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ADVISORY OPINION 2017-03

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URO PAC  
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Dear Ms. Arango and Mr. Mason:

We are responding to your advisory opinion request on behalf of American Association of Clinical Urologists, Inc. (“AACU”), and its separate segregated fund, UROPAC, concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations to the affiliation status of the AACU and the American Urological Association, Inc.

The Commission concludes that the AACU is no longer affiliated with the American Urological Association, Inc. (“AUA”).

***Background***

The facts presented in this advisory opinion are based on your letters received on April 26 and June 19, 2017, information provided at the Commission’s open meeting on June 8, 2017, and publicly available information.<sup>1</sup>

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

The AACU is an incorporated, non-profit membership organization composed of urologists and registered under section 501(c)(6) of the Internal Revenue Code. Advisory Opinion Request at AOR001. The American Urological Association, Inc. is also an incorporated non-profit 501(c)(6) membership organization. *Id.* The AUA is “comprised of urologists and related professionals.” *Id.* “[The] AACU and the AUA are organized into geographically identical regional sections which elect board members to their respective parent organizations, conduct their own annual section meetings, and carry out other functions of the organizations.” *Id.* UROPAC is a separate segregated fund (“SSF”) created by the AACU in 1992. AOR001.

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

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

The AACU, the AUA, and AUA sections work together in a number of ways. They engage in shared public policy and advocacy efforts at the national and state levels. AOR003. At the national level, the AACU and the AUA jointly presented the “Health Policy Forum” at the AUA’s annual meeting in May 2017. *Id.* Also, the “AUA is planning a 2018 Urology Summit in which AUA has invited AACU and other urology organizations to participate, including financial cooperation.” *Id.*

At the state level, in August 2016, the AACU’s “State Society Network” held its “Annual State Advocacy Conference,” which was attended by many AUA section presidents. *Id.* (citing AACU State Society Network, 9th Annual State Advocacy Conference, [http://cqrcengage.com/aacu/file/HPr0A1bjced/Program-9th\\_Annual\\_AACU\\_SSN-6102016.pdf](http://cqrcengage.com/aacu/file/HPr0A1bjced/Program-9th_Annual_AACU_SSN-6102016.pdf) (last visited May 23, 2017)). At that event, the AACU and AUA presidents gave a joint presentation, the AUA president was involved in a panel presentation, and the AUA data committee chair gave three presentations. AOR003.

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

In addition to their public policy and advocacy efforts, the AACU and the AUA have personnel ties. The AACU’s and the AUA’s (and its sections’) bylaws require the associations

to have certain overlapping officers, committee members, and members. Under the AACU's bylaws, any non-United States citizen must be a member of the AUA to be eligible as a member of the AACU. AOR004. Also, the AUA bylaws designate three seats on its Public Policy Council for the AACU; the AACU has filled those seats with its president, past-president, and health policy chair. AOR003.

The AACU's and the AUA's current and former officers, committee members, and members also overlap in ways not required by the associations' bylaws. Ninety-eight percent of AACU members are also AUA members. AOR004. The AACU's and AUA's boards shared a common director up until at least April 26, 2017. *Id.* That common director no longer serves on the AUA's board, but the two organizations will share a board member again when, in two years, an AACU board member will rotate onto the AUA board. *Id.*<sup>2</sup> Also, there are at least 13 current or previous AACU board members and officers that either currently serve or have previously served on various AUA or AUA section committees and working groups. AOR004-006. Twenty-three of the thirty-five members of the AUA's Public Policy Council are AACU members. AOR003. Fifteen AACU members sit on the AUA's 20-member Legislative Affairs Committee. *Id.*

In addition, 13 of the AACU's 14 board members are AUA members, and also recently served, currently serve, or will serve as an AUA or AUA section board member, officer, or committee member. AOR004-005. Of the eight section representatives that must serve on the AACU board, four also serve on at least one AUA committee or working group.<sup>3</sup> AOR005. Moreover, six other AACU board members also have been either an officer or committee member for the AUA or an AUA section. *Id.*

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

Additionally, some AACU presidents have later served as the AUA's president. AOR004. For example, three of the AUA's six most recent presidents (serving in 2010-11, 2011-12, and 2015-16) had previously been president of AACU. AOR005. Finally, the AACU

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

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

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

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

In 2003, UROPAC received an advisory opinion from the Commission deeming the AUA and the AACU affiliated organizations and, as a result, both able to serve as UROPAC's connected organizations. AOR001; *see also* Advisory Opinion 2002-15 (UROPAC). From that time until 2015, the AACU and the AUA were both connected organizations for UROPAC. AOR002. As such, both associations paid for UROPAC's administrative and staff expenses. *Id.*

