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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 17-22-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 2017-01 (American Urological Association) 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 2017-01

2

3 Kate A. Belinski, Esq.
4 Nossaman LLP
5 1666 K Street, NW
6 Suite 500
7 Washington, DC 20006

DRAFT

8

9 Dear Ms. Belinski:

10 We are responding to your advisory opinion request on behalf of the American
11 Urological Association, Inc. (“AUA”), concerning the application of the Federal Election
12 Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the possible
13 disaffiliation of the AUA from the American Association of Clinical Urologists, Inc.

14 The Commission concludes that the AUA remains affiliated with the American
15 Association of Clinical Urologists, Inc. (“AACU”).

16 ***Background***

17 The facts presented in this advisory opinion are based on your letters received on January
18 25 and April 17, 2017, your emails received on February 6, 23, and March 21, 2017, and
19 publicly available information.¹

20 The AUA is an incorporated non-stock membership organization registered under section
21 501(c)(6) of the Internal Revenue Code. Advisory Opinion Request at AOR002, AOR006-023.²

22 Formed in 1902, the AUA’s mission is “to promote the highest standards of urological clinical

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

² See also American Urological Association, AUA Governance, <https://www.auanet.org/about/aua-governance.cfm> (last visited May 22, 2017).

1 care through education, research and the formulation of health care policy.” AOR001.³ The
2 AUA has more than 22,000 members, including “practicing urologists, research scientists,
3 urologists in training, and advanced practice providers.” *Id.*

4 The AUA’s board of directors has 15 members, of whom seven are also the AUA’s
5 officers. AOR011, AOR013. The other eight board members are representatives of the AUA’s
6 regional “Sections,” which are separately incorporated non-profit entities that provide services to
7 AUA members across North and Central America. AOR006, AOR013; Advisory Opinion
8 Request Supplement at 1. The AUA has eight standing committees, which report to the board.
9 AOR015.

10 The American Association of Clinical Urologists, Inc., a section 501(c)(6) organization
11 founded in 1969, is “dedicated to developing and advancing health policy as it affects urologic
12 practice and training.” AOR002. The “AUA as an organization did not have any role in
13 founding” the AACU, AOR Supp. at 1; however, “several individuals who held leadership
14 positions in the AUA or its Sections were involved in the formation of AACU,” AOR029; *see*
15 *also* AOR Supp. at 1 (“Several AUA officers and members in their individual capacities may
16 have been involved in the formation of AACU.”). The AUA itself did not “take a vote to
17 establish AACU or in any other way assist with its formation.” AOR Supp. at 1. The AACU is
18 a distinct legal entity from the AUA — it has its own separate bylaws, board of directors,
19 mission, headquarters, and operational activities. AOR001, AOR003. The AUA states that it
20 “has no authority to control” the AACU’s “board[, officers, employees, or operations.”
21 AOR004 n.1; *see also* AOR006-022.

³ *See also* American Urological Association, History of the AUA, <https://www.auanet.org/about/history-of-the-aa-a.cfm> (last visited May 22, 2017).

1 In 1992, the AACU created a separate segregated fund (“SSF”) called the American
2 Association of Clinical Urologists PAC (“URO PAC”). AOR001-002. The AUA played no role
3 in creating URO PAC. AOR028. In 2003, URO PAC received an advisory opinion from the
4 Commission deeming the AUA and the AACU affiliated organizations and, as a result, both able
5 to serve as URO PAC’s connected organizations. *See* Advisory Opinion 2002-15 (American
6 Association of Clinical Urologists PAC) (“URO PAC”). In making its determination, the
7 Commission considered “factors such as overlapping membership, governance structures, and
8 Board membership between the two entities.” *See id.* at 6-7.

