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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-23-A
AGENDA ITEM
For meeting of June 8, 2017

June 1, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Esther D. Gyory *EDG by RMK*
Acting Assistant General Counsel

Kevin Hancock *KPH*
Attorney

Subject: AO 2017-03 (AACU/UROPAC) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on June 7, 2017.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2017-03

2

3 Ms. Barbara Arango

4 David M. Mason, Esq.

5 American Association of Clinical Urologists, Inc.

6 UROPAC

7 1100 E. Woodfield Road

8 Suite 350

9 Schaumburg, IL 60173

10

11 Dear Ms. Arango and Mr. Mason:

12 We are responding to your advisory opinion request on behalf of American Association

13 of Clinical Urologists, Inc. (“AACU”), and its separate segregated fund, UROPAC, concerning

14 the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and

15 Commission regulations to the affiliation status of the AACU and the American Urological

16 Association, Inc.

17 The Commission concludes that the AACU remains affiliated with the American

18 Urological Association, Inc. (“AUA”).

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on April 26,

21 2017, and publicly available information.¹

22 The AACU is an incorporated non-profit membership organization composed of

23 urologists and registered under section 501(c)(6) of the Internal Revenue Code. Advisory

24 Opinion Request at AOR001. The American Urological Association, Inc. is also an incorporated

25 non-profit 501(c)(6) membership organization. *Id.* The AUA is “comprised of urologists and

¹ In this advisory opinion, the Commission relies on the facts presented by the AACU in support of its request in Advisory Opinion Request 2017-03 (AACU/UROPAC) and not those presented by the AUA in support of its request in Advisory Opinion Request 2017-01 (AUA), even though both advisory opinion requests concern whether the AACU and the AUA remain affiliated.

DRAFT

1 related professionals.” *Id.* “[The] AACU and the AUA are organized into geographically
2 identical regional sections which elect board members to their respective parent organizations,
3 conduct their own annual section meetings, and carry out other functions of the organizations.”
4 *Id.* UROPAC is a separate segregated fund (“SSF”) created by the AACU in 1992. AOR001.

5 The AACU was founded by AUA officers, including then-AUA president Charles
6 Hoffman and AUA section presidents, to serve “essentially as the public policy arm of the
7 urology community.” AOR002; *see* AOR001. The AACU’s founding took place “at an AUA
8 meeting.” AOR002. After helping found the AACU, Hoffman led the AACU as its first
9 president. *Id.* Other initial and early AACU officers also were officers and members of the
10 AUA and its sections. *Id.*

11 The AACU’s board of directors has 14 voting members and consists of the AACU’s
12 president, president-elect, immediate past-president, secretary-treasurer, health policy chair, state
13 society network chair and “one (1) AACU member from each geographical section such as
14 established by the American Urological Association.” AOR018; *see also* AOR004.

15 The AACU and the AUA work together in a number of ways. The AACU and the AUA
16 engage in shared public policy and advocacy efforts at the national and state levels. AOR003.
17 At the national level, the “AUA is planning a 2018 Urology Summit in which AUA has invited
18 AACU and other urology organizations to participate, including financial cooperation.” *Id.* The
19 AACU and the AUA will also be jointly presenting the “Health Policy Forum” at the AUA’s
20 annual meeting this year. *Id.*

21 At the state level, in August 2016, the AACU’s “State Society Network” held its “Annual
22 State Advocacy Conference,” which was attended by many AUA section presidents. *Id.* (citing
23 AACU State Society Network, 9th Annual State Advocacy Conference,

1 http://cqrcengage.com/aacu/file/HPr0A1bjced/Program-9th_Annual_AACU_SSN-6102016.pdf
2 (last visited May 23, 2017)). At that event, the AACU and AUA presidents gave a joint
3 presentation, the AUA president was involved in a panel presentation, and the AUA data
4 committee chair gave three presentations. AOR003.

5 The AACU and the AUA organize a urology caucus to represent the interests of urology
6 at the American Medical Association's House of Delegates biannual meetings. AOR003. While
7 each association elects its delegate to the House of Delegates meeting independently, at the
8 meeting the AACU's and AUA's delegates "work together as one unit" along with AACU and
9 AUA staff. *Id.* Also, the AACU and the AUA participate in each other's annual convention
10 through the provision of booths or sponsored lectures, AOR002, and the AACU helps pay for
11 functions at certain AUA section meetings, AOR004.

12 In addition to their public policy and advocacy efforts, the AACU and the AUA have
13 personnel ties. The AACU's and the AUA's (and its sections') bylaws require the associations
14 to have certain overlapping officers, committee members, and members. Under the AACU's
15 bylaws, any non-United States citizen must be a member of the AUA to be eligible as a member
16 of the AACU. AOR004. Finally, the AUA bylaws designate three seats on its Public Policy
17 Council for the AACU; the AACU has filled those seats with its president, past-president, and
18 health policy chair. AOR003.

