



June 21, 2022

Attn: Jennifer Waldman  
Federal Election Commission  
1050 First Street, NE  
Washington, DC 20463

**Re: Second Supplement to Hispanic Leadership Trust Advisory Opinion Request**

Dear Ms. Waldman:

This letter responds to your June 14, 2022 e-mail requesting additional information from the Commissioners about our advisory opinion request on behalf of the Hispanic Leadership Trust (“HLT”):

**1. Structure, Size, and Selection of HLT’s Board of Directors**

- a. What will be the size and makeup of the Board of Directors under the bylaws? Will there be any requirements for a minimum number of directors?**
- b. How will initial members of the Board of Directors be selected?**

We address these questions together because they are closely related.

Per our first supplement,<sup>1</sup> HLT proposes draft bylaws that provide for a Board of Directors consisting of incumbent members of the Congressional Hispanic Conference who: (i) consent to serve as a Director; and (ii) are elected by the existing Directors.

Also per our first supplement,<sup>2</sup> HLT expects the initial HLT Board of Directors to consist of the current members of the Congressional Hispanic Conference,<sup>3</sup> with the exception of Rep. Anthony Gonzalez, who is retiring at the end of his current term.

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<sup>1</sup> AOR016.

<sup>2</sup> *Id.* n.5.

<sup>3</sup> Organizations typically do not name their initial board members in the bylaws, nor do most states require this information in the articles of incorporation. Rather, an organization’s incorporators typically appoint the initial board members. Therefore, we did not address this issue in the draft

Therefore, there should be approximately eight initial HLT Board members.

It is highly unlikely that the number of eligible HLT Board members will ever fall below two or three by virtue of the proposed draft bylaw qualifications. However, if this affects the Commissioners' analysis of the "affiliation" question presented, HLT also could adopt an additional provision in the bylaws to the following effect (as shown by the underlined text):

***Qualifications.** Incumbent members of the Congressional Hispanic Conference shall be eligible to serve on the Committee's Board of Directors, provided however, that: (i) any Conference members must consent to serve as a Committee Director; and (ii) the Committee's existing eligible Directors must elect any new Directors. In the event that the number of eligible Directors is to fall below two [or, alternatively: three], the incumbent Directors may elect additional Directors who will not be Congressional Hispanic Conference members.<sup>4</sup>*

For the reasons discussed in our initial request,<sup>5</sup> HLT should not be "affiliated" with the leadership PACs of Members of Congress by virtue of Members serving as HLT Board members or officers, assuming HLT has more than one Board member and more than one officer.

Lastly, although not discussed in our initial request, we note here that the website of the CHC Bold PAC<sup>6</sup> referenced in our request<sup>7</sup> identifies several Members of Congress as being "Board Member[s]" of that PAC. The website of the Congressional Black Caucus PAC<sup>8</sup> referenced in our request<sup>9</sup> also identifies several Members of Congress as being part of that PAC's "Leadership."

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bylaws provisions provided in our first supplement. The undersigned counsel will be HLT's incorporators and intend to appoint HLT's initial board members.

<sup>4</sup> The underlined text is in addition to the proposed draft bylaws language provided in our first supplement (at AOR016). If having a minimum of three versus two directors makes a difference to the Commissioners' analysis, then the language in brackets is alternative text that HLT could adopt.

<sup>5</sup> AOR009-10.

<sup>6</sup> <https://www.boldpac.com/#MEMBERS>

<sup>7</sup> See AOR001, 007.

<sup>8</sup> <https://www.cbcpac.org/leadership>

<sup>9</sup> See AOR001, 007.

Based on the Commission's leadership PACs list,<sup>10</sup> it appears that Members who are part of the boards or leadership of CHC Bold PAC and the Congressional Black Caucus PAC also generally have their own leadership PACs. Just as the "Chairs" of the CHC Bold PAC and Congressional Black Caucus PAC are not treating their respective leadership PACs as being "affiliated" with the CHC Bold PAC and Congressional Black Caucus PAC,<sup>11</sup> the other Members who are on these two PACs' boards or leadership also presumably are not treating their own leadership PACs as being affiliated by virtue of their board/leadership positions with these two PACs.

