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FEDERAL ELECTION COMMISSION
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AGENDA DOCUMENT NO. 22-28-A
AGENDA ITEM
For meeting of July 14, 2022

July 7, 2022

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Jessica Selinkoff *JS*
Acting Assistant General Counsel

Jennifer G. Waldman *JGW*
Attorney

Subject: Draft AO 2022-06 (Hispanic Leadership Trust) - Draft A

We have been asked to place this draft on the Agenda by one or more Commissioners.

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 July 13, 2022.

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 2022-06

2

3 Chris Gober, Esq.

4 Eric Wang, Esq.

5 The Gober Group

6 1501 Wilson Blvd., Suite 1050

7 Arlington, VA 22209

8

9 Dear Messrs. Gober and Wang:

DRAFT A

10 We are responding to your advisory opinion request on behalf of the Hispanic Leadership
11 Trust (“HLT”), concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§
12 30101-45 (the “Act”), and Commission regulations to HLT’s status as a nonconnected
13 committee in light of the involvement of members of Congress on its board of directors and as its
14 officers. HLT asks five questions about whether discrete elements of its structure, activities, and
15 leadership would result in HLT becoming a leadership PAC or affiliated with the leadership PAC
16 of two officers: the chair and vice chair. HLT further asks whether any of three alternative
17 proposed bylaws governing its officers’ fundraising activities would allow it to remain
18 unaffiliated with those officers’ leadership PACs.

19 The Commission concludes that HLT would not be a leadership PAC of either the
20 proposed chair or proposed vice chair under the proposed bylaws’ Alternative C. The
21 Commission further concludes that HLT would not be affiliated with the existing leadership
22 PACs of its proposed chair or vice chair, under the proposed bylaws’ Alternative C.

23 ***Background***

24 The facts presented in this advisory opinion are based on your letters received on April
25 19 and May 3, 2022, your email received on May 5, 2022, and the supplemental material you
26 submitted on June 21, 2022.

1 HLT registered with the Commission in March 2022 as a nonconnected political
2 committee; it states that it has a “mission of electing and re-electing Hispanic Republican
3 candidates to Congress.”¹ HLT represents that it is a “hard money” committee and, more
4 specifically, that it is not an independent expenditure-only political committee (Super PAC) or a
5 Hybrid PAC. AOR001. HLT represents that the “formation of HLT was initiated and managed
6 by Susan Lilly of Lilly & Company” and that HLT’s counsel “will be HLT’s incorporators.”
7 Advisory Opinion Request Supplement (“AOR Supp.”) at 2-4, n.3.

8 HLT states that it would like to name Representatives Mario Diaz-Balart and Tony
9 Gonzales as its Chair and Vice Chair, respectively. AOR014. Representative Diaz-Balart
10 sponsors the leadership PAC Maintaining All Republicans in Office PAC (“MARIO PAC”) and
11 Representative Gonzales sponsors the leadership PAC Honor Courage Commitment PAC (“HCC
12 PAC”).² HLT has reported receiving \$5,000 contributions from both MARIO PAC and HCC
13 PAC.³

¹ Advisory Opinion Request (“AOR”) at AOR001; *see* Hispanic Leadership Trust (“HLT”), Statement of Organization (Mar. 21, 2022), <https://docquery.fec.gov/pdf/068/202203219495794068/202203219495794068.pdf>.

² *See* AOR014; Maintaining All Republicans in Office PAC, Statement of Organization at 3 (July 2, 2014), <https://docquery.fec.gov/pdf/857/14031251857/14031251857.pdf>; Honor Courage Commitment PAC, Amended Statement of Organization at 5 (Aug. 2, 2021), <https://docquery.fec.gov/pdf/756/202108029465820756/202108029465820756.pdf>. HLT states that Susan Lilly provides consulting services for, *inter alia*, Tony Gonzales for Congress, HCC PAC, and Mario Diaz-Balart for Congress though further represents that Lilly “did not form HLT while acting as an ‘agent’ to these entities” or any candidate. AOR Supp. at 3-4. HLT further represents that “Representatives Gonzales and Diaz-Balart did not have any role in the legal formation of HLT.” AOR Supp. at 3.

³ HLT, April 2022 Report (“Rep.”) at 6 (Apr. 14, 2022), <https://docquery.fec.gov/pdf/074/202204149496137074/202204149496137074.pdf> (HCC PAC contribution); HLT, May 2022 Rep. at 6 (May 20, 2022), <https://docquery.fec.gov/pdf/509/202205209512424509/202205209512424509.pdf> (MARIO PAC contribution).

1 HLT submitted relevant portions of its proposed bylaws, which set out the powers and
2 duties of its board of directors and officers.⁴ The proposed bylaws vest the powers and duties of
3 HLT in the board of directors; the proposed bylaw excerpts submitted by the requestor do not
4 indicate a set number of directors on the board. AOR015-16. Only “incumbent members of the
5 Congressional Hispanic Conference” are eligible to be HLT Directors and HLT represents that
6 its board of directors will include *all* incumbent members of the Congressional Hispanic
7 Conference who consent to serve and who are elected by existing directors.⁵ AOR Supp. at 1.
8 HLT proposes that, if the number of eligible board numbers falls below two or three, and if that
9 “affects the Commissioners’ analysis of the ‘affiliation’ question,” HLT’s bylaws could include a
10 provision allowing non-Congressional Hispanic Conference members to be eligible to be
11 directors. *Id.* at 2.

12 HLT’s counsel “intend to appoint HLT’s initial board members.” *Id.* at 2, n.3. HLT
13 expects its initial board of directors will consist of approximately eight members, *i.e.*, all current
14 members of the Congressional Hispanic Conference except one representative who is retiring at
15 the end of his current term. AOR Supp at 1-2. Because the number of board members is not set,
16 HLT proposes a bylaw that defines a quorum for the transaction of business as a majority
17 percentage of duly elected and qualified directors. *Id.* at 3.

18 Under the proposed bylaws, the board of directors selects HLT’s two officers, which are
19 the “Chair/President” and the “Vice Chair/Vice President,” who must both also be members of

⁴ AOR015-17; AOR Supp. at 2-3. HLT states that it has not yet adopted the bylaws, which may change based on the Commission’s conclusions to the questions presented in this advisory opinion. AOR015.

⁵ AOR016; *Id.* at n.5. The Congressional Hispanic Conference is comprised of Hispanic Republican members in the U.S. House of Representatives. *See id.*, n.1.

1 the board of directors.⁶ The “Chair/President” acts as HLT’s chief executive officer and has
2 responsibilities that include:

3 (i) establishing and maintaining an effective organization and structure with clearly
4 defined roles, responsibilities, and reporting relationships; (ii) establishing and
5 maintaining a process for open and consistent communication with the Board of Directors
6 to ensure effective governance of the Corporation; and (iii) retaining and terminating
7 Committee contractors in consultation with the Vice Chair and other Directors.
8

9 AOR016. The “Vice Chair/Vice President” assists the “Chair/President” with all duties. *Id.*

10 HLT represents that it does not expect federal officeholders or candidates to be involved in its
11 day-to-day operations; it expects that consultants will perform HLT’s day-to-day operations “at
12 the direction of the HLT’s officers and directors.” AOR018.

