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By Office of General Counsel at 3:27 pm, Jun 21, 2017

1666 K Street, NW  
Suite 500  
Washington, DC 20006  
T 202.887.1400  
F 202.466.3215

Kate A. Belinski  
D 202.887.1473  
kbelinski@nossaman.com

Refer To File #: 501829-0001

June 21, 2017

Lisa J. Stevenson, Esq.  
Acting General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Comment on Supplemental Submission for AOR 2017-03 (American Association of Clinical Urologists, Inc.)

Dear Ms. Stevenson:

This letter responds to the Supplemental Submission for AOR 2017-03 that was filed by the American Association of Clinical Urologists, Inc. (AACU) on June 19, 2017. As with the initial Advisory Opinion request filed by AACU, this supplemental submission dramatically overstates the level of connection and cooperation between the American Urological Association (AUA) and AACU and significantly downplays the fact that these two entities are not only entirely separate, but in several respects, are at odds with one another on matters related to strategy and policy. If the Commission were to adopt draft A of AOR 2017-03, it would effectively quash the independent political voice of the vast majority of AUA's members and leave the AUA artificially tethered to AACU's advocacy priorities and strategic decisions.

AACU emphasizes the support from AUA Sections in terms of providing funding to UROPAC's administrative account. As discussed at the Commission meeting, AUA currently does not have its own PAC to which the Sections can provide financial support. Their only available option to continue to participate in the political process is to provide funding to UROPAC. This is clearly not the preferred option, as demonstrated by the fact that the AUA Board, including the Section representatives, voted unanimously not only to discontinue AUA's funding of UROPAC in 2015, but also to file an Advisory Opinion Request seeking disaffiliation (AOR 2017-01).<sup>1</sup> Regardless of the funding from the AUA Sections, it is clear that the membership's support of UROPAC is waning. From its height in the 2010 election cycle, contributions to UROPAC have dropped as much as \$200,000 each subsequent election cycle; a decrease of over a half a million dollars in contributions between the 2010 and 2016 cycles.

<sup>1</sup> In the Supplemental Submission, AACU notes that the New England Section's representative was recused from the discussion of whether to file the Advisory Opinion Request due to his concurrent service on the AACU Board, but that only serves to highlight the tensions between the two organizations; if they were aligned, there wouldn't be a conflict of interest that would require recusal.



These numbers belie the robust support of UROPAC that AACU's counsel described during the Commission meeting.

AACU also overstates the alignment between AUA and AACU regarding candidates and policy interests, and describes their policy agendas as "identical" with only a few disagreements around the fringes. While there are a few common policy interests on which both entities agree, the divergence of their overall agendas highlights the relative disparity between the two organizations in terms of size and scope. AUA's more diverse policy agenda matches its broad base of approximately 22,000 members. Whereas AACU lists four legislative priorities on its website, AUA lists nine.<sup>2</sup> Moreover, AUA works as opportunities arise on other legislative issues, including biosimilars, telemedicine, RAC audits, Physician Payments Sunshine Act, health information technology, Affordable Care Act issues, FDA issues, Medicare Part B issues, physician burnout, clinical data registries, drug shortages, IVF coverage for veterans, opioids, patient safety, government meetings, tax issues, and various insurance barriers such as prior authorization and narrowing of networks. AUA seeks to support candidates who are strong on these issues, many of which are completely outside the scope of AACU's more limited legislative agenda.

The lack of alignment of the organizations' public policy interests and agendas is further demonstrated by AUA's decision in 2015 to withdraw from co-sponsorship of UROPAC; AUA's decision to allow the affiliation agreement with AACU to expire without renewal; AUA's decision to stop co-sponsoring the Joint Advocacy Conference with AACU and instead to sponsor its own Advocacy Summit, and AUA's affirmative decision – again, determined by full Board vote – not to invite UROPAC to participate in the Summit in any capacity, a decision which has been communicated to AACU's President.

AACU describes the disparity of membership totals between the two organizations as "less disproportionate," but even if we look only to the PAC-eligible membership population to discuss the relative size of the two organizations, AUA's membership is nearly five times as large as AACU's. As discussed at the Commission meeting, AUA is currently in the difficult and unenviable position of being held, against its will, to a much smaller organization's advocacy priorities and strategic decisions.

As Commissioner Goodman highlighted during the discussion of AOR 2017-03, the entire purpose of the affiliation provisions of the Federal Election Campaign Act is to avoid circumvention of the contribution and expenditure limits. It presupposes that two affiliated organizations are so aligned with one another that they should be treated as a single entity. That is clearly not the case between AUA and AACU, underscored most pointedly by the sharp disagreement on whether they should remain affiliated.

As discussed at the meeting, the decision in 2002 was a close call, but there were several factors present at the time that weighed in favor of affiliation, including a formal affiliation agreement, shared lobbyist, co-sponsorship of a high-profile joint advocacy conference, and a joint legislative agenda. None of these factors are present today. If the Commission were to

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<sup>2</sup> <http://www.aacuweb.org/federal?1>; <http://www.auanet.org/advocacy/advocacy-priorities>





determine – based on the objective facts as they exist at present – that AUA and AACU remain affiliated despite the tenuous connections between the two organizations and the AUA’s clear desire for a clean break, it would call into question the affiliation status of a vast number of trade associations and membership organizations; entities that never would have fathomed they might be affiliated under this same rationale.

For all of these reasons, and those in the record of AOR 2017-01 and AOR 2017-03, we respectfully request that the Commission reject Draft A of AO 2017-03 in favor of a determination that AUA and AACU are no longer affiliated. If there is any additional information we can provide, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kate A. Belinski', with a long horizontal flourish extending to the right.

Kate A. Belinski  
for Nossaman LLP