**c. What number or percentage of Directors present constitutes a quorum for purposes of doing business?**

HLT proposes to adopt the following bylaws provision:

*Quorum for Board Meetings. A number of Directors equal to a majority (i.e., more than fifty percent) of the duly elected and qualified Directors will constitute a quorum for the transaction of business.*

**d. Will the bylaws provide for any officers in addition to Chairman and Vice Chairman? If yes, what are those officers and what are their powers and duties?**

At this time, HLT does not contemplate having any other officer positions.

We note that the CHC Bold PAC and Congressional Black Caucus PAC do not appear to have any officer positions other than that of "Chair."<sup>12</sup>

**2. What role, if any, did Representatives Gonzales and Diaz-Balart have in the legal formation of HLT?**

Representatives Gonzales and Diaz-Balart did not have any role in the legal formation of HLT. The formation of HLT was initiated and managed by Susan Lilly of Lilly & Company. While Lilly & Company provides consulting services to Tony Gonzales for Congress, Honor Courage Commitment PAC (leadership PAC of Rep. Tony Gonzales), and Mario Diaz-Balart

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<sup>10</sup> <https://www.fec.gov/data/committees/?designation=D>

<sup>11</sup> See AOR007-8.

<sup>12</sup> See *supra* notes 6 and 8.

for Congress, Ms. Lilly did not form HLT while acting as an “agent” to these entities or any other candidate for public office.<sup>13</sup>

The Commission has recognized that “agents of federal candidates” may “act in their own capacities,” and “not on the authority of the candidates,” with respect to other activities without those activities being attributed to their federal candidate clients.<sup>14</sup>

**3. Please provide any additional information you believe the Commission should know about the amounts and sources of contributions to HLT in its initial operational period, including any other contributions HLT may have received since April 30, 2022.**

The following is a list of all contributions that HLT has received to date:

CONTRIBUTOR	DATE	AMOUNT
HONOR COURAGE COMMITMENT PAC (Leadership PAC of Rep. Tony Gonzales*)	3/28/2022	\$5,000
POINT ACTION PAC (Leadership PAC of Rep. Drew Ferguson)	4/29/2022	\$5,000
MAINTAINING ALL REPUBLICANS IN OFFICE PAC (Leadership PAC of Rep. Mario Diaz-Balart*)	4/29/2022	\$5,000
LIBERTAD (Leadership PAC of Rep. Carlos Gimenez*)	5/13/2022	\$5,000
HARTWELL, ROBERT	5/20/2022	\$1,000
LILLY, SUSAN	5/21/2022	\$1,000
LOVE, BEN	6/3/2022	\$2,000
FRANCO, OMAR	6/9/2022	\$5,000
REPUBLICAN PARTY OF BEXAR COUNTY	6/10/2022	\$5,000
RULLI, LISA	6/10/2022	\$500
CLARK, STEVE	6/14/2022	\$1,000
BRYAN, JAMES	6/17/2022	\$5,000
LOVE, BEN	6/17/2022	\$2,000
VERN PAC (Leadership PAC of Rep. Vern Buchanan)	6/17/2022	\$5,000
MALEY, CHARLES	6/17/2022	\$500
GARZA-BROWN, MARIA	6/17/2022	\$500
	<b>Total =</b>	<b>\$48,500</b>

\* Denotes proposed HLT Board members.

<sup>13</sup> In addition, Lilly & Company consults for Maria Elvira Salazar for Congress. Rep. Salazar also is a proposed HLT Board member.

<sup>14</sup> AO 2015-09 (Senate Majority PAC/House Majority PAC).

We note here that these contributions by the Members' leadership PACs are distinguishable from the proposed contributions in AO 2006-04 (Tancredo for Congress). In that advisory opinion, a state ballot initiative committee was established on February 12, 2004, and, through the fourth quarter of 2005, the committee had received total contributions of only \$9,285.40. The Commission concluded that the proposal for then-Rep. Tancredo's campaign committee to additionally contribute: (i) up to \$50,000 to the ballot committee; or, alternatively (ii) an amount equal to 25% of the ballot committee's receipts would both "result in [Tancredo for Congress] 'financing' [the committee] for the purpose of 11 C.F.R. 300.2(c)."