13 HLT represents that it wishes to give members of Congress selected as HLT officers the
14 “Chair” and “Vice Chair” titles “to signify their fundraising role with HLT.” AOR002, 5, 8, 9,
15 12, 16, 17. HLT’s proposed bylaws present three alternative provisions governing fundraising
16 for, and contributions by, HLT. Under “Alternative A,” the Chair “shall determine [HLT’s]
17 fundraising activities and contributions to candidates and other committees in consultation with
18 the Vice Chair and other Directors.” AOR016. Should Alternative A “cause HLT to be
19 affiliated with the Chair’s leadership PAC,” HLT’s proposed bylaws at “Alternative B” provide
20 that “[t]he Chair and Vice Chair shall jointly determine [HLT’s] fundraising activities and
21 contributions to candidates and other committees in consultation with the other Directors.”

22 AOR017. Should Alternatives A and B “cause HLT to be affiliated with the Chair’s and Vice
23 Chair’s leadership PACs,” HLT’s proposed bylaws at “Alternative C” provide that “[HLT’s]

⁶ AOR015-16. HLT represents that it “does not contemplate having any other officer positions.” AOR Supp. at 3.

1 fundraising activities and contributions to candidates and other committees shall be determined
2 by a vote of the Directors.” *Id.*

3 HLT states that it “is likely that HLT will solicit contributions from existing contributors
4 to the leadership PACs and the authorized committees of Members of Congress who serve as
5 HLT[’s] directors and officers” and “also may” solicit contributions from contributors who have
6 not already given to those leadership PACs and authorized committees. AOR015. HLT states
7 that it is “possible” that members of Congress and federal candidates may contribute to HLT
8 from their leadership PACs, their authorized committees, and their personal funds. AOR014.
9 HLT represents, however, that these sources of contributions to HLT are “not expected to be a
10 significant source of funding for HLT” or “comprise more than five percent (if even that much)
11 of HLT’s total funding over the long term.” *Id.*

12 To date, HLT has reported, in regularly scheduled reports filed with the Commission,
13 receiving six contributions, totaling \$22,000, and no other receipts; HLT has reported no
14 contributions it has made to candidates or committees and one disbursement for \$218.64.⁷ The
15 first contribution, which HLT reported receiving on March 21, 2022, a week after HLT
16 registered as a committee, was from HCC PAC.⁸ HLT reported receiving its next two leadership
17 PAC contributions on April 29, 2022; one of these contributions was from MARIO PAC.⁹ On
18 its third report, HLT reported receiving three additional contributions, one from a leadership

⁷ See HLT, Amended June 2022 Rep. (June 15, 2022).

⁸ HLT, April 2022 Rep. at 6.

⁹ HLT, May 2022 Rep. at 6 (reporting contributions from MARIO PAC and Point Action PAC, Inc.); see also Point Action PAC, Inc., Amended Statement of Organization at 6 (Nov. 15, 2021), <https://docquery.fec.gov/pdf/851/202111159468500851/202111159468500851.pdf> (listing Anderson Drew Ferguson IV as the leadership PAC sponsor).

1 PAC of a Congressional Hispanic Conference member and two from individuals, including
2 Susan Lilly.¹⁰ HLT represents that it will refund contributions received to date from leadership
3 PACs if “the Commission is inclined to conclude that HLT is EFMC’d by Members on this
4 basis.”¹¹

5 ***Questions Presented***

6 1. *Would HLT’s use of the titles “Chair” and “Vice Chair,” in and of themselves,*
7 *result in HLT becoming either (i) a leadership PAC of the members of Congress in those*
8 *positions or (ii) “affiliated” with those members’ existing leadership PACs?*

9 2. *If so, would HLT’s use of the titles “Honorary Chair” and “Honorary Vice*
10 *Chair” have the same consequences?*

11 3. *Will HLT become a leadership PAC or affiliated with the existing leadership*
12 *PACs of members of Congress if those members engage in one or more of the following*
13 *activities: (i) serve on HLT’s board of directors; (ii) hold officer positions with HLT; (iii) direct*
14 *HLT to contribute to certain candidates; (iv) direct HLT’s fundraising strategy; and/or (v) hire*
15 *and/or fire HLT employees and consultants?*

16 4. *Will HLT become a leadership PAC or affiliated with the existing leadership*
17 *PACs of members of Congress if those members are responsible for raising a large percentage*
18 *of contributions to HLT?*

¹⁰ See HLT, Amended June 2022 Rep. at 7; AOR Supp. at 4.

¹¹ AOR Supp. at 6; and see *id.* at 4 (representing that HLT has received five \$5000 contributions from leadership PACs, including one since HLT’s last regularly-filed report from Representative Buchanan’s Vern PAC). The analysis below addresses whether HLT’s officers or directors establish, finance, maintain, or control, *i.e.*, “EFMC,” HLT.

1 5. *Will HLT become a leadership PAC or affiliated with the existing leadership*
2 *PACs of members of Congress if there are similar patterns of contributions to, or disbursements*
3 *by, HLT and those members' leadership PACs?*

4 ***Legal Analysis and Conclusions***

5 Considering all the facts presented in the request, the Commission concludes, as
6 explained further below, that HLT would not be a leadership PAC of Representatives Diaz-
7 Balart or Gonzales because Representatives Diaz-Balart and Gonzales did not establish, finance,
8 maintain, or control HLT. The Commission further concludes that, considering the full context
9 of the relationships, HLT would not be affiliated with HCC PAC or MARIO PAC, under
10 Alternative C of the proposed bylaws.

11 **A. Leadership PACs**

12 The Act and Commission regulations define a “leadership PAC” as a political committee
13 “that is directly or indirectly established, financed, maintained or controlled by” a candidate or
14 federal officeholder “but which is not an authorized committee” of the candidate or federal
15 officeholder “and which is not affiliated with an authorized committee” of the candidate or
16 federal officeholder.¹² Like other nonconnected committees, leadership PACs may receive
17 contributions up to \$5,000 per year and make contributions to candidate committees of \$2,900

¹² 52 U.S.C. § 30104(i)(8)(B) (defining “leadership PAC” for purposes of bundling and travel provisions in Honest Leadership and Open Government Act of 2007); 11 C.F.R. § 100.5(e)(6) (defining “leadership PAC” for generally applicable purposes); *see also* Honest Leadership and Open Government Act of 2007, Pub. L. No. 110–81, 121 Stat. 735 (Sept. 14, 2007); *and see* Leadership PACs, 68 Fed. Reg. 67,013, 67,016 (Dec. 1, 2003) (explaining that no leadership PAC is affiliated with its sponsoring candidate’s authorized committee).

1 per election (in the 2021-2022 election cycle) or \$5,000 per election if qualified as a
2 multicandidate committee.¹³

3 The Act and Commission regulations do not define when a candidate or federal
4 officeholder directly or indirectly EFMC's a committee for purposes of the "leadership PAC"
5 definition at 11 C.F.R. § 100.5(e)(6). Moreover, the Commission has not previously considered
6 when a nonconnected committee that is not registered as a leadership PAC is, in fact, directly or
7 indirectly EFMC'd by a candidate and is, therefore, a leadership PAC under 11 C.F.R.
8 § 100.5(e)(6).