19 The AACU and the AUA's current and former officers, committee members, and
20 members also overlap in ways not required by the associations' bylaws. Ninety-eight percent of
21 AACU members are also AUA members. AOR004. The AACU's and AUA's boards shared a
22 common director until May 16, 2017, and that overlap will occur again when, in two years, an

1 AACU board member will rotate onto the AUA board. *Id.*² Also, there are at least 13 current or
2 previous AACU board members and officers that either currently serve or have previously
3 served on various AUA or AUA section committees and working groups. AOR004-006.
4 Twenty of the 23 members of the AUA’s Public Policy Council are AACU members. AOR003.
5 Fifteen AACU members sit on the AUA’s 20-member Legislative Affairs Committee. *Id.*

6 In addition, 13 of the AACU’s 14 board members are AUA members, and also recently
7 served, currently serve, or will serve as an AUA or AUA section board member, officer, or
8 committee member. AOR004-005. Of the eight section representatives that must serve on the
9 AACU board, four also serve on at least one AUA committee or working group.³ AOR005.
10 Moreover, six other AACU board members also have been either an officer or committee
11 member for the AUA or an AUA section:

- 12 • Current AACU board member Kevin R. Loughlin was also an AUA board member until
13 May 16, 2017. AOR004.
- 14 • Current AACU board member and president-elect Patrick H. McKenna is an alternate
15 member of the AUA North Central Section’s board. *Id.* In two years, McKenna will
16 rotate onto the AUA board of directors while remaining on the AACU board. *Id.*

² See also AUA, Board of Directors, <https://www.aunet.org/about-us/aua-governance/board-of-directors> (indicating that Loughlin’s term on the AUA board ended on May 16, 2017) (last visited May 23, 2017).

³ For example, AACU board member Eugene Y. Rhee is also a member of five AUA committees or workgroups, in addition to being the Vice Chair of the AUA Western Section’s Health Policy Committee. AOR005. And in December 2016, the AUA’s New England Section designated an official section representative (Dr. Brian Irwin) to the AACU board, stating that it was “an important position” and that Dr. Irwin would “serve as a link between the [section] and the AACU, reporting to [the leadership of both organizations].” AOR004 (citing New England Section of the AUA, Dec. 2016 Issue, <http://neaua.org/newsletters/2016-december-full.cgi> (last visited May 26, 2017)).

1 McKenna also currently serves on four AUA committees or working groups, one of
2 which he chairs. *Id.*

3 • Current AACU board member and president Charles A. McWilliams sits on the AUA’s
4 Public Policy Council. *Id.*

5 • Current AACU board member and health policy chair R. Jonathan Henderson is also a
6 member the AUA’s Public Policy Council and of the AUA Southeastern Section’s board.
7 *Id.*

8 • Current AACU board member and secretary-treasurer Mark T. Edney is also a member of
9 the AUA’s Public Policy Council in addition to the AUA’s Legislative Affairs
10 Committee. AOR005. Edney is also the AUA Mid-Atlantic Section’s health policy
11 chair. *Id.*

12 • Current AACU board member and immediate past-president Martin K. Dineen also
13 serves on the AUA’s Public Policy Council. *Id.*

14 Recent AACU presidents have invariably also served in AUA positions. *Id.* “[E]ach of
15 the last eleven Presidents of AACU also served, before, during or after their AACU Presidential
16 terms in offices or in key committee positions in AUA, including seven who served as Presidents
17 of AUA regional sections.”⁴ *Id.*

18 Additionally, AACU presidents often later serve as the AUA’s president. AOR004. For
19 example, three of the AUA’s six most recent presidents (serving in 2010-11, 2011-12, and 2015-
20 16) had previously been president of AACU. AOR005. Finally, the AACU and three of the

⁴ For example, the AACU’s current president, Charles A. McWilliams, was president of the AUA South Central Section and an AUA Practice Management Committee member. AOR004, AOR006.

1 AUA's sections employ the same executive director, which provides "all staff support for the
2 AACU and these AUA regional sections." *Id.*

3 In 2003, UROPAC received an advisory opinion from the Commission deeming the
4 AUA and the AACU affiliated organizations and, as a result, both able to serve as UROPAC's
5 connected organizations. AOR001; *see also* Advisory Opinion 2002-15 (American Association
6 of Clinical Urologists PAC) ("UROPAC").

7 From 2002 to 2015, the AACU and the AUA were both connected organizations for
8 UROPAC. AOR002. Both associations paid for UROPAC's administrative and staff expenses
9 during that time. *Id.* But on January 1, 2016, the AUA stopped its payments for UROPAC's
10 administrative costs and otherwise ceased helping the AACU govern UROPAC. AOR002-003.
11 As a result, UROPAC removed the AUA as one of its connected organizations on the amended
12 statement of organization that it filed with the FEC in early 2016. AOR002.⁵ Since that time,
13 AUA's sections have continued to financially support UROPAC. AOR003. For example, in
14 2017, four of the eight AUA sections provided funds to UROPAC for administrative expenses.
15 *Id.* Additionally, UROPAC has continued to solicit AUA members in good faith reliance upon
16 Advisory Opinion 2002-15 (UROPAC). *Id.*

17 The AACU and the AUA have a history of entering into formal and informal
18 arrangements, including affiliation agreements. *See* AOR002; *see also* Advisory Opinion 2002-
19 15 (UROPAC) at 3. The associations' most recent agreement, which focused on the
20 associations' co-sponsorship of their "Urology Joint Advocacy Conference," has expired without

⁵ *See* UROPAC, Statement of Organization, Form 1 at 5 (Jan. 14, 2016), <http://docquery.fec.gov/pdf/852/201601149004501852/201601149004501852.pdf>.