Now, the AACU states that there are "organizational tensions" between the AACU and the AUA. AOR003. On January 1, 2016, the AUA stopped its payments for UROPAC's administrative costs and otherwise ceased helping the AACU govern UROPAC. AOR002-003. As a result, UROPAC removed the AUA as one of its connected organizations on the amended Statement of Organization that it filed with the FEC in early 2016. AOR002.<sup>5</sup> Since that time, some of the AUA's sections have continued to financially support UROPAC. AOR003. Additionally, UROPAC has continued to solicit AUA members in reliance on Advisory Opinion 2002-15 (UROPAC). *Id.*

The AACU and the AUA have a history of entering into formal and informal arrangements, including affiliation agreements. *See* AOR002; *see also* Advisory Opinion 2002-15 (UROPAC) at 3. The associations' most recent agreement, which focused on the associations' co-sponsorship of their "Urology Joint Advocacy Conference," has expired without renewal. AOR001, AOR011. As a result, the associations will no longer hold this conference. AOR001, AOR011.

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

### ***Question Presented***

*Are the AACU and the AUA still affiliated?*

### ***Legal Analysis and Conclusion***

No, the AUA and the AACU are no longer affiliated.

Political committees, including separate segregated funds, are "affiliated" if they are established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or 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 purposes of the Act's contribution limits, contributions made to or by affiliated political

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

committees are considered to have been made to or by a single political committee. *See* 52 U.S.C. § 30116(a)(5); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

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

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

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

The Commission considers the ten circumstantial factors in turn.

(A) *Controlling Interest*

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

This factor asks whether a sponsoring organization owns a controlling interest in the voting stock or securities of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A). Here, both entities are non-profit, section 501(c)(6) membership organizations and thus own no controlling interest in each other.<sup>6</sup> AOR001, AOR008; *see* Advisory Opinion 2002-15 (UROPAC) at 6. The absence of such ownership weighs against finding that the AACU and the AUA are affiliated. *See* Advisory Opinion 2014-21 (Cambia) at 4.

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

(B) *Governance*

The governance factor indicates that the AACU and the AUA are not affiliated.

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

In Advisory Opinion 2002-15 (URO PAC), the Commission found that this factor suggested that the AUA and the AACU were affiliated based on three facts. *Id.* at 6. First, the AUA's bylaws and an affiliation agreement between the entities reserved three seats on the AUA's Health Policy Council for the AACU. *Id.* Second, the AACU's bylaws required all of the AACU's voting members and elected officials, including all officers and committee members, also to be members of the AUA. *Id.* Third, the AACU's bylaws required "an AUA presence" on the AACU's Government Relations Committee. *Id.* Of these three facts, only the first remains, and that only in part, given the absence of an affiliation agreement between the entities.<sup>7</sup>

The Commission has previously found that the governance factor indicates disaffiliation where one entity controls only a small minority of the seats on the other's board of directors. For example, in Advisory Opinion 2014-21 (Cambia), the Commission concluded that Blue Cross and Cambia were no longer affiliated 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 in Blue Cross's governing board." *Id.* at 5; *see also* Advisory Opinion 2014-11 (HCSC) at 4 ("BCBSA's complete absence of representation on HCSC's governing board and the very limited (1-in-38) role played by HCSC in BCBSA's governing board weigh against finding that the entities' SSFs are affiliated."). In another advisory opinion, the Commission found that where an entity had the authority to appoint up to 25 percent of another entity's board of directors, this factor suggested affiliation, but did "not weigh heavily." Advisory Opinion 2016-02 (Enable) at 7 (determining that two entities were not affiliated).

In contrast, here, the AACU does not appear to have the authority to appoint any of the AUA's directors, nor does the AUA appear to have the authority to appoint any of the AACU's directors. Although the AACU bylaws do require that the AACU's 14-member board include eight "AACU member[s] from each geographical section such as established by the American Urological Association," AOR018; *see also* AOR001, AOR004, this feature is consistent with the associations' shared past, rather than demonstrating an ongoing relationship. Significantly, there is no indication that these eight individuals represent the AUA or AUA sections on the AACU's board.

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<sup>7</sup> Although the AACU's bylaws also require members who are not United States citizens to be members of the AUA, AOR0113-015, "[v]irtually all of AACU's [m]embers are U.S. [n]ationals." Supp'l Submission by AACU and URO PAC at 3.