9 The Commission, however, has defined and delineated EFMC in three regulations
10 governing affiliation and non-federal funds (also known as "soft money"). First, Commission
11 regulations at 11 C.F.R. §§ 100.5(g)(4) and 110.3(a)(3)(ii) lay out ten non-exhaustive factors the
12 Commission will examine, "in the context of the overall relationship between committees or
13 sponsoring organizations," to determine whether one committee has EFMC'd another committee
14 such that those committees are affiliated.¹⁴ Second, Commission regulations at 11 C.F.R.
15 § 300.2(c) define EFMC for purposes of the soft money restrictions on political party
16 committees, candidates, and federal officeholders and any "entity directly or indirectly

¹³ 52 U.S.C. §§ 30116(a)(1)(C), (a)(2)(A); 11 C.F.R. §§ 110.1(d), 110.2(b); *see also* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,107 (July 29, 2002) (explaining that leadership PACs may not solicit, receive, direct, transfer, or spend non-federal funds, *i.e.*, "soft money"); *cf.* Leadership PACs, 68 Fed. Reg. at 67,016 (explaining, in context of 11 C.F.R. §100.5(g)(5), that the Act's "'hard money' limits" apply to unauthorized committees controlled by candidates). HLT represents that it will raise only "hard money" and does not ask questions relating to raising soft money, should the Commission conclude that it is a leadership PAC.

¹⁴ 11 C.F.R. § 100.5(g)(4)(ii); *id.* at 110.3(a)(3)(ii). As used in 11 C.F.R. § 100.5(g)(4), a "sponsor" is "(i) a single corporation and/or its subsidiaries; (ii) a single national or international union and/or its local unions or other subordinate organizations; (iii) an organization of national or international unions and/or all its State and local central bodies; (iv) a membership organization (other than political party committees) including trade or professional associations and/or related State and local entities of that organization or group; or (v) the same person or group of persons." 11 C.F.R. § 100.5(g)(3) (internal citations omitted); *and see* 11 C.F.R. § 110.3(a)(2) (same).

1 established, financed, maintained or controlled by” one of those persons.¹⁵ The Commission has
2 explained that the EFMC definition at 11 C.F.R. § 300.2(c) uses the same non-exhaustive
3 affiliation factors found at 11 C.F.R. § 100.5(g)(4)(ii) “recast in the terminology demanded by
4 the [soft money] context.”¹⁶ As it does in the affiliation analysis, the Commission will consider
5 the regulatory factors in a soft money EFMC determination “in the context of the overall
6 relationship between the sponsor and the entity to determine whether the presence of any factor
7 or factors is evidence that the sponsor directly or indirectly established, finances, maintains, or
8 controls the entity.”¹⁷

9 The Commission concludes that the factors in the well-established and well-known
10 affiliation and soft money EFMC regulations provide a useful framework for analyzing whether
11 HLT is a leadership PAC under the circumstances presented in this request.¹⁸ Additionally, the
12 Commission concludes that, in order to answer your questions concerning whether HLT is a
13 leadership PAC, it must do so while considering these factors in the context of the overall
14 relationship between HLT and the Chair and Vice Chair, as possible sponsors, to determine

¹⁵ 52 U.S.C. § 30125(a)(2), (b)(1), (d), (e)(1); *and see* 11 C.F.R. part 300.

¹⁶ Soft Money E&J, 67 Fed. Reg. at 49,084. As used in 11 C.F.R. § 300.2(c), a “sponsor” is a national, state, district, or local committee of a political party; candidate; federal officeholder; or an officer, employee, or agent of any of the foregoing persons. 11 C.F.R. § 300.2(c)(1).

¹⁷ 11 C.F.R. § 300.2(c).

¹⁸ To the extent that the factors address the “sponsor” or the “sponsored organization” only as a corporation (with or without stock or securities), labor organization, membership organization, cooperative, or trade association, those factors do not apply here and are not analyzed. *See, e.g.*, AO 2012-21 (Primerica, Inc.) at 8, 11. To the extent the language can be adapted to apply to committees sponsored by individuals, it is and is analyzed as such.

1 whether the presence of any factor or factors is evidence that the sponsor directly or indirectly
2 EFMC'd HLT.¹⁹

3 *1. Established*

4 A sponsor directly or indirectly “established” an entity if the sponsor “had an active and
5 significant role in the formation” of the entity.²⁰ In MUR 5367 (Issa, *et al.*), the Commission
6 concluded that early financing of a committee can, by itself, satisfy the formation, or
7 “establishment,” factor of EFMC; the Commission concluded that Representative Issa
8 established a state ballot initiative committee because he “provided [the committee] with ‘seed
9 money.’”²¹ More particularly, Representative Issa, through a company that he controlled,
10 “provided the first donation reported by [the committee] in the amount of \$100,000,” which was
11 provided in the week before the committee had registered with the California Secretary of
12 State.²²

13 Just as Representative Issa provided the seed money for a ballot committee,
14 Representative Gonzales provided HLT with seed money in the form of HLT’s first receipt, in its
15 first week that it was registered with the Commission,²³ and Representative Diaz-Balart provided

¹⁹ See 52 U.S.C. § 30108(a)(1); 11 C.F.R. § 112.1(b) (specifying that requests presenting hypothetical situations or regarding general questions of interpretation do not qualify as advisory opinion requests).

²⁰ 11 C.F.R. § 300.2(c)(2)(ix); Factual and Legal Analysis (“FLA”) at 4, MUR 5367 (Issa) (Feb. 20, 2004) (finding reason to believe Representative Issa violated soft money provisions via a state ballot committee that the Commission determined Issa established); *see also* Vote Certification, MUR 5367 (Issa, *et al.*) (Nov. 3, 2005) (taking no further action against Representative Issa); Second Gen. Counsel’s Rpt., MUR 5367 (Issa, *et al.*) (Oct. 28, 2005) (recommending no further action in light of subsequent developments in non-EFMC areas of the law (concerning ballot committees and candidates’ personal funds)).

²¹ FLA at 4-5, MUR 5367 (Issa).

²² *Id.*; *see also id.* at 5 (detailing Representative Issa’s control of his company), 6 (detailing the committee’s \$3 million total receipts over the course of its activity, 60% of which were provided by Representative Issa or his company).

²³ HLT, April 2022 Rep. at 6.