1 renewal. AOR001, AOR011. As a result, the associations will no longer hold this conference.

2 AOR001, AOR011.

3 The AACU did not state in its request whether it notified the AUA of its advisory opinion
4 request. However, the AUA subsequently submitted a comment to the Commission stating that
5 it opposes the AACU's request. *See* AUA, Comment at 1.

6 ***Question Presented***

7 *Are the AACU and the AUA still affiliated?*

8 ***Legal Analysis and Conclusion***

9 Yes, the AUA and the AACU remain affiliated.

10 Political committees, including separate segregated funds, are "affiliated" if they are
11 established, financed, maintained, or controlled by the same corporation, labor organization,
12 person, or group of persons, including any parent, subsidiary, branch, division, department, or
13 local unit thereof. *See* 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). For
14 purposes of the Act's contribution limits, contributions made to or by affiliated political
15 committees are considered to have been made to or by a single political committee. *See* 52
16 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

17 Commission regulations identify certain committees that are *per se* affiliated, such as
18 those established, financed, maintained, or controlled by a single corporation and its subsidiaries.
19 *See* 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i). None of these criteria are met here.

20 In the absence of *per se* affiliation, the Commission examines "the relationship between
21 organizations that sponsor committees, between the committees themselves, [and] between one
22 sponsoring organization and a committee established by another organization to determine
23 whether committees are affiliated." *See* 11 C.F.R. § 100.5(g)(4)(i). Commission regulations

1 provide a non-exhaustive list of ten “circumstantial factors” to be considered “in the context of
2 the overall relationship” in order to determine whether the respective entities are appropriately
3 considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii); *see, e.g.*, Advisory
4 Opinion 2016-02 (Enable Midstream Services) (“Enable”); Advisory Opinion 2014-21 (Cambia
5 Health Solutions) (“Cambia”); Advisory Opinion 2014-11 (Health Care Service Corporation
6 Employees’ PAC) (“HCSC”); Advisory Opinion 2002-15 (URO PAC).

7 In Advisory Opinion 2002-15 (URO PAC), the Commission concluded that the AACU
8 was affiliated with the AUA and that both entities could therefore serve as connected
9 organizations for URO PAC. The AACU states here that “the two associations remain
10 intertwined . . . to substantially the same degree reviewed by the Commission in AO 2002-15.”
11 AOR001. The AACU therefore seeks “reaffirmation” of the Commission’s 2003 finding that the
12 two associations are affiliated. *Id.*

13 The Commission considers the ten circumstantial factors in turn.

14 (A) *Controlling Interest*

15 The “controlling interest” factor weighs in favor of finding that the AUA and the AACU
16 are not affiliated.

17 This factor asks whether a sponsoring organization owns a controlling interest in the
18 voting stock or securities of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(A),
19 110.3(a)(3)(ii)(A). As was the case in Advisory Opinion 2002-15 (URO PAC) when the
20 Commission concluded that the AACU and the AUA were affiliated, both entities are non-profit,

1 501(c)(6) membership organizations and thus own no controlling interest in each other.⁶

2 AOR001, AOR008; *see* Advisory Opinion 2002-15 (URO PAC) at 6. While this aspect of the
3 associations' relationship has not changed, the absence of such ownership weighs against the
4 AACU and the AUA's affiliation. *See* Advisory Opinion 2014-21 (Cambia) at 4.

5 (B) *Governance*

6 The governance factor indicates that the AACU and the AUA remain affiliated.

7 This factor concerns whether a sponsoring organization has the authority or ability to
8 direct or participate in the governance of the other sponsoring organization through provisions of
9 constitutions, bylaws, contracts, or other rules, or through formal or informal practices or
10 procedures. 11 C.F.R. §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

11 In Advisory Opinion 2002-15 (URO PAC), the Commission found that this factor
12 suggested that the AUA and the AACU were affiliated based on three facts. *Id.* at 6. First, the
13 AUA's bylaws and an affiliation agreement between the entities reserved three seats on the
14 AUA's Health Policy Council for the AACU. *Id.* Second, the AACU's bylaws required the
15 AACU's elected officials, including all officers and committee members, to be members of the
16 AUA. *Id.* Third, the AACU's bylaws also required "an AUA presence" on the AACU's
17 Government Relations Committee. *Id.*

18 The AUA continues to reserve three seats for the AACU on one of its standing
19 committees, the Public Policy Council, namely the AACU president, past president, and health

⁶ In Advisory Opinion 2002-15 (URO PAC), the Commission did not consider the "ownership interest" factor separately, but noted in its analysis that "neither entity has issued any shares of stock or holds any stock or other ownership interest in the other." *Id.* at 6.

