits a person from making a contribution in the name of another
8 person, knowingly permitting his or her name to be used to effect such a contribution, or
9 knowingly accepting such a contribution.²¹ The Commission has included in its regulations
10 illustrations of activities that constitute making a contribution in the name of another:

- 11 (i) Giving money or anything of value, all or part of which was provided
12 to the contributor by another person (the true contributor) without
13 disclosing the source of money or the thing of value to the recipient
14 candidate or committee at the time the contribution is made; or
15
16 (ii) Making a contribution of money or anything of value and attributing
17 as the source of the money or thing of value another person when in
18 fact the contributor is the source.²²
19

20 The requirement that a contribution be made in the name of its true source promotes

21 Congress's objective of ensuring the complete and accurate disclosure by candidates and

¹⁹ 52 U.S.C. § 30101(8)(A).

²⁰ *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. *See* 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to "contributions by a person made on behalf of or to a candidate." *Id.* By their terms, neither the earmarking provision of the Act nor the Commission's implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

²¹ 52 U.S.C. § 30122.

²² 11 C.F.R. § 110.4(b)(2)(i)-(ii).

1 committees of the political contributions they receive.²³ Courts therefore have uniformly
2 rejected the assertion that “only the person who actually transmits funds . . . makes the
3 contribution,”²⁴ recognizing that “it is implausible that Congress, in seeking to promote
4 transparency, would have understood the relevant contributor to be [an] intermediary who
5 merely transmitted the campaign gift.”²⁵ Consequently, both the Act and the Commission’s
6 implementing regulations provide that a person who furnishes another with funds for the purpose
7 of contributing to a candidate or committee “makes” the resulting contribution.²⁶ This is true
8 whether funds are advanced to another person to make a contribution in that person’s name or
9 promised as reimbursement of a solicited contribution.²⁷ Because the concern of the law is the
10 true source from which a contribution to a candidate or committee originates, we look to the

²³ *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) (“[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.”) (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

²⁴ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

²⁵ *O'Donnell*, 608 F.3d at 554; see also *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

²⁶ See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

²⁷ *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

1 structure of the transaction itself and the arrangement between the parties to determine who in
2 fact “made” a given contribution.²⁸

3 **B. The Facts Suggest that SPM Was the Source of the Funds that It**
4 **Contributed to Black Men Vote**

5 On balance, the record in this case, including the sworn representations of Michel in
6 support of the Response and the structure of the transactions at issue, militates against a finding
7 that Michel unlawfully made contributions to Black Men Vote in the name of SPM by using that
8 entity as a mere pass-through intermediary for the funds it contributed.

9 First, SPM directly earned the funds it disbursed to Black Men Vote to effect the
10 contributions; Michel never personally possessed them. Michel attests that he “did not make any
11 transfers of funds into SPM from [his] personal accounts in 2012.”²⁹ The funds that SPM
12 contributed came to SPM directly as income from the assets, investments, and businesses that it
13 was created to own and operate. In the financial quarter ending September 30, 2012, Michel
14 represents that SPM had the resources to make its contributions without any advance or
15 reimbursement of funds from outside sources. Thus, the contributions were made with funds
16 which Michel never actually held, distinguishing them from contributions where an infusion of
17 funds — whether through an advance or a reimbursement — would have been necessary for an
18 individual or entity to make the contribution in the first place.³⁰

²⁸ As the court in *O'Donnell* acknowledged, the Commission's earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

²⁹ Decl. ¶ 3.

³⁰ See, e.g., *Whittemore*, 776 F.3d at 1077.