1 HLT with seed money in the form of HLT’s second receipt, five weeks after HLT’s
2 registration.²⁴ Moreover, just as the Commission concluded that Representative Issa provided
3 those funds via an entity he controlled, Representatives Diaz-Balart and Gonzales provided funds
4 to HLT through MARIO PAC and HCC PAC, their respective leadership PACs that, as a matter
5 of law, they control.²⁵ In MUR 5367, however, Representative Issa provided, in the first three
6 months of the ballot committee’s formation, “more than 60% of [the committee’s] total funds,”²⁶
7 while, here, Representatives Diaz-Balart and Gonzales have each contributed only 10% of HLT’s
8 total receipts to date, all in the first three months since HLT’s registration with the
9 Commission.²⁷ Moreover, HLT has not spent any of the funds received in this initial operating
10 period, other than a negligible amount to a check company for printing. The Commission
11 concludes that, under the circumstances presented, ten percent of the total amount of
12 contributions HLT has received in this initial operating period is not a significant enough amount
13 to be considered “seed money.”²⁸

14 A sponsor can also “establish” an entity through its legal formation. In Advisory Opinion
15 2003-12 (Flake), the Commission concluded that Representative Flake established a state ballot
16 committee because he “formed” the committee, “signed the documents filed with the Arizona

²⁴ HLT, May 2022 Rep. at 6.

²⁵ See 52 U.S.C. § 30104(i)(8)(B) (defining “leadership PAC” as a political committee “that is directly or indirectly established, financed, maintained or controlled by” a candidate or federal officeholder “but which is not an authorized committee” of the candidate or federal officeholder).

²⁶ FLA at 6, MUR 5367 (Issa).

²⁷ See AOR Supp. at 4 (detailing HLT’s receipts to date); *cf. id.* at 6 (stating that “HLT has not solicited contributions in earnest up to now in large part because of its pending advisory opinion request and the uncertainty over the extent to which Members of Congress may be involved in HLT’s activities”).

²⁸ *Cf.* AO 2006-04 at 3 (Tancredo) (examining what defines a “significant amount on a case-by-case basis in view of all the relevant circumstances”).

1 Secretary of State,” and served as the “first chairman,” while his campaign consultant “aided the
2 [committee] with its [S]tate filings and establishing its bank account.”²⁹ Similarly, in Advisory
3 Opinion 2012-23 (Snake River Sugar Company), in the context of an affiliation analysis of an
4 agricultural cooperative and seven sugarbeet growers’ associations, the Commission concluded
5 that the associations established the cooperative because the associations “participated in the
6 formation of” the cooperative and all but three of the cooperative’s original 24 directors were
7 officers of the associations.³⁰

8 Just as Representative Flake was his ballot committee’s “first chairman,” Representative
9 Diaz-Balart would be HLT’s first Chair and President. Comparably, Representative Gonzales
10 will be HLT’s first Vice Chair and Vice President, with the powers and duties of the
11 “Chair/President” when the Chair is not available. AOR016. Unlike Representative Flake,
12 however, Representatives Gonzales and Diaz-Balart “did not have any role in the legal formation
13 of HLT.” AOR Supp. at 3. They will not be the incorporators of HLT or appoint HLT’s initial
14 board members. *Id.* at 2, n.3. And, while the Commission concluded that the sugarbeet growers’
15 associations in the Snake River advisory opinion established the agricultural cooperative, in part,
16 due to the associations’ officers holding 21 of 24, or 87%, of the directors’ spots at the
17 cooperative, here, Representatives Diaz-Balart and Gonzales hold 2 of what is expected to be 8
18 of the initial seats on the board of directors, or 25% of the total seats on HLT’s board.

19 On consideration of all the facts presented in the request, and in light of the overall
20 relationship between HLT and the Chair and Vice Chair, the Commission concludes that neither

²⁹ AO 2003-12 (Flake) at 7.

³⁰ AO 2012-23 (Snake River Sugar Company) at 7; *see also* 11 C.F.R. § 100.5(g)(4)(ii)(I).

1 Representative Diaz-Balart nor Representative Gonzales established HLT within the meaning of
2 the “leadership PAC” definition.

3 2. *Financed*

4 A sponsor “finances” a committee when the sponsor provides, or causes or arranges for
5 the provision of, funds “in a significant amount or on an ongoing basis” to the committee.³¹ The
6 Commission determines what constitutes a “significant amount” on a case-by-case basis in “view
7 of all the relevant circumstances.”³² “[A]mounts that are so large or . . . that comprise such a
8 substantial percentage of the organization’s receipts would be considered ‘financing’ a
9 committee.”³³ The Commission has concluded that an entity will not be deemed to have been
10 EFMC’d by a potential sponsor solely because that potential sponsor “attends fundraising events,
11 and/or participates in, fundraising activities to some extent.”³⁴ In Advisory Opinion 2004-06
12 (Tancredo), the Commission explained that a candidate committee’s proposed donation to a
13 nonfederal committee that was equal to 50% of the recipient’s total receipts “at the time of the
14 donation” would, by itself, be a “significant amount” that would constitute “financing” under
15 section 300.2(c).³⁵

³¹ 11 C.F.R. §§ 100.5(g)(4)(ii)(G)-(H), 110.3(a)(3)(ii)(G)-(H), 300.2(c)(2)(vii)(viii); *see also* FLA at 5-6, MUR 5367 (Issa).

³² AO 2006-04 (Tancredo) at 3.

³³ *Id.* at 4 (analyzing 11 C.F.R. § 300.2) (internal quotations omitted).

³⁴ AO 2003-12 (Flake) at 12-13.

³⁵ *Id.* at 4-5 (also concluding that a proposed donation of 25% of receipts to date would be a “significant amount”). A sponsor may also “finance” an entity when the sponsor and entity have “similar patterns of contributions or contributors” that indicate a “formal or ongoing relationship” between the two. 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J); *see also* 11 C.F.R. § 300.2(c)(2)(x).

1 At the time of Representative Gonzales’s contribution, through his leadership PAC, to
2 HLT, the contribution amount was 100% of HLT’s then-reported receipts and Representative
3 Diaz-Balart’s contribution, through his leadership PAC, was 33% of HLT’s total receipts on the
4 date it was received.³⁶ Each of these contributions is a substantial percentage of HLT’s current
5 total receipts, indicating that, on this basis alone, Representative Gonzales and Representative
6 Diaz-Balart would finance HLT.³⁷

7 However, because HLT represents that it will refund Representatives Gonzales and Diaz-
8 Balart’s leadership PAC contributions if those receipts are material to an EFMC determination,
9 AOR Supp. at 6, and they are material, the Commission further analyzes additional facts in
10 determining whether Representatives Gonzales or Diaz-Balart would “finance” HLT.

11 The Commission concludes, based on the overall relationship of the representatives and
12 HLT, that Representatives Gonzales and Diaz-Balart would each “finance” HLT, within the
13 meaning of the “leadership PAC” definition, under proposed fundraising bylaw provisions
14 Alternative A and Alternative B, but would not under Alternative C.

15 Even if the representatives’ own contributions, through their leadership PACs, are
16 refunded, Representatives Diaz-Balart and Gonzales both have significant fundraising roles as

³⁶ HLT represents that contributions from candidates’ leadership PACs, authorized committees, and personal funds are not expected to “comprise more than five percent (if even that much) of HLT’s total funding *over the long term.*” AOR014 (emphasis added). Although the “finance” conclusion might change over time as HLT receives subsequent contributions from persons who are not members of Congress, the Commission does not have sufficient information concerning this “long term” fundraising to answer whether future contributions from the Chair, Vice Chair, or another member of Congress would constitute a “significant amount” of HLT’s receipts at the time those future contributions are made. *See* 11 C.F.R. § 112.1(b) (specifying that general questions of interpretation and hypothetical situations do not qualify as an advisory opinion requests); *and see* AO 2006-04 (Tancredo) at 4-5 (concluding that the Commission looks at the contribution at the time it is made, rather than calculating the contribution as a percentage of uncertain future receipts).