1 policy chair. AOR003. With respect to the second two facts on which the Commission relied,
2 the circumstances have changed somewhat. First, while the AACU bylaws require any AACU
3 elected official who is a non-United States citizen to be a member of the AUA (since AUA
4 membership is required for all non-citizen AACU members), the bylaws no longer require all
5 elected officials to be AUA members. AOR013-015. Second, the AACU's governance structure
6 is specifically tailored to the AUA's governance structure: The "AACU and AUA are organized
7 into geographically identical regional sections." AOR001; *see also* AOR004. AACU bylaws
8 require that the AACU's board of directors include eight representatives from the AUA sections
9 among its 14 voting members. AOR004, AOR018. This feature of the AACU and the AUA's
10 relationship also existed in 2003, when the Commission found the associations affiliated. *See*
11 *Advisory Opinion 2002-15 (URO PAC)* at 3 (noting that the AACU "provid[es] for the election
12 of an at-large member of the AACU Board to represent each of the AUA's eight regional
13 sections). Although the bylaws no longer require an AUA presence on the Government
14 Relations Committee (which no longer exists), several of the standing committees include all of
15 the section representatives to the board. AOR019-020, AOR022.

16 Moreover, the AUA has a longstanding informal practice of electing current or former
17 AACU officers or directors as AUA or AUA section directors or officers. AOR008. For
18 example, three of the AUA's six most recent past presidents have previously been presidents of
19 the AACU. AOR005. Additionally, the AACU's last 11 presidents also served in AUA offices
20 or committee positions either before, during, or after their terms as AACU president. AOR005.
21 Seven of those 11 served as president of an AUA regional section. AOR005. Finally, as of the
22 date of the AACU's request, 13 of the AACU's 14 board members were also serving in AUA or
23 AUA section offices or on AUA or AUA section committees. AOR004-005.

1 Given these ongoing and significant governance ties between the AACU and the AUA,
2 the governance factor points towards their continued affiliation.

3 (C) *Hiring Authority*

4 Factor (C) weighs in favor of finding that the AUA and the AACU are not affiliated.

5 This factor concerns whether a sponsoring organization has the authority or ability to
6 hire, appoint, demote, or otherwise control the officers or other decision-making employees of
7 the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C). A lack of
8 such authority suggests that two entities are not affiliated. *See* Advisory Opinion 2016-02
9 (Enable) at 7; Advisory Opinion 2014-11 (HCSC) at 5. Here, neither the AACU nor the AUA
10 exercise any hiring authority over the other, nor did they when the Commission considered
11 Advisory Opinion 2002-15 (URO PAC). AOR008.

12 (D) *Common Membership*

13 The common membership between the AACU and the AUA weighs in favor of a finding
14 that the two entities remain affiliated.

15 This factor considers whether a sponsoring organization has common or overlapping
16 membership with the other sponsoring organization that indicates a formal or ongoing
17 relationship between the sponsoring organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(D),
18 110.3(a)(3)(ii)(D); *see* Advisory Opinion 2005-17 (American Crystal Sugar Company, *et al.*) at 4
19 (concluding that trade association and agricultural cooperative were affiliated due in part to “the
20 99.5 percent overlap between the membership of the two organizations”).

21 In Advisory Opinion 2002-15 (URO PAC), the Commission found this factor was a
22 “particularly significant” one suggesting that the AUA and the AACU were affiliated. *Id.* at 6.
23 At that time, 2,780 of the AACU’s 3,935 members, or approximately 71 percent, were also

1 members of the AUA, and approximately 25 percent of the AUA's 11,041 members were also
2 members of the AACU. *Id.* at 2, 6. All of the AACU's members that were eligible to hold office
3 were AUA members. *Id.* And the AACU's bylaws encouraged its members to join the AUA.
4 *Id.*

5 Today, the AACU's and AUA's memberships overlap to an even greater extent: 98
6 percent of the AACU's members are also members of the AUA. AOR004. This overlap is
7 reflected by the significant number of AACU members sitting on AUA committees. AACU
8 members hold 15 of the 20 seats on the AUA's Legislative Affairs Committee and 23 of the 35
9 seats on the AUA's Public Policy Council. AOR003. Furthermore, there are a significant
10 number of common current or former directors, officers, and employees shared by the two
11 groups. *See supra* pp. 9-10; *infra* pp. 13-15. Although the AACU's request does not state what
12 percentage of the AUA's members are members of the AACU or the number of total members in
13 each organization, the amount of membership overlap that the AACU has identified is enough to
14 indicate affiliation. *See* Advisory Opinion 2002-15 (UROPAC) at 6.