9 After the Commission confirmed their affiliation in 2003, the AUA and the AACU
10 shared the administrative expenses for URO PAC, AOR002, though each entity was primarily
11 responsible for soliciting contributions to URO PAC from its own members, AOR028. The AUA
12 and the AACU also entered into to a series of affiliation agreements in which they agreed to
13 conduct various joint activities. AOR002. For example, in an affiliation agreement executed in
14 August 2015, the AUA and the AACU agreed to:

- 15 • plan, promote, host, and pay for an annual “Urology Joint Advocacy Conference,” the
16 purpose of which was to develop an “advocacy strategy” regarding urology issues, to
17 educate urologists on that agenda, and to “actively lobby our Federal Legislators,”
18 AOR023;
- 19 • work together at the AUA annual meeting to promote health policy issues to urologists,
20 including during a “Urology Health Policy Forum” featuring speakers from both groups,
21 AOR025;
- 22 • encourage their delegates to the American Medical Association (“AMA”) to participate
23 in the AMA’s “Urology Caucus,” AOR026;

- 1 • reserve seats on each entity’s health policy council or similar committee for the other
2 entity, *id.*;
- 3 • “speak in a single unified voice” on “urologic causes,” including by “coordinating
4 communications with legislators and regulatory agencies,” *id.*; and
- 5 • require the AACU to have a booth, and allow UROPAC to have an exhibit, at the AUA’s
6 annual meeting, *id.*

7 The AUA states that over time, however, the AUA’s and AACU’s “organizational and
8 operational agendas and priorities began to diverge and the two organizations undertook the
9 process of unwinding many of their close connections.” AOR002. In December 2015, the AUA
10 and the AACU “agreed that AUA would no longer provide any financial support to UROPAC.”
11 AOR002, AOR004. The next month, UROPAC filed an amended Statement of Organization to
12 remove the AUA as a listed connected organization. AOR002.⁴

13 The AUA has no plans to renew its most recent affiliation agreement with the AACU,
14 which expired on March 17, 2017. AOR002, AOR004. The AUA states that, as a result, “the
15 organizations will no longer provide — or cause or arrange for — significant funds or in-kind
16 support to each other on a regular basis.” AOR004. The entities will no longer cosponsor the
17 Urology Joint Advocacy Conference, they will keep their own separate “grassroots contact
18 list[s],” and they will “no longer maintain a process to develop a mutual legislative agenda.”
19 AOR004, AOR028.

⁴ See UROPAC, Statement of Organization, Form 1 at 5 (Jan. 14, 2016), <http://docquery.fec.gov/pdf/852/201601149004501852/201601149004501852.pdf>.

1 The groups will, however, continue to work together in a number of ways. The AUA and
2 the AACU will jointly sponsor the Health Policy Forum at the AUA's annual meeting in May
3 2017. AOR028. The AUA will also continue to work with the AACU and other organizations
4 "with respect to AMA House of Delegates issues affecting urology." *Id.* Moreover, the AUA
5 has started to plan its "2018 Urology Advocacy Summit." AOR Supp. At 2. The AUA is the
6 sole sponsor of the summit, which has a planning committee comprised only of AUA leadership.
7 *Id.* The AUA has invited 15 urology societies, including the AACU, to "be involved in some
8 aspects of planning the Summit's educational program," however, the AACU has not yet agreed
9 to participate. *Id.*

10 Though presently there is overlap between the two organizations' board members, this
11 overlap will end in May 2017, at which time no AUA board member will also be a current (or
12 former) board member of the AACU. AOR003. There is no seat on the AUA's board that is
13 reserved for a member of the AACU. AOR Supp. at 1. The AUA states that it was not
14 reasonably able to obtain a copy of the AACU's current bylaws, AOR028, but "to AUA's
15 knowledge, AACU does not designate any of its board seats for an AUA representative," AOR
16 Supp. at 2. The AUA also states that the "the majority of AUA's officers over the past ten years
17 have never served on AACU's board." *Id.* at 2. Any overlapping board membership between
18 the AUA and the AACU "is entirely coincidental and a function of the individuals' personal
19 interests in serving both organizations." *Id.* at 1.

20 There is some overlap between the entities' committee memberships. The AUA was
21 historically entitled to one seat on the AACU's Health Policy Council, State Society Committee,
22 or "a committee of similar importance," but that entitlement expired in March 2017. AOR026.
23 Under the AUA's bylaws, the AACU will continue to hold three of approximately 16 seats on

1 the AUA's standing committee called the "Public Policy Council." AOR017. Beyond these
2 three seats, any further overlap between the two entities' committee memberships is "not based
3 on any effort by either organization to populate each other's committees." AOR Supp. at 2.