Because the governance ties between the groups appear to be well below the level the Commission had previously found to suggest affiliation, Advisory Opinion 2016-02 (Enable) at 7, the governance factor indicates that the AUA and the AACU are not affiliated.

(C) *Hiring Authority*

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

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

(D) *Common Membership*

The common-membership factor weighs in favor of finding that the two entities remain affiliated, but not heavily.

This factor considers whether “a sponsoring organization or committee has a common or overlapping membership with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees.” 11 C.F.R. §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D). Under the regulation, the existence of common or overlapping members “is only significant when it indicates a formal or ongoing relationship” between the organizations, and is not merely a reflection of “similar goals for the two organizations.” *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34,098, 34,100 (Aug. 17, 1989) (“*Affiliated Committees*”). The Commission has explained that common membership may constitute evidence of a “formal or ongoing relationship” where two entities are made up of “largely the same people in a manner suggesting an organized control over both groups.” Advisory Opinion 2007-13 (United American Nurses, AFL-CIO) (“*United American Nurses*”) at 7-8 (internal quotation marks omitted) (finding that “maximum possible indirect overlap of 62%” failed to indicate affiliation absent any indication of control).

Here, the AACU and the AUA have many common members. This overlapping membership suggests affiliation, but only slightly, under the circumstances presented here.

First, while a large percentage (98 percent) of the AACU’s members are members of the AUA, AOR004, a far smaller percentage (just 18 percent) of AUA’s members are also members of the AACU, *see* AUA Comment at 1.<sup>8</sup> Thus, the two groups do not consist of mostly the same

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<sup>8</sup> AACU suggests that the percentage of AUA members who are also members of AACU would be higher if non-U.S. national members were excluded from the calculation. Supp’l Submission of AACU and URO PAC at 3.

people since their membership overlap excludes more than 80 percent of the AUA's membership. *Cf.* Advisory Opinion 2005-17 (American Crystal Sugar Company) at 2, 4 (finding membership overlap to favor affiliation when at or near 100 percent for both entities); Advisory Opinion 2012-23 (Snake River Sugar Company) at 4 (same).<sup>9</sup>

Second, the entities' partially overlapping membership is consistent with their prior affiliation and the fact that they appeal to a limited audience with similar interests, and does not necessarily indicate an ongoing relationship or shared control. As the AACU acknowledges, its membership overlap with the AUA "reflects the core missions of both organizations in representing the professional interests of a small and well organized community of medical professionals." AOR008.

Third and finally, the partial membership overlap between the AUA and the AACU has not translated into either group controlling the other, since the groups currently do not share a single common board member or officer. *See infra* pp. 8-9. Although the membership overlap between the groups is reflected in the significant number of AACU members sitting on AUA committees, *see* AOR003, there is no indication that these committee memberships result in the AACU being able to control the AUA.

Thus, the partially overlapping membership between the AACU and the AUA is only slightly suggestive of continued affiliation.

(E) *Common Officers or Employees*

This factor indicates that the AACU and the AUA are not affiliated.

Factor (E) asks whether sponsoring organizations have common or overlapping officers or employees, indicating a formal or ongoing relationship between the organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E). Where two organizations have no common officers or employees, this factor weighs against affiliation. *See, e.g.*, Advisory Opinion 2016-02 (Enable) at 6.

Today, the AACU and the AUA have no current overlapping board members or officers, *see* AOR004-005, AOR009,<sup>10</sup> unlike at the time of Advisory Opinion 2002-15 (UROPAC) at 7,

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<sup>9</sup> In Advisory Opinion 2002-15 (UROPAC) at 6, the Commission found that factor (D) favored affiliation even though the AUA's and the AACU's memberships overlapped to a lesser extent than here. But the Commission also noted additional facts, absent here. First, the AACU's bylaws required "100 percent of the persons eligible to hold office in the AACU [to be] also AUA members." *Id.* Second, the AACU's bylaws "formally encouraged" the AACU's other active members also to join the AUA. Advisory Opinion 2002-15 (UROPAC) at 6. These facts, which showed an ongoing relationship between the two organizations, are no longer true. *See* AOR013-028.