15 *(E-F) Common Officers or Employees and Former Officers or Employees*

16 These two factors indicate that the AACU and the AUA remain affiliated.

17 Factor (E) asks whether sponsoring organizations have common or overlapping officers
18 or employees, indicating a formal or ongoing relationship between the organizations. 11 C.F.R.
19 §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E). Factor (F) concerns whether a sponsoring organization
20 has any members, officers, or employees who previously were members, officers, or employees
21 of the other sponsoring organization, indicating a formal or ongoing relationship or the creation
22 of a successor entity. 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

1 In Advisory Opinion 2002-15 (UROPAC), the Commission found that these factors
2 pointed towards affiliation between the AUA and the AACU. *Id.* at 7. That finding was based
3 on several features of the AUA and the AACU’s relationship. First, one person was then a
4 member of both the AUA’s and the AACU’s boards of directors. *Id.* Second, eight AACU
5 officers and past or future board members were then serving on the AUA’s 14-member Health
6 Policy Council. *Id.* Third, the entire AACU board was composed of AUA members, as required
7 by AACU bylaws. *Id.* Fourth, the entire AUA board was composed of AACU members. *Id.*
8 Fifth, it was “typical” for each entity’s officers to later serve as an officer for the other. *Id.*
9 Finally, the AUA and the AACU coordinated their national lobbying efforts by employing one
10 lobbyist to represent both groups. *Id.*

11 Today, most of these facts are still true to some degree, and overall, there is even more
12 extensive overlap between the AACU’s and the AUA’s current and former board members,
13 officers, and employees than was presented to the Commission in Advisory Opinion 2002-15
14 (UROPAC).

15 First, the AACU’s and AUA’s boards shared a common member until May 16, 2017, and
16 that overlap will occur again when, in two years, an AACU board member will rotate onto the
17 AUA board. AOR004.

18 Second, the AACU has identified at least 13 current or previous AACU board members
19 and officers that either currently serve or have previously served on various AUA committees or
20 AUA sections and working groups. AOR004-006. These 13 AACU members include the
21 AACU’s president, past president, and health policy chair, who sit on the AUA’s Public Policy
22 Council. AOR003.

1 Third, 13 of the AACU's 14 board members are not only AUA members, but also
2 recently served, currently serve, or in the near future will serve as an AUA or AUA section board
3 member, officer, or committee member. As required by the AACU bylaws, eight current AACU
4 board members were elected from AUA sections. AOR004-005, AOR018. All eight also
5 currently hold or formerly held offices or are current or former members of committees at their
6 respective AUA sections. AOR005. Four of the eight section representatives on the AACU
7 board also serve on at least one AUA committee or working group. *Id.* Also, six other AACU
8 board members also have extensive ties to the AUA and its sections. AOR004-005.

9 Fourth, the AACU does not state the extent to which the AUA's board is composed of
10 members of the AACU. But the AACU's request does indicate that at least two recent AUA
11 board members, whose terms expired in May 2017, are AACU members. *See* AOR004 (Kevin
12 R. Loughlin); AOR005 (William F. Gee).⁷

13 Fifth, just as it was "typical" in 2002 for each entity's officers to later serve as an officer
14 of the other, Advisory Opinion 2002-15 (URO PAC) at 2, the current "pattern of overlap" the
15 AACU has described has continued for the "past 50 years," AOR004.

16 Finally, the AACU does not state that it and the AUA continue to employ a common
17 lobbyist as they did in 2003, but the AACU and three of the AUA's sections do employ the same
18 executive director, who provides "all staff support for the AACU and these AUA regional
19 sections." AOR005.⁸

⁷ *See also* American Urological Association, Board of Directors, <https://www.auanet.org/about-us/aua-governance/board-of-directors> (indicating that Loughlin's and Gee's terms were set to expire on May 15, 2017) (last visited May 12, 2017).

⁸ The groups' common employment of the same executive director does not establish affiliation on its own, but is a further indication of the AACU's and the AUA's affiliated relationship.

1 In addition to these facts, which relate to those the Commission examined in Advisory
2 Opinion 2002-15 (UROFAC), the AACU describes additional ways in which the AACU's and
3 the AUA's officials overlap. First, recent AACU presidents have invariably also served in AUA
4 positions. AOR005. The AACU's last 11 presidents also held an AUA office or committee
5 position at some point. *Id.* Seven of those 11 AACU presidents also served as an AUA section
6 president. *Id.* It is also common for an AACU president to serve as the AUA's president, and
7 this has occurred three times since 2010.⁹ AOR004.

8 These numerous examples of systemic overlap between the AACU's and the AUA's (and
9 its sections') board members, officers, and committee members indicate a formal or ongoing
10 relationship between the associations under factors (E) and (F).