³⁷ *See* AO 2006-04 (Tancredo) at 8.

1 officers of HLT and by their powers as two of eight members of HLT’s initial board of directors
2 in directing the fundraising of others.³⁸ Representatives Diaz-Balart and Gonzales would have
3 the titles “Chair” and “Vice Chair” to “signify their fundraising role with HLT,” AOR002, 5, 8,
4 12, and, under all three of HLT’s proposed bylaws, the Chair and Vice Chair would have the
5 power to “direct” (or assist in the direction of) consultants in the operation of HLT. AOR018.
6 Moreover, under each of HLT’s three fundraising-specific bylaw alternatives, Representatives
7 Diaz Balart, as Chair, and Gonzales, as Vice Chair, would be empowered to cause or arrange for
8 the provision of funds to HLT by: (A) the Chair consulting with the Vice Chair as he determines,
9 or (B) the Chair and Vice Chair jointly determining, or (C) the Chair and Vice Chair
10 determining, by voting with the other directors, HLT’s fundraising activities. AOR016-17. In
11 fact, under HLT’s proposed bylaws, there is no fundraising function in which the Chair and Vice
12 Chair will not play a part either through their own fundraising activity, or through the board of
13 directors’ shared responsibility for the “direction and management of [HLT’s] affairs, as well as
14 the control and disposition of its assets.”³⁹

15 However, the representatives’ significant and ongoing fundraising *roles* for HLT do not
16 necessarily align with those representatives’ causing or arranging for the provision of funds in a

³⁸ See *supra*, note 6; accord AO 2021-06 (Kelly) at 7-9 (concluding, in soft money restriction analysis, that federal officeholder could be chair of state party committee under circumstances in which committee restructured so that the officeholder would have “no role” in control over the appointment of any member of a special committee established for non-federal fundraising, have no role in personnel management of the same, solicit no non-federal funds, and exercise no “review” of non-federal fundraising activity); cf. AO 2014-21 at 5 (Cambia) (concluding that two corporations were disaffiliated in part because Blue Cross held no seats on Cambia’s board, and there was a “very limited (2-in-38) role” played by Cambia on Blue Cross’s board); AO 2014-11 (HCSC) at 4 (non-affiliation for same reason).

³⁹ AOR015; cf. 11 C.F.R. §§ 100.5(g)(4)(ii)(B)-(C), 110.3(a)(3)(ii)(B)-(C), 300.2(c)(2)(ii)-(iii) (setting out factors regarding governance and personnel that can be relevant in analyzing finance as well as maintenance and control); AO 2021-06 (Kelly).

1 significant *amount* or ongoing basis to HLT; that is a determination made on a case-by-case basis
2 in “view of all the relevant circumstances.”⁴⁰ The Commission concludes, on consideration of
3 the powers of Representatives Diaz-Balart and Gonzales over HLT fundraising while exercising
4 powers of the Chair and Vice Chair under Alternatives A or B – under which the Chair and Vice
5 Chair alone exercise the fundraising power of HLT – the representatives would cause or arrange
6 the provision of a significant amount of funds to HLT on an ongoing basis. Thus,
7 Representatives Diaz-Balart and Gonzales, under Alternatives A or B, would “finance” HLT.

8 Under Alternative C, however, Representatives Diaz-Balart and Gonzales’s fundraising
9 power is diluted by the requirement that action be taken by a vote of the board of directors.
10 HLT’s proposed bylaws provide that the board may act by a majority (*i.e.*, more than 50%) of the
11 directors present at a meeting at which there is a quorum, which the proposed bylaws define as a
12 majority of the duly elected and qualified directors. AOR016; AOR Supp. at 3. With the initial
13 eight-member board, a quorum would require the presence of a minimum of five directors and
14 board action may proceed with a vote of a minimum of three of those directors. Thus, neither the
15 Chair nor Vice Chair may exercise the powers of HLT’s board without the support of at least two
16 other board members.⁴¹

⁴⁰ AO 2006-04 (Tancredo) at 3.

⁴¹ See AOR016; *cf.* AO 2016-02 (Enable Midstream Services LLC) at 7 (concluding that authority to appoint a minority of the members of board of directors does not weigh heavily in favor of finding affiliation between two entities); AO 2014-21 (Cambia) at 5 (concluding that two corporations are disaffiliated in part because Blue Cross held no seats on Cambia’s board, and there was a very limited (2-in-38) role Cambia played on Blue Cross’ board); AO 2000-28 (ASHA and NMHC) at n. 4 (concluding entities were disaffiliated where 35 companies of ASHA’s membership overlaps with approximately 750 companies, representing less than 5 percent); AO 1984-36 (American Health Capital) at 3 (concluding that corporation appointing four members to nine member governing board of partnership “lacks authority to direct partnership”); *but see* AO 1997-13 (United Space Alliance PAC) at 3 (concluding corporate owners directed or participated in governance of joint venture where officials of owners selected officers of joint venture and those officers were “vested with responsibility for managing and supervising day-to-day operations” of joint venture); AO 1995-12 (Independent Bankers) (concluding a state association was

1 While Representatives Diaz-Balart and Gonzales would exercise HLT’s fundraising
2 power and activities on an ongoing basis as HLT officers and board members under Alternative
3 C, with an eight-member board, they would do so with less than full authority, or only “to some
4 extent.”⁴² Thus, the Commission concludes that Representatives Diaz-Balart and Gonzales,
5 exercising the fundraising powers of HLT’s Chair and Vice Chair under an eight-member board
6 governed by bylaws containing Alternative C, and in light of the overall relationship between
7 HLT and the Chair and Vice Chair (including HLT’s refund of the MARIO PAC and HCC PAC
8 contributions), would not “finance” HLT within the meaning of EFMC in the “leadership PAC”
9 definition.⁴³

10 3. *Maintained*

11 The Commission has not previously analyzed when a sponsor “maintains” an entity such
12 that it EFMC’s that entity for purposes of the leadership PAC definition. Nonetheless, several
13 Commission regulations may provide useful frameworks for addressing the maintenance of an
14 entity under the circumstances of this request. In particular, in determining whether one entity is
15 affiliated with another, and whether one entity EFMC’d another entity in a different context —
16 for purposes of the soft money regulations — the Commission analyzes whether a sponsor has
17 the “authority or ability to direct or participate in the governance of” a committee “through
18 provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal

affiliated with related national association where 83 percent of national members were members of the state association and 65 percent of State association members were members of the national association).

⁴² AO 2003-12 (Flake) at 12-13.

⁴³ Should the number of directors fall below eight, the Chair and Vice Chair’s power will not be as diluted. The Commission’s conclusion is premised on an understanding that the powers of the Chair and Vice Chair are diluted by the involvement of at least one other director in decisions regarding the funding activities of HLT.