1 Second, Michel created and operated SPM for purposes other than to influence an
2 election by making contributions. Michel attests that he did not consider using SPM to make
3 political contributions, but intended to use it to consolidate, invest, and protect his assets —
4 including the title to his personal residence.³¹ He formed SPM before making the contributions
5 and appears to have continued using SPM for its stated commercial purposes after the 2012
6 election. No evidence suggests that Michel caused SPM to receive any particular earnings with
7 the intent to make a political contribution or to reimburse a contribution. SPM therefore was not
8 merely a ministerial conduit or vehicle for transferring Michel's contributions; it was an active
9 business entity through which Michel conducted his ongoing financial affairs.³²

10 Third, Michel did not seek to circumvent the Act's disclosure requirements by
11 contributing through SPM. Michel made two personal contributions to Black Men Vote *before*
12 directing SPM to make contributions as its sole member,³³ suggesting that he did not use the
13 entity to conceal his identity.³⁴ Indeed, Michel readily acknowledged his ownership of SPM and
14 explained that he directed his LLC to make the contributions not to mask his identity, but as a
15 matter of convenience: his personal accounts were depleted and SPM had sufficient cash flow to
16 make the contributions.³⁵

³¹ Decl. ¶¶ 2, 3.

³² On the other hand, if the record indicated that Michel created SPM or directed funds to it for the purpose of making political contributions, the contrary result would apply. Funds "given" to a conduit with the understanding that they will be used to make or reimburse a political contribution remain the contribution of the original source, despite the intervening possession of the conduit. *See Whittemore*, 776 F.3d at 1080; *O'Donnell*, 608 F.3d at 550.

³³ Decl. ¶ 3.

³⁴ Thus, the circumstances here differ markedly from those presented in MUR 6485 (W Spann LLC) (open matter), where a single-member LLC was formed specifically to serve as the "vehicle for one man's one-time political donation." Conard Resp. at 2.

³⁵ Decl. ¶ 3.

1 We recognize that Michel exercised sole authority over the disposition of SPM's
2 resources, including its decision to make the contributions at issue here. By definition, a single-
3 member LLC acts only by the will of that member. But absent further regulation in this area, the
4 mere involvement of such an entity in a contribution does not alone resolve the true-source
5 inquiry under Section 30122. Rather, we must engage in a close review of the particular facts
6 presented in each case. And under the circumstances here, because Michel did not create SPM
7 or direct funds to it for the purpose of making or reimbursing contributions, then as a distinct
8 legal person entitled to contribute without restriction to independent-expenditure-only political
9 committees under prevailing law, SPM could make contributions in its name, and Michel, as a
10 natural person, could also make contributions in his own name.³⁶

11 **C. Application of the Commission's Contribution Attribution Rules for Single-**
12 **Member LLCs**

13 In addition to alleging that the contributions to Black Men Vote were made in the name
14 of another under the Act, the Complaint also alleges that SPM may have violated the
15 Commission's rules regarding the proper attribution of LLC contributions.³⁷ Whether the
16 contributions should have been attributed to Michel under that regulation depends on the tax
17 status that Michel elected for SPM. If treated as a partnership or tax-disregarded entity, then

³⁶ We conclude that the record, taken as a whole, supports the view that SPM did not act as a mere pass through entity in this instance. Nonetheless, we recognize that at least two facts may suggest otherwise, considered in isolation. For instance, in connection with his Response, in which he denies being the source of SPM's contributions, Michel nonetheless represents that "I made four contributions to an independent expenditure only committee called Black Men Vote." Decl. ¶ 1 (emphasis added). While that characterization standing alone may be suggestive, taken in context with all of the facts presented, the use of the pronoun should not be afforded significant legal force. In addition, only approximately three months passed between SPM's founding and its contributions. *Id.* ¶¶ 1, 2. The formation of a single-member LLC in close temporal proximity to the contributions certainly may suggest that it was created to shield the identity of its founder from disclosure. But here, Michel's sworn representations, the fact that he previously made his own contributions to the same political committee, and the fact that SPM received no transferred funds from Michel to make or reimburse contributions all evidence the lack of any such intent.

³⁷ See 11 C.F.R. § 110.1(g).