11 *(G - H) Providing Funds or Goods and Arranging for the Provision of Funds or Goods*

12 These factors are neutral as to the AACU and AUA's continued affiliation.

13 Factor (G) considers whether a sponsoring organization provides funds or goods in a
14 significant amount or on an ongoing basis to the other sponsoring organization or committee. 11
15 C.F.R. §§ 100.5(g)(4)(ii)(G), 110.3(a)(3)(ii)(G). The Commission has looked at whether the
16 entities "fund or otherwise support" each other's SSF in evaluating this factor. Advisory
17 Opinion 2012-21 (Primerica) at 9, 11 (noting entity's lack of support for other entity's SSF as
18 indicating disaffiliation under factor (G)). Factor (H) concerns whether a sponsoring
19 organization causes or arranges for funds or goods to be provided to the other sponsoring

⁹ For each of the three overlapping presidents the AACU identified, at least nine years passed between his or her AUA and AACU presidential terms; nevertheless, the fact that this overlap has occurred three times in recent history shows a pattern that further suggests affiliation.

1 organization in a significant amount or on an ongoing basis. 11 C.F.R. §§ 100.5(g)(4)(ii)(H),
2 110.3(a)(3)(ii)(H).

3 Beginning in 2000, the organizations coordinated their public policy efforts through
4 “formal and informal arrangements.” AOR002. In Advisory Opinion 2002-15 (URO PAC), the
5 Commission noted one of these formal arrangements, an affiliation agreement between the
6 organizations, as evidence of their affiliation.¹⁰ *Id.* at 7. Between 2002 and 2015, the AACU
7 and the AUA also jointly managed URO PAC and both provided funds for administrative
8 expenses and staff support for URO PAC. AOR002.

9 Recently, the amount of funds or goods between the organizations has diminished, as
10 have the formal and informal arrangements for the provision of funds and goods. First, the
11 affiliation agreement between the AUA and the AACU expired recently and has not been
12 renewed. AOR011. Second, the two organizations will no longer sponsor the Urology Joint
13 Advocacy Conference. AOR002. Finally, on January 1, 2016, the AUA ended its financial
14 support for URO PAC. AOR001. The AUA is no longer a connected organization for URO PAC.
15 AOR002. The AUA’s sections, however, have continued to financially support URO PAC.
16 AOR003. In fact, four of the eight AUA sections provided funds for URO PAC’s administrative
17 expenses in 2017. *Id.*

18 In other ways, the organizations continue to provide funds to each other. The AUA has
19 invited the AACU, along with other urology organizations, to participate in the 2018 Urology
20 Summit, including through financial cooperation. *Id.* Additionally, the request states that there
21 are other instances of the AACU and the AUA providing financial support or sponsorships for

¹⁰ Advisory Opinion 2002-15 (URO PAC) does not separately address factors (G) and (H), but rather notes the affiliation agreement as an “additional indicator” of the relationship between the AUA and the AACU. *Id.* at 7.

1 particular activities at the other’s meetings. AOR010. The request cites the AACU’s
2 sponsorship of certain elements of the AUA annual meeting as an example of this “episodic”
3 financial support. *Id.* The request acknowledges, however, that such funding is not significant
4 in amount. *Id.*

5 Because the funding and arrangement for funding between the organizations has
6 diminished recently, but does still exist to a degree, these factors are neutral as to the
7 organizations’ affiliation.

8 *(I) Formation*

9 The formation factor weighs in favor of a finding that the AUA and the AACU remain
10 affiliated.

11 This factor involves whether a sponsoring organization or committee or its agent had an
12 active or significant role in the formation of the other sponsoring organization. 11 C.F.R.
13 §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I); *see, e.g.*, Advisory Opinion 2012-23 (Snake River Sugar
14 Company *at al.*) at 5 (concluding that two entities were affiliated in part because one entity
15 “participated in the formation of” other).

16 The AUA was founded in 1902,¹¹ before the AACU was created, and so the AACU could
17 not have had a role in the AUA’s founding. But AUA officers did have a role in the AACU’s
18 founding: At an AUA meeting in 1969, the AUA’s then-president, Charles Hoffman, and AUA
19 section presidents founded the AACU to serve “essentially as the public policy arm of the

¹¹ *See* AUA, History of the AUA, <https://www.auanet.org/about-us/about-uaa/history-of-the-uaa> (last visited May 24, 2017).

1 urology community.” AOR002. Hoffman then served as the AACU’s first president, and other
2 AUA members served as the AACU’s initial officers. AOR002.¹²

3 The involvement of AUA officers in the AACU’s founding suggests that the two groups
4 are affiliated under factor (I) even though the AACU does not state that the AUA itself formally
5 created the AACU. To be sure, affiliation is indicated under factor (I) where one entity creates
6 the other using a formal process. *See, e.g.*, Advisory Opinion 2006-12 (International Association
7 of Machinists and Aerospace Workers, *et al.*) at 2-4 (concluding that factor (I) indicated
8 affiliation where one entity chartered the other and “effectively fold[ed] the [entity] into its
9 hierarchical structure”). But the language of factor (I) asks whether an organization “or its
10 agent” had a role in forming another group. 11 C.F.R. §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I).
11 The Commission included the term “agent” in factor (I) specifically so that the rule would “also
12 focus on the role played by the personnel of an organization or committee” in forming another
13 entity. *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution*
14 *Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,100 (Aug. 17, 1989).