That conclusion from AO 2006-04 should not be applied here for several reasons.

*First*, HLT has only been in existence for less than three months. In that time, each of the leadership PAC contributions to HLT has been only approximately 10% of HLT's total contributions.<sup>15</sup> By contrast, in AO 2006-04, the ballot committee had been in existence for well more than a year when the Tancredo campaign committee proposed to give an amount equal to more than five times what the committee had received up to that point.

Moreover, while the Commission explained its conclusion regarding the \$50,000 amount at issue in AO 2006-04, the requester had asked, in the alternative, whether the Tancredo campaign committee could contribute a lesser amount equal to 25% of the ballot committee's total receipts. The Commission's response on this latter point was wholly conclusory and lacked any modicum of analysis or reasoning and therefore should not be considered precedential.

*Second*, as to the facts here, where each of the leadership PAC contributions have been well *below* 25%, the Commission has never otherwise articulated a percentage threshold for when the "financing" prong of the Commission's "established, financed, maintained, or controlled" ("EFMC") concept will be triggered. Rather, the Commission has taken a "make it up as it goes along" approach in advisory opinions and enforcement matters. This is impermissible.<sup>16</sup>

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<sup>15</sup> This also is not inconsistent with our representation in our first supplement (AOR014) that contributions to HLT from Members of Congress, federal candidates, and their leadership PACs are "not expected to comprise more than five percent (if even that much) of HLT's total funding *over the long term*" (emphasis added).

<sup>16</sup> See 52 U.S.C. § 30108(b) ("Any rule of law which is not stated in this Act or in chapter 95 or chapter 96 of title 26 may be initially proposed by the Commission only as a rule or regulation pursuant to procedures established in section 30111(d) of this title. No opinion of an advisory nature

*Third*, in AO 2006-04, the Commission was applying its EFMC regulations for “soft money” entities. While the present request also involves an EFMC question, as we explained in our initial request,<sup>17</sup> HLT is a “hard money” PAC and therefore the Commission’s “soft money” regulations and AO 2006-04 do not apply to HLT.

*Fourth*, as we stated in our first supplement,<sup>18</sup> HLT is offering to refund the contributions it has received from Members’ leadership PACs if the Commission is inclined to conclude that HLT is EFMC’d by Members on this basis. There was no representation to this effect in AO 2006-04.

*Lastly*, 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. It would be fundamentally unfair for the Commission to reach a conclusion affecting HLT’s legal status based on HLT’s funding sources when HLT’s fundraising has been hampered by the uncertainty created by the “open-ended rough-and-tumble of factors” set forth in the Commission’s affiliation rules and precedents.<sup>19</sup> Moreover, while HLT has patiently and diligently sought permission from the Commission before involving Members in its activities,<sup>20</sup> its counterparts CHC Bold PAC and the Congressional Black Caucus PAC have not done so.

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Thank you for the opportunity to address the Commissioners’ questions about this advisory opinion request.

We look forward to reviewing and commenting on the draft opinion(s) and hope to have a meaningful opportunity to do so before the next open meeting when this matter will be considered. We anticipate this matter will be on the agenda for the Commission’s July 14, 2022 meeting. Mr. Wang will be available in person to answer any additional questions the Commissioners may have.

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may be issued by the Commission or any of its employees except in accordance with the provisions of this section.”)

<sup>17</sup> AOR010-11.

<sup>18</sup> AOR014.

<sup>19</sup> See AOR008-9 (quoting *Citizens United v. FEC*, 558 U.S. 310, 336 (2010)).

<sup>20</sup> See *Citizens United*, 558 U.S. at 335 (“a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak”).

Sincerely,

A handwritten signature in black ink, appearing to read "Chris K. Gober", with a long horizontal flourish extending to the right.

Chris K. Gober

Eric Wang

Counsel to Hispanic Leadership Trust

cc: Ms. Jessica Selinkoff