4 There is also overlap between the AUA's members and the AACU's members. AOR003,
5 AOR023, AOR028. The AUA does not track whether its members affiliate with other
6 organizations but acknowledges that the AUA and the AACU "share a fair number of common
7 members." AOR003, AOR029; *see also* AOR028 (noting the "overlapping membership of the
8 organizations"). In their most recent affiliation agreement, the entities described themselves as
9 "independent membership organizations that share a common membership." AOR023.⁵ The
10 AUA does not require its members to become members of the AACU. AOR003. The AUA
11 states that it believes that the AACU requires certain categories of its members to be AUA
12 members, but that the AACU can waive that requirement. AOR003, AOR028.

13 The AUA stated in its request that it had notified the AACU of its advisory opinion
14 request, and that the AUA did not know whether the AACU had any position on the AUA's
15 request. AOR027-028. The AACU subsequently submitted to the Commission a comment
16 stating that the AACU opposes the AUA's request. *See* American Association of Clinical
17 Urologists, Comment at 1.

18 ***Question Presented***

19 *Are the AUA and the AACU disaffiliated?*

⁵ The AUA notes that overlapping membership among urology-based organizations is inevitable since there are at least 11 different such organizations in the United States, and 80 percent of the country's practicing urologists are members of the AUA. AOR003-004.

1 ***Legal Analysis and Conclusion***

2 No, the AUA and the AACU remain affiliated.

3 Political committees, including separate segregated funds, are “affiliated” if they are
4 established, financed, maintained, or controlled by the same corporation, labor organization,
5 person, or group of persons, including any parent, subsidiary, branch, division, department, or
6 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
7 purposes of the Act’s contribution limits, contributions made to or by affiliated political
8 committees are considered to have been made to or by a single political committee. *See* 52
9 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

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

13 In the absence of *per se* affiliation, the Commission examines “the relationship between
14 organizations that sponsor committees, between the committees themselves, [and] between one
15 sponsoring organization and a committee established by another organization to determine
16 whether committees are affiliated.” *See* 11 C.F.R. § 100.5(g)(4)(i). Commission regulations
17 provide a non-exhaustive list of ten “circumstantial factors” to be considered “in the context of
18 the overall relationship” in order to determine whether the respective entities are appropriately
19 considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(ii), 110.3(a)(3)(ii); *see, e.g.*, Advisory
20 Opinion 2016-02 (Enable Midstream Services) (“Enable”); Advisory Opinion 2014-21 (Cambia
21 Health Solutions) (“Cambia”); Advisory Opinion 2014-11 (Health Care Service Corporation
22 Employees’ PAC) (“HCSC”); Advisory Opinion 2002-15 (UROPAC).

1 In Advisory Opinion 2002-15 (URO PAC), the Commission concluded that the AUA was
2 affiliated with the AACU and that both entities could therefore serve as connected organizations
3 for URO PAC. The AUA states that the Commission should no longer consider the entities
4 affiliated due to intervening “changes in the[ir] relationship.” AOR001; *cf.*, *e.g.*, Advisory
5 Opinion 2014-21 (Cambia) at 4 (concluding that two entities were disaffiliated due to “changed
6 circumstances”).

7 The Commission considers the ten circumstantial factors in turn.

8 (A) *Controlling Interest*

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

11 This factor asks whether a sponsoring organization owns a controlling interest in the
12 voting stock or securities of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(A),
13 110.3(a)(3)(ii)(A). As was the case in Advisory Opinion 2002-15 (URO PAC), where the
14 Commission concluded that the AUA and the AACU were affiliated, both entities are 501(c)(6)
15 membership organizations and neither entity has issued any shares of stock or hold any stock or
16 other ownership interest in the other.⁶ AOR002, AOR006-023; *see* Advisory Opinion 2002-15
17 (URO PAC) at 6.⁷ While this aspect of the parties’ relationship has not changed, the absence of
18 such ownership weighs against the AUA and AACU’s affiliation. *See* Advisory Opinion 2014-
19 21 (Cambia) at 4.

⁶ In Advisory Opinion 2002-15 (URO PAC), the Commission did not consider the “controlling 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.

⁷ *See also* American Urological Association, AUA Governance, <https://www.auanet.org/about/aua-governance.cfm> (last visited May 22, 2017).