15 Consistent with that language, the Commission has previously concluded that factor (I)
16 reaches situations where one group’s members played a part in creating another entity. *See*
17 *Advisory Opinion 2012-23 (Snake River Sugar Company)* at 5 (finding that formation factor
18 suggested affiliation where members of several trade associations established agricultural
19 cooperative, and served as first directors of cooperative); *Advisory Opinion 2005-17 (American*
20 *Crystal Sugar Company)* at 2, 4 (concluding that trade association played active or significant
21 role in formation of cooperative because “members of the Association founded [the]

¹² Later, in 1992, the AACU founded UROPAC. AOR001. The AACU does not state whether the AUA played any role in UROPAC’s formation.

1 cooperative”); Advisory Opinion 1996-26 (FTD Association) at 2, 4 (finding that corporation
2 played a role in association’s formation of SSF because corporation’s members constituted 20
3 percent of association’s board, which voted to establish SSF).

4 The AUA’s officers’ involvement in the AACU’s formation weighs in favor of affiliation
5 under factor (I), even though some commonalities that had previously existed between the
6 AACU and the AUA no longer exist today. *See supra* p. 16. In some instances, the Commission
7 has given lesser weight to factor (I) when in the years since formation, the entities have taken
8 steps to sever their ties.¹³ For example, in Advisory Opinion 2004-41 (CUNA Mutual Insurance
9 Society), the Commission found that even though a trade association’s “officers and directors
10 were directly involved in the formation” of an insurance company, that involvement did not
11 indicate current affiliation due to the “significant ‘period of estrangement’” that occurred
12 between the two entities since formation. *Id.* at 8. Specifically, in 1956, the entities “entered
13 into a period of mutual acrimony” that lasted “until the late 1960s” and resulted in their forming
14 separate governing boards. *Id.* at 1-2. As a result of that estrangement, the two groups, at the
15 time of their request, “lack[ed] . . . overlap in officers or employees” and had a “number of
16 formal contracts and agreements that now govern[ed] the interactions between the two
17 organizations.” *Id.* at 8.

18 In contrast here, while there have been some changes in the relationship between the
19 AUA and the AACU, as described above, the AUA and the AACU have not endured a similarly
20 long period of estrangement, and there is no indication that their interactions are governed by

¹³ The passage of time, alone, does not negate finding that an entity’s formation of the other weighs in favor of affiliation under factor (I). For example, in Advisory Opinion 2005-17 (American Crystal Sugar Company), the Commission concluded that a trade association’s members’ founding of a cooperative suggested affiliation under factor (I) even though that founding had occurred 43 years prior. *Id.* at 2, 4.

1 formal contracts and agreements. Moreover, the request indicates that the organizations continue
2 to share substantially overlapping memberships and overlapping current and former officers and
3 employees, and to participate in each other's governance, as described above.

4 *(J) Contribution Patterns*

5 The contribution-patterns factor is neutral here. This factor pertains to whether the
6 sponsoring organizations' SSFs have similar patterns of contributions or contributors that would
7 indicate a formal or ongoing relationship between the sponsoring organizations or committees.
8 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J).

9 Prior to January 1, 2016, the AUA and the AACU both acted as connected organizations
10 for UROPAC, and so, for 13 years, had similar patterns of contributors and identical patterns of
11 contributions. *See* AOR001-002. On January 1, 2016, however, the AUA ceased being
12 UROPAC's connected organization. *Id.* Public filings with the Commission do not indicate that
13 the AUA has since established its own SSF. Therefore, because the AUA has not had its own
14 SSF with which to compare UROPAC's contribution patterns, the Commission cannot consider
15 whether patterns of contributions and contributors indicate a relationship that is currently "formal
16 or ongoing." *Cf.* Advisory Opinion 2016-02 (Enable) at 9 (finding that factor did not apply
17 where entity had not yet established SSF). Thus, this factor is neutral as to whether the AUA and
18 the AACU remain affiliated.

19 *Context of the Overall Relationship Between the Entities*

20 In considering the foregoing circumstantial factors, the Commission examines the
21 "context of the overall relationship" between the entities to determine whether they are properly
22 considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii).

1 Based on the information presented the AACU's request, the Commission concludes that
2 the AACU and the AUA remain affiliated. The only two factors that weigh in favor of
3 disaffiliation are based on circumstances that were present when the Commission initially
4 determined that the organizations were affiliated. As in Advisory Opinion 2002-15 (UROPAC),
5 neither entity has a controlling interest in the other. AOR008; *see* Advisory Opinion 2002-15
6 (UROPAC) at 6. The AACU's request also indicates that neither organization has hiring
7 authority with respect to the other organization, AOR008; the Commission did not include hiring
8 authority among the factors weighing in favor of affiliation in the prior advisory opinion, *see*
9 Advisory Opinion 2002-15 (UROPAC) at 6-8, nor did the 2002 advisory opinion request indicate
10 that either entity had such hiring authority over the other, *see* Advisory Opinion Request,
11 Advisory Opinion 2002-15 (UROPAC).