<sup>10</sup> *See supra* n.2 (indicating that the previous common board member between AUA and AACU, Kevin R. Loughlin, no longer serves on the AUA board).

when one person was a board member of both organizations at the same time.<sup>11</sup> The AACU does have several board members and officers who currently also serve as board members or officers for the AUA's sections. AOR004-005. But the affiliation status of the AACU and the AUA's sections is not at issue here; even if it were, the Commission lacks adequate information about the operations and governance of the sections to be able to address it.<sup>12</sup>

Additionally, the AACU's request does not indicate that the AACU and the AUA have any common employees. The organizations used to employ a common lobbyist, *see* Advisory Opinion 2002-15 (URO PAC) at 7, but the AACU's request does not state that the organizations continue to do so, and in fact, suggests that they no longer do, *see* AOR011 (noting, but not disputing, AUA's claim that there had been an "end of a formally coordinated lobbying effort" between the groups). The AACU and three of the AUA's sections do employ the same executive director, AOR005, but this connection is with AUA sections, not the AUA.

The AACU's request also indicates that several AACU board members hold seats on AUA committees, *see* AOR004-005, but these commonalities among those holding lower-level positions at the AUA are not enough to tip the balance of factor (E) in favor of affiliation in light of the groups' non-overlapping boards and officers. In Advisory Opinion 2004-41 (CUNA Mutual), the Commission noted under factor (E) that a trade association and an insurance company had "some overlap in non-governance related committees and at lower levels," but nevertheless found that factor (E) failed to support affiliation because there was no indication of a "formal or ongoing relationship" and there was "no direct overlap between [the entities'] officers and employees." *Id.* at 5. In contrast, in Advisory Opinion 2002-15 (URO PAC), the Commission found that factor (E) favored the AACU and AUA's affiliation where not only were AACU officers serving on an AUA committee, but where the groups also shared a common board member and employed a common lobbyist. *Id.* at 7.

In light of the lack of any overlap among the AACU's and the AUA's board members, officers, or employees, factor (E) fails to weigh in favor of affiliation.

*(F) Former Officers or Employees*

This factor also indicates that the AACU and the AUA are not affiliated.

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<sup>11</sup> The AACU notes that two years from now, the AACU and the AUA will again have a common board member because, at that time, a current AACU board member will "rotate onto the AUA Board." AOR004, *see also* AOR009. The AACU's request, however, asks the Commission to reaffirm that the entities are still affiliated today, *see, e.g.*, AOR011-012 ("The enumerated factors that were present in 2002 remain in place and essentially unchanged today."), and so the Commission expresses no opinion on whether a future common board member, or any other new or additional fact, would change the Commission's conclusion.

<sup>12</sup> The AUA has stated that it does not exert control over the regional sections, which minimizes the relevance of the relationship between the AACU and the AUA regional sections to the question of whether the AACU and the AUA are affiliated. Audio Recording of Discussion on Advisory Opinion Request 2017-01 (AUA) and Advisory Opinion Request 2017-03 (AACU/UROPAC) (June 8, 2017), <https://transition.fec.gov/audio/20170608.mp3> at 45:00 and 48:00. Even if the activity of the regional sections were imparted to the AUA national organization, the AUA has also stated that the AUA Board of Directors, which includes representatives from all AUA sections, voted unanimously to disaffiliate from the AACU. *Id.*, <https://transition.fec.gov/audio/20170608.mp3>, 56:00.

Factor (F) concerns whether a sponsoring organization has any members, officers, or employees who previously were members, officers, or employees of the other sponsoring organization, indicating a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F). Factor (F) weighs against affiliation where the organizations have no or few current members, officers, or employees who previously served in those roles for the other organization. *See, e.g.*, Advisory Opinion 2014-21 (Cambia) at 5.

The AACU has one current board member and officer, Kevin R. Loughlin, who was formerly a board member and officer of the AUA. *See* AOR004; *see also supra* n. 2. The AACU's request does not demonstrate that there are any other current AACU officers or employees who were formerly officers or employees of the AUA, although it does indicate that there are several current AACU officers or employees who were formerly officers or employees of AUA sections. Nor does the AACU's request identify any current AUA officers or employees who were formerly officers or employees of the AACU.

The AACU does identify a few *former* AUA officers who were previously officers for the AACU; however, such former overlaps between the organizations are of limited value in demonstrating that the groups here are currently affiliated. In applying factor (F), the Commission has looked to whether either organization *currently* has officers or employees who used to be officers or employees for the other organization. *See, e.g.*, Advisory Opinion 2014-18 (Rayonier) at 6 (“[M]ore than 90% of RYAM’s current employees are former employees of the Rayonier business unit[.]”); Advisory Opinion 2007-13 (United American Nurses) at 8 (“[O]nly three of the Union’s current twenty-four staff members were formerly employed by the Association.”). Here, the AACU points out that three of the AUA’s six most recent past presidents had earlier served as AACU president. AOR005. The AACU also states that the AACU’s president in 2011 had also been an AUA board member. AOR006. The AACU describes these previous connections as a pattern, AOR010, but the fact that no current officer or employee of either group has a former connection to the other could just as well signify that the organizations used to have a formal or ongoing relationship that no longer exists.