1 (B) *Governance*

2 The governance factor does not weigh either for or against the AUA and the AACU's
3 potential disaffiliation.

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

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

15 Here, the AUA has not demonstrated that these facts, upon which the Commission relied
16 in Advisory Opinion 2002-15 (UROPAC), have changed such that this factor now weighs in
17 favor of disaffiliation. The AUA's bylaws indicate that the AACU continues to hold three seats
18 on an AUA standing committee. AOR015; *see also* AOR017 (stating that three AACU members
19 must be members of the AUA's Public Policy Council). Regarding the second two facts on
20 which the Commission relied in the prior advisory opinion, the AUA states that it was not
21 reasonably able to obtain a copy of the AACU's current bylaws. AOR028. Therefore, the
22 AUA's request does not disclose whether the AACU continues to require its elected officials to

1 be AUA members. For the same reason, the AUA's request does not indicate whether the
2 AACU's bylaws still mandate an AUA presence on an AACU committee.

3 The AUA has presented additional facts indicating that it and the AACU lack some
4 authority or ability to direct or participate in the governance of the other. The AUA states that
5 the AACU has no authority to appoint any of the AUA's 15 directors. AOR013; AOR Supp. at
6 1. But this was also true in 2002; at that time, the AUA's bylaws did not entitle the AACU to
7 appoint the AUA's directors. Advisory Opinion Request at 18, 23, Advisory Opinion 2002-15
8 (URO PAC) (Dec. 9, 2002). The AUA further states that "it has no authority to control" the
9 AACU's "board[], officers, employees, or operations." AOR004. Although the Commission in
10 Advisory Opinion 2002-15 (URO PAC) identified certain structural requirements that gave each
11 organization the ability to participate in the governance of the other, *see* Advisory Opinion 2002-
12 15 (URO PAC) at 6, neither the advisory opinion nor the advisory opinion request indicate that
13 either organization had authority to control the other, *see* Advisory Opinion Request, Advisory
14 Opinion 2002-15 (URO PAC). As a result, these additional facts do not indicate changes in the
15 associations' relationship that would suggest that they are disaffiliated.

16 Two of the AUA's additional facts demonstrate potential changes in the associations'
17 relationship since 2002. First, the AUA points out that the entities' most recent affiliation
18 agreement had entitled the AUA to one seat on the AACU's Health Policy Council, State Society
19 Committee, or "a committee of similar importance," AOR026, but that agreement expired in
20 March 2017, and the AUA states that there is no plan to renew that agreement, AOR002,
21 AOR026, AOR028. However, as stated above, in 2002, the AACU's bylaws entitled the AUA to
22 representation on the AACU's Government Relations Committee. Advisory Opinion 2002-15
23 (URO PAC) at 2. The AUA's request does not indicate if the AACU's current bylaws continue

1 to separately grant the AUA to representation on an important AACU standing committee, as
2 those bylaws did in 2002.

3 Second, in 2002, the AACU's bylaws reserved a majority of the voting seats on the
4 AACU board for "AACU member[s] from each geographical section such as established by the
5 American Urological Association." Advisory Opinion Request at 32, Advisory Opinion 2002-15
6 (UROPAC). Although the request does not include the AACU's bylaws, the AUA states that "to
7 AUA's knowledge, AACU does not designate any of its board seats for an AUA representative."
8 AOR Supp. at 1-2. Based on the AUA's representations, these additional facts indicate that the
9 AUA today has lesser authority to direct or participate in the governance of the AACU than it
10 did in 2002.

11 On balance, the Commission therefore concludes that the governance factor is neutral.
12 The AUA's request does not show that the facts upon which the Commission relied in Advisory
13 Opinion 2002-15 (UROPAC) have significantly changed. Although the AUA's request does
14 suggest that there have been some other apparent changes in the AUA and the AACU's
15 governance relationship, those apparent changes are counterbalanced by the AACU's continuing
16 authority to hold three seats on the AUA's Public Policy Committee.

17 (C) *Hiring Authority*

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

19 This factor concerns whether a sponsoring organization has the authority or ability to
20 hire, appoint, demote, or otherwise control the officers or other decision-making employees of
21 the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C). A lack of
22 such authority suggests that the two entities are not affiliated. *See* Advisory Opinion 2016-02
23 (Enable) at 7; Advisory Opinion 2014-11 (HCSC) at 5.