1 practices or procedures.”⁴⁴ Similarly, the Commission considers whether a sponsor has the
2 authority or ability to hire, appoint, demote, or otherwise control the officers or other decision-
3 making employees of a committee. The Commission finds that these two factors are helpful in
4 analyzing whether the sponsors — Representatives Diaz-Balart and Gonzales — maintain
5 HLT.⁴⁵

6 As described above, HLT’s proposed bylaws vest the authority to direct or govern HLT
7 primarily in the “Chair/President” and “Vice Chair/Vice President,” though their authority would
8 be diluted as to the fundraising powers under Alternative C, because under that alternative action
9 would be required by the entire eight-member board of directors. As relevant for determining
10 whether the Chair “maintains” HLT, the bylaws vest that officer with the powers and
11 responsibilities to “establish[] and maintain[] an effective organization and structure” and
12 “establish[] and maintain[] a process for open and consistent communication.” AOR016. The
13 Vice Chair is vested with the power to assist the Chair. *Id.* Because these powers are held by
14 only these two officers, without involvement of the larger board, these powers counsel in favor
15 of a determination that the Chair and Vice Chair “maintain” HLT.

16 Other powers in the maintenance of HLT, however, are shared by the Chair and Vice
17 Chair with the board of directors. For example, the proposed bylaws vest in the Chair the power
18 to “retain[] and terminat[e] [HLT] contractors in consultation with the Vice Chair and other
19 Directors.” AOR016. Furthermore, HLT represents that the consultants that will perform HLT’s
20 day-to-day operations will do so “at the direction of HLT’s officers and directors.” AOR018.

⁴⁴ See 11 C.F.R §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B), 300.2(c)(2)(ii).

⁴⁵ 11 C.F.R §§ 100.5(g)(4)(ii)(C); 110.3(a)(3)(ii)(C), 300.2(c)(2)(iii).

1 HLT’s draft bylaws do not indicate that such “consultation” with the board, or the board’s
2 “direction” of contractors, requires a vote of the board for any purpose other than the fundraising
3 addressed in Alternative C. The Commission concludes that, absent a vote by the full, eight-
4 member board upon such consultations or in giving such directions, that the Chair and Vice
5 Chair would retain the “maintenance” of HLT. With the full board’s vote on these matters prior
6 to the Chair or Vice Chair’s exercising of these powers, however, the Commission concludes, for
7 the reasons discussed above, that the Chair and Vice Chair’s powers in these areas would be
8 diluted by others such that they do not “maintain” HLT.⁴⁶

9 The Commission concludes that, in light of the entirety of Representatives Diaz-Balart
10 and Gonzales’s participation in the governance of HLT, including of their control of others in
11 HLT, through their positions as officers and directors of HLT, and in light of the dilution of their
12 votes as two of eight directors under Alternative C and as explained above, neither
13 Representative Diaz-Balart, nor Representative Gonzales “maintains” HLT, with the meaning of
14 EFMC in the “leadership PAC” definition.

15 *4. Controlled*

16 In Advisory Opinion 2021-06 (Kelly), the Commission examined “control” in the context
17 of a soft money EFMC analysis of Representative Kelly’s role as chair of a state party
18 committee. The committee’s bylaws provided that “the Chair is the chief executive officer” and
19 has “full authority to exercise the executive powers” of the party committee. As part of these
20 powers, the Chair had the power to “appoint and dismiss ‘any and all personnel or staff,’” serve
21 as “ex-officio on all” sub-committees, “determine the number of appointments,” and “appoint the

⁴⁶ See *supra*, notes 41 and 43.

1 members of such committees.”⁴⁷ The party committee proposed alternative governance
2 structures for administering its non-federal account so that it could continue to raise and spend
3 soft money for non-federal elections without Representative Kelly’s position as chair resulting in
4 violations of the Act’s soft money restrictions. Under each of the three proposed alternatives,
5 Representative Kelly would have “no role” with respect to non-federal fundraising or spending
6 and would not exercise “oversight or influence” over the nonfederal account’s management or
7 governance.⁴⁸

8 The Commission analyzed the alternative governance proposals under the EFMC factors
9 in 11 C.F.R. § 300.2(c)(2)(ii)-(iii) and concluded that if the party committee amended its bylaws
10 so that its non-federal account were administered by a special committee “without the review or
11 approval of Congresswoman Kelly and Congresswoman Kelly has no role in the appointment of
12 any member of the special committee” then the non-federal account would not be directly or
13 indirectly EFMC’d by Representative Kelly.⁴⁹ Specifically, the Commission concluded that,
14 given the representative’s “control over the state party generally,” the governance factor weighs
15 against “control” of the non-federal account *only if* she “has no role” in the appointment of any
16 member of the special committee administering that account, including the authority to appoint
17 even a minority of members of that committee; similarly, she would not control the committee so
18 long as she was “restricted from supervising or taking adverse personnel actions” against any

⁴⁷ AO 2021-06 (Kelly) at 2.

⁴⁸ *Id.* at 3-4. Additionally, Representative Kelly would not make contributions or transfers to the non-federal account from her personal funds or her congressional campaign account and would not solicit or receive funds on behalf of the non-federal account. *Id.* at 3, 8.

⁴⁹ *Id.* at 7 (further specifying that this conclusion applies only to the election of a federal officeholder to serve as the chair of a state party and does not apply to the activities of other types of committees or entities).

1 officer or employee working on that account.⁵⁰ The Commission specified that if the
2 representative retained authority over appointment of persons on the special committee, she
3 would retain indirect control and would EFMC the non-federal account.⁵¹

4 As discussed above, HLT’s proposed bylaws vest many of the same powers in HLT’s
5 Chair and, in his absence, in HLT’s Vice Chair as the state party gave Representative Kelly.
6 HLT’s proposed bylaws articulate that the board of directors “shall elect the committee’s
7 officers.” AOR015. The Chair, “in consultation with the Vice Chair and other Directors” retains
8 and terminates contractors. AOR016. However, unlike the proposal in Advisory Opinion 2021-
9 06 (Kelly) that the Commission concluded would not result in the chair’s control over the
10 committee’s non-federal special committee, HLT does not propose to remove the relevant
11 governance powers from its Chair and Vice Chair. Even under Alternative C, the most restrictive
12 of HLT’s alternative bylaws, HLT’s Chair and Vice Chair would continue to directly control
13 HLT’s governance in all respects except fundraising; with respect to fundraising under
14 Alternative C, HLT’s Chair and Vice Chair would retain these powers indirectly, via their votes
15 as members of the board.

16 Nonetheless, because HLT, unlike the state party committee considered in Advisory
17 Opinion 2021-06 (Kelly), is a “hard money” committee that will neither raise nor spend non-
18 federal funds, the Commission concludes that the “vote dilution” considerations that were
19 disregarded in Advisory Opinion 2021-06 (Kelly) have greater force here.⁵² The Commission

⁵⁰ *Id.* at 7-8.

⁵¹ *Id.* at 9.