1 SPM was required to indicate to Black Men Vote that its contributions must be attributed to
2 Michel.³⁸

3 We do not know the tax election status of SPM. Nonetheless, we do not believe the
4 regulatory allegation warrants further enforcement activity. The LLC attribution regulations
5 were implemented to address a concern regarding the use of LLCs to circumvent contribution
6 limits; that concern, however, does not apply in this context — since the contributions at issue
7 here were made to independent-expenditure-only committees that are not subject to the Act's
8 contribution limits.³⁹ In addition, the public record already indicates that Michel owns SPM,
9 obviating the need for the Commission to expend further resources to resolve that fact.
10 Moreover, Black Men Vote appears to be a defunct committee. Under these circumstances, we
11 therefore recommend that the Commission dismiss the allegation regarding 11 C.F.R. § 110.1(g)
12 as a matter of prosecutorial discretion. Regardless, we also recommend that the Commission
13 issue a caution letter to Michel and SPM concerning the relevant attribution requirements for
14 single-member LLCs.⁴⁰

³⁸ Section 110.1(g) does not require single-member LLCs taxed as corporations to attribute their contributions to their member. The regulation was promulgated before corporations could make contributions to any recipient, affording the Commission no basis to address the attribution of contributions that would be prohibited in any event.

³⁹ We nevertheless note that the attribution regulations would apply here if Michel had elected to have SPM treated as a tax-disregarded entity, and in that case, SPM's contributions should have been attributed to Michel under Section 110.1(g).

⁴⁰ Black Men Vote has been dormant since 2013, and its last filed report — the 2013 Mid-Year Report — disclosed \$33,240 in operating expenditures, no independent expenditures, no receipt of contributions, and an ending cash-on-hand balance of \$4,318. We note that the Committee also reported an outstanding debt balance of \$10,005. Nevertheless, the available information does not suggest that the Committee engaged in any election-related activity after the 2012 election cycle, or intends to do so in the future. OGC has conferred with the Reports Analysis Division and verified that the Committee meets the criteria for administrative termination set forth in the RAD Review and Referral Procedures. *See* 11 C.F.R. § 102.4(a); *2015–2016 RAD Review and Referral Procedures for Unauthorized Committees* (Standard 4). Under these circumstances, we recommend that the Commission dismiss the allegation in the Complaint that the Committee has failed to file required periodic disclosure reports.

1 **IV. CONCLUSION**

2 Michel did not create or provide funds to SPM for the specific purpose of making or
3 reimbursing a contribution. He used the entity for ordinary business purposes, made
4 contributions in his own name, and authorized SPM, as its single member, to use its own funds to
5 contribute to the same recipient in its own name. Absent further Commission rulemaking on the
6 subject, under these circumstances and given the specific attestations that Michel made under
7 penalty of perjury, the facts presented do not support a finding that Michel used SPM to make a
8 contribution in the name of another.

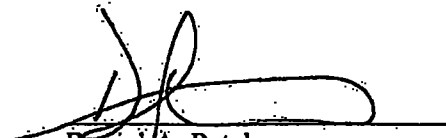
9 **V. RECOMMENDATIONS**


- 10 1. Find no reason to believe that Prakazrel "Pras" Michel, SPM Holdings LLC / SPM
11 2012 Holdings LLC, and Black Men Vote and William Kirk, Jr. in his official
12 capacity as treasurer violated 52 U.S.C. § 30122;
- 13 2. Dismiss the allegation that Prakazrel "Pras" Michel and SPM Holdings LLC / SPM
14 2012 Holdings LLC violated 11 C.F.R. § 110.1(g), but issue a caution letter;
- 15 3. Dismiss the allegation that Black Men Vote violated 52 U.S.C. § 30104(b);
- 16 4. Approve the attached Factual and Legal Analysis;
- 17 5. Approve the appropriate letters; and

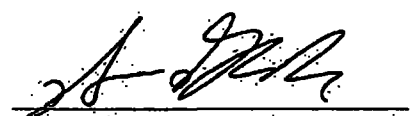
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6. Close the file.

Date: 11/19/15


Daniel A. Petalas
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