1 In Advisory Opinion 2002-15 (URO PAC) at 6-8, the Commission did not include the
2 hiring authority factor among those weighing in favor of the AUA and AACU's affiliation. The
3 record from that advisory opinion indicates that in 2002, neither the AUA nor the AACU had the
4 authority or ability to hire, appoint, or demote the other's officers or employees. *See* Advisory
5 Opinion Request at 12-51, Advisory Opinion 2002-15 (URO PAC). Here, the AUA's request
6 indicates that the entities still lack hiring authority over each other. The AUA states that it is a
7 separate legal entity from the AACU and has "no authority to control" the AACU's "board[],
8 officers" or "employees." AOR001, AOR004. Also, the AUA's current bylaws do not grant the
9 AACU the authority to hire, appoint, demote, or otherwise control the AUA's officers or other
10 decision-makers. *See* AOR006-022. This factor therefore weighs in favor of disaffiliation. *See*,
11 *e.g.*, Advisory Opinion 2016-02 (Enable) at 7.

12 *(D) Common Membership*

13 The common membership between the AUA and the AACU 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, approximately 71 percent of the AACU's members were also members of the AUA.

1 *Id.* All of the AACU's members that were eligible to hold office were AUA members. *Id.* And
2 the AACU's bylaws encouraged its members to join the AUA. *Id.*

3 Here, the AUA acknowledges that, "[a]s was the case in 2003, the AUA and AACU
4 continue to share a fair number of common members." AOR003; *see also* AOR026 (describing
5 the membership of the organizations as "overlapping"). The AUA has not stated what
6 percentage of its members overlap with the AACU since the AUA does not track whether its
7 members affiliate with other organizations. *See* AOR029. But the entities' August 2015
8 affiliation agreement independently suggests that the overlap is significant, as it categorically
9 states that the groups "share a common membership." AOR023. Although the AUA does not
10 require its members to be AACU members, AOR003, AOR008-011, the AUA believes that the
11 AACU does require certain categories of its members to be AUA members, unless that
12 requirement is waived, AOR003, AOR028.

13 Whether the entities' overlapping membership is "entirely coincidental" and a "function
14 of the individuals' personal interests in serving in both organizations," AOR Supp. at 1, does not
15 change the fact that such overlapping membership exists. The Commission's regulations state
16 that for overlapping membership to indicate affiliation, the overlap need only indicate an
17 "ongoing relationship" between the entities. 11 C.F.R. §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D).
18 In its 2002 advisory opinion request, UROPAC presented facts indicating that then, as now, the
19 AUA did not require its members to be members of the AACU, and the AACU required only
20 some of its members to be members of the AUA. Advisory Opinion 2002-15 (UROPAC) at 1-2.

1 Nonetheless, the Commission concluded that the AUA and the AACU’s then-overlapping
2 membership significantly weighed in favor of affiliation. *Id.* at 6.⁸

3 Due to their substantial mutual overlapping memberships, this factor continues to weigh
4 significantly in favor of finding the AUA and the AACU affiliated.

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

6 Based on the AUA’s request and supplement, these two factors do not weigh either for or
7 against the AUA and the AACU’s potential disaffiliation.

8 Factor (E) asks whether sponsoring organizations have common or overlapping officers
9 or employees, indicating a formal or ongoing relationship between the organizations. 11 C.F.R.
10 §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E). Factor (F) concerns whether a sponsoring organization
11 has any members, officers, or employees who previously were members, officers, or employees
12 of the other sponsoring organization, indicating a formal or ongoing relationship or the creation
13 of a successor entity. 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

14 In Advisory Opinion 2002-15 (URO PAC), the Commission found that these factors
15 pointed towards affiliation between the AUA and the AACU. *Id.* at 7. That finding was based
16 on several features of the AUA and the AACU’s relationship. *Id.* First, one person was then a
17 member of both the AUA’s and the AACU’s boards of directors. *Id.* Second, eight AACU
18 officers and past or future board members were then serving on the AUA’s 14-member Health
19 Policy Council. *Id.* Third, the entire AACU board was composed of AUA members, as required

⁸ The AUA states that urology is a “relatively small, but well-organized medical specialty” and membership overlap is inevitable, given that 80 percent of all American urologists are AUA members. AOR003-004. But nothing in the request indicates that this has changed since the Commission found that overlapping membership was a particularly significant factor weighing in favor of the AUA and the AACU’s affiliation. Advisory Opinion 2002-15 (URO PAC) at 6.