12 Of the six factors that the Commission found to weigh in favor of affiliation in Advisory
13 Opinion 2002-15 (UROPAC), only two, the provision of goods and services or the arranging for
14 the provision of goods and services, no longer clearly weigh in favor of affiliation. Those two
15 factors now are neutral as to affiliation. Beyond the remaining four factors that weighed in favor
16 of affiliation in the prior advisory opinion, the additional factor of formation, which was not
17 considered by the Commission in Advisory Opinion 2002-15 (UROPAC), also weighs in favor
18 of affiliation. The AACU and the AUA retain considerable ability to participate in each other's
19 governance through formal requirements and longstanding informal practices. Nearly every
20 member of the AACU is also a member of the AUA. More overlap between the AACU's and

1 the AUA's (and its sections') current and former board members, officers, and employees exists
2 today than was presented to the Commission in 2003.¹⁴

3 Finally, the list of factors in the regulations is not exhaustive. 11 C.F.R. § 110.3(a)(3)(ii).
4 The Commission may look at other evidence of an ongoing relationship between two
5 organizations to determine whether they are affiliated. In Advisory Opinion 2002-15
6 (UROPAC), the Commission relied upon several "indicators of an ongoing commitment to joint
7 endeavors" in concluding that the AUA and the AACU were affiliated. *Id.* at 7. Specifically, the
8 AUA and the AACU coordinated their national lobbying efforts, each participated in the other's
9 annual convention "through the provision of booths and/or sponsored lectures," and worked
10 together to offer joint nominations for AMA elected positions and then worked together to
11 support the elected delegates of both groups. *Id.* at 3, 7.

12 Today, overall, the AUA and the AACU continue to work together in the ways that
13 indicated an ongoing commitment to joint endeavors in Advisory Opinion 2002-15 (UROPAC),
14 even though the associations have discontinued some of their joint activities.

15 First, the AACU and the AUA continue to engage in shared public policy and advocacy
16 efforts at the national and state levels, even though the AACU does not state whether the entities
17 continue to jointly employ a lobbyist. AOR003. The AACU and the AUA will be jointly

¹⁴ According to the AACU, the AUA argues that the Commission should not consider the AACU's links with the AUA's sections in its affiliation analysis because the "AUA's sections are independent of AUA," and the AUA and its sections "do not constitute a federation." AOR006. But in Advisory Opinion 2002-15 (UROPAC), the Commission cited the AACU's contacts with AUA sections in concluding that the AACU and the AUA were affiliated. *Id.* at 1 (explaining that AACU required its "Active Unified" members to be members of "the AUA (or a section of the AUA)"), 2 (stating that large percentage of AACU "Active Non-Unified members are also members of the AUA or its sections"), 3 (explaining that AACU's board included representative of "each of the AUA's eight regional sections"). In any event, the Commission need not determine whether the AUA and its sections today qualify as a federation of affiliated trade associations. The AACU and the AUA have sufficient indicia of an ongoing and formal relationship to qualify for affiliation even if the Commission considers only the AACU's ties with the AUA itself and not the AUA's sections.

1 presenting a “Health Policy Forum” at the AUA’s 2017 annual meeting. *Id.* The AUA is also
2 planning a “2018 Urology Summit,” to which the AUA has invited the AACU and other groups.
3 *Id.* Furthermore, the two associations’ shared interests will likely require that they “continue to
4 cooperate in public policy efforts.” *Id.*

5 Second, the AUA and the AACU continue to participate in each other’s annual
6 convention through the provision of booths or sponsored lectures, AOR002, as they did at the
7 time of the prior advisory opinion, Advisory Opinion 2002-15 (UROPAC) at 7.

8 Third, the AACU and the AUA continue to organize a urology caucus to represent the
9 interests of urology at the American Medical Association’s House of Delegates biannual
10 meetings. AOR003. While each association elects its delegate to the House of Delegates
11 independently, at the American Medical Association’s biannual meeting the AACU’s and
12 AUA’s delegates “work together as one unit” along with AACU and AUA staff. *Id.*

13 Finally, the AUA and the AACU’s continued public policy efforts are consistent with the
14 reason why the AUA’s leadership created the AACU in the first place — to serve “essentially as
15 the public policy arm of the urology community.” AOR002.

16 When the Commission considers the ten circumstantial factors analyzed above alongside
17 the AUA’s and the AACU’s ongoing collaboration, it concludes that the organizations have an
18 ongoing relationship and remain affiliated.

19 This response constitutes an advisory opinion concerning the application of the Act and
20 Commission regulations to the specific transaction or activity set forth in your request. *See* 52
21 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
22 assumptions presented, and such facts or assumptions are material to a conclusion presented in
23 this advisory opinion, then the requestor may not rely on that conclusion as support for its

1 proposed activity. Any person involved in any specific transaction or activity which is
2 indistinguishable in all its material aspects from the transaction or activity with respect to which
3 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
4 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
5 affected by subsequent developments in the law including, but not limited to, statutes,
6 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
7 on the Commission's website.

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On behalf of the Commission,

Steven T. Walther,
Chairman.