⁵² *See id.* at 7-8 and n.7 (emphasizing that Representative Kelly, as a federal officeholder, is prohibited from raising and spending non-federal funds and thus distinguishing the need, in the state party’s governance structure,

1 therefore concludes for the reasons discussed above that, absent a vote by the full, eight-member
2 board, that the Chair and Vice Chair would retain control of HLT. As discussed above, however,
3 the Commission concludes that if the Chair or Vice Chair’s exercising of their powers is
4 contingent on a vote of the full board, then Representatives Diaz-Balart and Gonzales do not
5 “control” HLT when their powers are so diluted.

6 * * *

7 Accordingly, the Commission concludes that, so long as HLT refunds the MARIO PAC
8 and the HCC PAC contributions, adopts Alternative C, and requires a board vote for those
9 powers requiring board “consultation” and “direction,” neither Representative Diaz-Balart nor
10 Representative Gonzales, directly or indirectly, establish, finance, maintain, or control HLT.
11 With those conditions, the Commission concludes that HLT is not a leadership PAC of either the
12 proposed Chair or proposed Vice Chair.

13 **B. Affiliation**

14 Political committees “established, financed, maintained or controlled” by the same
15 corporation, labor union, person, or group of persons are affiliated.⁵³ Affiliated committees that
16 make contributions to candidate committees share a limit for contributions they make and
17 receive.⁵⁴

for *no* control from the indirect control the Commission has concluded is permissible in some corporate affiliation analysis).

⁵³ 11 C.F.R. 100.5(g)(2); *see id.* §§ 100.5(g)(3)(v), 110.3(a)(1)(ii), (a)(2)(v); AO 2003-12 (Flake) at 8 (concluding, that state committee EFMC’d by candidate was “sufficiently similar to traditional leadership PACs” and, therefore, not affiliated with the sponsoring candidate’s campaign committee under then-pending Leadership PAC rules, now at 11 C.F.R. § 100.5(g)(5)).

⁵⁴ *See* 52 U.S.C. § 30116(a)(5); 11 C.F.R. § 110.3(a)(1); AO 2016-02 (Enable) at 5; AO 2004-12 (Democrats for the West) at 4.

1 The Commission has determined that, as a matter of law, a leadership PAC is not
2 affiliated with an authorized committee of the candidate sponsoring the leadership PAC,
3 notwithstanding that the candidate EFMC'd the leadership PAC.⁵⁵ Nonetheless, while
4 “leadership PACs are not exposed to the consequences of affiliation with authorized committees,
5 leadership PACs may still be deemed affiliated with other unauthorized committees.”⁵⁶

6 Commission regulations identify certain committees that are *per se* affiliated, such as
7 those established, financed, maintained, or controlled by a single corporation and its
8 subsidiaries.⁵⁷ HLT and the leadership PACs of HLT officers and directors – HCC PAC and
9 MARIO PAC – are not *per se* affiliated. In the absence of *per se* affiliation, the Commission
10 examines “the relationship between organizations that sponsor committees, between the
11 committees themselves, [and] between one sponsoring organization and a committee established
12 by another organization to determine whether committees are affiliated,” as discussed above.⁵⁸
13 In analyzing each of these factors that follow, the Commission treats Representatives Diaz-Balart
14 and Gonzales as having directly or indirectly EFMC'd their existing leadership PACs.⁵⁹ As with

⁵⁵ 11 C.F.R. § 100.5(e)(6), (g)(5); Leadership PACs, 68 Fed. Reg. at 67,016 (explaining that 11 C.F.R. § 100.5(g)(5) “clarifies the relationship between an authorized committee and a leadership PAC by removing the possibility that a candidate’s authorized committee can be affiliated with an entity that is not an authorized committee, even if the candidate established, financed, maintained, or controlled that entity”); *see also* 11 C.F.R. § 100.5(f)(2) (defining “unauthorized committee” as one that “has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate”).

⁵⁶ Leadership PACs, 68 Fed. Reg. at 67,016 (citing 11 C.F.R. § 100.5(g)(2), (3), and (4); AO 1990-16 (Thompson)).

⁵⁷ *See* 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i); AO 2016-02 (Enable) at 5.

⁵⁸ 11 C.F.R. §§ 100.5(g)(4), 110.3(a)(3); *see also supra*, Part A. To the extent that the factors address the “sponsor” or the “sponsored organization” only as a corporation (with or without stock or securities), labor organization, membership organization, cooperative, or trade association, those factors do not apply here and are not analyzed. *See, e.g.*, AO 2012-21 (Primerica, Inc.) at 8, 11. To the extent the language can be adapted to apply to committees sponsored by individuals, it is and is analyzed as such.

⁵⁹ *See* 52 U.S.C. § 30104(i)(8)(B); 11 C.F.R. § 100.5(e)(6).

1 the answers above, the Commission concludes that, in order to answer your questions concerning
2 HLT’s affiliation with existing leadership PACs, it must do so while considering these factors in
3 the context of the overall relationship between HLT and the Chair and Vice Chair’s leadership
4 PACs to determine whether the presence of any factor or factors is evidence that the committees
5 are affiliated.⁶⁰

6 *1. Governance*

7 This factor asks whether a sponsor “has the authority or ability to direct or participate in
8 the governance of” both committees “through provisions of constitutions, bylaws, contracts, or
9 other rules, or through formal or informal practices or procedures.”⁶¹

10 As described above, HLT’s proposed bylaws vest the powers and duties of HLT in the
11 board of directors as a governing body and afford the “Chair/President” the powers and
12 responsibilities to establish and maintain “an effective organization and structure” and
13 “establish[] and maintain[] a process for open and consistent communication.” AOR016.
14 Representative Gonzales, as the “Vice Chair/Vice President,” is vested with the power to assist
15 the Chair. *Id.* These are HLT’s only two officers though, as directors, the Chair’s and Vice
16 Chair’s votes are diluted, as discussed above, as two of eight board members.⁶²

17 In light of Representatives Diaz-Balart and Gonzales’s participation in the governance of
18 HLT through their positions as officers, diluted participation in HLT’s governance through their

⁶⁰ See 52 U.S.C. § 30108(a)(1); 11 C.F.R. § 112.1(b) (specifying that requests presenting hypothetical situations or regarding general questions of interpretation do not qualify as advisory opinion requests).

⁶¹ 11 C.F.R §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

⁶² See *supra*, notes 41 and 43.

1 positions on the board of directors, and EFMC of their respective leadership PACs, this factor
2 weighs slightly in favor of finding affiliation as to each representative's leadership PAC.

3 *2. Hiring Authority*

4 This factor considers whether a sponsor has the authority or ability to hire, appoint,
5 demote, or otherwise control the officers or other decision-making employees of both
6 committees.⁶³

7 As discussed above, HLT's proposed bylaws vest in the board the power to elect HLT's
8 officers, retain and terminate contractors in consultation with the Chair and Vice Chair, and, with
9 HLT officers, direct consultants' performance of HLT's day-to-day operations. AOR015-018.
10 Because the Chair and Vice Chair must consult with the eight-member board on hiring and
11 demoting decisions, their powers in this area are diluted by others, for the reasons discussed
12 above.⁶⁴ Thus, in light of Representatives Diaz-Balart and Gonzales's hiring authority of HLT
13 through their positions on the board of directors and as officers, and in light of their EFMC of
14 their respective leadership PACs, this factor weighs, on the HLT side of the equation, slightly in
15 favor of finding affiliation as to each representative. However, the Commission lacks
16 information about Representatives Diaz-Balart and Gonzales's leadership PAC organizational
17 structures and decision-making powers, apart from the presumed roles of the representatives
18 themselves as persons who EFMC'd those committees. Thus, because of lack of information,
19 this factor weighs neutrally and cannot be used to determine affiliation.