1 by AACU bylaws. *Id.* Fourth, the entire AUA board was composed of AACU members. Fifth,
2 it was “typical” for each entity’s officers to later serve as an officer for the other. *Id.* Finally, the
3 AUA and the AACU coordinated their national lobbying efforts by employing one lobbyist to
4 represent both groups. *Id.*⁹

5 Here, the AUA request shows that two of these features of its relationship with the
6 AACU have since changed since Advisory Opinion 2002-15 (URO PAC). First, “as of May
7 2017, no AUA board member will also be a current (or former) board member of the AACU.”
8 AOR003. Second, the AUA and the AACU no longer “employ a contract lobbyist to provide
9 joint representation,” and in general, the entities “do not employ any common staff members.”
10 AOR004.¹⁰

11 Beyond these two changes, however, the AUA makes no representations about whether
12 the other three facts on which the Commission made its determination in Advisory Opinion
13 2002-15 (URO PAC) have changed. *See* Advisory Opinion 2002-15 (URO PAC) at 7. First, the
14 AUA does not state whether any members of the AUA’s standing committees are also AACU
15 officers, former officers, or past or future board members. Second, the AUA does not state
16 whether the AACU’s board is composed of AUA members to any extent, as it was when the
17 Commission considered the prior advisory opinion. *See id.* Also, since the AUA is not

⁹ In Advisory Opinion 2002-15 (URO PAC), the Commission considered the significance of the associations’ employment of one lobbyist under a catch-all section of “Additional Indicators of the Relationship Between AACU and AUA.” *Id.* at 7. Here, the Commission considers this fact under factor (E), since it is relevant to whether the AUA and the AACU have “common or overlapping officers or *employees*.” *See* 11 C.F.R. §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E) (emphasis added).

¹⁰ The AUA adds that “the majority of AUA’s officers over the past ten years have never served on AACU’s board.” AOR Supp. at 2. But the AUA does not indicate how many of the AUA’s officers from the last decade *have* served on the AACU’s board. Nor does the AUA state whether this fact represents a change in the relationship between the AUA and the AACU that would indicate that they are moving away from their affiliation.

1 reasonably able to obtain a copy of the AACU's bylaws, AOR028, the Commission cannot
2 determine from the AUA's request and supplement whether the AACU currently requires its
3 board to be composed of AUA members, as it did in the prior advisory opinion, *see* Advisory
4 Opinion 2002-15 (URO PAC) at 7. Third, the AUA also makes no representation as to whether
5 any AUA board members are also AACU members, another fact upon which the Commission
6 relied in making its determination in Advisory Opinion 2002-15 (URO PAC). *See id.*

7 Given that the entities today continue to "share a common membership," AOR023, there
8 would appear to be some likelihood that each group's members continue to serve as board
9 members, officers, and committee members of the other group. But the record is unclear since
10 the AUA states that it "does not track whether its members are also members of other
11 organizations," and thus it "cannot reasonably determine how many of its members are also
12 members of the AACU." AOR026-027. The Commission is therefore unable to determine
13 whether, on balance, (E) and (F) suggest that the AUA and the AACU are disaffiliated.

14 *(G - H) Providing Funds or Goods or Arranging for Provision of Funds or Goods*

15 These factors weigh in favor of finding that the AUA and the AACU are disaffiliated.

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

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 shortly before the Commission considered Advisory Opinion 2002-15
4 (URO PAC) and until 2016, the AUA and the AACU executed a series of additional affiliation
5 agreements, which primarily governed their co-sponsorship and sharing of the administrative
6 expenses for URO PAC and sponsoring of “various advocacy conferences in Washington, D.C.”
7 AOR002. The Commission noted the affiliation agreement in determining that the entities were
8 affiliated.¹¹

9 Since the start of 2016, the amount of funds exchanged between the AUA and the AACU
10 has decreased in some important ways, suggesting that the groups have moved toward
11 disaffiliation. First, the AUA no longer helps pay for URO PAC’s administrative expenses.
12 AOR002, AOR004. Second, after 14 years of entering into a series of affiliation agreements, the
13 AUA has “no plans” to agree to a new one after the latest agreement lapsed in March 2017.
14 AOR002, AOR004. Third, the AUA will no longer co-sponsor the annual Urology Joint
15 Advocacy Conference with the AACU. AOR004, AOR023, AOR028. Because of these
16 changes, factors (G) and (H) weigh in favor of the two entities being disaffiliated.