Because the request has identified just one current officer or employee who was formerly an officer or employee of the other organization, factor (F) does not point to affiliation.

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

These factors weigh in favor of finding that the AACU and the AUA are not affiliated.

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

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

Beginning in 2000, the organizations coordinated their public policy efforts through “formal and informal arrangements.” AOR002. In Advisory Opinion 2002-15 (URODAC), the Commission noted one of these formal arrangements, an affiliation agreement between the organizations, as evidence of their affiliation.<sup>13</sup> *Id.* at 7. Between 2002 and 2015, the AACU and the AUA also jointly managed URODAC and both provided funds for administrative expenses and staff support for URODAC. AOR002.

Recently, the amount of funds or goods between the organizations has decreased in some important ways, as have the formal and informal arrangements for the provision of funds and goods, suggesting that the groups are no longer affiliated. First, the affiliation agreement between the AUA and the AACU recently expired and has not been renewed. AOR011. Second, the two organizations will no longer sponsor the Urology Joint Advocacy Conference. AOR002. Third and finally, on January 1, 2016, the AUA ended its financial support for URODAC, and is no longer a connected organization for URODAC. AOR001-002. Although the AACU states that some of the AUA’s sections have continued to financially support URODAC, AOR003, the question before the Commission pertains to AACU’s potential affiliation with the AUA, and not with the AUA’s sections.

Any remaining provision of funds between the organizations is “episodic” and “not significant in amount.” AOR010. The AUA has invited the AACU, along with other urology organizations, to participate in the 2018 Urology Summit, including through financial cooperation. AOR003. Additionally, the request states that there are other instances of the AACU and the AUA providing financial support or sponsorships for particular activities at the other’s meetings. AOR010. The request cites the AACU’s sponsorship of certain elements of the AUA annual meeting as an example of this “episodic” financial support. *Id.*

Because the funding and arrangement for funding between the organizations has diminished recently in significant ways, these factors weigh against the organizations’ affiliation.

(I) *Formation*

The formation factor is neutral regarding whether the AACU and the AUA are affiliated.

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

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<sup>13</sup> Advisory Opinion 2002-15 (URODAC) 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.

The AUA was founded in 1902,<sup>14</sup> before the AACU was created, and so the AACU could not have had a role in the AUA's founding. But AUA officers did have a role in the AACU's founding: At an AUA meeting in 1969, the AUA's then-president, Charles Hoffman, and AUA section presidents founded the AACU to serve "essentially as the public policy arm of the urology community." AOR002. Mr. Hoffman then served as the AACU's first president, and other AUA members served as the AACU's initial officers. AOR002.<sup>15</sup>

The involvement of AUA officers in the AACU's founding is significant under factor (I) even if the AUA itself did not formally create the AACU. To be sure, affiliation is indicated under factor (I) where one entity creates the other using a formal process. *See, e.g.*, Advisory Opinion 2006-12 (International Association of Machinists and Aerospace Workers, *et al.*) at 2-4 (concluding that factor (I) indicated affiliation where one entity chartered other and "effectively fold[ed] the [entity] into its hierarchical structure"). But the language of factor (I) asks whether an organization "or its agent" had a role in forming another group. 11 C.F.R. §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I). The Commission included the term "agent" in factor (I) specifically so that the rule would "also focus on the role played by the personnel of an organization or committee" in forming another entity. *Affiliated Committees*, 54 Fed. Reg. at 34,100.

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

However, the significance of the involvement of AUA officers in the AACU's founding 48 years ago is mitigated by the extent to which the organizations have grown apart since. *See* Advisory Opinion 2007-13 (United American Nurses) at 9 (finding that factor (I) did not alone indicate affiliation, even though one group helped found other, given "the steps both organizations have taken . . . to sever their operational and financial ties"); Advisory Opinion 2004-41 (CUNA Mutual Insurance Society) at 8 (citing "significant 'period of estrangement'" between two groups in concluding that one's "role in establishing" other "does not indicate that the two organizations, or their SSFs, are now affiliated").