⁶³ 11 C.F.R §§ 100.5(g)(4)(ii)(C); 110.3(a)(3)(ii)(C).

⁶⁴ *See supra*, notes 41 and 43.

1 3. *Common Officers or Employees*

2 This factor concerns whether the committees have common or overlapping officers or
3 employees, indicating a formal or ongoing relationship between the committees.⁶⁵

4 Representatives Diaz-Balart and Gonzales each have leadership PACs, though the
5 Commission does not have information about the officers and employees of those leadership
6 PACs other the presumed roles of the representatives themselves as persons who EFMC'd those
7 committees. Representatives Diaz-Balart and Gonzales will be officers of HLT. AOR014.
8 Because Representatives Gonzales and Diaz-Balart each have officer roles in HLT, this factor
9 weighs in favor of finding affiliation as to each representative's leadership PAC although,
10 because of the lack of information concerning the leadership PACs, it weighs neutrally and
11 cannot be used to determine affiliation.

12 4. *Former Officers or Employees*

13 This factor examines whether either committee has any members, officers, or employees
14 who previously were members, officers, or employees of the representative's other committee,
15 indicating a formal or ongoing relationship or the creation of a successor entity.⁶⁶

16 With the information provided to us by the requestor, the Commission is unable to
17 determine if there will be former members, officers, or employees in common between HLT and
18 either leadership PAC. Accordingly, this factor weighs neutrally and cannot be used to
19 determine affiliation.

⁶⁵ 11 C.F.R §§ 100.5(g)(4)(ii)(E); 110.3(a)(3)(ii)(E).

⁶⁶ 11 C.F.R §§ 100.5(g)(4)(ii)(F); 110.3(a)(3)(ii)(F).

1 5. *Providing, or Arranging for the Provision of Funds or Goods*

2 These factors consider whether one committee provides, or arranges for the provision of,
3 funds or goods in a significant amount or on an ongoing basis to the other committee.⁶⁷ As
4 discussed above, Representatives Diaz-Balart and Gonzales, through their leadership PACs,
5 played a role in the financing of HLT by contributing \$5,000 each to HLT from MARIO PAC
6 and HCC PAC.⁶⁸ For the reasons discussed above regarding the financing of HLT within the
7 meaning of the “leadership PAC” definition, and the representatives’ EFMC of their respective
8 leadership PACs, this factor weighs in favor of finding affiliation as to each leadership PAC,
9 unless HLT refunds the contributions it received from MARIO PAC and HCC PAC and adopts
10 Alternative C. If HLT refunds the HCC PAC and MARIO PAC contributions, and adopts
11 Alternative C, this factor weighs against affiliation.

12 6. *Formation*

13 This factor considers whether a sponsoring committee or its agent had an active or
14 significant role in the formation of the other sponsoring committee.⁶⁹ As described above,
15 “formation of HLT was initiated and managed by Susan Lilly” who, though a consultant to HCC
16 PAC, among others, did not form HLT as an agent of HCC PAC. AOR Supp. at 3-4. Moreover,
17 HLT’s counsel, not MARIO PAC or HCC PAC, will be HLT’s incorporators and appoint HLT’s
18 initial board members. AOR Supp. at 2-3. This weighs against affiliation.

⁶⁷ 11 C.F.R. §§ 100.5(g)(4)(ii)(G)-(H), 110.3(a)(3)(ii)(G)-(H).

⁶⁸ *See supra*, notes 36 and 37, and related text; Part A.2.

⁶⁹ 11 C.F.R. §§ 100.5(g)(4)(ii)(I); 110.3(a)(3)(ii)(I).

1 Furthermore, for the reasons discussed above, MARIO PAC and HCC PAC’s \$5,000
2 contributions to HLT weigh slightly, but not independently, in favor of affiliation on this factor,
3 should HLT not refund these contributions.⁷⁰ For these reasons, as discussed above, this factor
4 weighs against finding affiliation as to each representative’s leadership PAC, though only if HLT
5 refunds the HCC PAC and MARIO PAC contributions.

6 7. *Contribution Similarities*

7 This factor concerns whether the committees have similar patterns of contributions or
8 contributors that indicate a formal or ongoing relationship between the committees.⁷¹

9 Analysis of this factor requires information about contributors to HLT and their
10 leadership PACs, in order to make a comparison between those two lists. But HLT, is a new
11 committee, with few reported receipts, two of which are from the Chair and Vice Chair’s
12 leadership PACs.⁷² Accordingly, the Commission is unable to weigh this factor appropriately.

13 8. *Context of the Overall Relationship Between the Committees*

14 In considering the foregoing circumstantial factors, the Commission examines the context
15 of the overall relationship between the committees to determine whether they are properly
16 considered affiliated.⁷³

17 For both the relationship between MARIO PAC and HLT and the relationship between
18 HCC PAC and HLT, the only factor that weighs in favor of affiliation is governance. There are

⁷⁰ See *supra*, notes 25 and 28, and related text; Part A.1.

⁷¹ 11 C.F.R. §§ 100.5(g)(4)(ii)(J); 110.3(a)(3)(ii)(J).

⁷² HLT’s only contributor other than MARIO PAC and HCC PAC is Point Action PAC, Inc, which has no reported contributions to MARIO PAC or HCC PAC. .

⁷³ See 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii).

1 four factors for which the Commission has insufficient information to make a determination:
2 hiring authority, common officers or employees, former officers or employees, and contribution
3 similarities. The other two factors (financing and formation) weigh against affiliation, so long as
4 HLT refunds HCC PAC and MARIO PAC's contributions. Thus, on balance, the affiliation
5 factors weigh against finding affiliation, but only if HLT refunds the contributions it received
6 from the proposed chair and vice chair's leadership PACs.

7 The Commission accordingly concludes that HLT would not be affiliated with either
8 MARIO PAC or HCC PAC, so long as it refunds the contributions from those committees and
9 adopts Alternative C.

1 This response constitutes an advisory opinion concerning the application of the Act and
2 Commission regulations to the specific transaction or activity set forth in your request. *See* 52
3 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
4 assumptions presented, and such facts or assumptions are material to a conclusion presented in
5 this advisory opinion, then the requestor may not rely on that conclusion as support for its
6 proposed activity. Any person involved in any specific transaction or activity which is
7 indistinguishable in all its material aspects from the transaction or activity with respect to which
8 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
9 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
10 affected by subsequent developments in the law including, but not limited to, statutes,
11 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
12 on the Commission’s website.

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On behalf of the Commission,

Allen Dickerson
Chairman