17 *(I) Formation*

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

20 This factor involves whether a sponsoring organization or committee or its agent had an
21 active or significant role in the formation of the other sponsoring organization. 11 C.F.R.

¹¹ 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 §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I); *see, e.g.*, Advisory Opinion 2012-23 (Snake River Sugar
2 Company) at 5 (concluding that two entities were affiliated in part because one entity
3 “participated in the formation of” the other).

4 The AUA was founded in 1902.¹² Decades later, in 1969, “[s]everal individuals who
5 held leadership positions in the AUA or its Sections were involved in the formation of the
6 AACU.” AOR029; *see also* AOR Supp. at 1 (“Several AUA officers and members in their
7 individual capacities may have been involved in the formation of AACU.”); AACU, AACU
8 History, <http://www.aacuweb.org/about/history> (last visited May 23, 2017) (describing how
9 members of AUA “explore[d] the founding” of AACU during AUA meeting in 1968).

10 The involvement of AUA officers in the AACU’s founding suggests that the two groups
11 are affiliated under factor (I) even though the AUA “as an organization” did not “take a vote to
12 establish AACU.” AOR Supp. at 1. To be sure, affiliation is indicated under factor (I) where
13 one entity creates the other using a formal process. *See, e.g.*, Advisory Opinion 2006-12
14 (International Association of Machinists and Aerospace Workers, *et al.*) at 2-4 (concluding that
15 factor (I) indicated affiliation where one entity chartered other and “effectively fold[ed] the
16 [entity] into its hierarchical structure”). But the language of factor (I) asks whether an
17 organization “or its agent” had a role in forming another group. 11 C.F.R. §§ 100.5(g)(4)(ii)(I),
18 110.3(a)(3)(ii)(I). The Commission included the term “agent” in factor (I) specifically so that the
19 rule would “also focus on the role played by the personnel of an organization or committee” in
20 forming another entity. Affiliated Committees, Transfers, Prohibited Contributions, Annual

¹² *See* American Urological Association, AUA History, <https://www.auanet.org/about/history-of-the-uaa.cfm> (last visited May 22, 2017). Since the AUA was formed first, the AACU could not have had a role in the AUA’s founding. *See* AOR029.

1 Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,100 (Aug. 17,
2 1989).

3 Consistent with that language, the Commission has previously concluded that factor (I)
4 reaches situations where one group's members played a part in creating another entity. *See*
5 Advisory Opinion 2012-23 (Snake River Sugar Company) at 5 (finding that formation factor
6 suggested affiliation where members of several of trade associations established agricultural
7 cooperative, and served as first directors of the cooperative); Advisory Opinion 2005-17
8 (American Crystal Sugar Company) at 2, 4 (concluding that trade association played active or
9 significant role in formation of cooperative because "members of the Association founded [the]
10 cooperative"); Advisory Opinion 1996-26 (FTD Association) at 2, 4 (finding that corporation
11 played role in association's formation of SSF because corporation's members constituted 20
12 percent of association's board, which voted to establish SSF).

13 The AUA's officers' involvement in the AACU's formation weighs in favor of affiliation
14 under factor (I), even though some commonalities between the AUA and the AACU have
15 diminished over time. *See* AOR003. In some instances, the Commission has given lesser weight
16 to factor (I) when, in the years since formation, the entities have taken steps to sever their ties.¹³
17 For example, in Advisory Opinion 2004-41 (CUNA Mutual Insurance Society), the Commission
18 found that even though a trade association's "officers and directors were directly involved in the
19 formation" of an insurance company in 1935, that involvement did not indicate affiliation in
20 2004 due to the "significant 'period of estrangement'" that had occurred between the two entities

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 since formation. *Id.* at 8. Specifically, in 1956, the entities “entered into a period of mutual
2 acrimony” that lasted “until the late 1960s” and resulted in their forming separate governing
3 boards. *Id.* at 1-2. As a result of that estrangement, the two groups, at the time of their request,
4 “lack[ed] . . . overlap in officers or employees” and had a “number of formal contracts and
5 agreements that now govern[ed] the interactions between the two organizations.” *Id.* at 8. In
6 contrast here, while there have been some changes in the relationship between the AUA and the
7 AACU, as described above, the AUA and the AACU have not endured a similarly long period of
8 estrangement, and there is no indication that their interactions are governed by formal contracts
9 and agreements. Moreover, the request indicates that the organizations continue to share
10 substantially overlapping memberships, and participate to a degree in each other’s governance,
11 as described above.