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<sup>14</sup> *See* AUA, History of the AUA, <https://www.auanet.org/about-us/about-uaa/history-of-the-uaa> (last visited May 24, 2017).

<sup>15</sup> Later, in 1992, the AACU founded UROPAC. AOR001. The AACU does not state whether the AUA played any role in UROPAC's formation.

The AACU acknowledges that there are current “organizational tensions” between the AACU and AUA, AOR003, and indeed, the AUA opposes the AACU’s request that the Commission find the two groups affiliated, *see* AUA Comment at 1, and has filed its own advisory opinion request asking the Commission to find the two groups to be disaffiliated. *See* AOR 2017-01 (AUA). Furthermore, as mentioned above, the AUA has ended its financial support for UROPAC, the organizations’ latest affiliation agreement has expired without renewal, and the entities will no longer sponsor their Urology Joint Advocacy Conference. AOR001-002, AOR011. Given this divergence between the organizations, the fact that members of the AUA played a role in the formation of the AACU nearly 50 years ago fails, on its own, to indicate that the groups are affiliated today.

(J) *Contribution Patterns*

The contribution-patterns factor is neutral regarding whether the AACU and the AUA are affiliated.

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

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

*Conclusion of Circumstantial Factors Analysis*

After analyzing the relationship between the AACU and the AUA under the ten circumstantial factors discussed above, the Commission concludes that the AACU and the AUA are no longer affiliated. In contrast to Advisory Opinion 2002-15 (UROPAC), where six factors weighed in favor of affiliation between the AUA and the AACU, here, seven factors now weigh against affiliation. The AUA and the AACU own no controlling interest in each other; have no authority to appoint each other’s directors or officers; have no ability to hire or otherwise control each other’s decision-making employees; lack any current common board members, officers, or employees; and exchange fewer funds than they have in the past. In short, the AACU and the AUA lack most of the usual indicia that two organizations have a formal or ongoing relationship.

The only factor weighing in favor of affiliation is the organizations’ membership overlap, but the significance of that overlap is mitigated by the disproportionate percentage of AUA’s members who are not members of the AACU. Moreover, overlapping membership may well be

expected where, as here, two organizations appeal to the same, relatively small interest group, and does not necessarily demonstrate that either organization controls the other. Accordingly, on balance, the factors support finding that the AACU and the AUA are no longer affiliated.

*Context of the Overall Relationship Between the Entities*

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

Although the list of factors in the regulations is not exhaustive, 11 C.F.R. § 110.3(a)(3)(ii), no other aspects of the AUA and the AACU’s relationship indicate that they continue to be affiliated. In Advisory Opinion 2002-15 (URO PAC), the Commission relied upon several “indicators of an ongoing commitment to joint endeavors” in concluding that the AUA and the AACU were affiliated. *Id.* at 7. Specifically, the AUA and the AACU coordinated their national lobbying efforts, each participated in the other’s annual convention “through the provision of booths and/or sponsored lectures,” and worked together to offer joint nominations for American Medical Association elected positions and to support the elected delegates of both groups. *Id.* at 3, 7.

Here, the AACU states that the two organizations have recently engaged in and plan to continue certain joint endeavors. AOR003. For example, in August 2016, the AACU’s State Society Network held its annual state advocacy conference, in which AUA officials participated. *Id.* In May 2017, the AACU and the AUA jointly presented a “Health Policy Forum” at the AUA’s annual meeting. *Id.* In the future, the AACU and the AUA will continue to participate in each other’s annual convention through the provision of booths or sponsored lectures. AOR002. The AUA is also planning a “2018 Urology Summit,” to which the AUA has invited the AACU and several other groups. AOR003. Moreover, the AACU and the AUA continue to organize a urology caucus to represent the interests of urology at the American Medical Association’s House of Delegates biannual meetings. AOR003. At the same time, however, the AUA has clearly demonstrated its intention to pursue its own policy objectives by severing its relationship with the AACU’s SSF, URO PAC, and by asking the Commission to find it to be disaffiliated from the AACU. *See* AOR 2017-01 (AUA). Thus, while these examples of cooperation between the two organizations may demonstrate a shared area of interest and some shared goals, they do not indicate an ongoing relationship sufficient to find affiliation.

Considering the foregoing facts in the context of the AACU and the AUA’s overall relationship, the Commission concludes that the two organizations are no longer affiliated.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which

this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Steven T. Walther". The signature is written in a cursive style with a large initial "S".

Steven T. Walther,  
Chairman