12 (J) *Contribution Patterns*

13 The contribution patterns factor is neutral here. This factor pertains to whether the
14 sponsoring organizations’ SSFs have similar patterns of contributions or contributors that would
15 indicate a formal or ongoing relationship between the sponsoring organizations or committees.
16 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J).

17 Prior to December 2015, the AUA and the AACU both acted as connected organizations
18 for UROPAC, and so, for 13 years, had similar patterns of contributors and identical patterns of
19 contributions. *See* AOR004. In December 2015, however, the AUA ceased being UROPAC’s
20 connected organization, *id.*, and has not since established its own SSF, *see* AOR028. Therefore,
21 because the AUA has not had its own SSF with which to compare UROPAC’s contribution
22 patterns, the Commission cannot consider whether patterns of contributions and contributors
23 indicate a relationship that is currently “formal or ongoing.” *Cf.* Advisory Opinion 2016-02

1 (Enable) at 9 (finding that factor did not apply where entity had not yet established SSF). Thus,
2 this factor is neutral as to whether the AUA and the AACU remain affiliated.

3 *Context of the Overall Relationship Between the Entities*

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

7 Based on the information presented in the AUA’s request and supplement, the
8 Commission concludes that, on balance, the AUA and the AACU remain affiliated. Of the six
9 factors that the Commission found to weigh in favor of affiliation in Advisory Opinion 2002-15
10 (UROPAC), only two, the “provision of funds or goods” and the “arranging for provision of
11 funds or goods,” now suggest disaffiliation. With respect to three of the remaining four factors
12 that supported affiliation in Advisory Opinion 2002-15 (UROPAC), “governance,” “common
13 officers or employees,” and “former officers or employees,” the AUA here has provided some
14 evidence of a changed relationship with the AACU, but did not provide information
15 demonstrating that the circumstances have changed to the extent that these factors now weigh in
16 favor of disaffiliation. And the fourth factor that supported affiliation in Advisory Opinion
17 2002-15 (UROPAC), “common membership,” still indicates affiliation, as explained above.

18 The other two factors that weigh in favor of disaffiliation here are based on circumstances
19 that were present when the Commission initially determined that the organizations were
20 affiliated. As in Advisory Opinion 2002-15 (UROPAC), neither entity has a controlling interest
21 in the other. AOR002, AOR006-023; *see* Advisory Opinion 2002-15 (UROPAC) at 6. The
22 AUA’s request indicates that the AUA does not have hiring authority over the AACU, AOR001,
23 AOR004; the Commission did not include hiring authority among the factors weighing in favor

1 of affiliation in the prior advisory opinion, *see* Advisory Opinion 2002-15 (URO PAC) at 6-8, nor
2 did the 2002 advisory opinion request indicate that either entity had such hiring authority over
3 the other, *see* Advisory Opinion Request, Advisory Opinion 2002-15 (URO PAC).

4 As in Advisory Opinion 2002-15 (URO PAC), the overwhelming common membership
5 between the organizations indicates affiliation. An additional factor that was not considered in
6 the prior advisory opinion, the role that members of the AUA had in the formation of the AACU,
7 also weighs in favor of affiliation. The remaining factor, patterns in contributions, was not
8 considered in Advisory Opinion 2002-15 (URO PAC) and is neutral here.

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

18 The request states that the AUA and the AACU “no longer maintain a process” to
19 develop a mutual legislative agenda and lobbying strategy. AOR004. Nevertheless, the two
20 associations do still plan to continue other joint endeavors and activities. The AUA and the
21 AACU will jointly sponsor the Urology Health Policy Forum during the AUA’s annual meeting
22 in May 2017. AOR028. Also, the AUA will continue to work with the AACU on “AMA House

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Steven T. Walther,
Chairman.